Clause 135

Guide Dogs

ETA
Schedule VI, Part II, sections 33 and 33.1 of French Version

Sections 33 and 33.1 of Part II of Schedule VI to the French version of the Act are amended to use more generally accepted terminology and to correct grammatical errors.

These amendments are effective on Royal Assent.

Clause 136

Assistive Devices

ETA
Schedule VI, Part II, sections 34 to 40

Section 34 Service in Respect of Medical Device

Section 34 zero-rates supplies of certain services, such as repair or maintenance services, in respect of zero-rated medical devices. As a number of these devices that are currently listed in the Regulations are added to the list in this Schedule, the cross-references in section 34 are amended accordingly.

Sections 35 and 36 Graduated Compression Stocking and Specially Designed Clothing

Sections 35 and 36 of Part II of Schedule VI are amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

In addition, the expression "disabled individual" in section 36 is replaced with the more generally accepted expression "individual with a disability".

Finally, the sections are amended to ensure that the articles described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

Sections 37 to 40

These sections deal with assistive devices that are currently prescribed under the *Medical Devices (GST) Regulations*. They are added to Part II of Schedule VI so that all of the existing provisions zero-rating medical or assistive devices may be found in the body of the Act as opposed to the Act and those Regulations. The repeal of those Regulations, and these additions to the Schedule, will apply in respect of supplies made after April 23, 1996.

Section 37 Incontinence Products

New section 37 of Part II of Schedule VI zero-rates a supply of an incontinence product that is specially designed for use by an individual with a disability. This includes a broad range of briefs, pants, pads and underpads – disposable and reusable – that are specially designed to assist an individual in coping with an incontinence disorder. Baby diapers are not included under this section.

New section 37 incorporates the reference to incontinence products contained in subparagraph 2(*d*)(i) of the *Medical Devices (GST) Regulations*.

Section 38 Feeding Utensils

New section 38 of Part II of Schedule VI zero-rates a supply of a feeding utensil or other gripping device that is specially designed for use by an individual with impaired use of hands or similar disability. New section 38 replicates paragraph 2(*b*) of the *Medical Devices (GST) Regulations*.

Section 39 Reaching Aids

New section 39 of Part II of Schedule VI zero-rates a supply of a reaching aid. These goods must be specially designed to assist an individual with a disability in order to be supplied on a zero-rated basis. New section 39 incorporates the reference to reaching aids contained in subparagraph 2(*d*)(ii) of the *Medical Devices (GST) Regulations*.

Section 40 Prone Boards

New section 40 of Part II of Schedule VI zero-rates a supply of a prone board that is specially designed for use by an individual with a disability. These are devices that provide a safe support at a range of angles between the prone and standing positions. The device must be specially designed to assist an individual with a disability in order to be supplied on a zero-rated basis.

New section 40 incorporates references to prone boards currently contained in subparagraph 2(*d*)(iii) of the *Medical Devices (GST) Regulations*.

Clause 137

Basic Groceries

ETA
Schedule VI, Part III, section 1

Section 1 of Part III of Schedule VI to the Act describes supplies of food and beverages for human consumption that are generally zero-rated, unless they are specifically excluded by paragraphs (*a*) to (*r*) of that section.

Subclause 137(1)

Non-Alcoholic Malt Beverages

ETA
Schedule VI, Part III, paragraph 1(*b*)

The amendment deletes paragraph 1(*b*), which refers to "non-alcoholic malt beverages". These products are already included under other provisions such as paragraph 1(*c*), which refers to carbonated beverages.

This amendment is effective on Royal Assent.

Subclause 137(2)

Juice Bars and Frozen Non-Dairy Substitutes

ETA
Schedule VI, Part III, paragraphs 1(*j*) and (*k*)

Existing paragraph 1(*j*) excludes ice lollies from zero-rated treatment. The amendment adds a reference to juice bars and products that are similar to ice lollies, or flavoured, coloured or sweetened ice waters. Therefore, juice bars and similar products will be taxable.

Existing paragraph 1(*k*) refers to ice cream, ice milk, sherbet and frozen yoghurt or frozen puddings packaged in single servings. The amendment adds a reference to non-dairy substitutes of any of these products. In addition, to be included in paragraph (*k*) and, therefore, taxable, products must be either packaged or sold in single servings, which is consistent with the criteria under subparagraph 1(*o*)(v).

These amendments apply to supplies for which all of the consideration becomes due or is paid without having become due on or after May 14, 1996.

Subclause 137(3)

Prepared Food or Beverages

ETA

Schedule VI, Part III, paragraphs 1(*o*) to (*o*.5)

Existing paragraph 1(*o*) lists certain prepared foods and beverages that are taxable under the GST. Amended paragraph 1(*o*) retains this exclusion from zero-rated treatment for food and beverages that are heated for consumption.

New paragraph 1(*o*.1) replaces existing subparagraph 1(*o*)(ii), which refers to "prepared salads". The new paragraph refers to salads that are not canned or vacuum sealed. This ensures that canned prepared salads are not caught by the exclusion as a result of the deletion of the words "sold in a form suitable for immediate consumption". For example, fruit salad in a can will continue to be zero-rated.

New paragraph 1(*o*.2) replaces existing subparagraph 1(*o*)(iii) dealing with sandwiches and similar products. The new paragraph differs only in that it includes the words "other than when frozen" as a substitute for the existing test of whether the product is sold "in a form suitable for immediate consumption".

Existing subparagraph 1(*o*)(iv), which excludes from zero-rated treatment platters and arrangements of prepared foods, is renumbered as new paragraph 1(*o*.3).

Existing subparagraph 1(*o*)(vi) is renumbered as paragraph 1(*o*.4).

New paragraph 1(*o*.5) refers to food and beverages sold under, or in conjunction with, a catering contract. This clarifies that, where food is provided along with the service of catering, the supplies of the food and the service are taxable.

These amendments apply to supplies for which all of the consideration becomes due or is paid without having become due on or after May 14, 1996.

Clause 138

Grains or Seeds and Fodder Crops

ETA
Schedule VI, Part IV, section 2

Existing section 2 of Part IV of Schedule VI zero-rates supplies of grains or seeds in their natural state or treated for storage purposes or hay, silage or other fodder crops where these are ordinarily used to produce food for human consumption, or feed for livestock or poultry. To qualify for zero-rated treatment, they must be sold in quantities larger than those in which they are typically sold to consumers. Specifically excluded from the application of this section are grains, seeds or grain or seed mixtures to be used as feed for wild birds or as pet food.

The section is amended to include grains or seeds irradiated for storage purposes.

This amendment applies to supplies of grains or seeds for which any consideration becomes due after April 23, 1996, or is paid after that day without having become due.

Clause 139

Fertilizer

ETA
Schedule VI, Part IV, section 5

Existing section 5 of Part IV of Schedule VI zero-rates supplies of fertilizer sold in bulk or in containers of less than 25 kg of fertilizer where the total quantity of fertilizer supplied at a given time is at least 500 kg. Since some goods that contain fertilizer may be sold for use as topsoil for purposes other than commercial farming, this section is amended to ensure that these goods will not be zero-rated, regardless of the quantity sold.

This amendment applies to supplies made after April 23, 1996.

Clause 140

Supplies to Unregistered Foreign Carriers

ETA
Schedule VI, Part V, paragraph 2(*a*)

Existing section 2 of Part V of Schedule VI zero-rates supplies of property or services to a non-resident operator of a ship, aircraft or railway if the operator is not registered for the GST. The purpose of this provision is to ensure that such operators are not disadvantaged relative to operators who are GST registrants and, as such, are entitled to recover any tax paid by claiming input tax credits.

Existing paragraph (*a*) of that section provides zero-rated treatment to inputs acquired for consumption, use or supply in transporting passengers or freight to or from Canada. The amendment to paragraph 2(*a*) clarifies that, where the international carrier transports passengers or freight through Canada, the carrier will be able to acquire inputs on a zero-rated basis. For example, where an international carrier stops in Gander, Newfoundland to refuel in the course of a flight beginning and terminating outside Canada, the amendment ensures that the carrier will obtain the fuel on a zero-rated basis.

This amendment applies to supplies made after April 23, 1996.

Clause 141

Supplies of Fuel to International Carriers

ETA
Schedule VI, Part V, paragraph 2.1(*a*)

Existing section 2.1 of Part V of Schedule VI zero-rates a supply of fuel made to a registered carrier for use in providing international transportation services. This provision reduces the registered carrier's cash-flow costs associated with purchases of fuel, which is typically a carrier's single largest operating cost. The purpose of this provision is to ensure that such operators are not disadvantaged relative to

unregistered foreign carriers whose purchases of fuel for international services are zero-rated under section 2 of this Part.

Existing paragraph 2.1(*a*) provides zero-rated treatment to fuel used in transporting passengers or freight to or from Canada. The amendment clarifies that the provision also applies where the registered carrier transports passengers or freight through Canada. An example is where a registered carrier makes a stop in Gander, Newfoundland for refuelling in the course of a flight beginning and terminating outside Canada. The amendment ensures that the registered carrier may obtain fuel on a zero-rated basis in these circumstances. This amendment parallels a similar change made to paragraph 2(*a*) of this Part (see commentary on clause 140).

This amendment applies to supplies of fuel made after April 23, 1996.

Clause 142

Services to Non-Residents

ETA
Schedule VI, Part V, sections 4 to 6.2

The amendment repeals and replaces existing sections 4 to 6 of Part V of Schedule VI to the Act. Each section is described below.

Section 4 Services Performed on Temporarily Imported Goods

Existing section 4 of Part V of Schedule VI zero-rates any service, other than a transportation service, performed on goods that are temporarily imported into Canada for the sole purpose of having the service performed. An example is where goods are produced in Canada and exported, then returned to Canada for repair. Section 8 of Schedule VII to the Act relieves the tax on the goods themselves that would otherwise be applicable at the time of the importation.

Section 4 is amended to clarify that zero-rated treatment extends to goods supplied in conjunction with the service. This measure ensures that parts and services supplied in these circumstances are both relieved of tax.

This amendment applies to supplies made after April 23, 1996.

Section 5 Agents' Services

Section 5 zero-rates a purchasing or selling agent's services to a non-resident person. In many situations, however, a representative of a non-resident person is not an "agent" of the non-resident person. The amendment broadens the scope of section 5 by extending it to services of arranging for, procuring or soliciting orders for supplies by or to a non-resident person.

As in the case of a service of acting as an agent of a non-resident person, to be zero-rated under amended section 5, the service must be in respect of a supply to the non-resident person that is zero-rated under Part V of Schedule VI or a supply made outside Canada by or to the non-resident person. For example, a purchasing representative may zero-rate services to a non-resident person of arranging for or procuring orders of goods that will either be exported on a zero-rated basis under section 1 of Part V of Schedule VI or supplied outside Canada to the non-resident person. It is not necessary that the purchasing representative have the authority to conclude the contracts for the purchase of the goods on behalf of the non-resident person.

Similarly, the service of a sales representative of arranging for, procuring or soliciting orders in Canada for a non-resident person may be zero-rated if the non-resident's supply is made outside Canada. In interpreting paragraph 5(*b*), it should be noted that certain supplies made by non-residents in Canada are considered under subsection 143(1) to be made outside Canada. Also, as in the case of services of purchasing representatives, it is not necessary that the sales representative have the authority to conclude the contract of sale in Canada on behalf of the non-resident person.

This amendment is effective January 1, 1991.

Section 6 Emergency Repair Services

A domestic carrier, such as a railway, is often responsible for repairing damages to cargo containers or conveyances belonging to other carriers while the containers or conveyances are in the domestic carrier's possession. Existing section 6 zero-rates the repair service if supplied to a non-resident person.

Amended section 6 contains the words "or transported" to ensure the section applies where the carrier is not necessarily "using" a particular conveyance or cargo container but merely transports it. Other minor wording changes are made for consistency with other provisions of Part V. For example, the word "goods" is changed to "property".

This amendment applies to supplies made after April 23, 1996.

Section 6.1 Repair of Railway Rolling Stock

Existing section 6 deals with repair services that are in respect of a conveyance or cargo container and are supplied by a carrier to a non-resident person. However, there are service providers who are not carriers. Under the existing rules, such suppliers would be at a competitive disadvantage relative to carriers and relative to non-resident suppliers of repair services. New section 6.1 zero-rates supplies made to unregistered non-residents of emergency repairs to railway rolling stock. Any repair parts supplied in conjunction with the zero-rated service are also zero-rated.

New section 6.1 applies to supplies made after April 23, 1996.

Section 6.2 Repair and Storage of Cargo Containers

New section 6.2 zero-rates a supply to an unregistered non-resident person of emergency repair services or storage services in respect of empty cargo containers where the container is for use exclusively in the international transport of freight and is classified under specified tariff items. Any repair parts supplied with the zero-rated service are also zero-rated.

New section 6.2 applies to supplies made after April 23, 1996.

Clause 143

Exported Services

ETA
Schedule VI, Part V, section 7

Section 7 of Part V of Schedule VI zero-rates exports of certain services supplied to non-resident persons.

Subclause 143(1)

Services Primarily for Consumption, Use or Enjoyment in Canada

ETA
Schedule VI, Part V, paragraphs 7(*a*) and (*a*.1)

The portion of the preamble to existing section 7 of Part V of Schedule VI that relates to the exclusion for supplies to non-resident individuals is replaced with new paragraph 7(*a*). This paragraph provides that a supply of a service to an individual may not be zero-rated under section 7 if the individual is in Canada at any time during which the individual has contact with the supplier in relation to the supply. This amendment does not alter the scope of the provision.

Existing paragraph 7(*a*), which excludes from zero-rating under section 7 a service that is primarily for consumption, use or enjoyment in Canada, is replaced with new paragraph 7(*a*.1). Difficulties have arisen in the determination of where certain services are primarily consumed, used or enjoyed. New paragraph 7(*a*.1) excludes from section 7 a supply of a service that is "rendered" to an individual while that individual is in Canada. Note that this applies whether or not the supply is "made" to an individual (i.e., whether an individual is the legal recipient within the meaning of subsection 123(1)). A supply may meet the condition in new paragraph 7(*a*) in that the service is not "supplied" to an individual who is in Canada. If, however, the service is "rendered" to an individual while the individual is in Canada, the supply would be excluded from zero-rating under section 7 by paragraph 7(*a*.1).

For example, where a non-resident company pays a fee for an employee to attend a management training session in Canada, the training service, although supplied to a non-resident person other than an individual, would not be zero-rated under section 7 because the service is rendered to the employee, an individual, while the employee is in Canada. It should be noted that, since section 7 is a general zero-rating provision for services, a more specific provision (e.g., section 18 of this Part) may apply in some cases.

This amendment applies to supplies for which all of the consideration becomes due or is paid without having become due on or after July 1, 1996.

Subclause 143(2)

Representatives' Services

ETA
Schedule VI, Part V, paragraph 7(*f*)

Section 7 zero-rates most supplies of services to non-resident persons. However, paragraph 7(*f*) excludes agents' services that are addressed under section 5 of Part V. This amendment is consequential to the amendment to section 5 with respect to services of arranging for, procuring or soliciting orders for supplies by or to a non-resident person (see commentary above). Amended paragraph 7(*f*) excludes these services from the application of section 7.

This amendment applies to supplies made after April 23, 1996.

Subclause 143(3)

Telecommunication Service

ETA
Schedule VI, Part V, paragraph 7(*h*)

Section 7 zero-rates most supplies of services to non-resident persons. However, new paragraph 7(*h*) excludes telecommunication services. The tax status of those services will depend on whether the supply of the service is, under new section 142.1, made in Canada (see commentary on subclause 7(1)) and on new section 22.1 of this Part,

which zero-rates a supply of a telecommunication service made by a registrant who carries on a business of supplying such services to a non-resident person who is not a registrant and who also carries on a business of supplying telecommunication services (see commentary on clause 145).

This amendment applies to supplies made after December 15, 1996.

Clause 144

Goods Sold to Persons for Delivery Abroad

ETA
Schedule VI, Part V, section 12

Existing section 12 of Part V of Schedule VI zero-rates goods supplied to a recipient if the supplier mails the goods, or has a common carrier deliver the goods to that recipient, at an address outside Canada.

The amendment broadens the scope of this zero-rating provision by eliminating the requirement that the goods be delivered to the recipient, as opposed to any other person, at a place outside Canada. It will allow for the zero-rating of goods where the supplier delivers the property to a common carrier or mails the property, either to the recipient of the supply or to a third party, such as a non-resident relative of the recipient.

This amendment applies to supplies made after April 23, 1996.

Clause 144.1

Custodial or Nominee Services

ETA
Schedule VI, Part V, section 17

Existing section 17 of Part VI of Schedule VI zero-rates a supply made to a non-resident person of custodial or nominee services in respect of securities of the non-resident. The section is amended to

also zero-rate such services supplied in respect of precious metals of a non-resident person. "Precious metal" is defined in subsection 123(1) of the Act.

This amendment applies to supplies made after 1996.

Clause 145

Postal Services and Telecommunication Services

ETA
Schedule VI, Part V, sections 22 and 22.1

Section 22 Postal Services

Existing section 22 of Part V of Schedule VI zero-rates a supply of a telecommunication or postal service made by a registrant who carries on a business of supplying such services to a non-resident person who is not a registrant and who also carries on a business of supplying such services. The amendment to section 22 removes references to telecommunication services, which are addressed in new section 22.1 of this Part.

The amendment applies to supplies made after April 23, 1996.

Section 22.1 Telecommunication Services

New section 22.1 of Part V of Schedule VI zero-rates a supply of a telecommunication service made by a registrant who carries on a business of supplying such services to a non-resident person who is not a registrant and who also carries on a business of supplying telecommunication services. "Telecommunication service" is newly defined in subsection 123(1) (see commentary on the definition of this term under clause 1).

The zero-rating provision does not include a supply of a telecommunication service where the telecommunication is emitted and received in Canada. For example, if an employee of a non-resident telecommunications carrier places a long-distance call from a place in Canada to another place in Canada and uses the non-resident employer’s calling card, the Canadian

telecommunications carrier would have to charge the non-resident tax on the call, which is deemed to be made in Canada under the rules in new section 142.1 (see commentary on clause 7).

The amendment applies to supplies made after April 23, 1996, and to supplies made on or before that day if the supply was not treated as taxable i.e., if the supplier did not charge tax or an amount was charged as tax and a refund of the amount was claimed in an application received at a Revenue Canada office before April 23, 1996 or a deduction under subsection 232(3) in respect of the amount was claimed in a return filed at a Revenue Canada office before that day.

Clause 146

Advisory, Professional or Consulting Services

ETA
Schedule VI, Part V, paragraph 23(*d*)

Section 23 of Part V of Schedule VI zero-rates certain supplies of advisory, professional or consulting services made to non-resident persons. However, paragraph 23(*d*) excludes agents' services, which are dealt with under section 5. This amendment is consequential to the amendment to section 5 with respect to services of arranging for, procuring or soliciting orders for supplies by or to a non-resident person (see commentary above). Amended paragraph 23(*d*) excludes these services from the application of section 23.

This amendment applies to supplies made after April 23, 1996.

Clause 147

International Flight

ETA
Schedule VI, Part VII, section 1

This amendment repeals the definition "international flight" in section 1 of Part VII of Schedule VI. It is replaced by the definition "international flight" in new subsection 180.1(1) (see commentary on clause 31).

This amendment is effective on April 24, 1996.

Clause 148

In-Flight Charges

ETA
Schedule VI, Part VII, section 5

This amendment provides that supplies to passengers of goods delivered or services performed on board an international flight while the flight is in Canada will no longer be zero-rated under Schedule VI. Nonetheless, these supplies remain non-taxable as the zero-rating provision is replaced by new subsection 180.1(2), which deems such supplies to be made outside Canada (see commentary on clause 31).

This amendment applies to supplies made after April 23, 1996.

Clause 149

International Air Ambulance Services

ETA
Schedule VI, Part VII, section 15

New section 15 of Part VII of Schedule VI zero-rates services provided by Canadian air ambulance operators operating in the U.S. and international markets. Under the existing legislation, ambulance services are exempt under section 4 of Part II of Schedule V. That section is amended to exclude international air ambulance services to maintain competitive equity between Canadian suppliers and foreign suppliers of air ambulance services, who do not have to pay GST on their inputs (see commentary on clause 93).

The amendment is effective January 1, 1991.

Clause 149.1

Non-taxable Importations

ETA
Schedule VII, section 4

Section 4 of Schedule VII describes goods that have been donated to a charity and are being imported by the charity. By virtue of being included in this Schedule, the goods are not subject to tax under Division III of Part IX of the Act.

Section 4 is amended, as of January 1, 1997, as a consequence of the amendment to the definition of "charity" in subsection 123(1) (see commentary on clause 1)). The amended definition excludes entities that are "public institutions" as newly defined in subsection 123(1) (see commentary on the definition "public institution" under clause 1). Specific reference to public institution is therefore added to section 4 to ensure that those entities continue to receive the benefit of relief from tax on imported goods that have been donated to them.

Part II

EXCISE TAX ACT

This Part contains amendments intended to implement the Harmonized Sales Tax (HST).

Clause 150

Definitions

ETA
123(1)

Subsection 123(1) contains definitions of terms used in Part IX of the Act. A number of those definitions are amended and certain definitions are added as a consequence of the introduction of the HST. These amendments to subsection 123(1) all come into force on April 1, 1997.

Subclause 150(1)

Application

The preamble in subsection 123(1) is amended to provide that the definitions in this subsection apply to new Schedules VIII to X, which relate to the HST.

Subclause 150(2)

"consideration fraction" and "tax fraction"

These definitions are repealed as a consequence of the introduction of the 15-per-cent tax rate in the participating provinces under the HST. The existing definitions of "consideration fraction" and "tax fraction" are based only on the 7-per-cent GST tax rate. References to these terms in Part IX of the Act are replaced with references to the appropriate fraction that takes into account the provincial component of the HST wherever it is applicable.

Subclause 150(3)

"direct cost"

The "direct cost" of property or a service supplied by a person includes tax under Part IX that was payable by the supplier in respect of that property or service. This definition, as amended in subclause 1(12), is further amended to ensure that the "direct cost" of property that is subject to the HST upon being brought into a participating province by a supplier includes that tax as well. The definition "direct cost" is relevant to the exemption under section 5.1 of Part V.1 of Schedule V to the Act and section 6 of Part VI of that Schedule.

Subclause 150(4)

"residential complex"

This amendment to the definition "residential complex" is consequential to the addition of subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155). The definition "residential complex" is amended to ensure that the reference therein to the period of continuous possession or use is a reference to such period as provided for under the arrangement to avoid confusion with the lease interval period in respect of each separate deemed supply.

Subclause 150(5)

"residential trailer park"

This amendment to the definition "residential trailer park" is consequential to the addition of subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 155). The definition "residential trailer park" is amended to ensure that the reference therein to the period of continuous possession or use is a reference to such period as provided for under the arrangement to avoid confusion with the lease interval period in respect of each separate deemed supply.

Subclause 150(6)

"basic tax content"

The "basic tax content" of a person's property is generally the amount of tax under Part IX that the person was required to pay on the property and improvements thereto, after deducting any amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise and after taking into account any depreciation in the value of the property. The depreciation factor is generally calculated by dividing the fair market value of the property at the time the basic tax content is determined by the value on which the tax was originally calculated.

For example, if goods are purchased in a non-participating province for $1,000, GST of $70 will be payable. Immediately after the goods are purchased, they have a basic tax content of $70 if no rebates or remissions of tax are available. If the fair market value of the goods is $500 one year later, the basic tax content will be $35 at that time, because the goods have depreciated in value by one-half.

The value determined under this new definition applies after March 1997 in determining a person's liability for tax or eligibility for input tax credits in a number of cases where the person is deemed under Part IX to have supplied or acquired property. Basic tax content is most commonly used for purposes of the capital property rules set out in Subdivision d of Division II of Part IX, which allow a person to claim additional input tax credits where the person increases the use of capital property in commercial activities and recaptures the credits where the use in commercial activities decreases. Basic tax content is also used for purposes of various other deemed supplies and acquisitions, such as where a person becomes, or ceases to be, a registrant.

Before April 1997, the provisions of Part IX dealing with deemed supplies and acquisitions of capital personal property, for example, generally deem tax to have been collected or paid, as the case requires, equal to tax on the fair market value of the property calculated at the rate of tax applicable to the supply. However, using this method of calculating the deemed tax would lead to inappropriate results after March 1997 where the tax on the acquisition of the

property or an improvement was calculated at a different rate than that applicable to the deemed supply.

For example, if a registrant purchases property for $200 in a participating province after March 1997 for use as capital property in non-commercial activities, HST of $30 will be payable. If the property is later removed to a non-participating province where the registrant begins to use the property exclusively in commercial activities, the registrant is deemed to have acquired the property in the non-participating province and would, under the pre-April 1997 capital property rules, be deemed to have paid tax at the 7-per-cent rate applicable to supplies made in that province. Assuming no change in the value of the property, the input tax credit available on the change in use would equal $14 (7 per cent of $200). The remaining tax of $16 would be unrecoverable. The amendments relating to basic tax content address this problem so that the tax consequences of a change in use will take into account all of the tax under Part IX that applied to the property regardless of where the property is situated when the deemed supply or acquisition occurs, subject to the adjustments for rebates and depreciation. In this example, the full $30 of HST would be recoverable as an input tax credit.

The basic tax content of property includes not only tax that was actually paid but also the tax that otherwise would have been payable when the property (or improvements to the property) was acquired or brought into a participating province if not for subsection 153(4), section 167 or the fact that it was acquired or brought in for consumption, use or supply exclusively in the course of commercial activities.

Any part of the tax that is recoverable otherwise than as an input tax credit must be removed from the "basic tax content" calculation. Therefore, "basic tax content" of a particular property will not include any amount a person was entitled to recover, or would have been entitled to recover if the property had been acquired for use exclusively in activities that are not commercial activities, by way of a rebate (e.g. public service body rebates), refund (e.g. an amount of tax refunded due to an adjustment to consideration), remission or otherwise under this Act or any other Act or law. For example, if a charity that is a registrant acquires property for use exclusively in commercial activities, it may recover all of the tax payable on the

acquisition by claiming an input tax credit and a rebate under section 259 is not available. Nevertheless, the basic tax content is calculated as if a rebate were available, calculated on the full amount of tax payable.

The method for calculating basic tax content varies where the property was brought into a participating province from a non-participating province. In this case, paragraph (*b*) of the definition applies. In all other cases (for example, property that was last acquired in a participating or a non-participating province, property that was imported into a participating or a non-participating province, etc.), paragraph (*a*) applies when determining the basic tax content.

For example, if property is purchased in a non-participating province for $10,000 and GST of $700 is payable on the purchase, the basic tax content of the property immediately after the purchase is $700. Assuming the property is for use exclusively in commercial activities, the registrant would be entitled to a $700 input tax credit. If the property is later brought into a participating province for use exclusively in commercial activities at a time when its fair market value is $5,000, under paragraph (*b*) of the definition, the basic tax content will now be the total of

- the basic tax content of the property immediately before the property was brought into the province, which in this example is $350 ($5,000/$10,000 x $700), plus

- the tax that would have been payable on bringing the property into the province if the property were for use in non-commercial activities, which in this example is $400 (8 per cent of $5,000).

Thus, the basic tax content will be $750. If the registrant ceases using the property in commercial activities soon after it is brought in, the registrant would be required to pay tax under the capital property change-in-use rules equal to the basic tax content of $750.

The 8 per cent portion of the HST is deducted in calculating the basic tax content of property of a selected listed financial institution that is required to use the special attribution method in new section 225.2 of the Act. However, these financial institutions are required to add an amount in calculating basic tax content, generally equal to 8/7ths of

the GST applicable to the purchase of the property or improvement multiplied by the institution's total prescribed percentage under section 225.2 for the taxation year in which the GST became payable.

For example, if a selected listed financial institution acquires a machine for $100,000 plus $15,000 of HST in a taxation year for which its total prescribed percentage (for the purposes of the special attribution method) for the participating provinces is 10 per cent, its basic tax content for the machine will be $7,800, calculated as follows:

- $15,000, being the tax that was payable on the acquisition; plus

- $800, being 8/7ths of 10 per cent of the $7,000 of GST that was payable on the acquisition; less

- $8,000, being the provincial component of the HST payable on the acquisition.

"Newfoundland offshore area"

The new definition "Newfoundland offshore area" is relevant for purposes of the new definition "participating province" in subsection 123(1). The definition parallels that found in section 2 of the *Canada-Newfoundland Atlantic Accord Implementation Act*. By including this area in the definition of "participating province", the provincial component of the HST applies to the Newfoundland offshore area in a manner consistent with the terms of the Canada-Newfoundland Atlantic Accord. Reference should also be made to the commentary on the new definition "off-shore activity".

"non-participating province"

The new definition "non-participating province" is relevant for purposes of the HST. "Non-participating province" is defined to mean a province that is not a participating province, or another area of Canada that is outside the participating provinces. "Participating province" is newly defined in subsection 123(1) and refers to a province or area (i.e., the Nova-Scotia and Newfoundland off-shore areas) listed in new Schedule VIII to the Act. For purposes of Part IX of the Act, the term "non-participating province" refers to the

provinces not specified in Schedule VIII, as well as other areas of Canada that are not in a province, such as some off-shore areas.

"Nova Scotia offshore area"

The new definition "Nova Scotia offshore area" is relevant for purposes of the new definition "participating province" in subsection 123(1). The definition parallels that found in section 2 of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. By including this area in the definition "participating province", the provincial component of the HST applies to the Nova Scotia offshore area in a manner consistent with the terms of the Canada-Nova Scotia Offshore Petroleum Resources Accord. Reference should also be made to the commentary on the new definition "offshore activity".

"offshore activity"

The new definition "offshore activity" is relevant to the application of the provincial component of the HST to the Nova Scotia and Newfoundland offshore areas (as newly defined in subsection 123(1)) in a manner consistent with the terms of the Canada-Nova Scotia Offshore Petroleum Resources Accord and the Canada-Newfoundland Atlantic Accord. Essentially, an "offshore activity" is an activity in respect of which tax would be imposed under the implementation Acts for those Accords if the references therein to the consumption taxes of Nova Scotia and Newfoundland were references to the HST.

"participating province"

The new definition "participating province" is relevant for purposes of the HST, particularly the rules for determining whether a supply is made in or outside a participating province. "Participating province" is defined to mean a province referred to in new Schedule VIII. The participating provinces are Nova Scotia, New Brunswick and Newfoundland. Reference should also be made to the commentary on the new definition "tax rate" in subsection 123(1) and the commentary on new Schedule VIII.

"province"

The term "province" is defined to include a "participating province" (as newly defined in subsection 123(1)) to ensure that the reference encompasses the Nova Scotia and Newfoundland offshore areas (also newly defined) since these areas are included in the definition "participating province" but are not otherwise considered provinces.

"selected listed
financial institution"

The definition "selected listed financial institution" is added to subsection 123(1). A "selected listed financial institution" is defined as a listed financial institution that meets the criteria set out in new subsection 225.2(1). This definition is relevant for the purposes of new rules that apply to listed financial institutions that will be required to use the special attribution method provided under that subsection to determine their net tax. The definition is also relevant to various other provisions of the Act including new section 218.1 and Subdivisions "a" and "b" of new Division IV.1.

"specified motor vehicle"

The new definition "specified motor vehicle" is relevant for purposes of the HST. Special rules apply for purposes of determining the time of payment of the provincial component of the HST on these vehicles as well as the value on which that tax is calculated. Paragraph (*a*) of the definition enumerates a number of tariff items under Schedule I to the *Customs Tariff*. Goods that are, or would be if they were imported, classified under these tariff items (other than racing cars classified under heading no. 87.03 and any prescribed motor vehicles) are defined as specified motor vehicles. Paragraph (*b*) of the definition provides for any other motor vehicles that may be prescribed.

"tax rate"

The new definition "tax rate" is relevant for purposes of the imposition of the HST in the participating provinces. The definition provides that the tax rate for, or in relation to, a participating province means the rate set opposite the name of the province in new Schedule VIII (see commentary relating to Schedule VIII).

"Participating province" is newly defined in subsection 123(1). The tax rate in each of the participating provinces is 8 per cent. Reference may also be made to the commentary on new subsection 165(2), which imposes the provincial component of the HST on taxable supplies made in the participating provinces.

Subclause 150(7)

Application of Provisions to Schedules

ETA
123(4)

Subsection 123(4) is amended to ensure that any provision that applies for purposes of Part IX of the Act also applies for purposes of new Schedules VIII to X, which relate to the HST.

Clause 151

Small Supplier Divisions

ETA
129.1

Subclause 151(1)

Restriction on Input Tax Credits for Purchases

ETA
129.1(2)(*a*)

This provision currently restricts a public service body from claiming input tax credits with respect to any tax paid or payable for property of the body (other than capital property or improvements thereto) acquired or imported for consumption, use or supply in the course of activities engaged in by a small supplier division of the body.

The amendment adds the words "brought into a participating province", thus also restricting input tax credits with respect to the provincial component of the HST paid or payable in respect of property of the body (other than capital property or improvements

thereto) brought into a participating province for consumption, use or supply in the course of activities engaged in by a small supplier division of the body.

This amendment is effective on April 1, 1997.

Subclause 151(2)

Restriction on Input Tax Credits for Leases

ETA
129.1(3)

This subsection restricts a public service body from claiming input tax credits for tax paid or payable on lease payments for a period (referred to as a "lease interval") during which the leased property is used by a small supplier division of the body.

Subsection 129.1(3) is repealed as it is no longer necessary due to the fact that new subsection 136.1(1) deems a separate supply to be made (and therefore a separate acquisition by the body) of the property for each lease interval. As a result, the input tax credit entitlement of the body will be determined separately for each lease interval. The input tax credit will be denied if the property is for use in a small supplier division during the lease interval by virtue of paragraph 129.1(2)(*a*).

This amendment is effective on April 1, 1997.

Clause 152

Residence

ETA
132.1

The residence of a person is relevant to a number of provisions relating to the HST. For example, a consumer that is resident in a participating province is generally not eligible for a rebate of the provincial component of the HST paid on goods removed from a participating province to a non-participating province (an exception is made for specified motor vehicles (as newly defined in subsection 123(1)) removed from the participating provinces). Also,

the self-assessment rules for services and intangible personal property acquired in a non-participating province for consumption or use primarily in a participating province require a determination of residence of the recipient.

The determination of residence ordinarily depends on general legal principles. However, section 132 sets out special rules relating to a person's residence in Canada. New section 132.1 provides special rules relating to the determination of residence for HST purposes.

Subsection 132.1(1) Person Resident in a Province

New subsection 132.1(1) sets out rules to determine, for purposes of Part IX of the Act, the residence of certain categories of persons. However subsection 132.1(1) does not apply for the purposes of determining the residence of an individual in the individual's capacity as a consumer. For example, it does not apply for the purpose of determining the individual's eligibility for the rebate for the provincial component of the HST on personal goods removed from a participating province.

A corporation is treated as being resident in a province if it is resident in Canada and incorporated or continued under the laws of that province and not continued elsewhere. A partnership or other unincorporated body is resident in a province if it is resident in Canada and the member or a majority of the members having management and control of the partnership is or are resident in that province. In the case of a labour union, the union is resident in a province if it is resident in Canada and carrying on activities as a union in that province and has a local union or branch in that province. In any case, a person is regarded as resident in a province if the person has a permanent establishment in that province. "Permanent establishment" is defined, for purposes of this section and Schedule IX, in subsection 132.1(2).

Subsection 132.1(2) Meaning of "permanent establishment"

In addition to its implications for purposes of determining a person's residence, whether a supplier has a permanent establishment in a province could impact on where a supply is considered to be made for HST purposes. Depending on the province in which the supply is made, the supplier may be required to collect either the GST or the

HST. For example, if a service is performed in more than one province, including a participating province, the place of supply of the service may depend on the place of negotiation of the supply. "Place of negotiation" of the supply is defined in section 1 of Part I of Schedule IX in terms of the location of the supplier's permanent establishment.

New subsection 132.1(2) defines "permanent establishment" for purposes of subsection 132(1) and Schedule IX. In the case of an individual, the estate of a deceased individual or a trust that carries on a business, "permanent establishment" has the same meaning as for purposes of Part XXVI of the *Income Tax Regulations*. In the case of a corporation that carries on a business, "permanent establishment" has the same meaning as for purposes of Part IV of those Regulations.

Paragraph 132.1(2)(*c*) sets out the rules for partnerships. "Permanent establishment" of a partnership includes a permanent establishment, as defined for purposes of Part XXVI of the *Income Tax Regulations*, of a member that is an individual, the estate of a deceased individual or a trust, where the establishment relates to a business carried on through the partnership. "Permanent establishment" of a partnership also includes a permanent establishment, as defined for purposes of Part IV of the *Income Tax Regulations*, of a member that is a corporation where the establishment relates to a business carried on by the partnership. In addition, "permanent establishment" of a particular partnership also includes a permanent establishment, as defined in this section, of a member that is itself a partnership where the establishment relates to a business carried on by the particular partnership. Paragraph 132.1(2)(*d*) provides that, in any case not covered by paragraphs 132.1(2)(*a*) to (*c*), the term "permanent establishment" is to be given the same meaning as would be assigned for purposes of Part IV of the *Income Tax Regulations* if the person were a corporation and its activities were a business for purposes of the *Income Tax Act*.

For purposes of subsection 132.1(2), "business" has the meaning assigned by subsection 248(1) of the *Income Tax Act*.

The definition "permanent establishment" applies as of April 1, 1997.

Clause 153

Combined Lease of Real Property

ETA
136(2.1)

This subsection is repealed as a consequence of the addition of new subsection 136.1(1), which provides the same rule with respect to leased property in general, namely that a separate supply of the property is deemed to be made for each period (referred to as a "lease interval") to which a lease payment is attributable.

This amendment is effective April 1, 1997.

Clause 154

Separate Supplies

ETA
136.1 to 136.4

Subsection 136.1(1) Lease, etc. of Property

New subsection 136.1(1) provides that supplies of property by way of lease, licence or similar arrangement will be treated as a series of separate supplies for each period (referred to as a "lease interval") to which a particular lease payment is attributable. For each lease interval, the supplier is deemed to have made, and the recipient is deemed to have received, a separate supply of the property on the earliest of the first day of the lease interval, the day on which the payment for that interval becomes due, and the day on which the payment attributable to the lease interval is paid. This new subsection is particularly relevant for purposes of the place of supply rules set out in new Schedule IX in order to determine the appropriate amount of tax applicable to each separate lease payment.

This amendment applies to lease intervals that begin on or after April 1, 1997.

Subsection 136.1(2) Ongoing Services

New subsection 136.1(2) provides that supplies of services will be treated as a series of separate supplies for each period (referred to as a "billing period") to which a particular payment is attributable. For each billing period, the supplier is deemed to have made, and the recipient is deemed to have received, a separate supply of the service on the earliest of the first day of the billing period, the day on which the payment attributable to the billing period becomes due and the day on which the payment attributable to the period is made. This new subsection is particularly relevant for purposes of the place of supply rules set out in new Schedule IX in order to determine the appropriate amount of tax applicable to each payment.

This amendment applies to billing periods that begin on or after April 1, 1997.

Section 136.2 Supply of Real Property Partly Outside a Province

Section 1 of Part IV of new Schedule IX (place of supply rules) provides that a supply of real property is made in a province if the property is situated in the province. However, a single supply may be made of real property that is situated in a participating province and real property that is situated in a non-participating province or outside Canada. New section 136.2 is intended to deal with this situation for purposes of determining where in Canada the supply is made and the portion of the consideration subject to the 7-per-cent GST rate or the 15-per-cent HST rate.

In these circumstances, section 136.2 results in the provision of the real property situated in a particular province being regarded as a separate taxable supply from the provision of the real property situated in another province or outside Canada. Also, the separate taxable supplies are deemed to be made for separate consideration equal to the proportion of the total consideration reasonably attributable to each part of the real property.

Whether a supply of real property is made in or outside Canada for purposes of subsection 165(1) is determined under section 142.

This section is effective April 1, 1997.

Section 136.3 Separate Supplies of Freight Transportation Services

Section 5 of Part VI of new Schedule IX sets out the place of supply rules for a supply of a freight transportation service. Specifically, a supply of a freight transportation service is regarded as made in a participating province if the destination of the freight transportation service is in a participating province. For this purpose, "freight transportation service" has the same meaning as in section 1 of Part VII of Schedule VI.

New section 136.3 addresses the situation where a supply of a freight transportation service includes the provision of the service of transporting tangible personal property to a destination in a participating province and other property to a destination in a non-participating province. In such a case, the provision of the service of transporting the property to a destination in a participating province and the provision of the service of transporting property to a non-participating province are each deemed to be separate supplies made for separate consideration equal to the portion of the total consideration that is reasonably attributable to the respective parts of the entire transportation service.

This section is effective April 1, 1997.

Section 136.4 Telecommunications Channel

Section 3 of Part VIII of new Schedule IX provides that a supply of a service of granting sole access to a telecommunications channel is made in a province based on the rules set out in new section 136.4.

"Telecommunications channel" is defined in subsection 136.4(1) to mean a telecommunications circuit, line, frequency, channel, partial channel or other means of sending or receiving a telecommunication but does not include a satellite channel.

Subsection 136.4(2) provides that a person making a supply of a service of granting sole access to a telecommunications channel for transmitting telecommunications between two provinces is deemed to have made separate supplies. The supplier is deemed to have made a separate supply of the service in each of those two provinces as well as in any other provinces between the two provinces. The consideration for the deemed supply in each province is calculated

based on the proportional distance over which the telecommunication would be transmitted in the province if the telecommunication were transmitted solely by means of cable and related telecommunications facilities located in Canada that connected, in a direct line, the transmitters for emitting and receiving the telecommunications.

This section is effective April 1, 1997

Clause 155

Intended Use in Commercial or Other Activities

ETA
141

The amendments under this clause add a reference to property brought into a participating province to the amended provisions, which currently refer only to property acquired or imported. The added reference is necessary as the bringing in of property into a participating province is another occurrence that may trigger the application of tax under the HST (see new section 220.05). There is therefore the need to ascertain the purpose for which the property is brought into the participating province to determine a person's input tax credit entitlement in respect of the tax.

These amendments are effective April 1, 1997.

Clause 156

Acquisition for Purpose of Making Supplies, etc.

ETA
141.01(2), (4) and (5)

The amendments under this clause add a reference to property brought into a participating province to the amended provisions, which currently refer only to property acquired or imported. The added reference is necessary as the bringing in of property into a participating province is another occurrence that may result in tax becoming payable under the HST (see new section 220.05). There is

therefore a need to ascertain the purpose for which the property is brought into the participating province to determine a person's input tax credit entitlement in respect of the tax.

These amendments are effective April 1, 1997.

Clause 157

Disposition of Personal Property, Inventory, etc.

ETA
141.1(1) and (2)

The amendments under this clause add a reference to property brought into a participating province to the amended provisions, which currently refer only to property acquired or imported. The added reference is necessary as the bringing in of property into a participating province is another occurrence that may trigger the application of tax under the HST (see new section 220.05). There is therefore a need to ascertain the purpose for which the property is brought into the participating province to determine a person's input tax credit entitlement in respect of the tax.

These amendments are effective April 1, 1997.

Clause 158

Supply in a Province

ETA
144.1

A taxable supply (other than a zero-rated supply) made in a participating province is subject to tax at the 15-per-cent HST rate, whereas such a taxable supply made in a non-participating province is subject to tax at the 7-per-cent GST rate. As a result, special rules are required to determine when a supply is made in or outside a participating province.

Section 144.1 provides that, for purposes of Part IX of the Act, a supply is deemed to be made in a province if it is made in Canada and is, under the rules set out in new Schedule IX, made in that province. However, if the supply is not made in Canada or the rules in Schedule IX do not deem the supply to be made in that province, the supply is deemed to be made outside that province. Further, a supply made in Canada that is not made in a participating province is deemed to be made in a non-participating province. "Participating province" and "non-participating province" are newly defined in subsection 123(1) (see commentary on clause 150).

Section 144.1 comes into force on April 1, 1997.

Clause 159

Consideration for Portions of Tour Packages

ETA
163

Section 163 sets out the rules for determining the consideration for the taxable portion of a tour package. This section is amended in order to reflect circumstances where some or all of the elements included in the tour package are supplied in a province that is a participating province under the HST.

Generally, the term "tour package" refers to a combination of two or more services or of property and services that may include transportation, accommodation and other travel services that are provided to a recipient at an all-inclusive price. Certain elements of a tour package can attract tax at the 7-per-cent GST rate or at the 15-per-cent HST rate. Furthermore, some elements such as accommodation provided outside Canada are outside the scope of the sales tax.

The taxable portion of a tour package includes those services that are taxable at the 7-per-cent GST rate, where the provision of the element is in a non-participating province, or at the 15-per-cent HST rate, where the provision of the element is in a participating province. Examples of taxable property and services are domestic transportation services, accommodation, entertainment and restaurant meals.

The non-taxable portion of a tour package includes such property and services as overseas transportation services and accommodation, meals, entertainment, and other services supplied outside Canada.

Tour operators selling tours involving a combination of taxable and non-taxable travel services are required to prorate the selling price of the tour package according to the value of the taxable and non-taxable elements in the package. The prorating is based on the relative tax-excluded cost of each element to the tour operator. Prorating is required only once in respect of any given tour package. Thereafter, the taxable portion of that tour package will be a fixed percentage of the selling price as long as the mixture of input travel costs does not change significantly.

Subsection 163(1) establishes the value for tax of a tour package sold by the first supplier of the package. In some cases, tour operators act as wholesalers and sell tour packages to travel retailers who, in turn, sell the packages to final consumers. If the retailer paid tax on, for example, 35 per cent of the total price of the tour package, then the retailer in turn would charge tax to its customers on 35 per cent of the price paid by the customer. Subsection 163(1) is amended to provide for separate calculations in respect of the "provincially taxable portion" (which is subject to the 15-per-cent HST rate) and the "non-provincially taxable portion" of the tour package (which is subject to the 7-per-cent GST rate). The latter terms and the additional factors necessary to the determination of consideration under subsection 163(1), namely the "taxable percentage", "base percentage", and "initially taxable percentage" are defined in amended subsection 163(3).

New subsection 163(2.1) deems the provision of the taxable portion of a tour package that is the provincially taxable portion of the package to be a supply made in a participating province that is separate from and not incidental to the other parts, if any, of the tour package. For the purposes of calculating the provincially taxable portion of the other parts of the tour package, those parts are deemed to be supplied outside the participating province.

New subsection 163(2.2) provides a transitional provision in the circumstances where a supply of a provincially taxable portion of a tour package is made by, a person who acquired the tour package from the first supplier of the tour package for resale and was not

required to pay tax at the 15-per-cent HST rate due to the fact that the tour package was acquired prior to the implementation of HST. Subsection 163(2.2) deems the person resupplying the tour package to be the first supplier for the purposes of determining the tax on the provincially and the non-provincially taxable portion of the tour package.

Subsection 163(3) newly defines the term "provincially taxable portion" of a tour package in respect of a participating province as all the property and services in the tour package that, if supplied separately and not as part of a tour package, would be subject to tax at the 15-per-cent HST rate because those supplies would be considered made in a participating province.

As noted above, the definitions of the various percentages relevant to establishing the portion of the sale price that is taxable at 15 per cent and 7 per cent are also amended to apply in respect of each of the provincially taxable portions of the tour package and the non-provincially taxable portion of the tour package.

These amendments apply to tour packages that are supplied for consideration that becomes due on or after April 1, 1997 or is paid on or after that day without having become due.

Clause 160

Imposition of Tax under Division II of Part IX

ETA
165, 165.1, 165.2

Section 165 Charging Provision

Section 165 imposes the tax under Part IX of the Act on supplies made in Canada. This section is amended to impose, under new subsection 165(2), the provincial component of the HST on supplies made in a participating province. Existing subsection 165(2) is renumbered as subsection 165(3).

These amendments come into force on April 1, 1997. However, reference should be made to the application and transition rules under

new section 349 to determine to which supplies new subsection 165(2) applies.

Subsection 165.1(1) Pay Telephones

Existing subsection 165(3) is renumbered as subsection 165.1(1). It provides rules for calculating the amount of tax payable for the supply of a telecommunication service where the consideration for that supply is paid by depositing coins in a coin-operated telephone.

The subsection is amended to make reference to the provincial component of the HST imposed under new subsection 165(2). Under these rules, the tax payable for the supply is zero where the amount deposited for the supply does not exceed 25 cents. In any other case, the tax is rounded to the nearest 5 cents where the total tax, determined in accordance with subsections 165(1) and (2), is 5 cents or more.

The amendment comes into force on April 1, 1997.

Subsection 165.1(2) Coin-operated Devices

Subclause 17(2) adds new subsection 165(3.1) applicable to supplies made after April 23, 1996 through the use of certain coin-operated devices.

That subsection applies to goods dispensed from, or services rendered through the operation of, such a device that is designed to accept only a single coin of 25 cents or less as the total consideration for the supply. The effect of the subsection is that the GST on such supplies is equal to zero, since 7 per cent of 25 cents is less than 2.5 cents.

Effective April 1, 1997, that subsection is renumbered, under subclause 160(1), as subsection 165.1(2) and further wording changes are made as a consequence of the introduction of the 15-per-cent HST in the participating provinces. The result is still that the tax is zero when the total consideration for such supplies is a single coin of 25 cents or less.

Subsection 165.2(1) Calculation of Tax on Several Supplies

New subsection 165.2(1) clarifies that a supplier may calculate tax on the total consideration payable for all supplies included in a single invoice, receipt or agreement that are taxable at the same rate under Part IX of the Act, instead of calculating the tax separately for each of the supplies.

This subsection comes into force on April 1, 1997.

Subsection 165.2(2) Rounding of Tax

Existing subsection 165(4) is renumbered as subsection 165.2(2). This subsection sets out a rounding rule for determining the total tax under Part IX of the Act payable in respect of supplies for which a single invoice is issued. Wording changes are also made to clarify that the rounding rule applies whether the invoice, receipt or agreement includes one supply or several.

This change is effective April 1, 1997.

Clause 161

Input Tax Credits

ETA
169

Subclause 161(1)

General Rule for Credits and Improvements

ETA
169(1) and (1.1)

Subsection 169(1) General Rule for Credits

Subsection 169(1) sets out the general rules for determining an input tax credit of a person in respect of property or a service. The existing subsection refers only to property or a service "supplied to or imported by" the person. The subsection is amended to also make

reference to property brought into a participating province (as newly defined in subsection 123(1)) since that is another occurrence that could result in tax becoming payable by the person (under new Division IV.1) for which an input tax credit would be sought (see commentary on clause 204).

Subsection 169(1) is also restructured to define "an" input tax credit in respect of property or a service for a reporting period instead of "the" input tax credit, to take account of the possibility that a person might have more than one input tax credit in respect of the same property for the same reporting period. This could occur, for example, if tax became payable in the period both on the purchase of the property and upon bringing the property into a participating province. Tax might also become payable with respect to more than one deemed acquisition of the property under new section 136.1, which deems a separate supply by way of lease, licence or similar arrangement for each lease interval (as defined in that section) that falls in the reporting period. The registrant might not be entitled to an input tax credit to the same extent with respect to each of these amounts of tax that become payable at different times in the same reporting period since, from one time to the next, the intended use of the property or service might change. For that reason, the formula under subsection 169(1) applies separately to each amount of tax that becomes payable with respect to each taxable event – an acquisition, an importation or the bringing into a participating province of the property.

Subsection 169(1.1) Determining Credit for Improvement

Subsection 169(1.1), like subsection 169(1), is amended to make reference to property brought into a province that is a participating province under the HST since that is another occurrence that could result in tax becoming payable for which an input tax credit would be sought.

Further wording changes are made in paragraph (1.1)(*a*). Under the existing paragraph, where a registrant acquires property that is only in part for use in improving capital property of the registrant, the supply to the registrant of the property is treated as two separate supplies – a supply of that part of the property that is for use as an improvement and a supply of the remaining part of the property. This makes it possible to apply the special input tax credit rules with respect to

improvements to the portion of the tax payable on the acquisition of the property that is attributable to the separate deemed acquisition of the part that will be used as an improvement. However, the rule deeming separate supplies to have been made does not deal with the case where tax becomes payable on the property not as a result of a supply being made to the registrant but rather as a result of the registrant bringing the property into a participating province.

The wording of the paragraph is amended to simply deem the property to be two separate properties rather than the supply of it to be two separate supplies. The effect is exactly the same. The rules for calculating input tax credits in respect of improvements apply only to the tax attributable to the part of the property that is for use as an improvement. For greater certainty, it is specified that this deeming overrides section 138, which would provide for the opposite result in some cases.

These amendments come into force on April 1, 1997.

Subclause 161(2)

Determining Credit for Leased Property and Ongoing Services

ETA
169(1.2) and (1.3)

These subsections are repealed since they are no longer necessary as a consequence of new sections 136.1 and 136.2, which deem a separate supply and acquisition to be made for each period (referred to as a "lease interval" in the case of a supply of property and a "billing period" in the case of a supply of a service) to which a payment is attributable. Subsection 169(1) then applies to each deemed acquisition.

This amendment applies as of April 1, 1997.

Subclause 161(3)

Restricted Credit for Selected Listed Financial Institutions

ETA
169(3)

New subsection 169(3) restricts the ability of a selected listed financial institution (as defined in new subsection 225.2(1)) to claim input tax credits in respect of the provincial component of the HST. These institutions determine their net tax in accordance with new subsection 225.2(2) under which the amount of the provincial component of the HST to be recovered (or additional amount to be paid in some cases) is determined based on the unrecoverable amount of GST payable (or 7-per-cent component of the HST) and is taken into account as a special adjustment to net tax.

The restriction on input tax credits does not, however, apply where tax equal to the "basic tax content" of property (as newly defined in subsection 123(1)) is deemed to have been paid on a deemed acquisition of the property (see commentary on the definition "basic tax content" under subclause 150(6)). For example, tax equal to the basic tax content is deemed to have been paid under many of the amended capital property change-in-use rules, as well as other provisions of Part IX. The basic tax content of property may include tax that was calculated at the 7-per-cent GST rate and tax calculated at the 15-per-cent HST rate. Since it would be difficult to separate out the provincial component of the HST from the basic tax content, the financial institution may claim its input tax credits in these cases on the basis of the amount of tax deemed to have been paid. To reflect this, this deemed tax is excluded in determining the special net tax adjustment under subsection 225.2(2).

New subsection 169(3) comes into force on April 1, 1997.

Subclause 169(4) Required Reporting

Paragraph 169(4)(*b*), as amended by subclause 19(1), provides that where a registrant is required to account for tax on the purchase of real property in a return, the registrant cannot claim an input tax credit for that tax unless the registrant has so accounted for the tax. The paragraph is further amended to apply to tax on any property or

service that a registrant is required to report in a return. This would then encompass the self-assessed tax under new Division IV.1.

This amendment comes into force on April 1, 1997.

Clause 162

Restriction on Claiming Input Tax Credits

ETA
170(1)(*a*.1) and (*b*), 170(2)

The provisions that are amended by this clause restrict a registrant's ability to claim input tax credits for tax payable upon the acquisition or importation of certain property and services. These provisions are amended to add references to property brought into a participating province because that is another event that could result in tax becoming payable for which an input tax credit would be sought.

These amendments are effective on April 1, 1997.

Clause 163

Person Becoming a Registrant

ETA
171(1)(*b*)

When a person who is a small supplier becomes a registrant, subsection 171(1) deems the person to have received a supply by way of sale, and to have paid tax, on all property that the person is holding at that time for consumption, use or supply in the course of commercial activities. This is to allow the registrant to claim input tax credits for tax that was previously unrecoverable. Generally, the tax the person is deemed to have paid is equal to the lesser of the tax that became payable or was paid before the person became a registrant and the tax calculated on the fair market value of the property at the time the person becomes a registrant. If the person was entitled to claim a rebate under section 259, that rebate is also taken into account.

The formula in existing paragraph 171(1)(*b*) would not always yield the correct result in the context of the HST since the tax originally paid might have been calculated at a different rate than the tax on the fair market value at a later time if the property had been moved from a non-participating province to a participating province or vice versa. The formula under existing paragraph 171(1)(*b*) is repealed and the paragraph is amended to provide that the amount of tax deemed to have been paid is equal to the "basic tax content" of the property, which is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

The "basic tax content" of property is based on the total of all tax paid less the total of such tax that was recovered by way of rebate or remission. This difference is multiplied by a factor that, in essence, represents the change in the value of the property since the tax was last paid.

This amendment comes into force on April 1, 1997.

Clause 164

Taxi Businesses

ETA
171.1

Subclause 164(1)

Becoming a Registrant for Other Activities

ETA
171.1(2)(*a*)

Under subsection 240(1.1) every small supplier who carries on a taxi business is required to be registered in respect of that business. If the person is also engaged in other activities, under subsection 240(3.1), the person may apply to have the registration apply to all other commercial activities engaged in by the person. Where the person becomes a registrant in respect of those other commercial activities, the person is deemed to have received a supply way of sale of, and to have paid tax on, all non-capital property that the person held

immediately before that time for consumption, use or supply in the course of commercial activities. This is to allow the registrant to claim input tax credits for tax that was previously unrecoverable. Generally, the tax the person is deemed to have paid is equal to the lesser of the tax that became payable or was paid before that time and the tax calculated on the fair market value of the property at that time.

The rule under existing paragraph 171.1(2)(*a*) for determining the amount of tax deemed to have been paid by the registrant does not give the appropriate result in all cases in the context of the HST. An example would be where the tax originally paid on the property deemed to have been acquired was calculated at the 15-per-cent HST rate while the deemed acquisition occurs in a non-participating province to which the property was subsequently removed where the 7-per-cent GST rate applies.

Therefore, the paragraph is amended to instead deem the amount of tax paid to be equal to the basic tax content of the property, which is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

This amendment comes into force on April 1, 1997.

Subclauses 164(2) to (4)

ETA
171.1(2)(*b*)(i) and 171.1(3)(*b*) and (*c*)

The word "imported" is deleted from these amended provisions as the reference to services "acquired" in the context of these provisions encompasses a service that has been imported.

These amendments are effective on April 1, 1997.

Clause 165

Taxable Benefits

ETA
173

Section 173 sets out the rules for determining the amount of tax to be remitted on a supply by a registrant to an employee or shareholder of the registrant when that supply gives rise to a taxable benefit for income tax purposes.

Subclauses 165(1) and (2)

ETA
173(1)(*c*) and (*d*)(i)

Paragraph 173(1)(*c*) addresses situations where property is provided but not sold by a registrant to an employee or shareholder. The existing paragraph deems the registrant to have acquired or imported the property for use in commercial activities to the extent it was acquired or imported for the purpose of making the supply to the employee or shareholder. This has the effect, among other things, of ensuring that the registrant may claim input tax credits to the same extent in respect of the tax payable on the acquisition or importation, subject to any other restrictions that might apply. The paragraph is amended to also refer to the situation where the property is brought into a participating province for the benefit of the employee or shareholder since that is another event that could result in tax becoming payable (under new Division IV.1) in respect of the property.

For the same reason, subparagraph 173(1)(*d*)(i) of the English version of the Act is amended to make reference to property brought into a participating province. In this case, this ensures that where the registrant was prevented under section 170 from claiming an input tax credit for the tax payable upon bringing the property into the province, the registrant is not required to remit tax on the employee or shareholder benefit.

These amendments come into force on April 1, 1997.

Subclauses 165(3) and (4)

ETA
173(1)(*d*)(ii)(B) and (1)(*d*)(iv) of the French version

These amendments to the French version of the Act parallel those made to corresponding clause 173(1)(*d*)(vi)(B) and subparagraph 173(1)(*d*)(i) of the English version.

These amendments come into force on April 1, 1997.

Subclause 165(5)

ETA
173(1)(*d*)(vi)(B)

New subparagraph 173(1)(*d*)(vi), as enacted by subclause 22(1), provides that the calculation of the tax to be remitted on a taxable employee or shareholder benefit is based on the total consideration, which is equal to the total of the GST- and PST- included benefit amount reported for income tax purposes plus all reimbursements made by the employee or shareholder for the use or operation of an automobile that reduced the amount of the individual's automobile standby charge benefit or the operating expense benefit. Subclause 165(5) further amends this provision to take into account the differing tax rates in participating and non-participating provinces.

Where the recipient is a shareholder who is resident in a participating province at the end of the taxation year or where the recipient is an employee and the last establishment of the employer at which the employee ordinarily worked or to which the employee ordinarily reported in the year was located in a participating province, the tax remittance is to be calculated by multiplying the total consideration for the benefit by the fraction 14/114. In any other case, the total consideration is multiplied by the fraction 6/106.

This amendment applies to the 1997 and subsequent taxation years of individuals, except that for the 1997 taxation year, 75 per cent of the tax rate for the participating provinces is used to calculate the HST to be remitted on the taxable benefit where applicable. As a result, in respect of the 1997 taxation year, instead of the fraction 14/114, the fraction 12/112 applies.

Subclause 165(6)

ETA
173(3)(*c*)(i)

Paragraph 173(3)(*c*) disallows a registrant that is a financial institution from claiming an input tax credit, or recaptures an input tax credit previously claimed, in respect of tax payable on a vehicle or aircraft in respect of which the registrant has made an election under subsection 173(2) provided the vehicle or aircraft was last supplied by way of sale to the registrant and the cost to the registrant did not exceed $50,000. The amendment to subparagraph 173(3)(*c*)(i) provides for a similar denial or recapture of an input tax credit in these circumstances for tax payable upon the vehicle or aircraft being brought into a participating province.

The provision comes into force on April 1, 1997.

Subclause 165(7)

ETA
173(3)(*d*)

Existing paragraph 173(3)(*d*) disallows input tax credits in respect of tax payable upon the acquisition or importation of property or services for consumption or use in operating a vehicle in respect of which an election has been made under subsection 173(2). The amendment to paragraph 173(3)(*d*) also denies input tax credits for tax payable upon bringing any property into a participating province for consumption or use in operating the vehicle.

This amendment comes into force on April 1, 1997.

Clause 166

Travel and Other Allowances

ETA
174(*f*)

By virtue of section 174, a person who is an employer, partnership or charity may claim an input tax credit or rebate in respect of allowances paid for certain expenses to the same extent as would have been the case if the person had incurred the expense directly. Paragraph 174(*f*) provides that the time at which the person is considered to have paid tax in respect of the supply is the time at which the allowance is paid and that the amount of tax deemed to have been paid by the employer, partnership or charity is equal to the tax fraction of the allowance.

The amendments to this provision recognize that the expenses may have been subject to tax at the rate of 7 per cent or 15 per cent. Therefore, where all or substantially all of the supplies for which the allowance is paid were made in participating provinces or the allowance is paid for the use of a motor vehicle in participating provinces, the amount of tax deemed to have been paid is equal to the amount of the allowance multiplied by the fraction 15/115. In any other case, the amount of tax deemed to have been paid is equal to the amount of the allowance multiplied by the fraction 7/107.

These amendments apply to allowances paid after March 1997.

Clause 167

Reimbursement of Employees, Partners or Volunteers

ETA
175

Section 175 enables a person who is an employer, partnership, charity or public institution and who reimburses an employee, partner or volunteer for property or services acquired or imported to claim an input tax credit or rebate in respect of the reimbursed expense to the

same extent as the person would have been able to claim the credit or rebate if the person had incurred the expense directly.

The amendments to section 175 add references to property brought into a participating province since that is another occurrence that might result in tax becoming payable for which input tax credits would be sought.

The amendments come into force on April 1, 1997.

Clause 168

Warrantee Reimbursement

ETA
175.1

New section 175.1, as enacted by subclause 24(1), enables a warrantor to claim an input tax credit in respect of the tax portion of a reimbursement made to the warranty holder (i.e., beneficiary) for the cost of property or services, such as repairs provided under the terms of a warranty, supplied to the beneficiary by a third party.

The amendments to section 175.1 reflect the fact that the beneficiary may have incurred tax upon bringing property covered under the warranty into a participating province.

These amendments come into force on April 1, 1997.

Clause 169

Used Returnable Containers

ETA
176

Subclause 169(1)

ETA
176(1) of the French version

This amendment to subsection 176(1) of the French version of the Act deletes the reference to "tax fraction" as a consequence of the repeal of the definition of that term in subsection 123(1) (see commentary on subclause 150(2)). The amendment under subclause 169(3) provides for a new formula for determining the amount of tax that a registrant is deemed to have paid upon receiving supplies of certain used containers.

This amendment comes into force on April 1, 1997.

Subclauses 169(2) and (3)

ETA
176(1)

Subsection 176(1), as amended by subclause 25(1), is further amended to reflect the 15-per-cent HST rate in the participating provinces. Subparagraph 176(1)(*d*)(ii) is amended to ensure that the reference to "tax" includes a reference to all tax, being both the tax under subsection 165(1) and, where applicable, new subsection 165(2), the provincial component of the HST. Also as a consequence of the introduction of the 15-per-cent HST, the subsection is amended to remove the reference to "tax fraction", which only took into account tax at the rate of 7 per cent, and to replace this with a formula which takes into account the appropriate tax rate, depending on where the supply referred to is made.

These amendments come into force on April 1, 1997.

Clause 170

Alternate Collection Method for Direct Sellers

ETA
178.3

Section 178.3 sets out the rules of the alternate collection method for direct sellers whereby sales tax on their exclusive products is calculated once at the time of sale by the direct seller to its independent sales contractors based on the suggested retail selling price of the products.

Subclause 170(1)

ETA
178.3(2)(*e*)(i)

Under paragraph 178.3(2)(*e*), if an independent sales contractor of a direct seller sells an exclusive product of the direct seller to any other person, the supply is deemed to be a taxable supply made, not by the contractor, but by the direct seller. However, that deeming rule does not apply for purposes of subsection 178.3(4), for example, which refers to a supply being made outside Canada by a contractor. The amendment to subparagraph 178.3(2)(*e*)(i) provides that the deeming rule also does not apply for purposes of new subsections 178.3(5) and (6). These subsections provide for certain adjustments as a result of a sale of an exclusive product of a direct seller by an independent sales contractor outside a participating province after HST has applied to the product at the direct seller level or a sale by the contractor of an exclusive product in a participating province after the GST has applied to the product.

This amendment comes into force on April 1, 1997.

Subclause 170(2)

Adjustment for Direct Seller

ETA
178.3(5) and (6)

New subsection 178.3(5) allows a direct seller to adjust net tax in cases where an independent sales contractor of the direct seller has purchased an exclusive product from the direct seller, the direct seller has accounted for tax at the 15-per-cent HST rate based on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product outside the participating provinces. The direct seller may deduct from net tax an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at the time the independent sales contractor sold the product. In order to claim a deduction from net tax, the direct seller must maintain evidence that the independent sales contractor made a sale outside the participating provinces. The direct seller must also credit the amount of the deduction to the independent sales contractor. The direct seller may claim the deduction in determining net tax for the reporting period in which the credit is given to the independent sales contractor or within four years after the due date of the return for the reporting period in which the credit is given.

New subsection 178.3(6) requires a direct seller to add to net tax an amount equal to the provincial component of the HST calculated on the suggested retail price of an exclusive product in certain cases. This adjustment is required where an independent sales contractor has purchased the exclusive product from the direct seller, the direct seller has accounted for tax at the 7-per-cent GST rate based on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product in a participating province. The direct seller must add an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at that time in determining net tax for the reporting period in which the supply is made by the independent sales contractor.

These amendments come into force on April 1, 1997.

Clause 171

Alternate Collection Method for Distributors of Direct Sellers

ETA
178.4

Section 178.4 sets out the rules of the alternate collection method for distributors of direct sellers whereunder sales tax on the direct seller's exclusive products is calculated once at the time they are sold by a distributor who has elected jointly with the direct seller to use the method.

Subclause 171(1)

ETA
178.4(2)(*d*)(i)

Under paragraph 178.4(2)(*d*), if an independent sales contractor of a distributor of a direct seller, who has elected to follow the tax collection method under section 178.4, sells an exclusive product to any other person, the supply is deemed to be a taxable supply, made not by the contractor, but by the distributor. However, that deeming rule does not apply for the purposes of subsection 178.4(4), for example, which refers to a supply being made by a contractor. The amendment to subparagraph 178.4(2)(*d*)(i) provides that the deeming rules likewise does not apply for the purposes of new subsections 178.4(5) and (6). These subsections provide for certain adjustments as a result of a sale of an exclusive product of a direct seller by an independent sales contractor outside a participating province after the HST has applied to the product at the distributor level or a sale by a contractor of an exclusive product in a participating province after the GST has applied to the product.

This amendment comes into force on April 1, 1997.

Subsection 171(2)

Adjustment for Distributor

ETA
178.4(5) and (6)

New subsection 178.4(5) allows a distributor (for whom an approval under subsection 178.4(1) is in effect) to adjust net tax in cases where an independent sales contractor has purchased an exclusive product from the distributor, the distributor has accounted for tax at the 15-per-cent HST rate based on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product outside the participating provinces. The distributor may deduct from net tax an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at the time the independent sales contractor sold the product. In order to claim a deduction from net tax, the distributor must maintain evidence that the independent sales contractor made a sale outside the participating provinces. The distributor must also credit the amount of the deduction to the independent sales contractor. The distributor may claim the deduction in determining net tax for the reporting period in which the credit is given to the independent sales contractor or within four years after the due date of the distributor's return for the reporting period in which the credit was given.

New subsection 178.4(6) requires a distributor to add an amount equal to the provincial component of the HST calculated on the suggested retail price of an exclusive product in certain cases. This adjustment is required where an independent sales contractor has purchased the exclusive product from the distributor, the distributor has accounted for tax at the 7-per-cent GST rate on the suggested retail price of the product and the independent sales contractor has made a sale of the exclusive product in a participating province. The distributor must add an amount equal to the provincial component of the HST calculated on the suggested retail price of the product at that time in determining net tax for the reporting period in which the supply is made by the independent sales contractor.

These amendments come into force on April 1, 1997.

Clause 172

Restrictions on Input Tax Credits

ETA
178.5(8)(*a*)

Existing subsection 178.5(8) denies input tax credits to a direct seller or a distributor of the direct seller (for whom an approval under subsection 178.4(1) is in effect) in respect of property or a service (other than an exclusive product of the direct seller or a sales aid) that is imported or acquired by the direct seller or distributor for the purpose of supplying it to an independent sales contractor of the direct seller or a relative of the contractor for consideration that is less than the fair market value of the property or service. Subsection 178.5(8) also provides that no tax is payable on the supply to the contractor or the relative of the contractor. These rules apply where the contractor or the relative of the contractor is acquiring the property or service for use otherwise than in a commercial activity. The amendment to paragraph (*a*) results in the denial of input tax credits to the direct seller or distributor also in respect of tax payable upon bringing the property into a participating province.

This amendment comes into force on April 1, 1997.

Clause 173

Drop-Shipments

ETA
179

Subclause 173(1)

ETA
179(1)

Subsection 179(1), as amended by subclause 30(2), is further amended as a consequence of the introduction of the HST. Amended paragraph 179(1)(*c*) determines consideration that is deemed to have been paid in respect of a supply by a registrant to a non-resident

person of property to which the drop-shipment rules set out in section 179 apply.

These rules remain the same except that they are divided into separate paragraphs, (*c*) and (*c*.2), and new paragraph (*c*.1) is added to provide for the place where the deemed supply of the property is considered to be made. Paragraph 179(1)(*c*.1) provides that where physical possession of the property is transferred in a participating province, the supply is deemed to be made in the participating province and, as a result, the 15-per-cent HST rate applies.

These changes come into effect on April 1, 1997.

Subclause 173(2)

ETA
179(6)(*b*)

The amendment to paragraph 179(6)(*b*) removes the specific reference to "the acquisition or importation" of property so that the provision also applies to input tax credits in respect of tax payable on bringing property into a participating province.

This change is effective on April 1, 1997.

Clause 174

Coupons

ETA
181

Section 181 sets out the rules for the sales tax treatment of supplies for which a manufacturer’s or retailer’s coupon is accepted as full or partial consideration. The section is amended by adding the definition "tax fraction" of a coupon value or of the discount or exchange value of a coupon. This is consequential to the repeal of the existing definition "tax fraction" in subsection 123(1). The new definition provides that the tax fraction is 15/115 in respect of coupons accepted as consideration for supplies made in participating

provinces, which reflects the HST rate of 15-per-cent in those provinces.

Subsection 181(3) is amended to apply where a registrant accepts a non-reimbursable coupon that specifies a percentage reduction in the price of the property or service to which the coupon applies. As a result, the registrant has the option of treating the coupon as if it were a reimbursable coupon (i.e., as a partial payment that does not reduce the consideration for the property or service) and therefore subject to the rules set out in subsection 181(2), or as a reduction in the consideration for the supply and subject to the rules set out in subsection 181(4). If the registrant treats the coupon in the same manner as a reimbursable coupon, the registrant will calculate the tax payable on the supply before deducting the value of the coupon and will be entitled to claim an input tax credit equal to the tax fraction of the coupon value.

Where the registrant expects to be reimbursed by a third party for accepting a percentage discount coupon, the rules described in section 181(4) will continue to apply.

Subsection 181(5) permits a registrant that reimburses a vendor for certain coupons accepted by the vendor to claim an input tax credit in respect of the reimbursements. The subsection is amended to refer to reimbursements for fixed percentage reduction coupons and the reference to "tax fraction" is changed to a reference to the "tax fraction of the coupon value", which is newly defined in subsection 181(1).

These amendments come into force on April 1, 1997.

Clause 175

Rebates

ETA
181.1

Section 181.1 deals with rebates that are in respect of goods or services taxable at the rate of 7 per cent and are offered to a customer acquiring the goods or services from the manufacturer or other

vendor. Under the existing section, where the issuer of the rebate provides written notification with the rebate that it includes an amount on account of GST, the issuer may claim an input tax credit equal to the tax fraction of the rebate. Certain rebate recipients, by virtue of paragraph 181.1(*f*), have an obligation to add the amount of the rebate that is on account of the GST to their net tax to the extent that they have claimed an input tax credit for that amount.

The amendments to section 181.1 ensure that the amount of the input tax credit or of the addition to net tax reflects the tax rate of 15 per cent where the supply to the rebate recipient was made in a participating province.

This amendment comes into force April 1, 1997.

Clause 176

Forfeitures and Extinguishment of Debt

ETA
182(1)(*a*) and (*b*)

Section 182 deals with the situation where, as a consequence of the breach, modification or cancellation of an agreement for the making of a taxable supply by a registrant, amounts are paid or forfeited by a person to the registrant otherwise than as consideration for the supply. The section also deals with situations where a debt or other obligation of a registrant to a person is reduced or extinguished without payment on account of the debt or obligation. In both cases, the registrant is treated as having made a taxable supply to the other person and as having collected tax on the amount paid, forfeited, reduced or extinguished. The person paying or forfeiting the amount is deemed to have paid tax and, if a registrant, may be entitled to an input tax credit for that tax.

Paragraphs 182(1)(*a*) and (*b*), as amended by subclause 32(1), are further amended to take into account tax payable at the 15-per-cent HST rate in a participating province.

This amendment comes into force on April 1, 1997.

280

Clause 177

Seizures and Repossessions

ETA
183

Section 183 provides rules for the application of the GST to property seized or repossessed by a creditor.

The amendments to section 183 replace references to "tax fraction" with references to either the 7-per-cent GST rate or the 15-per-cent HST rate, whichever is applicable.

The deemed supply under subsection 183(4) by a creditor of the seized or repossessed property that the creditor begins to use otherwise than in making a supply is, pursuant to section 1 of Part IX of new Schedule IX (i.e., the place-of-supply rules), considered to be made where the property is situated at the time the creditor begins to so use it. Therefore, the 15-per-cent HST rate applies where the property is situated in a participating province at that time. The same result is obtained under amended subsections 183(5) and (6).

In recognition of the fact that many properties would not have borne the 8-per-cent provincial component of the HST before being seized or repossessed, the creditor who resupplies the property is not entitled to claim, under subsection 183(7) or (8), a notional input tax credit in respect of the provincial portion of the HST where the property was seized or repossessed before April 1, 2000 and supplied by the creditor outside Canada or on a zero-rated basis. This parallels the approach followed during the implementation of the GST. The notional input tax credit allowed to a creditor at the time certain property seized or repossessed after March 2000 is resupplied is based on where the property was situated at the time it was seized or repossessed and where the property is resupplied.

These amendments come into force on April 1, 1997.

Clause 178

Transfers to Insurers

ETA
184

Section 184 provides rules for the treatment of property transferred to an insurer in the course of settling an insurance claim.

The amendments to section 184 replace references to "tax fraction" with references to either the 7-per-cent GST rate or the 15-per-cent HST rate, whichever is applicable.

The deemed supply under subsection 184(3) of the transferred property by an insurer where the insurer begins to use the property otherwise than in making a supply is, pursuant to section 1 of Part IX of new Schedule IX (i.e., the place-of-supply rules), considered to be made where the property is situated at the time the insurer begins to so use it. Therefore, the 15-per-cent HST rate applies where the property is situated in a participating province at that time. The same result is obtained under amended subsections 184(4) and (5).

In recognition of the fact that many properties would not have borne the 8-per-cent provincial component of the HST before being transferred, a notional input tax credit is not allowed to the insurer in respect of the provincial portion of the HST where the property was transferred before April 1, 2000 and supplied by the insurer outside Canada or on a zero-rated basis. This parallels the approach followed during the implementation of the GST.

The notional input tax credit allowed to an insurer at the time certain property transferred to the insurer after March 2000 is resupplied is be based on where the property was situated when last held by the insured person before being transferred and where the property is resupplied.

These amendments come into force on April 1, 1997

Clause 179

Financial Services – Input Tax Credits

ETA
185(1)

Existing subsection 185(1) simplifies the operation of the tax for persons that are not financial institutions and that, in the course of their commercial activity, also provide some incidental financial services. The existing section deems property and services acquired or imported by such a person and relating to the incidental financial services to be for use in the person's commercial activities. As a result, the person is able to claim input tax credits for those inputs.

Subsection 185(1), as amended by subclause 35(1), is further amended as a consequence of the introduction of the HST to also refer to property brought into a participating province since this is another occurrence that will in some cases result in tax becoming payable for which an input tax credit would be sought.

This amendment comes into force on April 1, 1997.

Clause 180

Related Corporations

ETA
186

Section 186 deems a parent company that incurs expenses in relation to the shares of a subsidiary all or substantially all of whose property is for consumption, use or supply in commercial activities to have incurred those expenses in the course of a commercial activity. This enables the parent to claim inputs tax credits for those expenses. Existing subsection 186(1) refers to property or services acquired or imported. A reference is added to property brought into a participating province since this is another occurrence that will, in some cases, result in tax becoming payable for which an input tax credit would be sought.

This amendment comes into force on April 1, 1997.

Clause 181

Bets and Games of Chance

ETA
187

The amendment to section 187 provides that where a bet is placed in a participating province, a supply of a service is deemed to have been made in that province. In addition, the formula in the section is amended to delete the reference to "consideration fraction" as a consequence of the repeal of the definition of that term in subsection 123(1). The amended formula reflects the 15-per-cent HST rate applicable to supplies made in a participating province.

This amendment comes into force on April 1, 1997.

Clause 182

Non-substantial Renovations

ETA
192(*a*)

Section 192 provides a self-supply rule for non-substantial renovations made by a person who, in the course of a business, makes supplies of real property. In the absence of this rule, a used residential complex that has undergone renovations or alterations that do not meet the criteria of substantial renovations would remain tax-exempt on subsequent sale. Section 192 deems the person to have made and received a taxable supply of property for consideration equal to the total of all non-taxable costs (other than amounts paid for financial services) attributable to the renovation or alteration that would be included in determining the adjusted cost base of the complex for income tax purposes if the complex were capital property of the person. The tax is deemed to have been collected at the earlier of the time the renovation is substantially completed and the time ownership of the complex is transferred.

This amendment clarifies that the deemed taxable supply is made in the province in which the complex is situated. Consequently, in the above circumstances, a person who had made non-substantial renovations to property situated in a participating province would be required to self-assess tax at the harmonized rate of 15 per cent. Alternatively, a person who had made non-substantial renovations to property situated in a non-participating province would be required to self-assess tax at the GST rate of 7 per cent.

This amendment is effective on April 1, 1997.

Clause 183

Real Property Credits

ETA
193

Section 193 allows a registrant who makes a taxable supply by way of sale of real property to claim an input tax credit for previously non-recoverable tax paid by the registrant in respect of the property, except under certain circumstances.

The existing formulae for determining the credit do not take into account a situation where the non-unrecoverable tax might have been calculated at the rate of 7 per cent but the sale takes place after April 1, 1997 in a participating province where the tax rate is 15 per cent or vice versa. The amended formulae use the "basic tax content" factor, which is newly defined in subsection 123(1), in order to arrive at a result that properly takes account of the different tax rates (see commentary on subclause 150(6)).

These amendments apply to supplies made on or after April 1, 1997.

Clause 184

Incorrect Statement

ETA
194(*a*)

Section 194 imposes a liability for tax on a supplier who makes a taxable sale of real property but incorrectly states or certifies that it is an exempt supply of a residential complex or an exempt sale of real property under section 9 of Part I of Schedule V to the Act. Unless the purchaser knew or ought to have known that it was not an exempt supply, the supplier is liable, under the existing section, for tax equal to the tax fraction of the consideration for the supply.

The definition "tax fraction" is repealed under subclause 150(2). Under amended section 194, the amount of tax the supplier is deemed to have collected depends upon whether the provincial component of the HST imposed under subsection 165(2) is payable in respect of the supply. If that is the case, the tax equals 15/115ths of the consideration. Otherwise, the tax equals 7/107ths of the consideration. All the other rules in section 194 remain the same.

This amendment applies to supplies of real property the ownership and possession of which are transferred to the purchaser after March 1997.

Clause 185

Prescribed Property

ETA
195

This amendment provides for the authority to prescribe property brought into a participating province for use as capital property to be treated as personal property and not real property. The section already provides such regulation-making authority with respect to property acquired or imported.

This amendment is effective April 1, 1997.

Clause 186

Intended and Actual Use

ETA
196(2)

Existing section 196 is renumbered as subsection 196(1) and new subsection 196(2) is added to ensure that the manner in which a person was using property immediately before the time the person brings it into a participating province from a non-participating province is considered to be the intended use of the property for which it is brought into the participating province. This is relevant to determine, for example, the amount of an input tax credit, if any, that the person can claim in respect of the tax payable under new Division IV.1 upon bringing the property into the participating province.

This amendment is effective April 1, 1997.

Clause 187

Appropriation to Use as Capital Property

ETA
196.1(*b*)(ii)

Where a registrant appropriates non-capital property for use as capital property or as an improvement to capital property, section 196.1 deems the registrant to have sold and purchased the property.

If, before it was appropriated, the property was last acquired or imported for consumption, use or supply, or was consumed or used, in the course of commercial activities, the registrant is deemed to have collected and paid tax calculated on the fair market value of the property at the time of appropriation.

However, if the property was not last acquired or imported for consumption, use or supply in commercial activities and was never consumed or used in the course of commercial activities of the

registrant, the existing provision deems the registrant to have paid tax equal to the lesser of the tax previously paid and tax calculated on the fair market value of the property, adjusted for any rebate under section 259 that may have been claimed in respect of the tax previously paid.

The latter calculation does not yield an appropriate result in all cases in the context of the HST, such as when the tax previously paid was calculated at the rate of 7 per cent and the tax calculated on the fair market value at the time of appropriation would be calculated at the rate of 15 per cent. Therefore, the amended calculation uses the "basic tax content" factor, which is newly defined in subsection 123(1), in order to arrive at a result that properly takes account of the different tax rates (see commentary on subclause 150(6)).

This amendment is effective April 1, 1997.

Clause 188

Change in Use and Capital Acquisitions Outside Canada

ETA
198.1; 198.2

Section 198.1 limits, in specified circumstances, the tax liability imposed on registrants as a consequence of the change-in-use rules under Subdivision d of Division II of Part IX of the Act. The specified circumstances include where there has been an amendment to the Act that results in a person who was previously making taxable supplies being considered to be making exempt supplies and thus a change in use of capital property is triggered. Section 198.1 provides that the amount of tax deemed to have been collected or paid in the specified circumstances does not exceed the tax that is or would, but for section 167, have been payable by the registrant in respect of the last acquisition or importation of the property and improvements made to the property thereafter. For example, if a person had acquired property before 1991 and no improvements were made after 1990, the amount of tax deemed to have been collected by the registrant in respect of the property in one of the specified

circumstances would be nil since the property was never subject to tax under Part IX of the Act.

As a consequence of amendments to the change-in-use rules, as of April 1, 1997, the amount of tax deemed to have been paid or collected by a registrant under those rules will be determined by reference to the basic tax content of the property at the relevant time (as newly defined in subsection 123(1)). No tax amount would be included in the basic tax content of property that was never subject to GST. Similarly, the provincial component of the HST would not be included in the basic tax content where the property was never subject to that tax. Therefore, section 198.1 is no longer required and is therefore repealed.

Clause 189 also repeals section 198.2. Existing section 198.2 applies where a registrant receives a taxable supply of personal property or a service made outside Canada that is capital property or an improvement to capital property of the registrant and the registrant is not required to pay tax on the property or service because it is for consumption, use or supply exclusively in the course of commercial activities of the registrant (i.e., Division IV does not apply). In these cases, existing section 198.2 deems the registrant, for the purposes of certain change-in-use provisions, to have paid tax and to have claimed an input tax credit equal to 7 per cent of the value of the consideration determined in accordance with Division IV. As a result, should the registrant subsequently change the use of the capital property so that it is no longer used exclusively in commercial activities, the registrant must account for tax under the change-in-use provisions.

Effective April 1, 1997, the change-in-use provisions are amended such that the amount of tax deemed to be paid or collected is determined by reference to the basic tax content of the property. The basic tax content is newly defined in subsection 123(1) and includes not only an amount of tax actually paid or payable but also tax that would have been payable when the property (or an improvement to the property) was acquired, imported or brought into a participating province but for the fact that the person acquired, imported or brought the property into the participating province for consumption, use or supply exclusively in the course of commercial activities of the person. Therefore, section 198.2 is no longer required and is repealed.

This amendment is effective April 1, 1997.

Clause 189

Capital Personal Property

ETA
199

Subclause 189(1)

Acquisition of Capital Personal Property

ETA
199(2)

As a consequence of subsection 199(2), a registrant can claim an input tax credit for all the tax payable in respect of an acquisition or importation of personal property (other than certain specified property) that is for use by the registrant as capital property primarily in commercial activities of the registrant since the property is considered to have been acquired or imported for use exclusively in commercial activities. Conversely, where the property is for use less than primarily in commercial activities, the registrant is denied any input tax credits.

As a consequence of the introduction of self-assessment provisions in respect of the provincial component of the HST in new Division IV.1, subsection 199(2) is amended to include a reference to property that is brought into a participating province for use as capital property. Therefore, a registrant who brings capital personal property into a participating province for use primarily in commercial activities is considered to be bringing the property into the province for use exclusively in commercial activities and is not required to self-assess tax under Division IV.1 (see commentary on clause 254 with reference to section 22 of Part I of Schedule X to the Act).

This amendment is effective April 1, 1997.

290

Subclause 189(2)

Beginning Use of Personal Property

ETA
199(3)(*b*)

Existing subsection 199(3) deems a registrant who begins to use capital personal property primarily in a commercial activity to have paid tax equal to an amount calculated by a specified formula. Under the existing formula, the amount of tax deemed to have been paid is determined by reference to the tax that was or would, but for section 167, have been payable by the registrant in respect of the last acquisition or importation of the property and improvements made to the property thereafter and the tax calculated on the fair market value of the property at the time of the change in use. The formula also takes into account any rebate under section 259 to which the registrant may have been entitled.

The existing formula does not yield the appropriate result in the context of the HST in all circumstances, such as when tax previously paid or payable was calculated at the rate of 7 per cent but tax calculated on the fair market value of the property at the time of the change in use would be calculated at the rate of 15 per cent if the property were, at that time, situated in a participating province. The converse situation is equally problematic where the original tax payable was calculated at the rate of 15 per cent but the applicable tax rate at the time of the change in use is 7 per cent because the property was removed to a non-participating province from a participating province after its purchase.

The provision is amended so that the amount of tax deemed to have been paid by the registrant will equal the "basic tax content" of the property, which is newly defined in subsection 123(1). The basic tax content of property includes not only an amount of tax actually paid or payable in respect of the property but also tax that would, but for section 167, have been payable. Where the registrant was entitled to a rebate under section 259, that amount is taken into account in the basic tax content calculation as well.

This amendment is effective April 1, 1997.

Subclause 189(3)

Improvement to Capital Personal Property

ETA
199(4) and (5)

Under subsection 199(4), a registrant is not entitled to an input tax credit for tax payable in respect of an acquisition or importation of an improvement to capital personal property unless, at the time tax becomes payable or is paid without having become payable, the capital property is used primarily in commercial activities.

As a consequence of the introduction of the self-assessment provisions in respect of the provincial component of the HST in new Division IV.1, subsection 199(4) is amended to include a reference to improvements that are brought into a participating province. Therefore, a registrant who brings an improvement to capital personal property into a participating province at a time when the capital property is used primarily in commercial activities would not be required to self-assess tax under Division IV.1. since the registrant would be considered to be bringing in the improvement for use exclusively in commercial activities.

The wording of subsection 199(5) is amended to likewise encompass property (in this case, a musical instrument) brought into a participating province. The existing provision refers to the instrument as having been acquired or imported. By referring instead to the musical instrument as being capital property, it is not necessary to specify that the instrument was "acquired, imported or brought into a participating province".

This amendment is effective April 1, 1997.

Clause 190

Ceasing Use of Personal Property

ETA
200(2)

Subsection 200(2) deems a registrant to have made and received a supply by way of sale of capital personal property where the registrant was using the property primarily in commercial activities and begins to use it primarily for other purposes. Under the existing rules, the registrant is deemed to have paid and collected tax calculated on the fair market value of the property.

The existing provision does not result in the appropriate amount of tax deemed to have been paid and collected where, for example, the tax previously payable in respect of the property was calculated at the rate of 7 per cent and the tax calculated on the fair market value of the property at the time of the change in use is calculated at the rate of 15 per cent because the property is situated at that time in a participating province. The converse situation would likewise be inappropriately dealt with under existing subsection 200(2).

The subsection is amended such that the amount of tax deemed to have been paid and collected is determined by reference to the "basic tax content" of the property at the time of the change in use. The basic tax content is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

This amendment is effective April 1, 1997.

Clause 191

Value of Passenger Vehicle

ETA
201

Under existing section 201, the maximum amount of input tax credits a registrant is allowed to claim in respect of tax payable on the acquisition or importation of a passenger vehicle (and any

improvements thereto) is restricted to the amount of tax calculated on the amount deemed under paragraph 13(7)(*g*) or (*h*) of the *Income Tax Act* to be the capital cost of the passenger vehicle. Where the tax payable by the registrant is in respect of a change in use of a passenger vehicle under subsection 199(3) or 206(2) or (3) and the registrant is entitled to claim a rebate under section 259, the amount deemed under section 201 to be the tax payable would be further adjusted to take account of that rebate.

Section 201 is amended to extend the above rules to passenger vehicles brought into a participating province. Under amended section 201, the maximum amount of input tax credits a registrant is allowed to claim in respect of tax payable on the acquisition, importation or bringing into a participating province of a passenger vehicle (and any improvements thereto) is deemed to be the lesser of the tax payable by the registrant on the acquisition, importation or bringing in, as the case may be, of the vehicle and the amount determined under the formula. The amount determined under the new formula is the excess amount, if any, that is obtained by subtracting the total input tax credits to which the registrant was entitled in respect of the last acquisition or importation of the vehicle or improvements to it by the registrant from the tax that would be payable by the registrant if the registrant were acquiring the vehicle in the participating province into which it is brought (or simply if it was acquired in Canada in the case where it is not brought into a participating province) for consideration equal to the amount deemed under paragraph 13(7)(*g*) or (*h*) of the *Income Tax Act* to be the capital cost of the vehicle. The amount of tax that would be payable is adjusted to account for any portion that would be rebatable under section 259.

This amendment is effective April 1, 1997.

Clause 192

Input tax Credit for Passenger Vehicle or Aircraft

ETA
202(2) to (4)

Section 202 sets out rules for determining input tax credits in respect of passenger vehicles and aircraft, and improvements thereto, acquired or imported for use as capital property of a registrant. Amendments are made to also refer to vehicles and aircraft (and improvements thereto) brought into a participating province since that is an occurrence that might likewise result, in some cases, in tax becoming payable by the registrant for which an input tax credit would be sought and to which section 202 should apply.

In addition, the formula under subsection 202(4) is amended to delete the reference to "tax fraction" since the definition of that term in subsection 123(1) is repealed. Instead, the formula applies the fraction 7/107 where the vehicle or aircraft is acquired or imported, or deemed to have been acquired under subsection 202(5), in circumstances in which only the 7-per-cent GST rate applied. The fraction 8/108 applies where the vehicle or aircraft (or improvement) is being brought into a participating province from a non-participating province or is acquired in a non-participating province from an unregistered non-resident person who was not required to pay tax on the vehicle, aircraft or improvement, both of which are circumstances in which only the provincial component of the HST applies. Finally, the fraction 15/115 applies where the acquisition or importation, or deemed acquisition under subsection 202(5), is one to which the 15-per-cent HST rate applies.

This amendment is effective April 1, 1997.

Clause 193

Passenger Vehicles

ETA
203(1) and (2)

Subsection 203(1) allows a registrant who makes a taxable sale of a passenger vehicle that was last used as capital property in commercial activities of the registrant to claim an input tax credit in respect of the tax previously paid by the registrant in respect of the vehicle that was not recovered because of the rule under section 201 which denies an input tax credit for the tax calculated on the cost of the vehicle in excess of its capital cost for income tax purposes.

At the time the vehicle is sold, the maximum amount of input tax credit available is basically the amount of unrecovered tax or the tax calculated on the fair market value of the property at the time of sale, whichever is less.

Subsection 203(1) is amended so that the amount of input tax credit available is determined on the basis of the "basic tax content" of the property at the time the vehicle is sold. The basic tax content of property is newly defined in subsection 123(1) (see commentary on subclause 150(6)). Basing the determination of the input tax credit on the basic tax content addresses the case where the tax previously paid in respect of the vehicle was calculated at a different rate than the tax calculated on the sale because the vehicle was moved from a participating province to a non-participating province (or vice versa) since tax was last paid on the vehicle.

Similarly, the existing rule under subsection 203(2) that results in a registrant who is an individual or partnership having to remit tax calculated on the fair market value of a passenger vehicle or aircraft that is no longer used exclusively in commercial activities is amended to refer to the basic tax content of the vehicle or aircraft. The intent of the subsection is to recapture previously claimed input tax credits not exceeding the tax on the depreciated value (i.e., current fair market value) of the vehicle or aircraft. However, here again, the existing rule would yield an inappropriate result (either recapturing too little or too much) if the tax previously paid in respect of the

vehicle or aircraft were calculated at a different rate than the rate applicable at the time of the change in use.

These amendments are effective April 1, 1997.

Clauses 194 to 196

Change In Use of Capital Property

ETA
206 to 208

These sections set out rules that apply when a registrant changes the extent to which the registrant is using capital property in commercial activities. An increase in, or commencement of, use in commercial activities generally results in the registrant being deemed to have acquired the capital property and to have paid tax in order to enable the registrant to claim an input tax credit. Conversely, a reduction in, or cessation of, use in commercial activities generally results in the registrant being deemed to have made a supply and to have collected tax, giving rise to a tax liability that is intended to have the effect of recapturing previously claimed input tax credits not exceeding tax on the current fair market value of the property where it has depreciated in value.

Tax calculated on the fair market value of the property at the time of the change in use is one factor that is taken into account in determining, under the existing provisions, the amount that the registrant is deemed to have paid or collected. However, the use of this factor in these provisions would not, in all cases, yield an appropriate result after the introduction of the HST at the rate of 15 per cent on April 1, 1997 in participating provinces. An inappropriate result would be obtained if, for example, tax previously paid in respect of the property and which is intended to be recaptured or included in an input tax credit was calculated at the 7-per-cent GST rate while tax calculated on the property's fair market value at the time of the change in use would be calculated at the 15-per-cent HST rate if the property is, at that time, situated in a participating province. The converse situation would similarly yield anomalous results.

Alternatively, the amended provisions determine the amount to be recaptured, or to be claimed as an additional input tax credit, by reference to the "basic tax content" of the property, which is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

An additional change is made in subsection 208(4). That subsection restricts the ability of a registrant who is an individual to claim an input tax credit in respect of property or a service acquired or imported as an improvement to real property. The subsection is amended by adding a reference to an improvement brought into a participating province since that is another occurrence that may result in tax becoming payable by the registrant for which an input tax credit would be sought and to which this subsection should apply.

These amendments come into force on April 1, 1997.

Clause 197

Deemed Sale where Election

ETA
211(2)(*a*)

Under existing subsection 211(2), where an election in respect of real property is made by a public service body to treat its otherwise exempt supplies of certain real property as taxable supplies, the body is considered to have made a supply of the property immediately before the election takes effect and to have received on the day it takes effect a taxable supply of the property. The body is also deemed to have collected and paid tax on the deemed sale equal to the lesser of tax that was payable by the body in respect of the last acquisition of the property and any improvements made to the property thereafter and tax calculated on the fair market value of the property.

This existing rule does not yield the appropriate result in circumstances where tax previously paid in respect of the property was calculated at the 7-per-cent GST rate while tax calculated on the fair market value of the property at the time of the election is calculated at the 15-per-cent HST rate because the property is situated

in a participating province. The converse situation would similarly be inappropriately dealt with under the existing rule.

Subsection 211(2) is amended so that the amount of tax deemed to have been collected and paid by the body equals the "basic tax content" of the property on the day the election takes effect. The basic tax content of property is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

This amendment is effective April 1, 1997.

Clause 198

Imposition of Tax on Imports

ETA
212 and 212.1

Existing section 212 provides for the imposition of tax on goods imported by a person who is liable under the *Customs Act* to pay duty on the goods, or would be so liable if the goods were subject to duty. The tax is equal to 7 per cent of the value of the goods and is collected by Customs officials at the time of importation, as if it were a duty under the *Customs Tariff*.

Minor wording changes are made to this section to provide for consistency with other tax imposition provisions in Part IX of the Act.

New subsection 212.1(1) sets out a definition of the term "commercial goods" for purposes of new subsection 212.1(3). The term "commercial goods" has the meaning assigned by the *Accounting for Imported Goods and Payment of Duties Regulations* made for purposes of section 32 of the *Customs Act*. "Commercial goods" therefore includes any goods that are imported for sale or for any commercial, industrial, occupational, institutional or other similar use.

New section 212.1 imposes a tax under Division III, which is the provincial component of the HST in respect of certain importations

by residents of participating provinces. This tax applies in addition to the tax imposed under section 212.

Generally, the tax imposed under new section 212.1 will be collected by Canada Customs at the time of importation, where the goods in question are accounted for under section 32 of the *Customs Act* as other than "commercial goods" (e.g., where residents of participating provinces import goods for personal use.) There is a requirement under new section 220.07 to self-assess the provincial portion of the HST in respect of certain importations accounted for as commercial goods.

There are certain circumstances in which the tax under section 212.1 will not be payable even on non-commercial importations by residents of participating provinces. For example, the tax will not be imposed at the time of importation in respect of motor vehicles that are required to be registered under provincial law. Rather, the provincial portion of the HST payable in respect of the importation of such vehicles will be payable to the Receiver General in accordance with section 220.07 in new Division IV.1 and collected by provincial authorities at the time when the vehicle is registered in a participating province.

In addition, the tax under section 212.1 will not apply in respect of a mobile or floating home that has been used or occupied in Canada by individuals as a place of residence and, by virtue of existing section 213, the provincial portion of the HST will not apply in respect of goods that are listed in Schedule VII. (Also see commentary on new section 214.1 under clause 200 which effectively reduces the tax on the importation of certain goods for which a provincial rebate is provided.)

Finally, tax under section 212.1 will not apply to goods imported by or on behalf of a person residing in the Nova Scotia or Newfoundland offshore area (each of which is defined under subsection 123(1) as a participating province to the extent that "offshore activities" are carried out there) unless these goods are imported for consumption, use or supply in the course of an "offshore activity" (also newly defined in subsection 123(1)) or the importer is also resident in a participating province that is not one of these offshore areas.

Existing sections 214 and 215, which already apply in respect of the tax imposed under section 212, will also apply in respect of the tax imposed under new section 212.1. As a result, any tax payable under section 212.1 will be paid and collected as though it were a duty imposed under the *Customs Tariff*, and will be calculated on the excise and duty-paid value of the imported goods.

Section 212.1 applies to goods imported or accounted for under section 32 of the *Customs Act* on or after April 1, 1997 (see also the application rule under new subsection 349(3)).

Clause 199

Security

ETA
213.1

Existing section 213.1 provides authority for the Minister of National Revenue to require that security be posted by any person who imports goods and is liable for tax under section 212.

The provision is amended to add a reference to new section 212.1, thus enabling the Minister to require the posting of security for the payment of the provincial component of the HST as well.

This amendment is effective April 1, 1997.

Clause 200

Payment of Taxes

ETA
214 and 214.1

Section 214 Payment

Existing section 214 provides that the tax payable under Division III must be paid and collected under the *Customs Act* as if it were a duty levied under the *Customs Tariff*.

The provision is amended to clarify that it applies to both the tax under section 212 and the tax under new section 212.1 by referring to "tax" under that Division generally.

This amendment is effective April 1, 1997.

Section 214.1 Deduction for Printed Books etc.

New section 214.1 provides the mechanism for delivering the provincial rebate in respect of the provincial component of the HST on imported books and other imported items that qualify for the rebate (i.e., items referred to in new subsection 259.1(1)). The mechanism for suppliers to provide the point-of-sale rebate in respect of domestic sales is provided under new subsection 234(3).

Under subsection 234(3), a registrant may, in calculating net tax for a reporting period, deduct a prescribed amount that has been paid to or credited in favour of the recipient of a supply. The amount to be prescribed for that purpose is the provincial rebate of the provincial component of the HST in respect of printed books and other qualifying items. By that mechanism, the recipient of such a taxable supply made in Canada will effectively receive the benefit of the rebate of the provincial component of the HST at the time of purchase.

New section 214.1 provides for a similar result in respect of the provincial component of the HST imposed on imported printed books and other qualifying items. Where an amount of tax is payable under new section 212.1 in respect of any of these items, the amount of the provincial rebate of that 8-per-cent component of the HST may be deducted in determining the total amount of tax that is required to be paid in respect of the importation.

This amendment is effective April 1, 1997.

302

Clause 201

Rebate for Returned Goods

ETA
215.1(2)

Existing subsection 215.1(2) provides for a rebate of tax paid on goods imported under certain circumstances by an unregistered small supplier where an abatement or refund of the duties paid on the goods has been granted under the *Customs Act* because the goods were damaged, of inferior quality, defective, did not include the correct quantity or were not the goods ordered.

The formula in subsection 215.1(2) is used to calculate the amount of the rebate. Element "A" in the formula is amended to provide for the calculation to be made using the tax rate of 15 per cent in the case of goods in respect of which the HST is payable.

This amendment applies to rebates in respect of amounts paid as tax on or after April 1, 1997.

Clause 202

Tax on Imported Taxable Supplies

ETA
Division IV Heading

The heading of Division IV is amended to reflect the fact that it also applies, in the case of the rules pertaining to drop shipments of goods, to some supplies of tangible personal property.

This amendment comes into force on Royal Assent.

Clause 203

Tax on Imported Taxable Supplies

ETA
218 to 218.2

Section 218 Tax at 7 per cent

Subsection 218(1) imposes a liability on every recipient of an imported taxable supply (within the meaning of section 217) to pay tax at the rate of 7 per cent calculated on the value of the consideration for the supply. Existing subsection 218(2) provides that the tax imposed under Division IV is payable by the recipient on the earlier of the day on which the consideration is paid and the day on which it becomes due.

Existing subsection 218(1) is renumbered as section 218 and minor wording changes are made for consistency with other tax imposition provisions in Part IX of the Act. The rules in existing subsection 218(2) are incorporated in new section 218.2, which provides for the time of payment of the taxes imposed under section 218 and new section 218.1.

This amendment is effective April 1, 1997.

Subsection 218.1(1) Tax in Participating Provinces

Division IV of Part IX of the Act requires tax to be self-assessed in respect of certain supplies made outside Canada of property or services that are for use in Canada otherwise than exclusively in the course of a commercial activity of the recipient. The Division is amended to impose the provincial portion of the HST on certain of these supplies. For the most part, the new tax applies in circumstances parallel to those under which tax under section 218 applies to such supplies.

The tax imposed under new section 218.1 applies in addition to the tax imposed under section 218.

A resident of a participating province who is the recipient of an imported taxable supply of intangible personal property or a service

will be liable for the provincial component of the HST where the property or service is acquired by the resident for consumption, use or supply primarily in the participating provinces. The amount of tax payable in these circumstances will be calculated with regard to the extent to which the intangible property or service will be consumed, used or supplied in the participating province in which the recipient is resident.

The tax will also be imposed upon every registrant who is the recipient of a taxable supply of tangible personal property described in paragraph (*b*) of the definition "imported taxable supply" in section 217 (i.e. "drop-shipped" property), where physical possession of the property is transferred to that registrant in a participating province. In these circumstances, the tax will be calculated on the value of the consideration for the imported taxable supply.

Finally every person who is the recipient of a taxable supply of tangible personal property described in paragraph (*b*.1) of the definition "imported taxable supply" that is delivered or made available to the person in a participating province will be liable for tax calculated on the full consideration for the supply regardless of the extent to which it was acquired for consumption, use or supply in a participating province provided the person is a registrant or a resident of the province.

New section 218.1 is effective April 1, 1997.

Subsection 218.1(2) Selected Listed Financial Institutions

New subsection 218.1(2) provides that tax (other than a prescribed amount of tax) is not imposed under subsection 218.1(1) on an imported taxable supply if, at the time that tax would have become payable, the recipient is a selected listed financial institution (within the meaning of new subsection 225.2(1)). These institutions account for the provincial portion of the HST on their purchases through adjustments to their net tax calculation under new subsection 225.2(2).

Certain prescribed amounts of tax are excluded in the net tax adjustments under subsection 225.2(2). Therefore, tax under subsection 218.1(1) will apply to those amounts (see commentary on clause 209).

This subsection is effective April 1, 1997.

Subsections 218.1(3) and (4) Application in Offshore Areas

The Nova Scotia and Newfoundland offshore areas (newly defined in subsection 123(1)) are included as participating provinces to the extent that "offshore activities" (also defined in subsection 123(1)) are carried out there. New subsection 218.1(3) provides that the tax under new section 218.1 does not apply to an imported taxable supply unless the property or service is acquired for consumption, use or supply in the course of an offshore activity or, in the case of an imported taxable supply of intangible property or a service, the importer is also resident in a participating province that is not one of these offshore areas.

Subsection 218.1(4) is a complementary rule that provides that, for the purpose of applying the provincial component of the HST to imported taxable supplies of property or services that are in fact acquired for use to some extent in the Nova Scotia or Newfoundland offshore area, the property or services are subject to that component only to the extent that the use is in "offshore activities" (newly defined in subsection 123(1)).

Subsections 218.1(3) and (4) are effective April 1, 1997.

Section 218.2 When Tax Payable

New section 218.2 incorporates the rules of existing subsection 218(2) and applies for purposes of determining the time at which the tax imposed under Division IV, both existing section 218 and new section 218.1, is payable.

Pursuant to section 218.2, tax under the Division calculated on an amount of consideration becomes payable on the day on which that consideration is paid or becomes due, whichever is earlier.

This amendment is effective April 1, 1997.

Clause 204

Property and Services Brought Into a Participating Province

ETA
Division IV.1

New Division IV.1 provides for self-assessment of the provincial component of the HST in certain circumstances where taxable property or services are either imported from outside of Canada into a participating province or are supplied in Canada in a non-participating province and then brought into a participating province by a person for consumption, use or supply in the participating provinces. Special rules provide for the treatment of property brought into a participating province by someone other than the person on whose behalf it was acquired or by certain selected listed financial institutions (as newly defined in subsection 225.2(1)) and for property brought into a participating province en route to a destination outside the participating provinces.

These amendments come into force on April 1, 1997. Reference should also be made to the application and transition rules in new section 349.

Section 220.01 Meaning of "tangible personal property"

The definition of "tangible personal property" which otherwise applies for the purposes of Part IX is broadened for the purposes of new Division IV.1 to include mobile homes not affixed to land and floating homes (both of which are included in the definition of real property under subsection 123(1)).

Section 220.02 Carriers

This new provision ensures that where goods are brought into a participating province, by someone other than a resident of the participating provinces, on behalf of or for delivery to such a resident, any requirement to self-assess the provincial portion of the HST applies to the resident, rather than to the person who has transported the goods into the province on the resident’s behalf.

Section 220.03 Goods In Transit

This new provision ensures that the requirement to self-assess the provincial portion of the HST in respect of goods brought into a participating province does not arise where the goods are simply transported through the participating province en route to a destination outside the participating provinces.

Section 220.04 Selected Listed Financial Institutions

Pursuant to new section 225.2, a person who under that section is a "selected listed financial institution" during a reporting period is required to make adjustments in calculating net tax for the period to arrive at the financial institution's total liability for the provincial portion of the HST. Those adjustments have the effect of applying the provincial component of the HST to an attributed amount of consumption, use or supply in the participating provinces of all the institution's acquisitions and importations. Accordingly, new section 220.04 provides that, where these special adjustments are required to be made in determining net tax for a reporting period, there is no requirement for the selected listed financial institution to also self-assess tax under new Division IV.1 during that period.

An exception, however, has been made in respect of "prescribed amounts of tax" payable or paid by a selected listed financial institution. Prescribed amounts of tax are excluded in the net tax adjustments under subsection 225.2(2) and therefore it is necessary to have tax under Division IV.1 apply to those amounts (see commentary on clause 209).

Subsection 220.05(1) Goods Brought Into a Participating Province

This new section provides for self-assessment in respect of certain tangible personal property (including mobile homes not affixed to land and floating homes) brought into a participating province from a non-participating province. The tax would apply, for example, where property is supplied outside a participating province and then brought into a participating province by a person for consumption, use or supply in that province, subject to certain exclusions.

The circumstances in which this tax is payable generally parallel those in which the goods would be taxable if they were imported into

Canada. The self-assessment rules ensure that the provincial portion of the HST does not provide an incentive for consumers in the participating provinces to acquire property outside of those provinces.

In the case of "prescribed property" (to be defined by regulation) or "specified motor vehicles" (as newly defined in subsection 123(1) to include most registrable motor vehicles), the tax will be calculated on a prescribed value. The rules providing for valuation will be set out in regulations and, in the case of motor vehicles, will generally provide for valuation in accordance with the value assigned by the relevant provincial licensing authority. The regulations will also provide for any special valuation rules applicable to other "prescribed property".

In the case of property, other than specified motor vehicles and prescribed property, acquired by an arm's-length sale, the tax will be calculated on the lesser of the value of the consideration paid or payable for the supply and the fair market value of the property at the time it is brought into a participating province. In any other case, (i.e., where the property was acquired in a non-arm's-length sales transaction), the tax will be based on the fair market value of the property at the time it is brought into a participating province.

Subsection 220.05(2) When Tax Payable

The tax imposed under subsection 220.05(1) in respect of property other than specified motor vehicles will become payable at the time the property is brought into a participating province. In the case of specified motor vehicles, the tax will be payable to the Receiver General but collected by provincial licensing authorities. This tax becomes payable at the time the vehicle is registered in the participating province or the day on or before which it is required to be registered, whichever is earlier.

Subsection 220.05(3) Non-taxable Property

Although subsection 220.05(1) provides for a general requirement to self-assess where tangible personal property is brought into a participating province from a non-participating province, by virtue of subsection 220.05(3), this requirement does not apply in respect of property included in Part I of Schedule X to the Act. For the most part, that Part provides for relief from the provincial portion of the

HST in circumstances in which the property would be relieved from GST if it were imported into Canada. (See the commentary on new Schedule X under clause 254.)

Tax under subsection 220.05(1) also will not be payable where tax under new section 220.06 was paid by the recipient of a supply of the property upon the property being brought into a participating province, or where tax under new section 220.07 was self-assessed on the importation of the property as commercial goods (within the meaning of new subsection 212.1(1)).

Subsection 220.05(4) Application in Offshore Areas

Subsection 220.05(4) provides that where property is brought into the Nova Scotia or Newfoundland offshore area (each of which is newly defined in subsection 123(1) and included as a participating province to the extent that "offshore activities" are carried out there), the provincial component of the HST under subsection 220.05(1) applies to that property only insofar as it is brought into the area for consumption, use or supply in the course of an "offshore activity".

Subsection 220.06(1) Supply by Unregistered Non-resident

The rule in section 220.06 ensures that the provincial portion of the HST applies to property acquired in a participating province from an unregistered, non-resident of Canada who is not required to collect tax. The section imposes a requirement for the recipient of a supply in these circumstances to self-assess the provincial portion of the HST. Where the property is "prescribed property" (to be set out in regulations) the tax is calculated on the prescribed value.

In the case of property (other than prescribed property) that is acquired by way of an arm’s-length sale, the tax is calculated on the lesser of the value of the consideration paid or payable for the supply and the fair market value of the property at the time it is brought into a participating province. In any other case (i.e., where the property was acquired by way of a non-arms-length sale), the tax is calculated on the fair market value of the property at the time it is brought into a participating province.

Subsection 220.06(2) When Tax Payable

The tax imposed under subsection 220.06(1) in respect of property will become payable by a person at the time the property is delivered or made available to the person in a participating province.

Subsection 220.06(3) Non-taxable Property

Subsection 220.06(3) describes the circumstances in which the requirement to self-assess tax under subsection 220.06(1) does not apply. This will be the case, for example, in respect of property included in Part I of new Schedule X to the Act. For the most part, that Part provides for relief from the provincial portion of the HST in circumstances in which the property would be relieved from GST if it were imported into Canada. In addition, self-assessment under subsection 220.06(1) will not be required where tax under section 220.05 was paid by the non-resident supplier at the time the property was brought into the participating province or where tax under section 220.07 was self-assessed on the importation of the goods as commercial goods (within the meaning of new subsection 212.1(1)).

Subsection 220.06(4) Application in Offshore Areas

Subsection 220.06(4) provides that the tax under subsection 220.06(1) applies to property delivered or sent to the Nova Scotia or Newfoundland offshore area (newly defined in subsection 123(1) as a "participating province" to the extent that "offshore activities", also newly defined in that subsection, are carried out there) only if the property is for consumption, use or supply in an "offshore activity".

Subsection 220.07(1) Imported Commercial Goods

The existing tax under Part IX of the Act on imported goods is levied under Division III of that Part and collected by Canada Customs at the time of importation, as if the tax were a duty levied under the *Customs Tariff*. However, amended Division III imposes the provincial portion of the HST only in respect of certain non-commercial importations by residents of participating provinces. The tax under new section 212.1 does not apply to importations by non-residents of a participating province or to any commercial

importations because, in those cases, it would be very difficult for Canada Customs to determine the destination of the goods at the time of importation.

New subsection 220.07 imposes a requirement to self-assess the provincial portion of the HST in respect of most taxable importations of goods into the participating provinces where the goods are not subject to tax under Division III. There will be a requirement to self-assess the tax in respect of such goods that are, for Customs purposes, accounted for as "commercial goods" within the meaning assigned by subsection 212.1(1), and motor vehicles that are required to be registered under the laws of the province relating to the registration of motor vehicles.

Certain exceptions from self-assessment under this section are set out in new subsection 220.07(2).

Subsection 220.07(2) Exception

As is the case for the provincial portion of the HST imposed on imports under new section 212.1 in Division III, there will be no requirement to self-assess the tax under subsection 220.07(1) in respect of the importation of a mobile or floating home that has been used or occupied in Canada by individuals as a place of residence, or in respect of the importation of goods that are included in Schedule VII.

In addition, there will be no requirement to self-assess the tax in respect of goods (other than specified motor vehicles) that are imported by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant, provided that the registrant is neither a charity who is using the simplified accounting method set out in section 225.1 (added by subclause 45(1)), nor a registrant whose net tax is determined under the "Streamlined Accounting Quick Method" or the "Special Quick Method For Public Service Bodies" set out in Parts IV and V respectively of the *Streamlined Accounting (GST) Regulations*.

Subsection 220.07(3) Value of Goods

Where property is "prescribed property" (to be defined by regulation) or a "specified motor vehicle" (as newly defined in subsection 123(1)), the tax under subsection 220.07(1) is calculated on the prescribed value. The rules providing for valuation will be set out in regulations and, in the case of motor vehicles, will generally provide for valuation in accordance with the value assigned by the relevant provincial licensing authority. The regulations will also provide for any special valuation rules applicable to other "prescribed property".

In the case of property other than specified motor vehicles or prescribed property, the tax will be calculated on the excise and duty-paid value of the goods, in accordance with section 215.

Subsection 220.07(4) When Tax Payable

The tax imposed under subsection 220.07(1) in respect of property other than specified motor vehicles will become payable at the time the property is brought into a participating province. In the case of specified motor vehicles, the tax will be payable to the Receiver General but collected by provincial authorities. That tax will become payable at the time the vehicle is registered in the participating province or the day on or before which it is required to be registered, whichever is earlier.

Subsection 220.07(5) Use in Offshore Areas

Subsection 220.07(5) provides that the tax under subsection 222.07(1) does not apply to commercial goods brought into the Nova Scotia or Newfoundland offshore areas (newly defined to be "participating provinces" to the extent that "offshore activities" are carried out there) unless the goods are brought into the area for consumption, use or supply in the course of an "offshore activity" (also newly defined in subsection 123(1)).

Subsection 220.08(1) Intangible Property and Services

New section 220.08 provides for self-assessment by persons who are residents of a participating province and who are the recipients of certain taxable supplies of intangible personal property or services

when these are acquired for consumption, use or supply primarily in the participating provinces. The circumstances in which this tax is payable generally mirror those in which tax would apply if the supplies were imported taxable supplies under section 218 in Division IV.

Tax will be payable under subsection 220.08(1) each time an amount of consideration for the supply is paid or becomes due, and will be calculated on the value of that consideration at that time, multiplied by the extent (expressed as a percentage) to which the person acquired the property or service for consumption, use or supply in participating provinces.

Subsection 220.08(2) When Tax Payable

The tax under subsection 220.08(1) calculated on an amount of consideration becomes payable at the time that consideration becomes due or is paid without having become due.

Subsection 220.08(3) Non-taxable Supplies

Tax under subsection 220.08(1) is not payable in respect of a supply that is included in Part II of new Schedule X. For the most part, that Part mirrors relevant exclusions from the definition "imported taxable supply" in section 217. However, some of the exclusions from the latter definition are not required for purposes of section 220.08 because of the test of primary use contained in this section which is not found in section 217. (For further details, see the commentary on Schedule X).

Subsection 220.09(1) Returns and Payment of Tax

Subsection 220.09(1) sets out the general rules regarding the manner in which tax imposed under Division IV.1 must be reported and paid.

Where tax becomes payable by a registrant during a reporting period in respect of a supply of property other than a "specified motor vehicle" (as newly defined in subsection 123(1)), that tax must be reported in the return required under section 238 to be filed for that reporting period and the tax must be paid on or before the due date for that return. Where tax is payable by a non-registrant in respect of a supply of such property, the tax must be reported in the prescribed

return filed in prescribed manner and containing prescribed information and the tax must be paid on or before the last day of the month following the calendar month in which the tax became payable under Division IV.1.

Subsection 220.09(2) Exception for Specified Motor Vehicles

An exception to the general reporting and payment requirements is provided in new subsection 220.09(2) in respect of tax payable under Division IV.1 on a supply of a "specified motor vehicle" (as newly defined in subsection 123(1)).

In these circumstances, the tax is not required to be reported in any return, and it must be paid in the prescribed manner at the time the person registers the vehicle or the day on or before which the vehicle is required to be registered, whichever is earlier. Although the tax is payable to the Receiver General, it will be collected by provincial registration authorities on behalf of Revenue Canada.

Subsection 220.09(3) Deduction for Prescribed Amount

New subsection 220.09(3) provides the mechanism for delivering the provincial rebate in respect of the provincial component of the HST on printed books and other qualifying publications referred to in new subsection 259.1 that are brought into a participating province. The delivery mechanism for sales made in the participating provinces is provided under new subsection 234(3). Under that subsection, a registrant may, in calculating net tax for a reporting period, deduct a prescribed amount which has been paid to or credited in favour of the recipient of a supply of a printed book or other qualifying publication. In that way, the recipient may obtain the benefit of the rebate at the time of purchase. Subsection 220.09(3) provides for a similar result in respect of tax imposed under Division IV.1. Where an amount of tax is payable under that Division and the amount is a prescribed amount for purposes of subsection 234(3), the amount may be deducted in determining the total amount of tax under Division IV.1 which is required to be reported and paid.

Subsection 220.09(4) No Return Required

Subsection 220.09(4) provides that where the amount of tax required under subsection 220.09(1) to be reported or paid is nil

(i.e., as a consequence of a deduction having been taken under subsection 220.09(3)), no return need be filed under Division IV.1.

Clause 205

Disclosure of Tax

ETA
223

Existing section 223 requires a registrant who makes a taxable supply to disclose, normally in the invoice or receipt for the supply, the amount of tax on the supply or the fact that the total amount charged includes tax. The latter option would not readily enable the recipient to determine the actual amount of tax charged without an additional indication of the rate of tax and, where the invoice is for a mix of taxable and non-taxable items, which items are subject to tax. Therefore, section 223 is amended to require the supplier to indicate either the total tax payable in respect of the supply or both the tax rate and the items that are taxable.

This amendment comes into force on April 7, 1997.

Clause 206

Net Tax

ETA
225(5)

Subsection 225(5) restricts the ability of a registrant to claim an input tax credit in respect of property or a service acquired or imported as an improvement to real property. This subsection is amended to add a reference to an improvement brought into a participating province since that is another occurrence that may result in tax becoming payable for which an input tax credit would be sought and to which this subsection should apply.

This amendment comes into force on April 1, 1997.

Clause 207

Net Tax of Charity Under Streamlined Accounting Method

ETA
225.1(2)

New section 225.1 provides for a new streamlined accounting method for charities (see commentary on subclause 45(1)). Under that method, a charity is entitled to claim input tax credits in respect of property imported or purchased for use as capital property of the charity. Subsection 225.1(2) is amended as a consequence of the fact that the HST will apply in some cases to property brought into a participating province. Subparagraph (*a*)(ii) of the description of element B of the formula in subsection 225.1(2) is amended to refer also to tax payable upon bringing property into a participating province.

Under the streamlined accounting method, only 60 per cent of the tax in respect of most supplies (which does not include supplies of capital or real property) made by a charity is required to be included in determining the net tax remittable by the charity, given that the charity generally does not claim input tax credits under this method for its inputs (other than capital inputs) used in making the supplies. Accordingly, only 60 per cent of any special deductions from net tax in respect of those supplies is deductible in determining net tax under this method. The allowable deductions are listed in paragraph (*b*) of the description of element B in the net tax formula set out in subsection 225.1(2). The paragraph is amended to add a reference to the newly-added deduction under subsection 234(3) (see commentary on clause 214).

These amendments are effective April 1, 1997.

Clause 208

Selected Listed Financial Institutions

ETA
225.2(1) to (4)

New subsection 225.2(1) sets out criteria for determining who is a selected listed financial institution for the purposes of Part IX of the Act.

A person is a selected listed financial institution during a fiscal year if the person meets two conditions.

- First, the person must be a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (x) during the taxation year in which the fiscal year ends and during the preceding taxation year. A person who is a deemed listed financial institution solely because of an election made under section 150 does not qualify as a selected listed financial institution.

- Second, the person generally must have been required to allocate taxable income (or, in the case of an individual, income) to both a participating and a non-participating province in each of those taxation years. Alternatively, the person must either be a specified partnership described in subsection 225.2(8) in each of those taxation years or a prescribed financial institution. Part I of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* prescribe certain federal crown corporations for this purpose.

Paragraph 225.2(1)(*a*) sets out the criteria for determining whether a corporation that is a listed financial institution is a selected listed financial institution. These criteria apply to corporations such as chartered banks, insurance companies and trust and loan corporations. The corporation must be required under sections 402 to 405 of the *Income Tax Regulations* to allocate taxable income to a participating province and a non-participating province during each of the two relevant taxation years. For taxation years in which the corporation did not have taxable income, the test is whether the corporation would have been required to allocate taxable income to a participating

province and a non-participating province if the corporation had taxable income in that year.

Paragraph 225.2(1)(*b*) describes the circumstances in which listed financial institutions that are individuals, estates of deceased individuals or trusts are considered selected listed financial institutions. The person must be required under section 2603 of the *Income Tax Regulations* to allocate income to a participating province and a non-participating province during each of the two relevant taxation years. For taxation years in which the person did not have income, the test is whether the person would have been required to allocate income to a participating province and a non-participating province if the person had income in that year.

For HST purposes, the income allocation formulas prescribed by the *Income Tax Regulations* are used solely to determine whether or not a person is a selected listed financial institution. The allocation percentages used in the formula under subsection 225.2(2) are determined by rules set out in Part II of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

This amendment is effective on April 1, 1997.

Subsection 225.2(2) Adjustment to Net Tax

New 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. This adjustment is required because selected listed financial institutions are not required to pay the provincial component of the HST under new section 218.1 or new Division IV.1 and they generally cannot claim input tax credits in respect of the provincial component payable under new subsection 165(2) or new section 212.1. The adjustment compensates for these departures from the standard HST rules. The determination of net tax in accordance with subsection 225.2(2) is generally referred to as the "special attribution method".

The first step in calculating the amount of the adjustment under the special attribution method for a reporting period is to calculate the financial institution’s unrecoverable GST for the period at the 7 per-cent rate. This amount is determined by totalling all of the GST that became payable by the financial institution during the

period and all of the GST that was paid by the financial institution during the period without having become payable and subtracting from that total all input tax credits properly claimed in the return for the period by the financial institution.

In determining the adjustments to net tax under the special attribution method in section 225.2, a selected listed financial institution who had made an election under section 150 is required to make further adjustments in respect of the supplies made to it on an exempt basis under that election except where the supplier was another selected listed financial institution. In this regard, provision is made for the recipient to make a second election with the member of the closely related group with whom the section 150 election has been made to include in the recipient's net tax adjustments an amount equal to tax at the rate of 7 per cent calculated on the supplier's cost of making these supplies (excluding any remuneration to employees, the cost of financial services and any GST or HST payable on inputs). The recipient may include, in the total input tax credits claimed, any input tax credits to which it would have been entitled in respect of the amount so included if it were tax actually paid by the recipient.

Where the selected listed financial institution has not made the second election, in determining the total GST paid or payable for a particular reporting period, the financial institution must include the amount of GST that would have become payable by the financial institution during the period if it had not made the election under section 150. In this case, the financial institution may include in the total input tax credits claimed any input tax credits the financial institution to which it would have been entitled if that amount of GST so included was actually paid by the financial institution.

To determine the unrecoverable GST for a reporting period, the financial institution must segregate the 7 per-cent GST that applied to its purchases from the provincial component of the HST. However, the tax collected or collectible on supplies need not be separated into the GST and provincial components for purposes of the net tax calculation.

Provision is made in subsection 225.2(2) to exclude "prescribed amounts of tax" from the net tax adjustments under the special attribution method. Under Part III of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, "prescribed

amounts of tax" will include amounts of tax paid or payable by an insurer in respect of property or services acquired, imported or brought into a participating province exclusively and directly for consumption, use or supply in the course of investigating, settling or defending a claim arising under a insurance policy that is not in the nature of accident and sickness or life insurance. Any tax paid on inputs associated with overhead expenses, accident and sickness claims costs, and other non-claim related costs will continue to be required to be included in the attribution calculation. The Regulations will also prescribe amounts of tax paid or payable by a selected listed financial institution in respect of a supply or importation of property referred to in subsection 259.1(2) (e.g., a printed book).

The second step in the calculation is to gross up the unrecoverable GST by 8/7ths and multiply the result by the financial institution's allocation percentage for each participating province. The allocation percentage is determined for each taxation year in accordance with a method prescribed by regulations made under Part II of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*. Generally, the percentage is determined for a taxation year and applies to all reporting periods in fiscal years ending in that taxation year. The rules for determining the allocation percentages generally parallel the rules in sections 402 to 405 and 2603 of the *Income Tax Regulations* that apply to the financial institution. Special rules are also provided in the Regulations for determining a partnership's allocation percentages, since partnerships are not taxpayers for income tax purposes and are not required to allocate the partnership's income to provinces in accordance with the *Income Tax Regulations*.

The third step in the calculation is to determine, for each participating province, the total provincial component of the HST that became payable by the financial institution during the period or was paid by financial institution during the period without having become payable in respect of supplies made to the financial institution and in respect of goods imported by the institution. Where the financial institution has elected to account for supplies made to it that are exempt because of an election under section 150 on the basis of the supplier's costs, the financial institution may also include any provincial component of the HST payable or paid by the supplier in respect of those supplies.

The total of these amounts is deducted from the amount allocated to a participating province for the period under the second step.

The fourth step is to determine whether specific adjustments to the calculation are needed in determining the financial institution's net tax for the period. Part IV of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* prescribe amounts to be added or deducted by a financial institution under the special attribution method. These adjustments generally take into account exceptional circumstances such as adjustments of tax made under section 232, rebates received by a financial institution where section 181.1 applies, the recapture of input tax credits under section 235 and 236, and transitional adjustments. The total of the adjustments made under the Regulations could either be a positive or a negative amount.

Where the net tax adjustment determined under the special attribution method is a positive amount, it must be added in determining the financial institution's net tax for the period. Alternatively, where the net tax adjustment is a negative amount, that amount may be deducted in determining the financial institution's net tax for the period.

These provisions are effective April 1, 1997. However, for the purpose of determining the net tax of a selected listed financial institution for a reporting period that begins before April 1, 1997 and ends on or after that date, the net tax will be prorated according to the number of days in the reporting period that are after March 1997.

Subsection 225.2(3) Exclusions from Adjustment

New subsection 225.2(3) excludes certain amounts of tax and certain input tax credits from the calculation under subsection 225.2(2).

In certain cases, selected listed financial institutions are deemed to have paid tax equal to the basic tax content of property under subsections 171(1), 171.1(2), 206(2) and (3) and 208(2) and (3). Because of the difficulty in distinguishing between the 7 per-cent and 8 per-cent components of basic tax content, the taxes deemed to have been paid under those subsections are excluded from the calculation under subsection 225.2(2). Accordingly, pursuant to subsection 169(3), selected listed financial institutions are permitted

to claim input tax credits in respect of the provincial component of the taxes deemed to have been paid in these cases. They are also permitted to claim the input tax credits in respect of the provincial component of the HST calculated under subsections 193(1) and (2), which is also based on basic tax content and is excluded from the calculation under subsection 225.2(2).

New subsection 225.2(3) is effective on April 1, 1997.

Subsections 225.2(4) to (6) Election

As explained in the commentary on subsection 225.2(2), a selected listed financial institution who has made an election under section 150 can make a second election with the member of the closely related group with whom the election under section 150 has been made to include in the selected listed financial institution's net tax adjustments an amount equal to tax calculated at the rate of 7 per-cent on the other member's cost of making supplies to the selected listed financial institution. Subsections 225.2(4) to (6) deal with the application, form, manner of filing and effect of this second election.

Subsection (4) provides that the financial institution and the member may make the second election to apply to every supply to which the election under section 150 applies. Therefore, both elections would apply to the same set of supplies.

Under subsection (5), the financial institution must file the second election in prescribed form containing prescribed information. The form must specify the day the election is to become effective and be filed on or before the day the financial institution's return for the reporting period that includes the effective date of the election is required to be filed.

Subsection (6) provides that the second election remains in effect until the earliest of:

- the day the election under section 150 ceases to be in effect;
- the day the two parties jointly revoke, in prescribed form containing prescribed information, the second election;
- the day the other member becomes a selected listed financial institution; and

- the day the selected listed financial institution ceases to be a selected listed financial institution.

These new subsections are effective on April 1, 1997.

Subsection 225.2(7) Information Requirements

Pursuant to subsection 169(3), generally, a selected listed financial institution is not entitled to any input tax credits in respect of the 8 per-cent provincial component of the HST paid or payable by the financial institution. Instead, the financial institution is allowed to deduct such amounts when determining the net tax adjustments under element F of the formula in subsection 225.2(2). Although those deductions are not amounts of input tax credits, new subsection 225.2(7) provides that the input tax credit information requirements under subsection 169(4) and the disclosure of tax requirements under subsection 223(2) apply to those deductions. Therefore, as when claiming input tax credits, a selected listed financial institution must meet the documentary requirements before claiming the deductions provided for under subsection 225.2(2).

New subsection 225.2(7) is effective on April 1, 1997.

Subsection 225.2(8) Meaning of "specified partnership"

New subsection 225.2(8) defines the term "specified partnership". Under new subsection 225.2(1), a partnership is a selected listed financial institution during a fiscal year if the partnership is a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (x) during the taxation year in which the fiscal year ends and during the preceding taxation year and the partnership is a "specified partnership" during those two years.

A partnership is a "specified partnership" during a taxation year if it has at least one member who has taxable income (or income in the case of a member that is an individual, estate or trust) in that year earned in a participating province from a business carried on through the partnership and at least one member (whether or not the same member) who has taxable income (or income in the case of a member that is an individual, estate or trust) in that year earned in a non-participating province from such a business. The rules set out in sections 402 to 405 and section 2603 of the *Income Tax Regulations*

generally apply for the purpose of determining in which provinces a member of the partnership earned its income from the partnership. However, where a member of the partnership is a second partnership, section 402 of the regulations applies as if the second partnership were a corporation and a taxpayer for purposes of the *Income Tax Act*. In addition, where the members do not have income or taxable income in the year from the partnership business, the determination is made as if the members had income or taxable income from the partnership.

New subsection 225.2(8) is effective on April 1, 1997.

Clause 209

Returnable Containers

ETA
226

Section 226 sets out the rules for the simplified method of accounting for returnable beverage containers.

Subclause 209(1)

Input Tax Credits for Returnable Containers

ETA
226(4)

Subsection 226(4) sets out the general rule that a registrant may not claim an input tax credit (whether actual or notional) with respect to tax paid or payable on purchases of returnable containers. Subsection 226(4) is amended to add that a registrant may not claim an input tax credit with respect to tax paid or payable by the registrant on returnable containers brought into a participating province. This amendment is consequential to the introduction of self-assessment rules in new Division IV.1 relating to the imposition of the provincial component of the HST in participating provinces.

The amendment is effective April 1, 1997.

Subclause 209(2)

Change in Practice

ETA
226(6)

Subsection 226(6) applies to a registrant who ceases to qualify to use the simplified rules for accounting for supplies of returnable containers under subsection 226(4) (e.g., the registrant falls within one of the exceptions set out in subsection 226(5)). Subsection 226(6) deems a registrant in this case to have reacquired and paid tax on containers held at that time in order to allow the registrant to claim an input tax credit calculated on the price paid on the acquisition of the containers.

Subsection 226(6) is amended to add that the registrant may claim an input tax credit in respect of tax that was self-assessed upon bringing the container into a participating province after it was last acquired. This amendment is consequential to the addition of the self-assessment rules found in new Division IV.1.

Also, subsection 226(6) is amended so that the tax the registrant is deemed to have paid in respect of the deemed acquisition is equal to the "basic tax content" of the container at that time. The term "basic tax content" is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

These amendments are effective April 1, 1997.

Subclause 209(3)

Change in Practice

ETA
226(7)

Subsection 226(7) deals with registrants who become eligible to use the simplified method of accounting for returnable containers. These registrants will have claimed input tax credits for tax paid on their last acquisition of returnable containers.

Subsection 226(7) is amended to add a reference to an input tax credit in respect of tax that became payable upon bringing the container into a participating province after it was last acquired. This amendment is consequential to the introduction of self-assessment rules in new Division IV.1.

Further, paragraph 226(7)(*a*) is amended to specify that the registrant is deemed to have collected tax equal to the "basic tax content" of the containers. The term "basic tax content" is newly defined in subsection 123(1) (see commentary on subclause 150(6)).

These amendments are effective April 1, 1997.

Clause 210

Net Tax and Remittance

ETA
228

Subclauses 210(1) and (2)

Calculation of Net Tax and Remittance

ETA
228(1) and (2)

These subsections are amended so as not to apply where new subsection 228(2.1) or (2.2) applies. Those subsections provide special reporting and remittance rules for selected listed financial institutions, as newly defined in subsection 225.2(1).

This amendment applies to reporting periods that end after March 1997.

Subclause 210(3)

Selected Listed Financial Institutions – Returns and Remittance

ETA
228(2.1) to (3)

Subsection 228(2.1) Interim Return and Remittance

New subsection 228(2.1) requires a selected listed financial institution (as defined in new subsection 225.2(1)) that is a monthly or quarterly filer to make an interim payment on account of net tax for a reporting period. The payment must be made on or before the due date of the interim return for the period required under new subsection 238(2.1). Annual filers are not required to file interim returns because they pay quarterly instalments on account of their net tax.

Generally, a selected listed financial institution's interim net tax payment for a reporting period is calculated in the same way as its net tax for the period. However, in calculating the adjustment to net tax under new subsection 225.2(2) relating to the provincial portion of the HST payable on its purchases, the financial institution may use an allocation percentage for each participating province equal to the lesser of its allocation percentage for the current taxation year and its allocation percentage for the immediately preceding taxation year. Where the interim net tax for the reporting period is a positive amount, the financial institution must pay that amount on account of its net tax for the period. Where the interim net tax is negative, the financial institution may claim it as an interim net tax refund under new subsection 228(2.4).

The interim net tax must be reconciled with the actual net tax for the reporting period in the financial institution's final return for the period filed under subsection 238(2.1). Details of the reconciliation are set out in new subsection 228(2.3).

Subsection 228(2.2) Interim Returns in the First Fiscal Year

New subsection 228(2.2) establishes a transitional method for calculating the interim net tax of a financial institution for each of the reporting periods that end in the fiscal year in which it becomes a

selected listed financial institution. The method does not apply for fiscal years that begin before April 1997.

The transitional interim net tax calculation is generally the same as the standard interim net tax calculation under new subsection 228(2.1). However, in calculating the adjustment to net tax for a reporting period under new subsection 225.2(2), the allocation percentages for the participating provinces are equal to the financial institution's allocation percentages for the preceding reporting period.

Subsection 228(2.3) Final Return

A selected listed financial institution that is a monthly or a quarterly filer is required by new subsection 238(2.1) to file a final return for each reporting period during a fiscal year within three months after the end of the fiscal year. New subsection 228(2.3) sets out the amounts that the financial institution must report in the final return. These amounts include the financial institution's net tax for the reporting period, the amount of any interim net tax payments paid for the period and any amount claimed as an interim net tax refund for the period.

New subsection 228(2.3) also requires the selected listed financial institution to remit its net tax for the period on or before the due date of the final return for the period. Thus, where the final net tax exceeds the interim net tax payments for the period, the excess must be remitted by the due date. Also, where the financial institution claimed an interim net tax refund that exceeds the final net tax refund (if any) to which the person is entitled for the period, the excess must be repaid to the Receiver General on or before the due date of the final return.

Subsection 228(2.4) Interim Refund

New subsection 228(2.4) allows a selected listed financial institution that is a monthly or quarterly filer to claim any negative interim net tax for a reporting period as an interim net tax refund. The refund may be claimed in the interim return for the reporting period, but the interim return must be filed on or before the due date of the final return for the period.

Subsection 228(3) Net Tax Refund

Existing subsection 228(3) permits a person to claim a net tax refund for a reporting period in the person's return for the reporting period.

Amended subsection 228(3) permits a selected listed financial institution to claim its net tax refund for a reporting period in its final return for the period to the extent that the amount was not claimed as an interim net tax refund.

New subsections 228(2.1) to (3) apply to reporting periods that end after March 1997.

Subclause 210(4)

ETA
228(6) and (7)

These subsections refer to provisions under which amounts are required to be remitted or paid. They are amended to add references to new subsections 228(2.1) and (2.3) and new Division IV.1 which also provide for such requirements.

These amendments apply to reporting periods ending after March 1997.

Clause 211

Restriction

ETA
229(2)

Under existing subsection 229(2), a net tax refund for a particular reporting period of a person may not be paid to the person until the person files all returns required to be filed under Division V for the period and for all preceding reporting periods of the person. The subsection is amended to provide, under new paragraph 229(2)(*a*), that, in the case of an interim net tax refund, that refund may not be paid until all returns required to be filed under Division V by the person for all preceding reporting periods are filed. Interim net tax

refunds may be claimed under new subsection 228(2.4) by selected listed financial institutions (as newly defined in subsection 123(1)) that are required to determine their net tax in accordance with new section 225.2 (see commentary on that section under clause 208).

This amendment is effective April 1, 1997.

Clause 212

Refund of Payment

ETA
230(1)

Existing subsection 230(1) requires the Minister of National Revenue to refund an overpayment of net tax for a reporting period with all due dispatch after the return for the period is filed.
Subsection 230(1) is amended by subclause 48(1) so that the provision applies to instalments or any other payment made by the person on account of net tax for the particular reporting period.

Subsection 230(1) is further amended to apply to an amount of interim net tax paid by a selected listed financial institution (as newly defined in subsection 123(1)) that is determining its net tax in accordance with the rules set out in new section 225.2 (see commentary on that section under clause 208). If the person had remitted an amount that exceeds the amount of interim net tax remittable by the person for a particular reporting period, the Minister will refund the excess to the person with all due dispatch if the person claims a refund of that excess in a final return. Therefore, a person who had paid an excess amount on account of interim net tax for a particular reporting period should not claim that excess amount as a refund in a subsequent interim return but should claim a refund in the final return.

This amendment is effective April 1, 1997.

Clause 213

Patronage Dividends

ETA
233

Section 233 sets out the rules whereby registrants issuing patronage dividends can choose to treat the dividends as not reducing the value of consideration for any supplies made to the dividend recipients or as price adjustments in respect of such supplies. If the registrant chooses the latter treatment, the registrant has the further option of either identifying the actual portion of each dividend that relates to taxable supplies, other than zero-rated supplies, made in Canada to the dividend recipient or using a formula set out in the section to estimate this portion (referred to as the "specified amount").

Existing paragraph 233(2)(*a*) provides that the amount by which the registrant is considered to have reduced the consideration for supplies made to the dividend recipient is equal to an amount determined under the paragraph by reference to the "consideration fraction". The definition of that term in subsection 123(1) is repealed given that it does not take account of the 15-per-cent HST rate applicable to supplies made in the participating provinces. Therefore, the paragraph is amended by replacing the reference to "consideration fraction" with a reference to the fraction 100/107.

Where the dividend relates to supplies made in participating provinces, the consideration for the supplies is considered to be further reduced by the amount determined under new paragraph 233(2)(*a*.1). If the registrant has opted to determine the actual portion of each dividend attributable to taxable supplies, other than zero-rated supplies, the amount deemed to be the further reduction in consideration is determined by multiplying the fraction 100/115 by the actual portion of the dividend that relates to such taxable supplies made in participating provinces. When the registrant has chosen to use the specified amount, the deemed reduction in consideration under new paragraph (*a*.1) is determined by multiplying 100/115ths of the specified amount by the fraction that the part of the dividend that may reasonably be regarded as being in respect of supplies made in the participating provinces represents of the total dividend.

Subsections 233(4) and (5) relating to the timing of an election and its revocation are amended to refer to the renumbered provisions of subsection 233(2) that are cross-referenced.

These amendments come into force on April 1, 1997.

Clause 214

Deduction in Respect of Supply in a Participating Province

ETA
234(3) to (5)

New subsection 234(3) allows registrants who make supplies in a participating province to deduct, in determining their net tax, an amount equal to the prescribed amount they pay or credit to recipients on account of the tax payable on certain supplies. The "prescribed amount" in relation to supplies of printed books and other qualifying items referred to in new section 259.1 made in a participating province will equal the provincial component of the HST on those items.

This subsection provides the mechanism for delivering the provincial rebate in respect of the provincial component of the HST on printed books and other qualifying items referred to in new section 259.1 (added by subclause 69.1(1)) at the time of purchase.

New subsection 234(4) ensures that, since the crediting to a recipient of a prescribed amount reduces the tax actually paid by the recipient, the recipient is not entitled to claim the amount credited as an input tax credit, rebate or remission.

New subsection 234(5) permits an insurer to claim a deduction from net tax in respect of an amount of a rebate it credits to a segregated fund of the insurer in accordance with new section 261.31 (see commentary on clause 229).

New subsections 234(3) to (5) come into force on April 1, 1997.

Clause 215

Net Tax Where Passenger Vehicle Leased

ETA
235(1)

The purpose of section 235 is to recapture input tax credits in respect of leased passenger vehicles where the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*. Existing subsection 235(1) treats the lease of a passenger vehicle as one supply. However, under new subsection 136.1(1) a separate supply is deemed to have been received by the lessee for each lease interval the vehicle is leased (see commentary on subclause 155(1)). Therefore, in most cases, a lease of a passenger vehicle would involve more than one supply. Consequently, subsection 235(1) is amended to ensure that it applies to all supplies of a passenger vehicle made under a lease.

This amendment is effective on April 1, 1997.

Clause 216

Instalments

ETA
237

Subclause 216(1)

Instalments

ETA
237(1)

Existing subsection 237(1) requires registrants who are annual filers to pay quarterly instalments on account of their net tax for a reporting period equal to 1/4 of the registrant's instalment base for the period as determined under subsection 237(2). The instalments must be paid within one month after the end of each fiscal quarter in the reporting period.

Under amended subsection 237(1), where a registrant that is an annual filer becomes a selected listed financial institution during a reporting period, its instalments for the period are equal to the amounts determined under new subsection 237(5).

This amendment is effective on April 1, 1997.

Subclause 216(2)

Selected Listed Financial Institution - Instalments in First Fiscal Year

ETA
237(5)

New subsection (5) provides a transitional method for determining the instalments payable by a financial institution that is an annual filer for the fiscal year in which it becomes a selected listed financial institution. The transitional method does not apply to fiscal years that begin before April 1997. The method for determining instalments for that year is set out in new subsection 363(2) (see commentary on clause 241).

Under the transitional method, the financial institution's first instalment for the year is equal to 1/4 of its instalment base for the year as determined under subsection 237(2). Thus, the first instalment must be equal to the lesser of 1/4 of its net tax for the year and 1/4 of its total net tax for all reporting periods ending in the preceding 12-month period.

For each of the remaining fiscal quarters in the year, the financial institution's required instalment is equal to the lesser of 1/4 of its net tax for the year and the amount determined under the formula in new subparagraph 237(5)(*b*)(ii). The amount under the formula is equal to 1/4 of the financial institution's total net tax for all reporting periods ending in the preceding 12-month period determined without reference to the provincial component of the HST and grossed up by the total of the financial institution's allocation percentages for the participating provinces for the preceding fiscal quarter, as determined under regulations made pursuant to subparagraph 237(5)(*b*)(ii).

This amendment is effective on April 1, 1997.

Clause 217

Filing by Certain Selected Listed Financial Institutions

ETA
238(2.1)

Generally, monthly and quarterly filers are required by subsections 238(1) and (2) to file their returns within one month after the end of each reporting period.

However, new subsection (2.1) requires a selected listed financial institution that is a monthly or quarterly filer to file an interim return for each reporting period within one month after the end of the reporting period and to file a final return within three months after the end of the fiscal year in which the reporting period ends.

This amendment applies to reporting periods that end after March 1997.

Clause 218

Registration Permitted

ETA
240(3)(*d*)

This paragraph refers to a corporation that would be permitted to register for purposes of the tax under Part IX and thereby be in a position to claim input tax credits in respect of expenses incurred in the course of commercial activities (section 186 deems certain expenses to have been incurred by such a corporation in the course of commercial activities). One of the conditions for registration is that all or substantially all of the property of a subsidiary or prospective subsidiary of the corporation must have been acquired or imported for consumption, use or supply in the course of commercial activities. The amendment clarifies that it is the "last" acquisition or importation that is relevant. For example, under new section 136.1, a person is deemed to have acquired leased property at the beginning of each period (referred to as a "lease interval") to which a lease payment is

attributable. The use to which the leased property is put might change from one lease interval to the next. It is the intended use at the beginning of the last such lease interval with which subsection 240(3) is concerned.

Clause 219

Rebate in Respect of Foreign Conventions

ETA
252.4

Subsection 252.4 provides for rebates of tax paid on supplies or importations of convention supplies and supplies of the use of convention facilities.

The section is amended, in both the English and French versions of the Act, to make reference also to property brought into a participating province since that is another occurrence that could result in tax becoming payable (under new Division IV.1) for which a rebate would be sought.

The amendments come into force on April 1, 1997.

Clause 220

Employee and Partner Rebates

ETA
253

Section 253 provides for the payment of rebates to employees and partners in respect of tax paid by them on certain property or services acquired or imported on their personal account and for which they can deduct an amount for income tax purposes. The section is amended to also refer to such property brought into a participating province since that is another occurrence that could result in tax becoming payable by the employee or partner for which a rebate would be sought. In addition, the description of element A of the formula in subsection 253(1) by which the amount of the rebate is

determined is amended by replacing the reference to "tax fraction" with a reference to the fraction 7/107, 8/108 or 15/115, depending on whether the tax in question paid by the partner or employee was calculated at the rate of 7 per cent, 8 per cent or 15 per cent, respectively.

These amendments come into force on April 1, 1997.

Clause 221

New Housing Rebate

ETA
254

Section 254 provides for a partial rebate of the tax paid by an individual acquiring from a builder a single-unit residential complex or residential condominium unit that has been newly constructed or substantially renovated for use as a primary place of residence of the individual, a related individual or a former spouse of the individual.

Existing paragraph 254(2)(*d*) refers to the "total tax paid by the particular individual". The amendment to this paragraph adds the phrase "under subsection 165(1)" to ensure that the rebate in respect of tax calculated under that subsection is available in accordance with the current rules but that subsection 254(2) does not apply to the provincial component of the HST.

The amount of the rebate is determined under paragraph 254(2)(*h*) in certain cases specified therein. The amendment to the French version of this paragraph clarifies that the amount of tax to be factored into the calculation is the amount described in paragraph 256(2)(*d*) and referred to as "total de la taxe payée par le particulier".

New subsection 254(2.1) provides for a partial rebate of the tax paid under new subsection 165(2) (i.e., the provincial component of the HST) by qualifying purchasers of a single unit residential complex or a residential condominium unit that is for use in Nova Scotia as a primary place of residence. Where the purchaser of such a home is entitled to a rebate under subsection 254(2), or to be paid or credited the amount of such a rebate under subsection 254(4), or would be so

entitled if the total consideration for the complex or unit were less than $450,000, the purchaser is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 254(2), equal to the lesser of $2,250 and 18.75 per cent of the provincial component of the HST in respect of the supply of the complex or unit and of any other supply to the purchaser of an interest in the complex or unit. It should be noted that, unlike the rebate provided for in subsection 254(2), this rebate is not reduced where the consideration for the complex or unit or for any other supply of an interest in the complex or unit is greater than $350,000.

Subsection 254(3), as amended by subclause 63(1), allows an individual up to two years to claim the new housing rebate from the time the individual acquires ownership of the residential complex. The amendment to this subsection is consequential to the addition of subsection 254(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

Subsections 254(4) and (5) permit the builder of a qualifying residential complex, at the time of sale, to pay or credit the rebate to the purchaser. The amendments to these subsections are consequential to the addition of subsection 254(2.1) and ensure that purchasers who are entitled to a rebate under subsection 254(2.1) are similarly able to be paid or credited the rebate by the builder.

These amendments are effective April 1, 1997.

Clause 222

New Housing Rebate For Building Only

ETA
254.1

Section 254.1 provides for a rebate to an individual in respect of the purchase of a building that forms part of a single unit residential complex or residential condominium unit where the individual leases from the builder of the complex or unit, on a long-term basis or with an option to purchase, the land on which the complex or unit is situated.

The amendments to paragraphs 254.1(2)(*a*) and (*h*) are consequential to the addition of new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each period (referred to as a "lease interval") to which a lease payment is attributable (see commentary on clause 154).

New subsection 254.1(2.1) provides for a rebate to qualifying purchasers of eligible homes that are situated in Nova Scotia which reflects the provincial component of the HST required to be self-assessed by the builder when the builder gives possession of the home to the purchaser. Where the purchaser is entitled to a rebate under subsection 254.1(2), or to be paid or credited the amount of such a rebate under subsection 254.1(4), or would be so entitled if the fair market value of the residential complex (i.e., land and building) were less than $481,500, the purchaser is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 254.1(2), equal to the lesser of $2,250 and 1.39 per cent of the total consideration payable for the building or any other structure that forms part of the building. It should be noted that, unlike the rebate provided for in subsection 254.1(2), this rebate is not reduced where the fair market value of the complex is greater than $374,500.

New subsection 254.1(2.2) replaces existing subsection 254.1(2.1), which provides that a rebate under section 254.1 is not available where the builder is exempt under another Act or law from the payment of tax in respect of a deemed supply under subsection 191(1). The new subsection ensures that the same restriction applies in respect of the rebate provided for in new subsection 254.1(2.1).

Subsection 254.1(3), as amended by subclause 64(4), allows an individual up to two years from the time the individual takes possession of the complex to claim the rebate under section 254.1. The amendment to this subsection is consequential to the addition of new subsection 254.1(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

Subsection 254.1(4) permits the builder, at the time possession of the complex is transferred, to pay, or credit in favour of, the individual the amount of the rebate under section 254.1. The amendment to this subsection is consequential to the addition of new

subsection 254.1(2.1) and ensures that purchasers who are entitled to a rebate under that subsection are similarly able to be paid or credited the rebate by the builder.

These amendments are effective April 1, 1997.

Clause 223

Co-operative Housing Rebate

ETA
255

Section 255 provides for a rebate to an individual in respect of the purchase of a share in a co-operative housing corporation for the purpose of using a new residential unit of the corporation as a primary place of residence of the individual, a related individual or a former spouse of the individual.

New subsection 255(2.1) provides for a rebate in respect of the provincial component of the HST to qualifying purchasers of a share in a co-operative housing corporation for the purpose of so using such a new residential unit that is situated in Nova Scotia. Where the purchaser is entitled to a rebate under subsection 255(2), or would be so entitled if the total consideration for the share or an interest in the corporation, complex or unit were less than $481,500, the purchaser is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 255(2), equal to the lesser of $2,250 and 1.39 per cent of the total consideration payable for the share or interest. It should be noted that, unlike the rebate provided for in subsection 255(2), this rebate is not reduced where the total consideration for the share or an interest in the corporation, complex or unit is greater than $374,500.

Subsection 255(3), as amended by subclause 65(1), allows an individual up to two years from the time ownership of the share is transferred to claim the rebate under section 255. The amendment to this subsection is consequential to the addition of new subsection 255(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

These amendments are effective April 1, 1997.

Clause 224

Rebate for Owner-Built Homes

ETA
256

Section 256 provides a partial rebate of the tax paid by an individual who builds or substantially renovates his or her own primary place of residence or hires another person to do so.

Paragraph 256(2)(*c*) defines the "total tax paid by the particular individual", which is the amount that factors into the calculation of the rebate. This paragraph is amended to provide for a rebate in respect of the tax on improvements that are imported as well as imported mobile homes and floating homes. As well, the phrase "under subsection 165(1) and sections 212 and 218" is added to ensure that the rebate in respect of tax under those provisions is available in accordance with the current rules but that subsection 256(2) does not apply to the provincial component of the HST.

Paragraphs 256(2)(*e*) and (*f*) of the French version of the Act are also amended to clarify that the amount of tax to be factored into the calculation of the rebate is the amount described in paragraph 256(2)(*c*) of that version and referred to as "total de la taxe payée par le particulier".

New subsection 256(2.1) provides for a partial rebate of the provincial component of the HST in respect of a residential complex that is a mobile or floating home or a home that is constructed by an individual or that the individual engaged another person to construct, and that, in each case, is for use in Nova Scotia as the primary place of residence of the individual or a relation of the individual. Where the individual is entitled to a rebate for such a home under subsection 256(2), or would be so entitled if the fair market value of the home were less than $450,000, the individual is eligible to claim a rebate, in addition to the rebate, if any, payable under subsection 256(2), equal to the lesser of $2,250 and 18.75 per cent of

the provincial component of the HST in respect of the supply of the land that forms part of the complex or interest therein and the supply to, or importation, or bringing into Nova Scotia, of any improvement to the qualifying home. It should be noted that, unlike the rebate provided for in subsection 256(2), this rebate is not reduced where the fair market value of the complex at the time of substantial completion is greater than $350,000. In addition, unlike the rebate under subsection 256(2), this rebate is not available in respect of substantial renovations.

New subsection 256(2.2) replaces existing subsection 256(2.1), which allows a purchaser of a new mobile home to claim the owner-built rebate under section 256 thereby entitling the purchaser to a rebate in respect of tax paid on the purchase of the land for the mobile home and in respect of improvements to the land (including the mobile home itself). The new subsection ensures that the owner-built housing rebate under subsections 256(2) and (2.1) may similarly be claimed by qualifying individuals who import a mobile home or floating home, or bring into Nova Scotia a new mobile home or a new floating home from a non-participating province (as newly defined in subsection 123(1)). No rebate is required in respect of used mobile homes and floating homes purchased in Canada or brought into a participating province from a non-participating province since these are not subject to tax.

Subsection 256(3) sets out the time limits by which an individual must file an application for the rebate. The amendment to this subsection is consequential to the addition of new subsection 256(2.1) and ensures that the same limitation period applies in respect of the rebate provided for in that subsection.

These amendments are effective April 1, 1997.

Clause 225

Rebate to Owner of Land

ETA
256.1(1)

This section provides a rebate of tax to a person who is an owner or lessee of certain residential land where the tax was paid by the person in purchasing or improving the land. Generally, the rebate is available where the land has been leased under exempt conditions to a person who will be required to self-assess the tax on the use of the land for residential purposes. The amount of the rebate is calculated according to a formula which takes into account the total tax charged and the amount of any rebates or input tax credits to which the person was entitled.

The description of element A of the formula in subsection 256.1(1) is amended by adding a reference to tax payable in respect of improvements brought into a participating province since that is another occurrence that could result in tax becoming payable for which a rebate would be sought.

The amendment comes into force on April 1, 1997.

Clause 226

Non-registrant Sale of Real Property

ETA
257(1)

Section 257 provides a rebate of tax to a non-registrant who makes or is deemed to make a taxable supply of real property by way of sale. The rebate is determined by a formula that takes into account the tax the non-registrant paid on the purchase of the property and that was not recovered by the non-registrant by way of an input tax credit or rebate.

As a consequence of the introduction of the definition "basic tax content" in subsection 123(1) (see commentary on subclause 150(6)),

the reference to the total tax charged in respect of the property is replaced with the reference to the basic tax content of the property.

The amendment applies to supplies of real property made on or after April 1, 1997.

Clause 227

Public Service Body Rebate

ETA
259

Section 259 of the Act entitles qualifying public service bodies to a partial rebate of the tax paid by them on inputs for which they are not entitled to claim input tax credits. These amendments to section 259 come into force on April 1, 1997.

Subclause 227(1)

Definition "non-creditable tax charged"

ETA
259(1)

The term "non-creditable tax charged" is defined in subsection 259(1) and refers to amounts that the rebate applicant is or was required to pay as tax under Part IX of the Act (net of input tax credits) and that are therefore potentially rebatable.

The definition "non-creditable tax charged" is amended to include tax in respect of property or a service brought into a participating province. As well, the references to subsections 200(2) and 211(2) in subparagraph (*a*)(ii) of the definition are deleted as a consequence of the introduction of the "basic tax content" concept in those subsections (see commentary on clauses 192 and 197 respectively). The rebates to which a public service body would be entitled for tax under those subsections would already be taken into account in the definition of the basic tax content and therefore in how much tax the body is liable to pay in the first place. This change applies to tax that becomes payable or is deemed to have been collected after March 1997.

Subclause 227(2)

Rebate for Persons Other Than Designated Municipalities

ETA
259(3)

This subsection provides authority for the Minister of National Revenue to pay rebates to charities, qualifying non-profit organizations and selected public service bodies other than persons designated as municipalities under section 259. A similar rebate is available for the latter group under subsection 259(4).

This subsection is further amended to provide that the calculation of the rebate is subject to the rules set out in new subsection 259(4.2).

Subclause 227(3)

Rebate for Designated Municipalities

ETA
259(4)

This subsection provides authority for the Minister of National Revenue to pay rebates to organizations that are designated as municipalities in respect of certain activities for purposes of section 259. The subsection is amended to provide that the calculation of the rebate is subject to the rules set out in new subsections 259(4.2) and (4.3).

In addition, the calculation of the rebate under subsection 259(4) in respect of property or a service for a claim period is amended such that it is expressed as the total of all amounts, each of which is determined by the formula in that subsection. This is done so that the test of the extent to which the property or service is for use in designated activities applies each time an amount of tax becomes payable in respect of that property or service, which could occur more than once within that same claim period.

For example, under new sections 136.1 and 136.2, a recipient of a supply of property by way of lease, licence or similar arrangement or of a service is deemed to have received a separate supply of the

property or service for each period (referred to as a "lease interval" in the case of property or a "billing period" in the case of a service) to which a payment by the recipient is attributable. Calculating the rebate under subsection 259(4) as the total of the individual amounts of tax rebatable for the claim period properly takes account of situations where the intended use of such property or service in designated activities changes during a single claim period such that tax in respect of one lease interval or billing period may be rebatable to a different extent than the tax payable in respect of the same property or service for another lease interval or billing period in the claim period.

Subclauses 227(4) and (5)

Apportionment of Rebate

ETA
259(4.1)

This subsection, as enacted by subclause 69(7), is further amended to include a reference to the rules set out in new subsection 259(4.2). The other wording and structural changes in subsection 259(4.1) are strictly consequential to the restructuring of subsection 259(4) as explained above. There are no substantive changes to the rules under subsection 259(4.1).

Subclause 227(6)

Rebate in Respect of Tax in Participating Provinces

ETA
259(4.2)

New subsection 259(4.1) provides that the provincial component of the HST is not rebatable under section 259 except in the case of charities and qualifying non-profit organizations that are resident in any participating province (see new section 132.1 for rules regarding residency), selected public service bodies resident in Nova Scotia and municipalities resident in New Brunswick. Qualifying non-profit organizations resident in Newfoundland that are also designated municipalities under the section are subject to a special rule under new subsection 259(4.3).

New subsection 259(4.3) provides the rules for calculating a rebate under section 259 payable to a person that is a qualifying non-profit organization resident in Newfoundland and that is also designated under section 259 to be a municipality in respect of certain activities. The rules essentially provide that the rebate payable to the organization is the aggregate of the rebate that would be payable if no provincial component of the HST were included in the calculation of the rebate and an additional amount representing a 50-per-cent rebate of the non-recoverable provincial component of the HST payable on inputs into the organization's activities other than the activities in respect of which it has been designated to be a municipality since municipalities in Newfoundland are not eligible for a rebate in respect of the provincial component of the HST.

Clause 228

No Adjustment of Provincial Component of Tax

ETA
259.1(6)

Subclause 69.1(1) adds new section 259.1, which provides for a rebate of the tax imposed under subsection 165(1) in respect of printed books and certain other items acquired or imported by qualifying institutions. In addition to this relief, all recipients of taxable supplies of those items made in a participating province will be entitled to a rebate of the provincial portion of the HST pursuant to provincial legislation. Under new subsection 234(3), the supplier that pays or credits the recipient the amount of the provincial rebate of the provincial component of the tax (which will be a prescribed amount for the purposes of subsection 234(3)) is allowed to deduct the amount from the supplier's net tax. New subsection 259.1(6) ensures that no additional deduction from net tax may be claimed, and no addition to net tax will be required, under section 231 or 232 in the event that the consideration for the supply is subsequently adjusted by the supplier or is written off as a bad debt.

New subsection 259.1(6) is effective April 1, 1997.

Clause 229

Rebates

ETA
261.1 to 261.4

New sections 261.1 to 261.5 provide for special rebates where property or services are supplied in a participating province and, in the case of tangible personal property, the property is removed, or in the case of intangible personal property or services, the property or services are for use, outside the participating provinces by certain persons that are not able to claim input tax credits. A new rebate is also provided for segregated funds and investment plans in respect of management and administrative services provided to the fund or plan to the extent that it holds or invests funds for the benefit of persons who are not resident in a participating province.

Subsection 261.1(1) Rebate for Goods Removed

Subsection 261.1(1) provides a rebate for the provincial component of the HST paid on the purchase of eligible tangible personal property, mobile homes and floating homes by certain persons who remove the property from a participating province under specified circumstances. To qualify for the rebate, the person must generally be resident in Canada and not a consumer resident in a participating province. However, a consumer that is resident in a participating province may qualify, under this provision, for a rebate on a "specified motor vehicle" (as newly defined in subsection 123(1)).

In addition, to qualify for the rebate, the property must be for consumption, use or supply exclusively outside the participating provinces. The property must also be removed from a participating province to a non-participating province within 30 days after being delivered to the purchaser, and the purchaser must provide proof that any applicable provincial retail sales tax in the province to which the property is removed has been paid. Subsection 261.1(2) deals with property held in storage before being removed from the province.

This rebate does not apply to goods described in any of paragraphs 252(1)(*a*) to (*c*) (which relates to the rebate for goods exported from Canada by non-residents). The rebate is also subject

to the restrictions set out in section 261.4. Further, according to section 261.5, a "selected listed financial institution", as described in new subsection 225.2(1), generally is not eligible to claim a rebate under this provision because of the manner in which its purchases are factored into its net tax adjustment under new section 225.2. Exception is made for purchases that are excluded in determining the adjustment under section 225.2 (see commentary on clause 208).

Subsection 261.1(2) Stored Goods

New subsection 261.1(2) provides that, for purposes of the rebate of the provincial component of the HST on property removed from a participating province, the period during which the property is held in storage after delivery and before being removed from the participating province is not to be taken into account in determining whether the goods are removed from the province within the 30-day time limit for removing the property.

Section 261.2 Rebate for Property Imported

Under new section 212.1 residents of participating provinces are generally required to pay the provincial component of the HST when importing taxable goods that are not accounted for as "commercial goods". New section 261.2 provides for a rebate of the provincial component of the HST paid on property that is imported at a place in a non-participating province and that is not for consumption, use or supply in any participating province. This ensures that goods are not subject to provincial sales tax twice. For example, if a resident of a participating province flies into Toronto after a holiday abroad and leaves gifts with friends or relatives in Ontario before proceeding home to a participating province, the goods left in Ontario would be subject to the 15-per-cent HST upon importation. A rebate of the 8-per-cent provincial component of the HST paid under subsection 212.1(2) is available in these circumstances provided the person paid any taxes payable in the non-participating province (Ontario in this example).

This rebate is also subject to the restrictions described in section 261.4. Further, pursuant to section 261.5, a "selected listed financial institution", as described in new subsection 225.2(1), generally is not eligible to claim this rebate because of the manner in which importations of goods by the institution are factored into the

net tax adjustment of the institution under new section 225.2. Exception is made for importations that are excluded in determining the adjustment order section 225.2 (see commentary on clause 208).

Section 261.3 Rebate for Intangible Personal Property or Services

New section 261.3 provides for a rebate of the provincial component of the HST paid on supplies of intangible personal property or services to the extent that the property or service is acquired by the recipient of the supply for consumption, use or supply outside the participating provinces.

To qualify for the rebate, the recipient of the supply must be a resident of Canada. Also, the intangible personal property or service must be acquired by the recipient of the supply for consumption, use or supply primarily outside the participating provinces. The rebate is calculated by multiplying the tax payable by the percentage representing the extent to which the property or service is acquired for consumption, use or supply outside the participating provinces.

Pursuant to new section 261.5, a "selected listed financial institution", as described in new subsection 225.2(1), generally is not eligible to claim this rebate because of the manner in which its purchases are factored into its net tax adjustment under new section 225.2. Exceptions is made for purchases excluded in determining that adjustment.

This rebate is also subject to the restrictions described in section 261.4.

Section 261.31 Rebate to Certain Investment Plans

New section 261.31 allows an investment plan or an insurer’s segregated fund to claim a rebate of the provincial component of the HST payable on "specified services" to the extent that the plan or fund holds or invests funds for the benefit of persons who are resident outside the participating provinces.

New subsection 261.31(1) defines a "specified service" as any management or administrative service and any other service provided to the plan or fund by a person who also supplies management and administrative services to it.

Unlike the rebate under the section 261.3, eligibility for the rebate under section 261.31 is not based on whether the plan or fund consumes or uses the services primarily outside the participating provinces. Rather, the rebate under section 261.31 in respect of tax under subsection 165(2) on services supplied in a participating province or of tax under section 218.1 or 220.08 on services acquired outside the participating provinces is based on the extent to which the fund or plan can reasonably be regarded as holding or investing funds for the benefit of persons who are not resident in the participating provinces. Where the fund or plan has self-assessed tax under section 218.1 or 220.08 on services acquired outside the participating provinces, the formula for calculating the rebate differs somewhat from the formula for calculating the rebate in respect of tax under subsection 165(2) to reflect the fact that tax under sections 218.1 and 220.08 is payable only to the extent that the service was acquired for consumption or use in participating provinces.

New subsections 261.31(3) to (7) allow a segregated fund of an insurer to file an election with the Minister of National Revenue to obtain rebates directly from the insurer for services supplied by the insurer. Under this procedure, the fund must submit its rebate application to the insurer. Where the insurer pays or credits a rebate to the fund under these provisions, it may, under new subsection 234(5), claim a deduction equal to the rebate in determining its net tax. The insurer must transmit the rebate application to the Minister of National Revenue with the return in which the deduction is claimed.

Rebates for specified services provided to investment plans and segregated funds are not be available under new section 261.3.

Section 261.4 Restriction

Section 261.4 sets out several general restrictions relating to the rebates provided under sections 261.1, 261.2, 261.3 and 261.31.

The rebate under section 261.1 for property purchased by a person and removed from a participating province will not be paid unless the person files an application for the rebate within one year after the day the person removes the property from the province. In the case of the rebate for imported goods under section 261.2 or for property or services under section 261.3 or 261.31, the rebate applicant must file

an application for the rebate within one year after the day the tax became payable by the applicant.

In general, a person that is an individual is limited to one application per calendar quarter. Other persons are limited to one application per calendar month.

Each receipt for rebates under section 261.1 or 261.3 must be for taxable (other than zero-rated) eligible purchases totalling at least $50 in consideration. Also, the total consideration for all taxable (other than zero-rated) purchases for which a single application for rebate under section 261.1 or 261.3 is made must be at least $200.

Section 261.5 Restriction on Rebates to Selected Listed Financial Institutions

New section 261.5 provides that a selected listed financial institution (within the meaning of new subsection 225.2(1)) generally is not entitled to claim rebates under any of sections 261.1 to 261.31. This is because the provincial component of the HST payable by these institutions in respect of inputs attributable to activities outside the participating provinces are instead taken into account in the special adjustment to net tax calculated under new section 225.2. An exception is made for prescribed amounts of tax (i.e., amounts prescribed for the purposes of paragraph (*a*) of the description of element F of the formula in subsection 225.2(2)), which are excluded under the special adjustment for net tax in subsection 225.2(2). The prescribed amounts for which the selected listed financial institution may claim a rebate will include the provincial component of the HST payable by an insurer in respect of property or services acquired, imported or brought into a participating province exclusively and directly for consumption, use or supply in the course of investigating, settling or defending an insurance claim arising under a policy that is not in the nature of accident and sickness or life insurance. Another prescribed amount will be the provincial component of the HST in respect of printed books and other items referred to in new subsection 259.1(2).

Sections 261.1 to 261.5 come into effect on April 1, 1997.

Clause 230

Restriction on Rebate

ETA
263

Section 263 provides that a person is not entitled to a rebate under Division VI of an amount of tax to the extent that the amount has otherwise been refunded, remitted or credited to the person, or to the extent that the person was otherwise entitled to an input tax credit in respect of the tax. The section is amended to include a reference to the rebates payable under new sections 261.1, 262.2, 261.3 and 261.31 (see commentary on clause 229).

This amendment comes into force on April 1, 1997.

Clause 231

Distribution by Trust

ETA
269

Section 269, as amended by subclause 73(1), provides that where a trustee of a trust distributes property of the trust to one or more persons, the distribution of the property is deemed to be a supply of it by the trust for consideration equal to the amount determined for income tax purposes to be the proceeds of disposition. The section is further amended to specify where the deemed supply is considered to be made in order to ensure that, in the case of a taxable supply, if the place at which the property is delivered or made available to the persons is in a non-participating province, tax at the 7-per-cent GST rate applies and if the property is delivered or made available in a participating province, tax at the 15-per-cent HST rate applies.

This amendment comes into force on April 1, 1997.

Clause 232

Partnerships

ETA
272.1(2)

Subsection 272.1(2), as enacted by subclause 76(1), provides, among other things, that where property or a service is acquired or imported by a member of a partnership for consumption, use or supply in the course of activities of the partnership but not on the account of the partnership, the partnership is deemed not to have acquired or imported the property or service except as otherwise provided in subsection 175(1) relating to reimbursements. Paragraph 272.1(2)(*a*) is amended to also deal with the case where property acquired or imported by a partner otherwise than on the account of the partnership is brought into a participating province, since this is another occurrence that may result in tax becoming payable in respect of the property (i.e., the provincial component of the HST). The amended paragraph similarly deems the partnership not to have been the person that brought the property into the province in this case.

This amendment comes into force April 1, 1997.

Clause 233

Joint Venture Election

ETA
273(1) and (1.1)

Section 273 provides for an operator of a qualifying joint venture to jointly elect with a co-venturer to account for tax in respect of all supplies, acquisitions and importations made by the operator on behalf of the co-venturer under the agreement for the venture. This is achieved by deeming the operator to be making the supplies, acquisitions or importations. Paragraph 273(1)(*a*) and subsection 273(1.1) are amended to also refer to the bringing of property into a participating province on behalf of the co-venturer since that is an occurrence that could result in the provincial component of the HST becoming payable under new Division IV.1.

These amendments are effective April 1, 1997.

Clause 234

Temporary Regulations

ETA
277.1

The transition from the dual operation of the GST and provincial retail sales tax systems in the participating provinces to the single harmonized tax system may uncover technical issues that could not have been identified until after registrants had begun to put the harmonized tax into operation. In order to effectively address these situations, new section 277.1 provides that the Governor in Council may make certain regulations relating to the HST within two years of its implementation on April 1, 1997 which would have effect only until May 1, 2000. Generally, the provision will have been incorporated into the Act or related legislation by then. Specifically, the new provision provides that, during this period of transition to the HST, regulations may be made for the purpose of facilitating the administration and enforcement of the harmonized tax or the transition to it by

- adapting or modifying the provisions of Part IX of the *Excise Tax Act* or existing regulations under that Part to the HST,

- defining words or expressions in their application to the HST,

- providing that a particular provision does not apply to the HST, or

- prescribing, determining or regulating anything that is, according to Part IX, to be prescribed, determined or regulated for the purposes only of the HST or for the purposes of Part IX other than the HST.

356

Clause 235

Penalty and Interest

ETA
280

Subclause 235(1)

Penalty and Interest on Net Tax of Selected Listed Financial Institutions

ETA
280(1.1)

Section 280 imposes penalty and interest where a person has failed to pay or remit tax or instalments on account of tax. New subsection 280(1.1) parallels existing subsection 280(2), which imposes penalty and interest on overdue or deficient instalments.

Under new subsection 280(1.1), a selected listed financial institution (as defined in new subsection 225.2(1)) that fails to pay an amount of interim net tax for a reporting period within the time specified in new subsection 228(2.1) is required to pay a penalty of 6 per cent per year and interest at the prescribed rate on the amount in default. The penalty and interest are computed from the time that amount of interim net tax was required to be paid until the earlier of the day the amount, penalty and interest is paid and the day the financial institution is required to file the final return for that reporting period.

This amendment is effective on April 1, 1997.

Subclause 235(2)

Unpaid Penalty and Interest

ETA
280(4.01)

Where a selected listed financial institution (as defined in new subsection 252.2(1)) is required to pay penalty or interest under subsection 280(1.1) on an interim net tax payment for a reporting

period and the penalty or interest is not paid before the due date of the financial institution's final return for the period, new subsection 280(4.01) deems the penalty or interest to be an amount of net tax not remitted. As a consequence, penalty and interest continue to compound on the unpaid penalty or interest until it is paid. This provision parallels existing subsection 280(4).

This amendment is effective on April 1, 1997.

Clause 236

Disclosure of Personal Information

ETA
295(5)(*d*)(ii)

Section 295 sets out the restricted purposes for which a government official may provide confidential information obtained through the administration of Part IX of the *Excise Tax Act* to other specified persons. Existing paragraph 295(5)(*d*) provides that such information may be provided to another official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of specified Acts of Parliament. The provision is amended to add to that list of specified Acts, an Act of Parliament that provides that displays or indications of the price or consideration for property or services include tax imposed under the *Excise Tax Act* (i.e., any future federal legislation relating to tax-inclusive pricing).

Similarly, the existing paragraph permits an official to provide confidential information to another official, including a provincial official, solely for the purposes of the administration or enforcement of certain laws of the province, namely those that provide for the imposition of a tax or duty. The amendment adds to that list of provincial laws a law that relates to tax-inclusive pricing or that provides for reimbursements of amounts paid or payable on account of tax under the *Excise Tax Act* (such as the provincial component of the HST in respect of printed books supplied in the participating provinces).

These amendments come into force on Royal Assent.

Clause 237

Assessments

ETA
296

Subclause 237(1)

ETA
296(1)(*b*)

Existing paragraph 296(1)(*b*) provides the Minister of National Revenue with the authority to assess any tax payable by a person under Division II or IV of Part IX of the *Excise Tax Act*. This paragraph is amended to extend the Minister's authority to assess any tax payable under new Division IV.1, which generally requires a person to self-assess and remit tax on tangible personal property brought into a participating province from a non-participating province or on intangible personal property or a service acquired in a non-participating province for consumption, use or supply primarily in participating provinces.

Subclause 237(2)

ETA
296(1)(*d*)

Currently, paragraph 296(1)(*d*) provides the Minister of National Revenue with the authority to assess any amount payable by a person under section 230.1, which requires a person to repay to the Receiver General an overpayment of a net tax refund or interest thereon received by the person.

This paragraph is amended to provide the Minister with the authority to assess any amount payable by a person under paragraph 228(2.1)(*b*) or (2.3)(*d*) as well. These latter paragraphs require a person who is a selected listed financial institution (as defined by new subsection 225.2(1)) to pay to the Receiver General an amount that is a positive amount of interim net tax or an amount

claimed as an interim net tax refund in excess of the amount payable to the person.

These amendments are effective on April 1, 1997.

Clause 238

Period for Assessment

ETA
298

Subclause 238(1)

ETA
298(1)(*a*.1)

Subsection 298(1) sets out limitation periods with respect to assessments under section 296 for net tax or certain other amounts payable under various provisions of Part IX of the Act. New paragraph 228(2.1)(*b*) requires a selected listed financial institution (as defined by new subsection 225.2(1)) to pay to the Receiver General an amount that is a positive amount of interim net tax for a particular reporting period on or before the due date for the interim return for that period. Similarly, paragraph 228(2.3)(*d*) requires a selected listed financial institution to pay an amount claimed as an interim net tax refund for a particular reporting period in excess of the amount payable to the person for that reporting period on or before the due date for the final return for that reporting period.

Under new paragraph 298(1)(*a*.1), an assessment may not be made more than four years after the day the amount referred to in paragraph 228(2.1)(*b*) or paragraph 228(2.3)(*d*), as the case may be, is required to be paid.

Subclause 238(2)

ETA
298(1)(*d*.1)

New paragraph 298(1)(*d*.1) provides the limitation period in respect of assessments of tax payable by a person under new Division IV.1, which generally requires a person to self-assess and remit tax on tangible personal property brought into a participating province from a non-participating province or on intangible personal property or a service acquired in a non-participating province for consumption, use or supply primarily in participating provinces. Where the tax was required to be reported in a return, the assessment may not be made more than four years after the day on which the person was required to file the return or the day on which the return was filed, whichever is later. If there is no requirement to report the tax in a return (e.g., tax on specified motor vehicles), an assessment may not be made more than four years after the day on or before which the person is required to pay the tax to the Receiver General.

These amendments are effective April 1, 1997.

Clause 239

Liability of Directors

ETA
323(1)

Where a corporation fails to remit an amount of net tax as required under subsection 228(2), existing subsection 323(1) provides that the directors of the corporation are jointly and severally liable, together with the corporation, to pay the net tax and any interest or penalties relating to that net tax. Subsection 323(1) is amended to extend this joint and several liability provision to directors of a selected listed financial institution (as defined by new subsection 225.2(1)) that is a corporation where the financial institution fails to remit an amount of net tax for a reporting period on or before the due date for its final return for the period as required under new subsection 228(2.3).

This amendment is effective on April 1, 1997.

Clause 240

Goods Returned After 1990

ETA
337(9)

This subsection sets out rules that apply where goods sold prior to January 1, 1991 are returned by the customer after that date for a refund or credit for all or part of the purchase price. In most cases, the federal sales tax applicable prior to 1991 would have been paid on the goods. Therefore, in the absence of any relieving provisions, the goods would be subject to a degree of double taxation when resold by the supplier after 1990 and subject to GST at that time.

Subsection 337(9) is no longer necessary as it is unlikely that any such further price adjustments will arise. Moreover, price adjustments relating to the application of provincial taxes in the participating provinces prior to April 1, 1997, and the application of the provincial component of the HST as of April 1, 1997, will be addressed in the appropriate provincial sales tax legislation and new Division X of Part IX of the *Excise Tax Act*. The subsection is therefore repealed.

The amendment comes into force on April 1, 1997.

Clause 241

Division X

Transitional Provisions for Participating Provinces

This Division is divided into four Subdivisions. Subdivision a contains definitions of terms used in this Division. The application rules for the HST are set out in Subdivision b. Subdivision c contains a series of rules to determine the HST status of transactions straddling the start-up of the HST. Special cases are dealt with in Subdivision d.

Subdivision a, Section 348 Interpretation

The transitional provisions in Division X have been designed to minimize the number of amendments that would be required in future as additional provinces become participating provinces under the HST. Accordingly, terms such as "announcement date" are defined and used throughout the Division as opposed to referring to specific dates in the provisions.

Section 348 contains the following definitions of words and expressions that apply throughout new Division X.

"Announcement date" for a participating province means October 23, 1996 in the case of Nova Scotia, New Brunswick and Newfoundland. This is the date of release of the technical paper relating to the HST jointly issued by the governments of Canada, Nova Scotia, New Brunswick and Newfoundland and Labrador. The "announcement date" in the case of the Nova Scotia and Newfoundland offshore areas is February 10, 1997 given that the application of the HST to those areas was not addressed in the technical paper.

"Implementation date" for a participating province means April 1, 1997 in the case of Nova Scotia, New Brunswick, Newfoundland and the Nova Scotia and Newfoundland offshore areas. This is the day on which the current retail sales taxes in those provinces are replaced by the HST.

"Specified pre-implementation date" for a participating province means February 1, 1997 in the case of Nova Scotia, New Brunswick and Newfoundland. This is the date announced in the Technical Paper on the HST released October 23, 1996 as the date from which prepayments for property or services to be delivered or performed after March 1997 may become subject to the HST, subject to the transitional rules set out in Division X. These payments are deemed to have become due on April 1, 1997. Therefore, the supplier, if a registrant, would be required to collect the HST in respect of those payments where applicable. The "specified pre-implementation date" for the Nova Scotia and Newfoundland offshore areas is February 10, 1997 as the application of the HST to those areas was not addressed in the technical paper.

Subdivision b, Section 349 Application

The application rules for the HST are contained in new section 349.

The provincial component of the HST applies in the circumstances noted in each of the subsections under section 349 notwithstanding any of the provisions found in Division IX, the Division which sets out the rules that applied to the transition from the manufacturer's sales tax to the GST.

Subsection 349(1) Real Property

Subject to the transitional provisions in Subdivision c, the provisions of Part IX (other than Division IX) relating to the HST apply to sales of real property in a participating province where the ownership and possession of the property is transferred to the recipient of the supply on or after April 1, 1997. HST applies to supplies of real property in a participating province by way of lease, licence or similar arrangement where all or part of the consideration for the supply becomes due or is paid without having become due on or after April 1, 1997. In addition, the HST applies to supplies of real property in a participating province by way of lease, licence or similar arrangement where the consideration for the supply is deemed to have become due or deemed to have been paid on or after April 1, 1997 and is not deemed to have become due or to have been paid before April 1, 1997. HST is not payable on any part of the consideration that becomes due or is been paid before April 1997 unless otherwise provided under the transitional provisions contained in Subdivision c.

Subsection 349(2) Personal Property and Services

Subject to the transitional provisions in Subdivision c, the provisions of Part IX (other than Division IX) relating to the HST apply to supplies of personal property or services made in a participating province to goods supplied outside Canada but that are delivered or made available or the physical possession of which is transferred to the recipient in a participating province and to intangible personal property or services acquired, for consumption, use or supply in a participating province, where all or part of the consideration for the supply becomes due or is paid without having become due or is deemed to have become due or to have been paid on or after April 1,

1997. However, HST is not payable on any part of the consideration that is paid or becomes due before April 1997 unless otherwise provided under the transitional provisions contained in Subdivision c.

Subsection 349(3) Imported Goods

Subject to the transitional provisions in Subdivision c, the provisions of Part IX (other than Division IX) relating to the HST apply to goods, mobile homes not affixed to land and floating homes imported by a person on or after April 1, 1997 and to such goods imported by a person before April 1997 that are accounted for under the *Customs Act* on or after April 1, 1997.

Subsection 349(4) Tangible Personal Property Brought Into a Participating Province

Subject to the transitional provisions in Subdivision c, the provisions of Part IX (other than Division IX) relating to the HST apply to tangible personal property, mobile homes not affixed to land and floating homes brought into a participating province on or after April 1, 1997 by a carrier and to such property brought into a participating province before April 1, 1997 where the property is delivered in the participating province to a consignee on or after April 1, 1997.

Subdivision c, Sections 350 to 361 Transition

Subdivision c contains rules to determine the HST status of transactions straddling the start-up of the HST.

Section 350 Real Property

Tax under Part IX on a sale of real property generally becomes payable on the day on which either possession or ownership of the property is transferred to the purchaser, whichever is earlier. Section 350 provides that the provincial component of the HST is not payable in the case of real property sold in a participating province to a person where ownership or possession of the property is transferred to the person before April 1, 1997.

Subsection 351(1) Single Unit Residential Complex

This subsection grandfathers single-unit new residences from the provincial component of the HST where the sale of the residence is made under a written agreement entered into on or before the announcement date for the participating province, in this case October 23, 1996.

Builders in these cases will not be entitled to claim input tax credits for the provincial component of any HST on property and services acquired, imported or brought into a participating province in order to complete the grandfathered property.

Subsection 351(2) Resupply of a Single Unit Residential Complex

Subsection 351(2) provides that where an individual (considered to be a "builder" under paragraph (*d*) of the definition of "builder" in subsection 123(1)) purchases a property grandfathered under subsection 351(1) prior to it being occupied as a place of residence, the provincial component of the HST is not payable on any subsequent supply of the property by that individual or any successor in title unless that subsequent supply is a taxable supply by way of lease, licence or similar arrangement or that builder or successor has used the property as capital property, has substantially renovated it or has subsequently sold and reacquired it.

In the case where the provincial component of the HST is not payable, the builder and successor will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired to complete the property.

Subsection 351(3) Residential Condominium Unit

This subsection provides that the provincial component of the HST is not payable in respect of the purchase of a residential condominium unit in a participating province made under a written agreement entered into on or before October 23, 1996.

Builders of a grandfathered unit will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the unit.

Subsection 351(4) Resupply of a Residential Condominium Unit

Subsection 351(4) provides that where a person (considered to be a "builder" under paragraph (*d*) of the definition of "builder" in subsection 123(1)) purchases a grandfathered residential condominium unit prior to it being occupied as a place of residence, the provincial component of the HST is not payable in respect of any subsequent supply of the unit by that builder or any successor in title unless that builder or successor has used the unit as capital property, has substantially renovated the unit, has subsequently sold and reacquired the unit or is making a taxable supply by way of lease, licence or similar arrangement of the unit.

In the case where no provincial component of the HST is payable, the builder and successor will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the unit.

Subsection 351(5) Condominium Complex

This subsection provides that the provincial component of the HST is not payable in respect of the purchase of a condominium complex in a participating province made under a written agreement entered into on or before October 23, 1996. In addition, no provincial component of the HST is payable in respect of the purchase of any residential condominium unit located in the grandfathered condominium complex.

Builders of a grandfathered condominium complex will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the complex.

Subsection 351(6) Resupply of Condominium Complex

Subsection 351(6) provides that where a person (considered to be a "builder" under paragraph (*d*) of the definition of "builder" in subsection 123(1)) purchases a grandfathered condominium complex prior to it being occupied as a place of residence, no provincial component of the HST is payable in respect of any subsequent supply by that builder or any successor in title unless that builder or

successor has used the complex as capital property, has substantially renovated the complex, has subsequently sold and reacquired the complex or is making a taxable supply by way of lease, licence or similar arrangement of the complex. Similarly, no provincial component of the HST is payable in respect of any residential condominium unit located in the condominium complex unless the builder or successor has used the unit as capital property, has subsequently sold and reacquired the unit or is making a taxable supply by way of lease, licence or similar arrangement of the unit.

In the case where no provincial component of the HST is payable, the builder and successor will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province to complete the complex or unit.

Subsection 351(7) Limited Partnership

This subsection provides for special rules in respect of the sale of interests in a limited partnership under a fixed-price offering memorandum issued on or before October 23, 1996, where the partnership is formed for the purpose of constructing and renting residential condominium units.

A typical example of this situation is where investors become limited partners for the purpose of developing and owning, through their partnership interest, a residential condominium rental complex. The limited partnership would enter into a number of fixed-price agreements including an agreement for the purchase of land and a separate agreement for the construction of the condominium. In this situation, where the interest in the limited partnership is sold under a fixed-price offering memorandum issued on or before October 23, 1996 and possession of a condominium unit is given to a person under a lease, licence or similar arrangement after March 1997, the limited partnership, which is regarded as the builder of the complex, will not be subject to the self-supply rules under subsection 191(1).

The limited partnership will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province in order to complete the complex. The provincial component of the HST is not payable by the limited partnership under the agreement for the

construction of the condominium and the supplier of the construction service will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province for consumption or use in making the supply of construction services.

Subsection 351(8) Progress Payments

Where an individual has entered into an agreement in writing on or before October 23, 1996 for the construction or substantial renovation of a single unit residential complex, residential condominium unit or a multiple unit residential complex that does not contain more than two residential units (i.e., a duplex) in a participating province and the unit or complex is to be used as the primary place of residence of the individual, a person related to the individual or the former spouse of the individual, no provincial component of the HST is payable on the progress payments.

The supplier of the construction service will not be entitled to claim input tax credits for the provincial component of the HST on property and services acquired, imported or brought into a participating province for consumption or use in making the supply of construction services.

Sections 352 to 361 Property and Services

These sections set out rules relating to transactions that straddle the start-up of the HST for supplies of real property not covered under the preceding sections (e.g., leases), tangible personal property and services.

Subsection 352(1) Personal Property Before Implementation

Subsection 352(1) provides that the provincial component of the HST does not apply to sales of tangible personal property made in a participating province under certain agreements in writing where the property is delivered or ownership is transferred to the purchaser before April 1, 1997, regardless of when the consideration is paid or becomes due.

Subsection 352(2) Imported Taxable Supply Before Implementation

Subsection 352(2) provides that the provincial component of the HST does not apply to an imported taxable supply (within the meaning of section 217) of tangible personal property under certain agreements in writing, where physical possession of the property is transferred before April 1, 1997, regardless of when the consideration for the supply is paid or becomes due.

Subsection 352(3) No Written Agreement

Where there is no agreement in writing described in subsection 352(1), subsection 352(3) nevertheless provides that the provincial component of the HST does not apply to a supply of tangible personal property that is delivered or the ownership of which is transferred to the purchaser before April 1, 1997 to the extent that the consideration for the supply becomes due or is paid before August 1, 1997.

Subsection 352(4) Imported Taxable Supply

Where there is no agreement in writing described in subsection 352(2), subsection 352(4) nevertheless provides that the provincial component of the HST does not apply to an imported taxable supply (within the meaning of section 217) of tangible personal property that is delivered or made available, or the physical possession of which is transferred, before April 1, 1997, to the extent that the consideration for the supply becomes due or is paid before August 1, 1997.

Subsection 352(5) Continuous Supplies

Subsection 352(5) addresses the situation where property or services are supplied on a continuous basis by means of a wire, pipeline or other conduit. This would include supplies of natural gas, electricity and telephone services.

This subsection provides a general prorating rule for continuous supplies of property or services made in a participating province and straddling the HST start-up date where the consideration for the supply becomes due or is paid before August 1, 1997. The provincial

component of the HST will not apply to property or services to the extent they are delivered or rendered before April 1, 1997.

Section 353 contains rules where payment for a continuous supply is being made under a budget arrangement.

Subsection 352(6) Continuous Supplies

This subsection provides that where the consideration for a continuous supply made in a participating province is neither paid nor becomes due until after July 1997, the provincial component of the HST is payable in respect of that consideration regardless of when the property or service is delivered, performed or made available.

Subsection 352(7) Subscriptions

Subsection 352(7) provides that the provincial component of the HST does not apply to a payment for a supply in a participating province of a newspaper, magazine or other periodical subscription where the payment is made before April 1, 1997.

Subsection 352(8) Prepayments

Subsection 352(8) deals with the situation where consideration becomes due, or is paid without having become due, on or after the specified pre-implementation date for a participating province (in the case of New Brunswick, Nova Scotia and Newfoundland, February 1, 1997) and before the implementation date (i.e., April 1, 1997) for tangible personal property that is supplied by way of sale in a participating province and that is not delivered and title to which does not pass to the purchaser before April 1, 1997. In these circumstances, the consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day. As a result, the provincial component of the HST is payable on that consideration.

Subsection 352(8) also deals with the situation where consideration becomes due, or is paid without having become due, on or after February 1, 1997 and before April 1, 1997 for an imported taxable supply (within the meaning of section 217) of tangible personal property that is not delivered and title to which does not pass to the purchaser before April 1, 1997. In these circumstances the

consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day.

This subsection does not apply to consideration for subscriptions referred to in subsection 352(7) where that consideration is paid before April 1997.

Subsection 352(9) Self-assessment on Business Purchases of Tangible Personal Property

Subsection 352(9) provides for the self-assessment of tax on supplies of tangible personal property made in a participating province by a registrant to a recipient who is not a consumer, and on imported taxable supplies (within the meaning of section 217) of goods delivered or made available, or the physical possession of which is transferred, to the recipient in a participating province, where consideration for the supply becomes due or is paid without having become due after October 23, 1996 and before February 1, 1997 and the property is not delivered and title to it does not pass to the recipient before April 1, 1997.

Self-assessment is required where the property is not acquired by the recipient for consumption, use or supply exclusively in commercial activities of the recipient. Self-assessment is also required where the property is acquired by the recipient for consumption, use or supply exclusively in commercial activities but the recipient is a selected listed financial institution (as newly defined in subsection 123(1)) or a registrant whose net tax is determined under section 225.1 (added by subclause 45(1)) or Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Paragraph 352(9)(*d*) requires that the recipient report the tax in the recipient's return for the reporting period of the recipient that includes April 1, 1997, provided that return is due before August 1, 1997. The recipient is required to remit the tax on or before the day the return is due. Where paragraph (*d*) does not apply, the recipient is required to file with the Minister of National Revenue (in the prescribed manner) before August 1, 1997 a return and pay the tax to the Receiver General.

This subsection is subject to the rules for continuous supplies, as set out in subsection 352(5), and for subscriptions, as set out in subsection 352(7).

Subsection 352(10) Self-assessment on Business Purchases of Services

Section 352(10) provides for the self-assessment of tax on services supplied in a participating province by a registrant to a person who is not a consumer, where consideration becomes due or is paid without having become due after October 23, 1996 and before February 1, 1997 and such prepayment is attributable to services performed after March 1997. This subsection also requires self-assessment in similar circumstances where the supply of services is made outside the participating provinces to a person who is resident in a participating province and is not a consumer.

Self-assessment is required where the service is not acquired for consumption, use or supply exclusively in commercial activities of the person. Self-assessment is also required where the service is acquired for consumption, use or supply exclusively in commercial activities of the person if the person is a selected listed financial institution (as newly defined in subsection 123(1)) or a registrant whose net tax is determined under section 225.1 (added by subclause 45(1)) or Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Paragraph 352(10)(*d*) requires that the person report the tax in the person's return for the reporting period of the person that includes April 1, 1997, provided that return is due before August 1, 1997. The person must pay the tax to the Receiver General on or before the day the return is due. Where paragraph (*d*) does not apply, the person is required to file with the Minister of National Revenue (in prescribed manner) before August 1, 1997 a return and pay the tax to the Receiver General.

Notwithstanding this subsection, the subsections dealing with continuous supplies (subsection 352(5)), services substantially performed before April 1997 (subsection 356(1)), passenger transportation (subsection 358(1)) and freight transportation (subsection 359(1)) provide that the provincial component of the HST

is not payable on certain supplies of services commencing before April 1997.

Subsection 352(11) Goods Returned after Implementation

Situations will arise where price adjustments are made following the start-up of the HST in respect of supplies made prior to start-up. Examples include deferred quantity discounts, adjustments for goods less than quality or quantity ordered, and exchanges for defective goods. For the most part, these adjustments will have no implications for the provincial component of the HST. Goods returned in straight exchange for other replacement goods will not have consequences for the provincial component of the HST as long as the transaction does not involve the issuance of a credit note or a refund to the customer.

This subsection sets out rules that apply where a good sold in a participating province prior to April 1, 1997 is returned by the customer after March 1997 and before August 1997 and is exchanged for other property supplied to the person in the participating province. If the consideration for the other property exceeds that for the exchanged property, the provincial component of the HST applies only on the excess amount and if the consideration for the supply of the other property is equal to or less than the consideration for the returned property, no provincial component of the HST is payable.

Subsection 352(12) Supply Completed

Generally, any consideration for a taxable supply of property or service made in a participating province that has not become due or been paid before August 1997 will be subject to the provincial component of the HST, regardless of when the property is delivered or the service is performed. Section 168 provides rules to determine at which time tax becomes payable. One of those rules provides that tax is payable no later than the end of the month following the month in which the supply is completed. Subsection 352(12) treats the month of completion as being August 1997 where the actual month of completion is prior to April 1997 to ensure that where a pre-implementation date sale becomes taxable by virtue of the consideration not being paid or becoming due until after July 1997, the provincial component of the HST on the consideration is payable no later than September 30, 1997.

Subsection 352(13) Application

This subsection provides that the rules in section 352 with respect to supplies in a participating province that straddle the start-up date of the HST do not apply to supplies made under a budget arrangement. Rules for these arrangements are set out in section 353.

Section 353 Budget Arrangements

This section provides for a year-end reconciliation for budget plans so that the provincial component of the HST, in effect, applies only to goods delivered or services performed after March 1997.

Subsection 353(1) Budget Arrangements

This subsection requires the supplier of property or services provided in a participating province during any period beginning before April 1997 and ending after March 1997, and paid for under a budget arrangement providing for a reconciliation of the payments at or after the end of the period but before April 1998, to calculate an amount determined by the formula set out in this subsection. The amount represents the difference between the tax calculated at the tax rate for the province (8 per cent) only in respect of the property or services that were provided after March 1997 and tax calculated at the rate of 8 per cent on the consideration that becomes due, or is paid without having become due, after March 1997 for property or services provided during the entire period covered by the arrangement.

Subsection 353(2) Collection of Tax

Where the amount determined under subsection 353(1) is a positive amount (i.e., where the recipient has not paid the full amount of the provincial component of the HST payable in respect of the property or services received after March 1997), and the supplier of the property or services is a registrant, the supplier is required to collect this amount as tax from the recipient at the time the invoice for the reconciliation is issued.

Subsection 353(3) Refund of Excess

Where the amount determined under subsection 353(1) is a negative amount (i.e., the amount of the provincial component of the HST paid

by the recipient over the period exceeds the tax payable in respect of the property or services received after March 1997), and the supplier of the property or services is a registrant, the supplier is required to refund or credit the amount to the recipient and issue a credit note in accordance with section 232.

Subsection 353(4) Continuous Supply

In the case of a continuous supply of property or services made in a participating province under a budget arrangement where the time at which the property is delivered or services are provided cannot be determined for purposes of calculating the amount determined by the formula set out in subsection 353(1), the supply is to be prorated according to the number of days in the period.

Section 354 Rents and Royalties

The transitional rules governing prepaid rents, royalties and similar payments attributable to periods before and after March 1997 are set out in this section.

Subsection 354(1) Prepayment of Rents and Royalties

Subject to the special rule in subsection 354(4), the provincial component of the HST applies to any payment for a taxable supply that is rent, royalty or a similar payment attributable to a period after March 1997 and that would be subject to the provincial component of the HST if the payment became due after March 1997 but that actually becomes due, or is paid without becoming due, after January 1997 and before April 1997. In this case, the payment is considered to have become due on April 1, 1997 and not to have been paid before that day.

Subsection 354(2) Self-assessment on Business Prepayments of Rents and Royalties

This subsection parallels similar rules in subsection 352(9) and (10). The provincial component of the HST is payable in certain circumstances on lease payments to the extent the payment is made or becomes due after October 23, 1996 and before February 1, 1997 and is attributable to a period after March 1997. The tax must be self-assessed where the supply is made in a participating province to

a person who is not a consumer (e.g., a person who is acquiring the property for use in a commercial activity or in the making of an exempt supply) or the supply is made outside the participating provinces to a person who is not a consumer and to whom the property is made available, or who receives possession or delivery of the property, in a participating province.

The rules provided in subsection 354(2) require self-assessment where the property is not acquired for consumption, use or supply exclusively in commercial activities of the person. Self-assessment is also required if the property is acquired for consumption, use or supply exclusively in commercial activities of the person and the person is a selected listed financial institution (as newly defined in subsection 123(1)) or a registrant whose net tax is determined under section 225.1 (added by subclause 45(1)) or under Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Paragraph 354(2)(*d*) requires that the person report the tax in the person's return for the reporting period that includes April 1, 1997, provided that return is due before August 1, 1997. The person must pay the tax to the Receiver General on or before the due date for the return. Where paragraph (*d*) does not apply, the person is required to file with the Minister of National Revenue (in prescribed manner) before August 1, 1997 a return and pay the tax to the Receiver General.

This subsection is subject to the special rule in subsection 354(4).

Subsection 354(3) Periods Before Implementation

Where a supply of property by way of lease, licence or similar arrangement is made in a participating province, or is made outside the participating provinces to a person to whom the property is made available, or who receives delivery or possession of the property, in a participating province, the provincial component of the HST does not apply to any rent, royalty or similar payment attributable to a period before April 1997, provided that the payment for that period becomes due or is paid before August 1, 1997.

Subsection 354(4) Periods Including Implementation Date

The provincial component of the HST does not apply to any rent, royalty or similar payment for a supply made in a participating province or made outside the participating provinces to a person to whom the property is made available, or who receives delivery or possession of the property, in a participating province, where the payment is attributable to a period of one month or less that begins before April 1, 1997 and ends before April 30, 1997. For example, where a monthly lease period starts on March 15, 1997 and ends on April 14, 1997, the provincial component of the HST is not payable for the period from April 1, 1997 to April 14, 1997.

Subsection 354(5) Application

The rules governing rent, royalty and similar payments do not apply to payments associated with the use of intangible personal property where the amount of the payment does not vary with the amount of, or profit from, the use of the property or the production from the property. An example is a lump-sum payment made before April 1997 to an author for all rights associated with a book written by the author. In this case, the provincial component of the HST is not payable.

Section 355 Adjustments

Subsections 352(9), 352(10) and 354(2) require persons other than consumers, in certain circumstances, to self-assess and pay tax on property transferred, or services rendered, after March 1997, but where payments were made or became due after October 23, 1996 and before February 1, 1997. Section 355 allows the person to claim a refund under section 261 of the provincial component of the HST where the amount of tax changes, such as where the consideration for the supply is altered. However, this rule does not apply where the adjustment is an early payment discount referred to in section 161.

Section 356 Services

This section provides the transitional rules for services (other than transportation services) that are partially or fully performed before April 1, 1997 as well as for prepaid services that are performed after March 1997.

Subsection 356(1) Services Substantially All Performed Before Implementation

A supply of a service (other than a transportation service) made in a participating province or outside the participating provinces to a resident of a participating province that is all or substantially all performed before April 1997 is not subject to the provincial component of the HST provided that the consideration for the supply becomes due or is paid before August 1, 1997.

There is a special rule for lifetime memberships provided in subsection 356(6).

Subsection 356(2) Services Partly Performed Before Implementation

Consideration for a supply of a service (other than a transportation service) made in a participating province, or outside the participating provinces to a resident of a participating province, that is partly (but not all or substantially all) performed before April 1, 1997 and partly performed after March 1997 is not subject to the provincial component of the HST to the extent that the consideration relates to any part of the service that was performed before April 1997, provided that the consideration becomes due or is paid before August 1, 1997.

There is a special rule for lifetime memberships provided in subsection 356(6).

Subsection 356(3) Prepayments for Services

Subject to the rules for progress payments and for continuous supplies, the provincial component of the HST applies to any consideration for a supply of a service (other then a transportation service) to the extent that the consideration relates to that part of the service that is not performed before April 1997 where the supply of the service is made in a participating province or outside the participating provinces to a person who is resident in a participating province and the consideration becomes due or is paid on or after February 1, 1997 and before April 1, 1997. This consideration is treated as having become due on April 1, 1997 and as not having

been paid before that day. Therefore, tax in respect of that consideration becomes payable on April 1, 1997.

There is a special rule for lifetime memberships provided in subsection 356(6).

Subsection 356(4) Memberships and Admissions

Subsection 356(4) treats a supply of a membership in a club, an organization or an association (but not the supply of a right to acquire such a membership) and a supply of an admission to a place of amusement, a seminar, an activity or an event as a supply of a service for the purposes of the transitional provisions. An initiation fee for the right to acquire a membership is treated as a supply of intangible property and, therefore, the provincial component of the HST does not apply to initiation fees paid before April 1997.

Subsection 356(5) Grandfathered Admissions

Where a supply of an admission to a dinner, ball, concert, show or like event in a participating province is made on or before October 23, 1996, the provincial component of the HST does not apply to any supply of an admission to that event. Suppliers of the admission will not be entitled to claim input tax credits for the provincial component of the HST on any property or services acquired, imported or brought into a participating province for consumption, use or supply in making supplies of admissions to the event or holding that event.

Subsection 356(6) Lifetime Memberships

This subsection provides a special rule for the supply of a membership for the lifetime of an individual where payment for the membership is made after October 23, 1997 and before April 1, 1997 and the payment would have been subject to the provincial component of the HST (either under subsection 165(2) or on a self-assessment basis) if it were made after March 1997. Where the total of such payments made before April 1997 exceed 25 per cent of the total consideration for the supply, the excess will be subject to the provincial component of the HST.

Subsection 356(7) Combined Supply

This subsection provides that where any combination of service, personal property or real property is supplied, the consideration for each item is not identified separately and one of the items supplied is property that is not subject to the provincial component of the HST as a result of the rules provided in this Division, the transfer of the property will not determine the timing of any liability for the provincial component of the HST on the remaining items.

Subsection 356(8) Application

This subsection provides that the transitional rules for services set out in section 356 do not apply to services paid for under budget arrangement plans as provided for in section 353.

Section 357 Legal Services and Services of Trustees, Receivers and Liquidators

This section extends transitional relief to certain classes of services where the supplier is prevented from issuing an invoice before August 1997 for services performed before April 1997.

Subsection 357(1) Legal Services Performed Before Implementation

This subsection provides that the provincial component of the HST is not payable in respect of that part of a legal service that is performed before April 1997 if, under the terms of the agreement for the supply, the consideration for the supply was not to be invoiced until allowed, directed or ordered by a court or until the services were completed or terminated.

Subsection 357(2) Trustees, Receivers, Liquidators etc.

This subsection provides that the provincial component of the HST is not payable in respect of that part of a service of a personal representative in respect of the administration of an estate that is performed before April 1997 if the account for the service is not to be rendered until approved by all beneficiaries of the estate or in accordance with the terms of the trust. Relief is also provided where

the consideration for the service is not to become due until allowed, directed or ordered by a court.

This subsection also provides that the provincial component of the HST is not payable in respect of that part of a service of a trustee that is performed before April 1997 if the account for the trustee's services is not to be rendered until a date determined under the terms of the trust or written agreement for the supply of the trustee's services. Relief is also provided where the consideration for the service is not to become due until allowed, directed or ordered by a court.

Finally, this subsection provides that the provincial component of the HST is not payable in respect of that part of a service of a receiver or liquidator that is performed before April 1997 if the consideration for the service is not to become due until allowed, directed or ordered by a court.

Subsection 357(3) Services Before Implementation

As a result of this subsection, if substantially all of a service that is supplied in a participating province and described in subsection 357(1) or (2) is performed before April 1997, all of the service will be considered to have been performed before April 1997 and therefore no provincial component of the HST will apply.

Section 358 Transportation Services

This section provides transitional rules for passenger transportation services.

Subsection 358(1) Transportation of Individuals

The provincial component of the HST does not apply to a supply of a passenger transportation service (other than a transportation pass covering a period that commences before April 1, 1997 and ends after April 30, 1997) made in a participating province where the service commences before April 1997, provided that the payment for the service becomes due or is paid before August 1, 1997. A supply of a service of transporting the individual's baggage in connection with the passenger transportation service will have the same treatment as the passenger transportation service.

Subsection 358(2) Transportation of Individuals

Subsection 358(2) deals with a passenger transportation service (other than a supply of a transportation pass covering a period that commences before April 1, 1997 and ends after April 30, 1997) made in a participating province and for which consideration becomes due or is paid without having become due on or after February 1, 1997 and before April 1, 1997 for services not performed before April 1, 1997. The consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day. As a result, the provincial component of the HST is payable on that amount.

Subsection 358(3) Transportation Pass

The provincial component of the HST does not apply to a transportation pass supplied in a participating province to an individual for transportation services provided over a period that begins before April 1, 1997 and ends before May 1, 1997.

Subsection 358(4) Transportation Pass

Where the transportation pass supplied in a participating province to an individual for transportation services covers a period that begins before April 1, 1997 and ends after April 30, 1997, the provincial component of the HST applies on a prorated amount of consideration. The total consideration is prorated for the number of days in the period that are after March 1997.

Section 359 Freight Transportation Services

This section provides transitional rules for freight transportation services.

Subsection 359(1) Freight Transportation Services

Under this provision, any consideration for a continuous freight transportation service supplied in a participating province and commencing before April 1, 1997 is not subject to the provincial component of the HST, provided that the consideration becomes due or is paid before August 1, 1997.

Subsection 359(2) Freight Transportation Services After Implementation

Any consideration for a freight transportation service supplied in a participating province and performed entirely after March 1997 is subject to the provincial component of the HST where the consideration becomes due or is paid without having become due on or after February 1, 1997 and before April 1, 1997. The consideration is deemed to have become due on April 1, 1997 and not to have been paid before that day. As a result, the provincial component of the HST is payable on that amount.

Subsection 359(3) Interpretation

This subsection provides that the terms "continuous freight movement", "freight transportation service" and "shipper" have the meanings assigned by Part VII of Schedule VI.

Section 360 Funeral Services

This section sets out the rules governing prepaid funeral services.

Subsection 360(1) Definition of "Funeral Services"

Subsection 360(1) defines "funeral services" to include the provision of any property (including a burial plot, coffin or headstone) relating to the funeral, burial or cremation of an individual provided under a funeral service arrangement.

Subsection 360(2) Funeral Arrangements

The provincial component of the HST does not apply to prepaid funeral services where the arrangement for the funeral services is entered into in writing before April 1, 1997 and the funds under the arrangement are held by a trustee who is responsible for acquiring the funeral service, provided that, at the time the arrangement was entered into, it was reasonable to expect that all or part of the funds for the funeral service would be paid to the trustee before the services were rendered.

Subsection 360(3) Funeral Arrangements

The provincial component of the HST does not apply to prepaid funeral services supplied in a participating province where a written contract for the services was entered into before April 1, 1997. The consideration for the funeral services does not necessarily have to be paid in full as long as, at the time the arrangement was entered into, it was reasonable to expect that all or a part of the funds for the funeral service would be paid before the services were rendered.

Section 361 Products held by Independent Sales Contractor

Direct sellers distribute their products to final purchasers through independent sales contractors rather than through retail establishments. The alternate collection method under sections 178.3 and 178.4 provides direct sellers (or alternatively their distributors) with the option of ignoring, for sales tax purposes, sales to independent sales contractors of exclusive products of the direct seller and, instead, calculating their net tax liability as if the sales had been made directly to final purchasers for the suggested retail price of the products. Products held at the beginning of April 1, 1997 for sale in a participating province would not have borne the provincial component of the HST. Section 361 provides a mechanism to apply that tax to such exclusive products.

Subsection 361(1) Products from a Direct Seller

Where the Minister of National Revenue has approved the use of the alternate collection mechanism for direct sellers under section 178.3, the direct seller is responsible for accounting for tax on exclusive products of the direct seller sold to final purchasers, based on the suggested retail selling price of the products. If such a product has been sold by the direct seller to an independent sales contractor and is held at the beginning of April 1, 1997 by the independent sales contractor, the provincial component of the HST would not, but for section 361, apply. Under subsection 361(1), the direct seller is deemed, for the purpose of applying the provincial component of the HST, to have made, on April 1, 1997, and the independent sales contractor is deemed to have received on that day, a supply by way of sale of the exclusive products that are held for sale in a participating province at the beginning of that day by the independent sales contractor. The effect of this provision is that the direct seller

will be responsible for remitting the provincial portion of the HST on those exclusive products.

Subsection 361(2) Products for which a Distributor Accounts for Tax

The alternate collection mechanism under section 178.4 operates in the same manner as the mechanism under section 178.3 for direct sellers except that it is the distributor of the direct seller electing jointly with the direct seller who accounts for tax on the exclusive products of the direct seller based on the suggested retail selling price of the products. The rules of subsection 361(2) parallel those for subsection 361(1) except that it is the distributor, not the direct seller, who remits the provincial component of the HST on the suggested retail price of all exclusive products that independent sales contractors hold at the beginning of April 1, 1997 for sale in a participating province.

Subsection 361(3) Definitions

This subsection provides that the terms "direct seller", "distributor", "exclusive product" and "independent sales contractor" have the meanings assigned by section 178.1.

Subdivision d, Sections 362 and 363 Special Cases

This subdivision provides for the treatment of the property and services supplied in connection with the construction of the Northumberland Strait Crossing between New Brunswick and Prince Edward Island. It also provides transitional rules for determining a registrant’s instalment base.

Section 362 Northumberland Strait Crossing

This section provides for the treatment of the property and services supplied in connection with the construction of the Northumberland Strait Crossing between New Brunswick and Prince Edward Island.

Subsection 362(1) Definitions

This subsection provides that the terms "Advisory Group", "Crossing" and "Developer" have the meanings assigned by section 1 of the *Northumberland Strait Crossing Act* of New Brunswick.

Subsection 362(2) Construction of Crossing

This section provides that the provincial component of the HST is not payable in respect of property or services acquired for consumption or use exclusively in the construction of the Northumberland Strait Crossing.

Subsection 362(3) Exemption Certificates

This subsection provides that the general rule set out in subsection 362(2) does not apply to a recipient other than the Developer unless the recipient provides the supplier with a valid exemption certificate issued by the Advisory Group.

Section 363 Instalments

This section provides transitional rules for determining a registrant's instalment base.

Subsection 363(1) Instalment Base Following Implementation

Subsection 363(1) provides a transitional rule for determining the instalment base for a registrant resident in a participating province (other than a selected listed financial institution as defined in new subsection 225.2(1)) who has an annual reporting period that begins during the calendar year 1997.

The registrant's instalment base for that reporting period payable after the first fiscal quarter of the registrant beginning on or after April 1, 1997 is the lesser of the amount determined under paragraph 237(2)(*a*) (i.e., the estimate of that year's actual instalment base) and 200 per cent of the amount determined under paragraph 237(2)(*b*) (i.e., twice the amount of the registrant's preceding year's instalment base, which is somewhat less than what that base would have been if all the registrant's taxable supplies had been taxed at 15 per cent).

Subsection 363(2) Selected Listed Financial Institutions

Selected listed financial institutions (as defined in new subsection 225.2(1)) that are annual filers who determine their net tax under new section 225.2 are required by amended subsection 237(1) to pay quarterly instalments equal to the amount determined under subsection 237(2). However, new subsection 363(2) provides a transitional rule for determining the instalments for fiscal quarters that end on or after April 1, 1997 in the financial institution's transitional fiscal year that begins before April 1, 1997 and ends on or after that day. The selected listed financial institution must elect to use one of the four methods set out in the subsection. The election must be in prescribed form but need not be filed with Revenue Canada.

Generally, the methods set out in paragraphs 363(2)(*a*) and (*b*) are based on the financial institution's total net tax for reporting periods ending in the 12-month period preceding the transitional fiscal year.

Under paragraph 363(2)(*a*), the financial institution's instalments for fiscal quarters ending after March 1997 in the transitional fiscal year are generally equal to the lesser of

- 1/4 of the financial institution's net tax for the transitional fiscal year, and

- 1/4 of the financial institution's total net tax for all reporting periods ending in the 12-month period preceding the transitional fiscal year, grossed up by 8/7ths of the lesser of the total of the financial institution's allocation percentages for the participating provinces for the taxation year in which the transitional fiscal year ends and the total of its allocation percentages for the preceding taxation year (both as determined in accordance with rules prescribed under new section 225.2).

The method in paragraph 363(2)(*a*) permits the financial institution to calculate its instalments on the basis of the previous year's results. However, where the financial institution anticipates a decline in net tax in the transitional fiscal year or a decline in its allocation percentages, it is permitted to base its instalment payments on an estimate of the current year's net tax or allocation percentages, as the case may require. Provided that the financial institution has not underestimated the transitional year's net tax or allocation percentages

and the amounts payable were paid on time and in full, no penalty or interest is payable under section 280.

Under paragraph 363(2)(*b*), the financial institution's instalments for fiscal quarters ending after March 1997 in the transitional fiscal year are generally equal to 1/4 of the financial institution's total net tax for all reporting periods ending in the 12-month period preceding the transitional fiscal year, grossed up by 8/7ths of the financial institution's allocation percentages for the taxation year preceding the taxation year in which the transitional fiscal year ends. This method permits the financial institution to calculate its instalments solely on the basis of the previous year's results.

The methods set out in paragraphs 363(2)(*c*) and (*d*) are based on the financial institution's unrecoverable GST for the transitional fiscal year or for reporting periods ending in the preceding 12-month period. The method of determining a person's unrecoverable GST and the provincial component of the HST is discussed in the commentary on new subsection 225.2(2) under subclause 208(1).

Under paragraph 363(2)(*c*), the financial institution's instalments for fiscal quarters ending after March 1997 in the transitional fiscal year are generally equal to the lesser of 1/4 of the financial institution's net tax for the transitional fiscal year and the total of

- the amount by which 1/4 of the financial institution's unrecoverable GST for the transitional fiscal year, grossed up by 8/7ths of the lesser of the total of the financial institution's allocation percentages for the taxation year in which the transitional fiscal year ends and the total of its allocation percentages for the preceding taxation year, exceeds the total of the provincial component of the HST that is paid or becomes payable by the financial institution in the fiscal quarter,

- the total of the provincial component of the HST that is collected or becomes collectible by the financial institution in the fiscal quarter, and

- 1/4 of the financial institution's total net tax for reporting periods ending in the 12-month period preceding the transitional fiscal year.

The method in paragraph 363(2)(*c*) permits the financial institution to calculate the portion of each instalment that is attributable to GST on the basis of its actual results in the previous year. The portion of an instalment that is attributable to the provincial component of the HST is generally based on the provincial component that actually was paid or became payable by the financial institution, or that was collected or became collectible by the financial institution, during the fiscal quarter to which the instalment relates. However, the portion attributable to the net tax adjustment relating to the provincial component on the financial institution's purchases must be estimated on the basis of the financial institution's unrecoverable GST for the transitional year, although the financial institution may use attribution percentages for the participating provinces based on an estimate for the transitional year or based on the actual percentages for the preceding year. Where the financial institution anticipates an overall decline in net tax in the transitional fiscal year, it is also permitted to base its instalment payments on an estimate of the transitional year's net tax. However, in any case where the financial institution underestimates its required instalments, it will be subject to penalty and interest under section 280.

The method in paragraph 363(2)(*d*) is similar to the method in paragraph 363(2)(*c*). Generally, the instalment is determined on the basis of the financial institution's results for the reporting periods ending in the 12-month period preceding the transitional year, including the portion of each instalment that is attributable to GST and the portion attributable to the net tax adjustment relating to the provincial component of the HST on the financial institution's purchases. However, the portion of an instalment that is attributable to the provincial component of the HST that actually was paid or became payable by the financial institution, or that was collected or became collectible by the financial institution, is based on the financial institution's actual payments and collections during the fiscal quarter to which the instalment relates. Accordingly, the instalments may be calculated on the basis of the financial institution's actual results. This method does not permit the financial institution to base its instalments on an estimate of its net tax for the transitional fiscal year.

New subsection 363(2) applies to reporting periods that end after March 1997.

Subsection 363(3) Information Requirements

Pursuant to subsection 169(3), generally, a selected listed financial institution is not entitled to any input tax credits in respect of the 8 per-cent provincial component of the HST paid or payable by the financial institution. Instead, the financial institution is allowed to deduct such amounts when determining the instalments to be paid in the transitional year under element k of the formula in paragraphs 363(2)(*c*) and (*d*). Although those deductions are not amounts of input tax credits, new subsection 363(3) provides that the input tax credit information requirements under subsections 169(4) and (5) and the disclosure of tax requirements under subsection 223(2) apply to those deductions. Therefore, as when claiming input tax credits, a selected listed financial institution must meet the documentary requirements before claiming the deductions provided for under paragraphs 363(2)(*c*) and (*d*).

New subsection 363(3) applies to reporting periods that end after March 1997.

Clause 242

Division XI – Tax-Inclusive Pricing

ETA
364 to 368

Division XI sets out rules relating to the manner in which price information is to indicate the tax under Part IX in areas under federal jurisdiction. These rules are to come into force on a day to be fixed by order of the Governor in Council. That day shall not be before provinces together having at least 51 per-cent of the total population of all provinces that impose retail sales taxes or participate in the HST have enacted tax-inclusive pricing requirements.

Section 364 Definitions

This section defines terms used in new Division XI.

"electronic advertisement"

The definition "electronic advertisement" is relevant to new subsection 366(2) which sets out rules relating to inter-provincial electronic advertisements. An "electronic advertisement" of a registrant includes any audible or visual communication sent or transmitted by radio or television broadcast, or through an electronic or telecommunication medium, by or on the direction of the registrant, which mentions or displays in those advertisements a price that consumers could expect to pay for the advertised property or service.

"government supplier"

The term "government supplier" means the federal government, including any board, commission, corporation or other body established by federal statute to perform any function or duty on behalf of the federal government. The term also includes corporations that are wholly owned (except for qualifying shares owned by directors) by the federal government as well as any other body wholly controlled by the federal government or by a board, commission, corporation or other body established by federal statute. As well, provision is made to prescribe entities to be "government suppliers".

"national catalogue"

The term "national catalogue" is relevant to new subsection 366(3), which stipulates what and how information pertaining to the tax payable on advertised goods and services is to be indicated in a national catalogue. The publications considered "national catalogues" and therefore to which these rules would apply are to be prescribed by regulation.

"price information"

The definition "price information" is relevant for the purposes of new section 365. The term "price information" refers to the various forms of information by which consumers are informed of the prices they could reasonably expect to pay for a specific good or service that is displayed, described, detailed or advertised. Among the forms that

such information may take are tags, price lists, oral communication, written and electronic advertisements and contracts but does not include a national catalogue.

"price list"

A "price list" is one type of "price information", as defined in new section 364. "Price list" is defined in respect of property or a service as any list, menu, catalogue or any other type of document, whether written, printed or electronically produced or disseminated, that indicates the price for which the supplier of the property or service will supply the property or service to a consumer as defined in subsection 123(1).

"price tag"

The term "price tag" is used in the definition of "price information" in section 364.

A "price tag" for property or a service refers to any tag, sticker, label, sign, impression, or other device (other than a prescribed device) that is printed or embossed or impressed on, attached to or displayed in conjunction with, or in relation to, or issued for or intended to be used for the property or services. The price tag must visually indicate the price or consideration of the property for sale to a consumer as defined in subsection 123(1). "Price tag" does not include a postage stamp.

"specified supply"

New section 365 sets out tax-inclusive pricing requirements in relation to "specified supplies". These are defined as supplies of services made by a bank, supplies of passenger transportation services made by a railway or airline regulated under the *Canada Transportation Act* or by an extra-provincial bus company and supplies of telecommunication services under federal jurisdiction. The definition "specified supply" also provides authority to prescribe by regulation supplies that would be included or excluded from the definition.

"written advertisement"

The definition "written advertisement" is relevant to subsection 366(1), which relates to inter-provincial written advertisements. A "written advertisement" of a registrant includes any written or printed communication sent or distributed by or on the direction of the registrant that mentions or displays in those advertisements a price that consumers could expect to pay for the advertised property or service. However, national catalogues and written advertisements that do not include the price or consideration for any property or service to which the written advertisement relates are not included in the definition of "written advertisement".

Section 365 Price Information – Specified Supplies

Section 365 sets out tax-inclusive pricing rules in relation to registrants that make or offer to make specified supplies of property or services to consumers. The term "specified supply" is defined in section 364. The "price information", also as defined in section 364, must indicate the total of the consideration for the supply of the property or service and all air transportation tax under the *Excise Tax Act* and GST or HST in respect of the supply. The total may also include provincial tax imposed on the consumer. This total must appear at least as large and prominently as any indication of the price excluding the tax. Further, authority is provided to prescribe the manner or form of indicating the total tax-inclusive price or the standards to be met in indicating that total. Separate authority is provided to make regulations in this regard with respect to government suppliers and non-government suppliers. Also, regulations made pursuant to this section may prescribe suppliers to whom the section would not apply.

Section 366 Interprovincial Advertisements

New section 366 provides rules relating to tax-inclusive pricing with respect to interprovincial written advertisements. The term "written advertisement" is defined in section 364.

Subsection 366(1) provides that every registrant (other than a prescribed registrant) who is not resident in a participating province and who advertises property or services to consumers in a written form in that province, (e.g., in magazines, on billboards, or in any

other written medium that mentions or displays a price that consumers could expect to pay for the advertised property or service) must display or communicate the price of the property or service on a tax-inclusive basis or in compliance with prescribed standards.

Subsection 366(2) provides rules for tax-inclusive pricing with respect to inter-provincial "electronic advertisements" (also defined in section 364). The rule states that registrants (other than prescribed registrants) who are not resident in a participating province and who advertise property and services electronically in that province (e.g., by radio, television or any other telecommunications medium) and mention or display in those advertisements a price that consumers could expect to pay for the advertised property or service must display or communicate that price on a tax-inclusive basis or in compliance with prescribed standards.

Subsection 366(3) provides that national catalogues (which are defined by regulations made pursuant to section 364 must either display prices on a tax-inclusive basis or indicate, in prescribed manner and form and in compliance with prescribed standards, on the cover or cover page and on every second page thereafter that prices displayed in the catalogue do not include tax under Part IX.

Section 367 Agents of Suppliers

Section 367 provides that where an agent of a registrant or of a government supplier (as defined in section 364) supplies or offers to supply property or a service on behalf of the registrant, or government supplier, the agent is required to comply with the tax-inclusive pricing requirements.

Section 368 Offence

Subsection 368(1) indicates that every person who fails to comply with the tax-inclusive pricing requirements, as set out in Division XI, is guilty of an offence and liable on summary conviction to a fine of not less than $100 and not more than $5000 or to imprisonment for not more than 30 days or to both.

Subsection 368(2) indicates that each day for which the failure to comply continues constitutes a separate offence.

Subsection 368(3) provides that it is sufficient proof of an offence to establish that it was committed by an employee or agent of the accused whether the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the accused's knowledge or consent and all due diligence was exercised to prevent its commission.

Subsection 368(4) provides that, in determining the punishment for an offence under section 368, the court may consider whether the offence was deliberate and the incompetence, negligence or lack of concern of the offender, the economic benefit that accrued to the offender and any history of non-compliance by the offender.

Clause 243

Sales of Residential Complexes Other Than by Builder

ETA
Schedule V, Part I, section 2

Section 2 of Part I of Schedule V exempts the sale of a residential complex or an addition to a multiple unit residential complex or an interest therein by a person who is not the builder of the complex or addition, unless the person has claimed an input tax credit in respect of the last acquisition of the complex or an improvement to the complex or addition acquired or imported after the last acquisition of the complex.

Section 2 is amended to add a reference to the bringing into a participating province of an improvement since this is another occurrence that could result in tax becoming payable for which an input tax credit may be claimed.

This amendment is effective April 1, 1997.

Clause 244

Sales of Self-built Homes

ETA
Schedule V, Part I, section 3

Section 3 of Part I of Schedule V exempts the sale of a self-built home by an individual who has used the dwelling primarily as a place of residence, unless the individual has claimed an input tax credit in respect of the acquisition of the real property or an improvement thereto acquired or imported after the real property was last acquired.

Section 3 is amended to add a reference to the bringing into a participating province of an improvement since this is another occurrence that could result in tax becoming payable for which an input tax credit may be claimed.

This amendment is effective on April 1, 1997.

Clause 245

Self-built Single Unit Residential Complexes and Residential Condominium Units

ETA
Schedule V, Part I, paragraph 4(*d*)

Paragraph 4(*d*) of Part I of Schedule V ensures that the sale of a single unit residential complex or residential condominium unit is not exempt under section 4 if the builder claimed an input tax credit in respect of the last acquisition of the complex or unit or an improvement thereto acquired or imported by the builder after the complex or unit was last acquired by the builder.

Paragraph 4(*d*) is amended to also refer to an improvement brought into a participating province. As a result, the exemption under section 4 will likewise not apply where an input tax credit has been claimed in respect of an improvement to the complex or unit brought

into a participating province after the last acquisition of the complex or unit.

This amendment is effective April 1, 1997.

Clause 246

Self-built Multiple Unit Residential Complexes

ETA
Schedule V, Part I, paragraph 5(*d*)

Paragraph 5(*d*) of Part I of Schedule V ensures that the sale of a multiple unit residential complex or an addition thereto is not exempt under section 5 if the builder claimed an input tax credit in respect of the last acquisition of the complex or addition or an improvement thereto acquired or imported after the last acquisition of the complex or addition.

Paragraph 5(*d*) is amended to also refer to an improvement brought into a participating province. As a result, the exemption under section 5 will likewise not apply where an input tax credit has been claimed in respect of an improvement to the complex or addition brought into a participating province after the last acquisition of the complex or addition.

This amendment is effective on April 1, 1997.

Clause 247

Residential Trailer Parks.

ETA
Schedule V, Part I, section 5.3

Section 5.3 of Part I of Schedule V exempts the supply of land that is a residential trailer park or an addition thereto provided that certain requirements are satisfied. One of the requirements is that the person supplying the park did not claim an input tax credit in respect of the last acquisition of the park or addition, or in respect of an

improvement to the park or additional area acquired or imported after the last acquisition of the park or addition.

Section 5.3 is amended to also refer to an improvement brought into a participating province. As a result, the exemption under section 5.3 will likewise not apply where an input tax credit has been claimed in respect of an improvement to the park brought into a participating province after the last acquisition of the park.

An exception to this rule applies where the input tax credit was claimed in respect of an improvement to an additional where the improvement that was acquired, imported or brought into a participating province before the additional area was last acquired by the person claiming the credit (i.e., before self-assessment was required).

This amendment is effective April 1, 1997.

Clause 248

Long-term Residential Rents

ETA
Schedule V, Part I, paragraph 6(*a*)

Paragraph 6(*a*) of Part I of Schedule V exempts supplies by way of lease, licence or similar arrangement of a residential complex or residential unit under which continuous occupancy is provided for a period of at least one month. This amendment adds the phrase "under the arrangement" to paragraph 6(*a*), and is consequential to the addition of new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 154). The amendment to paragraph 6(*a*) clarifies that the period referred to therein is the period of continuous occupancy provided for under the arrangement and not the lease interval as defined in subsection 136.1(1).

This amendment comes into force on April 1, 1997.

Clause 249

Residential Leases

ETA
Schedule V, Part I, section 6.1

Section 6.1 of Part I of Schedule V exempts certain leases of land or residential buildings to a person who, in turn, leases the property on an exempt basis. The amendment to section 6.1 replaces the reference to existing subsection 136(2.1) with a reference to new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 154).

This amendment comes into force on April 1, 1997.

Clause 250

Lease of Land for Mobile Home, etc.

ETA
Schedule V, Part I, section 7

Section 7 of Part I of Schedule V exempts certain supplies by way of lease, licence or similar arrangement of land and residential trailer park sites under which continuous possession or use of the land or site is provided for a period of at least one month. The amendments to this section are consequential to the addition of new subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 154). The amendments to section 7 clarify that the period referred to therein is the period of continuous possession or use provided for under the arrangement as opposed to the lease interval period.

This amendment comes into force on April 1, 1997.

Clause 251

Sale of Parking Space

ETA
Schedule V, Part I, section 8

Section 8 of Part I of Schedule V exempts the sale of a parking space in a condominium complex provided certain requirements are satisfied. Existing paragraph 8(*b*) provides that one of the conditions for exemption is that the supplier did not claim an input tax credit in respect of the acquisition or importation of an improvement to the space after purchasing it. Paragraph 8(*b*) is amended to refer to an input tax credit in respect of an improvement as opposed to "the acquisition or importation" of an improvement. The amended wording thus also encompasses an input tax credit in respect of an improvement brought into a participating province.

This amendment comes into force on April 1, 1997.

Clause 252

Lease of Parking Space

ETA
Schedule V, Part I, section 8.1

Section 8.1 of Part I of Schedule V exempts supplies of residential parking spaces by way of lease, licence or similar arrangement under which any such space is made available throughout a period of a least one month. The amendment to section 8.1 is consequential to the addition of subsection 136.1(1), which provides that supplies of property by way of lease, licence or similar arrangement are considered to be separate supplies for each lease interval period (see commentary on clause 154). This amendment to Section 8.1 clarifies that the period referred to therein is the period throughout which a parking space is made available as provided for under the arrangement as opposed to the lease interval.

This amendment comes into force on April 1, 1997.

Clause 253

Interline Freight Settlements

ETA
Schedule VI, Part VII, paragraph 1(2)(*a*)

Subsection 1(2) of Part VII of Schedule VI provides rules designed to treat all interline freight settlements between carriers supplying services that are included in a continuous freight movement (within the meaning of that Part) as being payments for services supplied to each other, and not payments made by the shipper or consignee of the property being transported.

Existing paragraph 1(2)(*a*) deems the carrier that receives payment from the shipper or consignee to have supplied to the shipper or consignee all the freight transportation services in respect of the continuous freight movement. The amendment to paragraph 1(2)(*a*) provides that the destination of the transportation services deemed to have been supplied is considered to be the same as the destination of the continuous freight movement. The destination is relevant to determining the place at which the supply is considered to be made according to the rules set out in section 5 of Part VI of new Schedule IX and therefore to the determination of the appropriate rate of tax to apply to the supply (i.e., the 7-per-cent GST rate if the supply is considered to be made outside the participating provinces and the 15-per-cent HST rate if the supply is considered to be made in a participating province).

This amendment comes into force on April 1, 1997.

Clause 254

Participating Provinces and Applicable Tax Rates; Place of Supply; Non-taxable Property and Services

ETA
Schedules VIII to X

Clause 254 adds Schedules VIII to X to the Act, each of which is described below.

Schedule VIII Participating Provinces and Applicable Tax Rates

Schedule VIII sets out opposite the name of each participating province under the HST the tax rate for the province. The provincial component of the HST in each of the participating provinces of Nova Scotia, New Brunswick and Newfoundland, as well as the Nova Scotia and Newfoundland offshore areas, is 8 per cent.

Schedule IX Supply in a Province

Schedule IX sets out rules for determining when a supply is made in a province. The Schedule is divided into the following eight Parts:

Part I – Interpretation

Part II – Tangible Personal Property

Part III – Intangible Personal Property

Part IV – Real Property

Part V – Services

Part VI – Transportation Services

Part VII – Postage

Part VIII – Telecommunication Services

Part IX – Deemed Supplies and Prescribed Supplies

It should be noted that, because of new section 144.1, only supplies made in Canada are considered to be made in a province if they are determined under the rules of Schedule IX to be made in the province.

Schedule IX, Part I Interpretation

Part I defines terms for purposes of Schedule IX and sets out rules of interpretation.

Schedule IX, Part 1, section 1 "Lease Interval" and "Place of Negotiation"

Section 1 provides that, in respect of a supply by way of lease, licence or similar arrangement, the term "lease interval" has the same meaning in Schedule IX as in new section 136.1 of the Act. Section 136.1 refers to a lease interval as the period to which a lease or license payment is attributable where a supply of property is made by way of lease, licence or similar arrangement. Also, section 136.1 provides that a supplier is deemed to have made, and the recipient is deemed to have received, a separate supply of the property for each lease interval.

Section 1 also defines "place of negotiation" of a supply for purposes of Schedule IX. The place of negotiation is a factor that is taken into account in determining whether certain supplies are made in or outside a province. The expression refers to the supplier's permanent establishment at which the individual principally involved in negotiating for the supplier the agreement for the supply ordinarily works, or to which the individual ordinarily reports, in the performance of the individual's duties in relation to the activities of the supplier in the course of which the supply is made. For purposes of this definition, "negotiating" includes the making or the acceptance of an offer. "Permanent establishment" is defined in new subsection 132.1(2). The individual principally involved in negotiating the agreement for the supplier may be an employee, partner, officer or other representative of the supplier.

Schedule IX, Part 1, section 2 Floating and Mobile Homes

Section 2 of Part 1 of Schedule IX provides that, for purposes of Schedule IX, a floating home, and a mobile home that is not affixed to land, are each deemed to be tangible personal property and not real property. This deeming is necessary because these homes are defined under subsection 123(1) to be real property for purposes of Part IX of the Act.

Schedule IX, Part 1, section 3 Deemed Delivery or Performance

Section 3 of Part I of Schedule IX ensures that the place of supply rules in this Schedule apply to a supply of property or a service even where the property is never delivered or the service is never

performed. Section 3 deems the property to have been delivered or the service to have been performed according to the terms of the agreement for the supply.

Schedule IX, Part 1, section 4 Ordinary Location

This section provides that, for purposes of applying the rules relating to the ordinary location of property at a particular time in determining place of supply, that ordinary location is deemed to be where the supplier and the recipient mutually agree that the ordinary location of the property is to be at the particular point in time. In other words, the mutual agreement of the supplier and recipient will be determinative even where the property is actually located at a different place at the relevant time than what had been agreed upon. It should be noted that this rule contemplates the possibility of the mutual agreement of the parties changing from time to time. Therefore, even if the original written agreement for a supply of property specified that the property would be located in a non-participating province, the parties might mutually agree subsequent to the signing of the contract that the property would be moved at a particular time to a participating province in which case the latter location would be the "ordinary location" of the property at that particular time.

The definition "ordinary location" is also used in certain of the place of supply rules for intangible property, postal services paid for by the use of postal meters and for telecommunication services in relation to telecommunications facilities.

Schedule IX, Part I, section 5 Courier

The definition "courier" in subsection 123(1) parallels that of subsection 2(1) of the *Customs Act*. The definition set out in regulations under that Act refers to international freight services and, therefore, is not appropriate in the context of interprovincial supplies. Consequently, this section provides that the definition "courier" in subsection 123(1) does not apply for the purposes of Schedule IX.

Schedule IX, Part II Tangible Personal Property

This Part of Schedule IX sets out the place of supply rules for purposes of determining whether a supply of tangible personal

property (i.e., goods) made in Canada is made in a particular province. A registrant making a taxable supply (other than a zero-rated supply) of tangible personal property in a participating province is required to collect tax at the 15-per-cent HST rate, whereas a registrant making such a taxable supply in a non-participating province is required to collect tax at the 7-per-cent GST rate.

Schedule IX, Part II, section 1 Sales of Tangible Personal Property

Subject to the special rule in section 3 of Part VI of Schedule IX for supplies on board a conveyance, section 1 of Part II of Schedule IX provides that a sale of tangible personal property is made in a province if the supplier delivers the property or makes it available in the province to the recipient of the supply. For example, if a retailer in a participating province sells a stereo to a customer who takes delivery of the stereo in the retailer's store, the supply is regarded as made in the participating province and the retailer is required to collect HST on the sale. If a distributor in a non-participating province sells goods to a retailer in a participating province with terms of delivery f.o.b. the retailer's place of business, the supply is regarded as made in the participating province.

For purposes of determining whether tangible personal property is delivered in a province, reference should also be made to section 3 of Part II of Schedule IX, which deems supplies to be delivered in a particular province in certain specified circumstances.

Schedule IX, Part II, section 2 Other Supplies of Goods

Section 2 of Part I of Schedule IX sets out the place of supply rules for supplies otherwise than by way of sale (e.g., rentals or leases) of tangible personal property.

Paragraph 2(*a*) provides that, in the case of a supply of tangible personal property otherwise than by way of sale under an arrangement whereby continuous possession or use of the property is provided for a period of no more than three months, the province in which the supply is made is determined based on where the property is delivered or made available to the recipient of the supply. For example, where an individual rents and takes possession of a video camera in a participating province to use while travelling through

several provinces, and the rental agreement is for a one-week period, the supply is regarded as made in that participating province.

Paragraph 2(*b*) applies to a supply of tangible personal property otherwise than by way of sale under an arrangement whereby continuous possession or use of the property is provided for more than three months. Specifically, subparagraph 2(*b*)(i) provides that, in these circumstances, a supply of a "specified motor vehicle" (as newly defined in subsection 123(1)) is made in a province if that is the province in which the vehicle is required to be registered at the time the supply is made. Section 136.1 provides that a separate supply is deemed to be made for each lease interval (which is defined to be the period to which a particular lease payment relates). Further, paragraph 136.1(1)(*b*) provides that the supply for each lease interval is deemed to be made on the earliest of the first day of the interval, the day on which the lease payment attributable to that interval becomes due and the day that payment is made.

For example, suppose a car-leasing company in a non-participating province leases a car to a person for 24 months and the monthly lease payments are all due and paid at the beginning of each month. As long as the vehicle is required to be registered in a participating province at the beginning of each of the months, each of the lease payments will be subject to HST. If, however, in the middle of the 18th month, the lessee moved to a non-participating province and registered the car in that province, the six remaining monthly lease payments would be subject to tax at the 7-per-cent GST rate. Note that the place of supply of a vehicle rental for a period of three months or less is determined under paragraph 2(*a*).

Subparagraph 2(*b*)(ii) applies to supplies of other tangible personal property by way of lease, licence or similar arrangement where continuous possession or use of the property is provided for more than three months. Here again, because of section 136.1, a separate supply is considered to be made for each lease internal or payment period. In these circumstances, the place of each of the separate supplies is based on the ordinary location of the property at the time the supply is made, which, again, is the earliest of the days referred to in paragraph 136.1(1)(*b*). Consider a case of a generator leased for a four-year period by a national leasing company to a construction company operating in a participating province and the annual lease payments are due and paid at the beginning of each year. Assume

the generator will usually be stored and maintained at the construction company's facilities in the participating province. However, during the second year, the company expands its operations to a non-participating province. The generator is relocated to the company's new facilities in the participating province. In this case, the first two lease payments would be subject to tax at the 15-per-cent HST rate. The lease payment attributable to the third year would be subject to tax at the 7-per-cent GST rate.

It should be noted that section 3 of Part I of Schedule IX provides that, in determining the ordinary location of property at a particular point in time, the supplier may rely on what the supplier and the recipient mutually agreed would be the ordinary location of the property at the particular point in time.

Schedule IX, Part II, section 3 Deemed Delivery

Under section 3 of Part II of Schedule IX, tangible personal property is regarded, for purposes of that Part and Part VII (postal services) as delivered in a particular province, and not in any other province, where the supplier ships the property, or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property, to a destination in the particular province that is specified in the contract of carriage.

If, for example, a parts manufacturer in a non-participating province, sells components to an assembler in a participating province and uses its own truck, hires a common carrier, or retains a common carrier on behalf of the assembler, to deliver the components to the assembler, the supply of the parts will be regarded as made in the participating province, even if the terms of delivery under the agreement for the sale were f.o.b. the supplier's place of business. If a parts manufacturer in a participating province sells parts to a purchaser in a non-participating province and uses its own truck, hires a common carrier, or retains a common carrier on behalf of the assembler, to deliver the components to the purchaser, the supply of the parts will be regarded as made in the non-participating province, even if the terms of delivery under the agreement for the sale were f.o.b. the supplier's place of business.

Property is also regarded as having been delivered in a particular province, and not in any other province, if the supplier sends the property by mail or courier to an address in the particular province. For example, if a mail-order company located in a non-participating province sends goods to customers in the participating provinces by placing the goods in the mail for delivery to its customers, the goods are regarded as delivered (and therefore supplied) in those participating provinces and HST will apply. (Note that section 5 of Part I of this Schedule provides that the definition "courier" in subsection 123(1) does not apply for purposes of this Schedule.)

Schedule IX, Part III Intangible Personal Property

This Part sets out the place of supply rules for purposes of determining whether a supply of intangible personal property (i.e., generally a "right" rather than a physical object) that is made in Canada is made in a particular province. A registrant making a taxable supply (other than a zero-rated supply) of intangible personal property in a participating province is required to collect sales tax at the 15-per-cent HST rate, whereas a registrant who makes such a taxable supply in a non-participating province is required to collect tax at the 7-per-cent GST rate.

Schedule IX, Part III, section 1 Canadian Rights

This section defines "Canadian rights" for purposes of the place of supply rules in sections 2 and 3 of Part III of Schedule IX. A supply made in Canada of intangible personal property may relate to rights exercisable in and outside Canada. "Canadian rights" in respect of intangible personal property refers to that part of the property that can be used in Canada.

Schedule IX, Part III, sections 2 and 3 Intangible Property

Sections 2 and 3 of Part III of Schedule IX set out the rules for determining the province in which a supply of intangible personal property is made. When applying these sections, it is important to note that section 3 is subject to section 2. In other words, section 2 should be considered first. If the supply is considered to be made in a particular province under section 2, then it is not necessary to consider section 3. If the supply is not regarded as made in a particular province under section 2, it is still necessary to consider

section 3. If the supply of intangible personal property is not regarded as made in a participating province under either section 2 or 3, the supply is considered to made outside the participating provinces, unless Part IX of the Schedule applies to determine the supply to be made in a participating province in the case of a deemed supply or a prescribed supply.

Sections 2 and 3 of Part III of Schedule IX deal with four categories of supplies of intangible personal property. They include supplies of intangible personal property that relate to:

- real property;

- tangible personal property; or

- services to be performed.

The fourth category is a supply of intangible personal property that does not relate to real property, tangible personal property or services to be performed.

Sections 2 and 3 of Part III are explained below in relation to each of these categories of supplies of intangible personal property.

Reference should also be made to the regulations made under section 3 of Part IX of Schedule IX. For example, among the prescribed supplies under these Regulations is a supply of a membership to an individual. Notwithstanding the place of supply rules in sections 2 and 3 of Part III, a supply to an individual of a membership that confers rights exercisable in more than one province, including a participating province, is regarded as supplied in a particular province if the mailing address of the individual is in the province.

Schedule IX, Part III, 2(*a*) and 3(*a*) Intangible Property Relating to Real Property

Paragraphs 2(*a*) and 3(*a*) of Part III apply to a supply of intangible personal property that relates to real property (e.g., an option to purchase real property). If all or substantially all of the real property that is situated in Canada is situated in a particular province, then,

pursuant to subparagraph 2(*a*)(i), the supply is regarded as made in that province.

In circumstances not described by subparagraph 2(*a*)(i), subparagraph 2(*a*)(ii) results in the supply being considered to be made in the province in which the place of negotiation of the supply is located provided all or substantially all of the real property that relates to the intangible personal property is not situated outside that province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, subparagraph 3(*a*)(i) results in the supply being regarded as made in a participating province if the real property that is situated in Canada is situated primarily in the participating provinces. Specifically, the supply of the intangible personal property is considered to be made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

In circumstances where section 2 does not determine the place of supply and the place of negotiation of the supply is outside Canada, subparagraph 3(*a*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if all or substantially all of the real property is located in Canada and the real property that is situated in Canada is situated primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

Schedule IX, Part III, 2(*b*) and 3(*b*) Intangibles Relating to Goods

Paragraphs 2(*b*) and 3(*b*) of Part III apply to a supply of intangible personal property that relates to tangible personal property. If all or substantially all of the tangible personal property that is ordinarily located in Canada is ordinarily located in a particular province, then subparagraph 2(*b*)(i) results in the supply of intangible personal property being regarded as made in that province. In circumstances where paragraph 2(*b*)(i) does not determine the place of supply, subparagraph 2(*b*)(ii) results in the supply being considered to be made in the province in which the place of negotiation of the supply

is located provided all or substantially all of the tangible personal property to which the intangible personal property relates is not ordinarily located outside that province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If the circumstances described in section 2 are not met and the place of negotiation of the supply is in Canada, subparagraph 3(*b*)(i) results in the supply being considered to be made in a participating province if the tangible personal property that is ordinarily located in Canada is ordinarily located primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located.

In circumstances where section 2 does not determine the place of supply and the place of negotiation of the supply is outside Canada, subparagraph 3(*b*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if all or substantially all of the tangible personal property is ordinarily located in Canada and the tangible personal property that is ordinarily located in Canada is ordinarily located primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located.

Schedule IX, Part III, 2(*c*) and 3(*c*) Intangibles Relating to Services

Paragraphs 2(*c*) and 3(*c*) of Part III apply to a supply of intangible personal property that relates to services to be performed. If all or substantially all of the services that are to be performed in Canada are to be performed in a particular province, then subparagraph 2(*c*)(i) results in the supply of the intangible personal property being regarded as made in that province.

If the circumstances described in subparagraph 2(*c*)(i) are not met, subparagraph 2(*c*)(ii) results in the supply being considered to be made in the province in which the place of negotiation of the supply is located, provided all or substantially all of the services that relate to the intangible personal property are not to be performed outside that province.

If the circumstances described in section 2 are not met and the place of negotiation of the supply is in Canada, subparagraph 3(*c*)(i) results in the supply being regarded as made in a participating province if the services to be performed in Canada are to be performed primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the services to be performed in the participating provinces are to be performed.

If the circumstances described in section 2 are not met and the place of negotiation of the supply is outside Canada, subparagraph 3(*c*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if all or substantially all of the services are to be performed in Canada and the services to be performed in Canada are to be performed primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the services to be performed in the participating provinces are to be performed.

Schedule IX, Part III, 2(*d*) and 3(*d*) Other Intangible Property

Paragraphs 2(*d*) and 3(*d*) of Part III apply to a supply of intangible personal property that does not relate to real property, tangible personal property or services to be performed. The concept of "Canadian rights" is relevant to these provisions. The expression is defined in section 1 of Part III of this Schedule as that part of the intangible personal property that can be used in Canada. If all or substantially all of the Canadian rights in respect of the intangible personal property can be used only in a particular province, then subparagraph 2(*d*)(i) results in the supply being regarded as made in that province.

In circumstances not described by subparagraph 2(*d*)(i), subparagraph 2(*d*)(ii) results in the supply being regarded as made in the province in which the place of negotiation of the supply is located, provided the property can be used otherwise than exclusively outside the province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, subparagraph 3(*d*)(i) results in

the supply being regarded as made in a participating province if the Canadian rights in respect of the intangible personal property cannot be used otherwise than primarily in the participating provinces. Specifically, the supply of the intangible personal property is regarded as made in the participating province in which the greatest proportion of the Canadian rights that can be used only in the participating provinces can be used.

In circumstances not described by section 2 and where the place of negotiation of the supply is outside Canada, subparagraph 3(*d*)(ii) results in the supply of the intangible personal property being regarded as made in a participating province if the property cannot be used otherwise than exclusively in Canada and the property cannot be used otherwise than primarily in the participating provinces. Specifically, the supply of the intangible personal property is made in the participating province in which the greatest proportion of the Canadian rights that can be used only in the participating provinces can be used.

Schedule IX, Part IV Real Property

This Part describes the place of supply rules for purposes of determining whether a supply of real property or a service in relation to real property that is made in Canada is made in a particular province. A registrant who makes a taxable supply (other than a zero-rated supply) of real property or a service in relation to real property in a participating province is required to collect tax at the 15-per-cent HST rate, whereas a registrant who makes such a taxable supply in a non-participating province is required to collect tax at the 7-per-cent GST rate.

Schedule IX, Part IV, section 1 Supply of Real Property

Section 1 of Part IV of Schedule IX provides that a supply of real property is considered to be made in the province in which the real property is situated. Reference should be made to new section 136.2 which provides that where a taxable supply of real property includes the provision of real property situated in a particular province and the provision of real property situated in another province or outside Canada, the provision of the part of the real property that is situated in the particular province and the provision of the part of the real

property situated in the other province or outside Canada are each deemed to be separate supplies made for separate consideration.

Schedule IX, Part IV, sections 2 and 3 Services in Relation to Real Property

Sections 2 and 3 of Part IV of Schedule IX set out the rules for determining the province in which a supply of a service in relation to real property is made. When applying sections 2 and 3 of Part IV, it is important to note that section 3 is subject to section 2. In other words, section 2 should be considered first. If the supply is considered to be made in a particular province under section 2, then it is not necessary to consider section 3. If the supply is not regarded as made in a particular province under section 2, it is still necessary to consider section 3. If the supply is not regarded as made in a participating province under either section 2 or 3, the supply is considered to be made outside the participating provinces unless it is determined to be made in a participating province under Part IX of Schedule IX, which applies to deemed supplies and prescribed supplies.

If all or substantially all of real property that is situated in Canada is situated in a particular province, then, pursuant to paragraph 2(*a*), the supply of a service in relation to the real property is regarded as made in that province. In circumstances not described by paragraph 2(*a*), paragraph 2(*b*) results in the supply of the service being considered as made in the province in which the place of negotiation of the supply is located, provided all or substantially all of the real property to which the service relates is not situated outside that province. "Place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, section 3 results in the supply being regarded as made in a participating province if the real property to which the service relates that is situated in Canada is situated primarily in the participating provinces. Specifically, the supply of the service is regarded as made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

In circumstances not described by section 2 and where the place of negotiation of the supply is outside Canada, the supply of the service is regarded as made outside the participating provinces provided all or substantially all of the property is not situated in Canada. If all or substantially all of the property is situated in Canada and the real property is situated primarily in the participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the real property that is situated in the participating provides is situated.

Schedule IX, Part V Services

Part V of Schedule IX sets out the place of supply rules for purposes of determining whether a supply of a service that is made in Canada is made in a particular province.

This Part is subject to special rules for specific kinds of services contained in Part IV and Parts VI to VIII. Part IV includes rules for services in relation to real property. Part VI addresses transportation services. Part VII addresses postage services and Part VIII deals with telecommunication services.

Reference should also be made to Part IX of Schedule IX, which applies to deemed supplies and prescribed supplies of services. In particular, the regulations under section 3 of that Part will set out special place of supply rules for specified services.

Schedule IX, Part V, section 1 Definition "Canadian Element"

This section defines the "Canadian element" of a service to be the portion of the service that is performed in Canada. Under section 142 of the Act, a supply of a service may be regarded as made in Canada if a part of the service is performed in Canada. For purposes of the provincial place of supply rules, it is necessary to consider the Canadian portion of such a supply.

Schedule IX, Part V, sections 2 and 3 Supply of a Service

Sections 2 and 3 of Part V of Schedule IX set out the rules for determining the province in which a supply of a service is made. When applying sections 2 and 3 of Part V it is important to keep in

mind that section 3 is subject to section 2. In other words, section 2 should be considered first.

If the supply is considered to be made in a particular province under section 2, then it is not necessary to consider section 3. If the supply is not regarded as made in a particular province under section 2, it is necessary to consider section 3. If the supply is not regarded as made in a participating province under either section 2 or 3, the supply is considered to made outside the participating provinces, unless it is determined to be made in a participating province under the rules of Part IX of this Schedule that apply to deemed supplies and prescribed supplies.

Section 2 provides that, subject to Parts IV and VI to VIII of the Schedule, if all or substantially all of the Canadian element of a service (as newly defined in section 1 of this Part) is performed in a particular province, the service is regarded as made in that province. In circumstances not described by paragraph 2(*a*), paragraph 2(*b*) results in the supply of the service being regarded as made in the province in which the place of negotiation of the supply is located, provided all or substantially all of the service is not performed outside that province. The "place of negotiation" of a supply is defined in section 1 of Part I of Schedule IX.

If section 2 does not determine the place of supply and the place of negotiation of the supply is in Canada, section 3 results in the supply being regarded as made in a participating province if the Canadian element of the service is performed primarily in the participating provinces. Specifically, the supply of the service is regarded as made in the participating province in which the greatest proportion of the Canadian element is performed.

In circumstances where section 2 does not determine the place of supply and the place of negotiation of the supply is outside Canada, section 3 results in the supply being regarded as made outside the participating provinces unless all or substantially all of the service is performed in Canada. If all or substantially all of the service is performed in Canada and the service is primarily performed in the participating provinces, then the supply is considered made in the participating province in which the greatest proportion of the services performed in the participating provinces are performed.

Schedule IX, Part VI Transportation Services

This Part sets out the rules for determining whether a supply of a freight or passenger transportation service that is made in Canada is made in a particular participating province.

In addition, this Part sets out the place of supply rules determining whether a sale of tangible personal property or services (other than a passenger transportation service) on board a conveyance is made in a participating province and whether a supply of transporting an individual's baggage in connection with a passenger transportation service is made in a participating province.

Schedule IX, Part VI, Section 1 Definitions

This section contains definitions of terms used in Part VI of Schedule IX. Several terms, namely "continuous journey", "freight transportation service", "origin", and "termination" have the same meanings as assigned by section 1 of Part VII of Schedule VI.

However, the following terms are defined specifically for purposes of the place of supply rules relating to transportation services:

"destination"

This term is relevant to the place of supply rules for freight transportation services. "Destination" is defined as the place specified by the shipper (usually on the bill-of-lading or other shipping documents) at which possession of the property is transferred to the person who is either the consignee or person to whom the property is addressed.

"leg" of a journey

This expression is used in section 3 of this Part. "Leg" of a journey on a conveyance refers to the part of the journey that begins where any passenger either embarks or disembarks the conveyance or where there is a stop for refuelling or servicing and ends at the place where the conveyance next stops for any of those purposes.

"stopover"

Generally, this term has the same meaning as in section 1 of Part VII of Schedule VI. However, for purposes of the place of supply rules, a stopover on a journey that does not include air transportation and the origin and termination of which is in Canada does not include a stop outside Canada at which the passengers are scheduled to be outside Canada for an uninterrupted period of less than 24 hours. For example, if an individual takes a day shopping bus tour from New Brunswick to Maine, the place in Maine where the individuals disembark the bus will not be considered a stopover since the individuals are not scheduled to be outside Canada for more than 24 hours.

Schedule IX, Part VI, section 2 Passenger Transportation Services

Section 2 of Part VI of Schedule IX sets out the place of supply rules for passenger transportation services.

Section 2 provides that, where a ticket or voucher issued for the first passenger transportation service that is part of a continuous journey specifies an origin of the journey that is within a participating province and the termination and all stopovers in respect of the continuous journey are in Canada, the place of supply is in that particular participating province. For example, if a return rail ticket had a routing Halifax-Ottawa-Halifax, the place of supply would be Halifax due to the fact that the origin specified in the ticket is in a participating province and the termination and all stopovers in respect of the journey are in Canada. Therefore, the consideration for the supply of the rail ticket would be subject to sales tax at the 15-per-cent HST rate.

Section 2 provides that, where the origin of the first passenger transportation service is not specified in the ticket or voucher, the place of supply will be in a particular province if the place of negotiation of the supply is in that province. For example, if a bus pass which entitled the passenger to unlimited bus travel for 60 days were purchased in Fredericton, New Brunswick but the pass did not specify the origin of the passenger transportation service, the place of supply would be New Brunswick and the consideration for the bus pass would be subject to tax at the 15-per-cent HST rate.

Schedule IX, Part VI, section 3 Supplies on Board Conveyance

Section 3 of Part VI of Schedule IX sets out the place of supply rules for supplies of tangible personal property or services delivered or performed on board a conveyance. Specifically, the sale of goods delivered on board a conveyance, or a supply of a service which is wholly performed on board the conveyance, during a leg of a continuous journey that begins and ends in the participating provinces is considered to be made in the participating province in which that leg of the journey begins. The term "leg" of a journey is defined in section 1 of this Part.

For example, a sale of alcoholic beverages served during a leg of a flight that begins in Fredericton, New Brunswick and ends in Halifax, Nova Scotia would be considered to be made in New Brunswick and would be subject to sales tax at the 15-per-cent HST rate.

Schedule IX, Part VI, section 4 Baggage Charges

Section 4 of Part VI of Schedule IX sets out the place of supply rules for the service of transporting an individual's baggage in connection with a passenger transportation service supplied to the individual. Section 4 provides that, where a person who supplies a passenger transportation service to an individual also supplies a service of transporting that individual's baggage in connection with the passenger transportation service, the place of supply of the service of transporting the individual's baggage is the same as that of the passenger transportation service. Therefore, the excess baggage charge will be subject to sales tax at the 15-per-cent HST rate if the passenger transportation service is subject to the HST.

Schedule IX, Part VI, section 5 Freight Transportation Services

Section 5 of Part VI of Schedule IX sets out the place of supply rules for freight transportation services. A supply of a freight transportation service is regarded as made in a participating province if the destination of the freight transportation service is in a participating province. The term "destination" is defined in section 1 of this Part.

Schedule IX, Part VII Postage

This Part describes the place of supply rules for certain postal services supplied by the Canada Post Corporation.

Schedule IX, Part VII, section 1

Section 1 defines the terms "postage stamp" and "permit imprint" for purposes of this Part.

A "postage stamp" is defined as a stamp that is authorized by the Canada Post Corporation for use as evidence of the payment of postage. However, postage meter impressions, a permit imprint or any "business reply" indica or item bearing that indicia are not included in the definition of postage.

A "permit imprint" is an indicia that is unique to a particular mailer and that the Canada Post Corporation has authorized the mailer to use as evidence of the payment of postage according to an agreement between the Corporation and the mailer. Postage meter impressions or any "business reply" indicia or item bearing that indicia are not included in the definition of "permit imprint".

Schedule IX, Part VII, section 2

Section 2 sets out the place of supply rule for the sale of postage stamps and postage-paid cards, packages or similar items (other than an item bearing a "business reply" indicia) and for the mail delivery service for which the stamp or item is used.

Section 2 provides that the place of supply of the stamp or other item serving as evidence of the payment of postage and the mail delivery service for which it is used is made in a participating province if the stamp or item is delivered in that province to the recipient of the supply. However, the supply of the mail delivery service is not considered made in the province if the consideration for the supply is $5 or more and the address to which the mail is sent is not in a participating province.

In addition, the place of supply rule in section 2 does not apply where the supply of the mail delivery service is made under a bill of lading (for example, in the case of a priority-post courier service).

Instead, the service falls under the general place of supply rule for freight transportation services in Part VI of Schedule IX whereby the supply is made in the province to which the mail is sent, consistent with the treatment of transportation services by other modes supplied under bills of lading. This would be the case regardless of the method of payment.

Schedule IV, Part VII, section 3

Section 3 sets out the place of supply rule where payment of postage for a mail delivery service supplied by the Canada Post Corporation is evidenced by a postage meter impression. Generally, in this case, the supply of the mail delivery service is considered to be made in the province in which the postage meter is ordinarily located, determined at the time the recipient of the supply pays the Canada Post Corporation to "fill" the meter. However, the place of supply rule reflects the commercial practice that postage meter impressions are sometimes used as a method of payment for courier services supplied pursuant to a bill of lading. Those cases are excluded from the rule in section 3 and therefore fall under the general place of supply rule for freight transportation services in Part VI of Schedule IX. As a result, the supply of the courier service is taxed on the basis of the destination of the mail regardless of the method of payment.

Schedule IX, Part VII, section 4

Section 4 sets out the place of supply rule where payment of postage for a mail delivery service supplied by the Canada Post Corporation (otherwise than pursuant to a bill of lading) is evidenced by a permit imprint. The term "permit imprint" is defined in section 1 of this Part.

This place of supply rule reflects the commercial practice whereby a typically large-volume mailer enters into an agreement with the Canada Post Corporation under which the mailer is authorized to use an exclusive permit imprint as evidence of the payment of postage and to deposit the mail at an agreed-upon location or locations. In this case, the place of supply of the mail delivery service is considered made in a particular province if the mail is deposited by the recipient at a location in that province in accordance with the agreement.

Consistent with sections 2 and 3 of this Part, where the mail delivery service is supplied pursuant to a bill of lading, the service is not covered under section 4 but is dealt with in Part VI of Schedule IX as a freight transportation service for which the place of supply is determined on the basis of the destination of the mail, regardless of the method of payment.

Schedule IX, Part VIII Telecommunication Services

This Part describes the place of supply rules for supplies of telecommunication services made in Canada.

Schedule IX, Part VIII, section 1 Meaning of "Billing Location"

Section 1 of Part VIII of Schedule IX provides rules for determining when the "billing location" for a telecommunication service is considered to be in a province. The billing location is, in some cases, relevant to the determination of the place of supply of a telecommunication service under section 2 of this Part.

The billing location for a telecommunication service is considered to be in a province if the fee for the service is charged or applied by the telecommunications company to an account of the recipient that relates to telecommunications facilities ordinarily located in that province. The term "telecommunications facility" is newly defined in subsection 123(1).

Where the fee for the service is not charged or applied to an account that the recipient has with the telecommunications company, the billing location is considered to be in a province if the telecommunications facility used to initiate the service is located in that province.

Schedule IX, Part VIII, section 2 Telecommunication Service

Section 2 of Part VIII of Schedule IV sets out the rules for determining when a telecommunication service (other than a service of granting sole access to a telecommunications channel, which is dealt with in section 3 of this Part) is made in a province.

Section 2 provides that, where the telecommunication service consists of making telecommunications facilities available for use, the supply

of the service is made in a province if all of the facilities are ordinarily located in the province or, where not all of the facilities are located in the province, the invoice for the supply is sent to an address in the province.

In the case of other telecommunication services (other than those described in section 3 of this Part), the supply is considered to be made in a province when the telecommunication is both emitted and received in that province. Also, a supply is considered to be made in a province when the telecommunication is either emitted or received in the province and the billing location for the supply is in that province. Finally, the supply is considered to be made in a province if the telecommunication is emitted in the province and is received outside the province and the billing location for the supply is not in a province in which the telecommunication is emitted or received.

Schedule IX, Part VIII, section 3 Telecommunications Channel

Section 3 applies in the case of a supply of a telecommunication service of granting sole access to a telecommunications channel. The term "telecommunications channel" is defined in new subsection 136.4(1) to mean a telecommunications circuit, line, frequency, channel, partial channel or other means of sending or receiving a telecommunication but does not include a satellite channel.

Section 3 provides that a supply of a service of granting sole access to a telecommunications channel is made in a province if it is deemed under section 136.4 to be made in the province. In effect, a supply of granting sole access to a particular telecommunications channel is divided into separate supplies if telecommunications are to be transmitted between two provinces via the channel. The supplier is deemed to have made a separate supply of the service in each of those provinces as well as in any other provinces in between. The consideration for the deemed supply in each province is calculated based on the distance over which the telecommunication would be transmitted in the province if the telecommunication were transmitted by means of cable and related facilities located in Canada that connected, in a direct line, the transmitters for receiving and emitting the telecommunications.

Schedule IX, Part IX Deemed Supplies and Prescribed Supplies

Part IX of Schedule IX sets out a number of override rules relating to Schedule IX.

Schedule IX, Part IX, section 1 Deemed Supplies of Property

This section enumerates a number of provisions in the Act generally relating to circumstances in which a supply of property is deemed to have been made, such as where the inventory of a small supplier is deemed to be sold and acquired by the supplier when the supplier becomes a registrant. Section 1 provides that, notwithstanding the rules in any other Part of Schedule IX, a supply of property that is deemed to have been made or received at any time under any of the specified provisions is considered to be made where the property is situated at that time.

Schedule IX, Part IX, section 2 Supplies Deemed to be Made in a Province

Section 2 overrides the rules in any other Part of Schedule IX in the case of supplies of property or services that are deemed to be made in a particular province under Part IX of the Act or regulations made under Part IX of the Act. For example, new subsection 163(2.1) deems the provincially taxable portion of a tour package in respect of a participating province to be made in that province. This overrides the rules of other Parts of Schedule IX.

Schedule IX, Part IX, section 3 Prescribed Supplies

Section 3 overrides the rules in the other Parts of Schedule IX in the case of supplies of property or services that are prescribed by regulation to be made in a particular province.

Schedule X Non-taxable Property and Services

New Schedule X to the Act lists property and services that are not taxable under new Division IV.1 of Part IX which imposes the provincial component of the HST on a self-assessment basis on certain supplies in respect which the suppliers are not required to collect that provincial component and in respect of certain importations and property brought into a participating province from

a non-participating province. Schedule X is added as of April 1, 1997. However reference should be made to the application and transition rules in new section 349 to determine the property and services to which new Schedule X applies.

Schedule X, Part I Non-taxable Goods

Although new subsection 220.05(1) provides for a general requirement to self-assess where tangible personal property is brought into a participating province from a non-participating province, by virtue of subsection 220.05(3), this requirement does not apply in respect of property included in Part I of new Schedule X to the Act. For the most part, this Part provides for relief from the provincial portion of the HST in circumstances in which the GST would be relieved if the goods were imported into Canada. Accordingly, the provisions of Part I of Schedule X mirror many of the existing provisions of Schedule VII to the Act. For example, most of the tariff headings listed in section 1 of Schedule VII have either been cross-referenced in section 1 of Part I of Schedule X or have been paralleled in separate sections in this Part. In addition, the following special provisions ensure that there is no requirement to self-assess in the following situations:

- in most cases where the property is brought into a participating province by a registrant for consumption, use or supply exclusively in commercial activities (section 22);

- to prevent double application of the provincial portion of the HST where it applies under another section (sections 18 and 20); and

- in respect of particular types of property (e.g., specified motor vehicles acquired from a non-registrant – section 24, and prescribed property – section 23)

Schedule X, Part I, section 1 Conveyances, Military Goods, International Publications

This section parallels section 1 of Schedule VII in that it provides for relief from the requirement to self-assess under sections 220.05 and 220.06 in circumstances where the property in question is included in any of tariff headings 98.01 (certain foreign-based conveyances involved in international commercial transportation), 98.10 (certain

arms, military stores, munitions and similar goods) and 98.12 (UN or NATO publications and books received from free lending libraries located abroad and subject to return under Customs supervision).

Schedule X, Part I, section 2 Conveyances Temporarily Brought In

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain conveyances that are temporarily brought into a participating province by a resident of that province for use in the international non-commercial transportation of the resident. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.02.

Schedule X, Part I, section 3 Conveyances and Baggage Temporarily Brought In

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain conveyances and baggage that are temporarily brought into a participating province by non-residents of the province. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.03.

Schedule X, Part I, section 4 Arms, Military Stores, Munitions

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain military goods that are brought into a participating province by the Canadian Government as replacement of or in exchange for, similar goods loaned to a foreign government. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.11.

Schedule X, Part I, section 5 Charitable Clothing or Books; Photographs

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods that are

brought into a participating province for charitable purposes, or photographs brought in for purposes other than sale. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.15.

Schedule X, Part I, section 6 Casual Donations and Gifts valued at less than $60

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain donations or gifts of property (other than alcohol, tobacco and advertising products), where the fair market value of the property does not exceed $60. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.16.

Schedule X, Part I, section 7 Convention and Exhibition Goods

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods that are brought into a participating province for a period not exceeding six months, where the goods are brought in for purposes of display at certain conventions or exhibitions. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.19.

Schedule X, Part I, section 8 Specified Temporary Importations from Mexico or the United States

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods that are brought into a participating province after having been imported on a temporary basis from Mexico or the United States. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff items 9823.60 (goods intended for display or demonstration), 9823.70

(commercial samples), 9823.80 (advertising films) and 9823.90 (conveyances or containers used in the international traffic of goods).

Schedule X, Part I, section 9 Property of Returning Residents

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of certain goods brought into a participating province by persons who are returning to the province to establish or re-establish permanent residence there for a period of at least one year. In order to qualify for relief, the property in question must have been for the person's personal or household use and must have been owned and in the individual's possession before being brought into the participating province. Where the property was owned and possessed for less than 31 days prior to being brought into the participating province, relief will be available only where the person can demonstrate that non-recoverable retail sales tax was paid on the goods in a non-participating province.

It should be noted that relief will not be available under this section for persons who are entering a participating province to reside there as a student or to be employed there on a temporary basis for a period of less than 36 months. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff headings 98.05 and 98.07.

Schedule X, Part I, section 10 Personal and Household Effects of Deceased Persons

This section provides for relief of the taxes imposed under sections 220.05 and 220.06 in respect of personal and household effects of a deceased person or such effects received by a person in anticipation of the death of another person, where the property is given as a gift or bequest to an individual who is resident in a participating province. The relief provided under this section is comparable to that which is provided for purposes of importations into Canada under section 1 of Schedule VII, through the inclusion in that section of tariff heading 98.06.

Schedule X, Part I, section 11 Prizes and Trophies Won Abroad

This section allows a person who is awarded or wins a medal, trophy or other prize (other than a merchantable good, such as an automobile) outside a participating province to bring it into a participating province without the requirement to self-assess tax under Division IV.1. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 2 of Schedule VII.

Schedule X, Part I, section 12 Tourist Literature

This section allows tourist literature of governments or other organizations described in the section to be brought into a participating province without a requirement to self-assess tax under section 220.05 or 220.06 when such literature is for public distribution without charge. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 3 of Schedule VII.

Schedule X, Part I, section 13 Property Donated to Charities or Public Institutions

This section provides for property that has been donated outside a participating province to be subsequently brought into that province by a charity or public institution without a requirement to self-assess tax under section 220.05 or 220.06. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 4 of Schedule VII.

Schedule X, Part I, section 14 Replacement Parts Under Warranty

This section relieves from the tax that would otherwise be required to be self-assessed under section 220.05 or 220.06 warranty replacement parts sent to an individual in Canada. This relief is provided on the premise that the individual would previously have paid the provincial portion of the HST on the cost of the original parts purchased or brought into the participating province, along with any implicit warranty costs. Taxing the replacement parts provided free under a warranty would effectively result in double taxation. The relief provided under this section parallels that which is provided for

purposes of importations into Canada under section 5 of Schedule VII.

Schedule X, Part I, section 15 Zero-rated Goods

This section ensures that certain property the supply of which in Canada is zero-rated is likewise not subject to the provincial portion of the HST under section 220.05 or 220.06 when the property is brought into a participating province. The relief provided under this section parallels that which is provided for purposes of importations into Canada by virtue of section 6 of Schedule VII.

Schedule X, Part I, section 16 Reusable Containers

This section provides for relief from self-assessment of the tax which would otherwise be payable when certain containers are brought into a participating province in circumstances in which the containers are similar in quantity and quality to containers that previously have been removed from the participating province. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 9 of Schedule VII.

Schedule X, Part I, section 17 Money or Financial Instruments

This provision confirms, for greater certainty, that such things as stock certificates, bond certificates, promissory notes and money are not taxable under section 220.05 or 220.06 when brought into a participating province. The relief provided under this section parallels that which is provided for purposes of importations into Canada under section 10 of Schedule VII.

Schedule X, Part I, section 18 Exemption Where Taxable Under Other Provisions

Section 18 ensures that property is not subject to the provincial portion of the HST under section 220.05 or 220.06 where it is subject to the provincial portion of the HST under another charging section. It therefore relieves the requirement for a person to self-assess tax under either of sections 220.05 or 220.06 in circumstances where tax was already payable in respect of a supply of the property under new subsection 165(2) or under new section 218.1. Similar relief from double taxation in respect of certain imported goods is provided

under section 20 of Part I of Schedule X. As well, sections 220.05 and 220.06 themselves provide for relief in cases where self-assessment is required under other provisions in Division IV.1.

Schedule X, Part I, section 19 Leases

As a result of this section, there will be no requirement to self-assess tax under Division IV.1 in respect of property brought into a participating province from a non-participating province where the property has been supplied in a non-participating province by way of lease licence or similar arrangement under which continuous possession or use is provided for a period in excess of 3 months. In such circumstances, the place of supply rules in new Schedule IX provide that the supply is considered made where the property is to be ordinarily located as determined at the time the supply is made. (Note that new section 136.1 deems there to be a separate supply for each lease interval or period to which a payment is attributable and deems when that supply is considered to be made).

In respect of the lease interval during which the property is brought into a participating province, relief from self-assessment may be provided by either section 18 or section 19 of Part I of Schedule X. Where, according to the place of supply rules, the property is supplied in a non-participating province, relief from self-assessment is provided by section 19, where GST is payable on the supply. Where the property is supplied in a participating province, the requirement to self-assess is relieved under section 18 of Part I of Schedule X because tax under subsection 165(2) would have been payable in respect of the supply.

In respect of subsequent lease intervals, the place of supply rules (e.g., the place where the separate supply of the property for the lease interval is made) will determine whether tax is payable under subsection 165(2).

With respect to leases for a period of 3 months or less, there is a requirement to self-assess tax under section 220.05 or 220.06 where the property is delivered in a non-participating province and then brought into a participating province during the lease or licence period. However, where the property was delivered in a participating province and is brought into another participating province during the lease or licence period, the requirement to self-assess tax under

section 220.05 or 220.06 is relieved under section 18 of Part I of Schedule X because tax under subsection 165(2) would have applied to the supply.

Schedule X, Part I, section 20 Imported Goods

This section provides relief from the requirement to self-assess tax in the case of certain imported goods that are brought into a participating province. There is no requirement to self-assess, for example, where the circumstances of the importation were such that the goods were relieved of tax under Schedule VII. Since such goods would also be relieved of the tax imposed under section 212.1, it is appropriate that they bear no tax when they are brought into a participating province.

In addition, in order to avoid double taxation, there is no requirement to self-assess tax under section 220.05 or 220.06 in cases where goods that have been brought into a participating province have already borne non-recoverable tax under section 212.1.

Schedule X, Part I, section 21 Property Used In, and Removed From, Participating Province

Where a person brings property into a participating province after previously having used the property in a participating province and then removed it, any liability for the provincial portion of the HST would already have arisen before the property was removed from the participating province. As a consequence, section 21 applies to ensure that tax is not payable again, through self-assessment under section 220.05 or 220.06, in these circumstances as long as the tax that previously became payable was not recovered by way of rebate under new section 261.1.

Schedule X, Part I, section 22 Property Acquired for Use Exclusively in Commercial Activity

This section provides that there is no requirement to self-assess tax in circumstances where tangible personal property (other than a specified motor vehicle or a returnable container within the meaning of subsection 226(1)) is brought into a participating province by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant, provided that the registrant's

net tax is not determined under the simplified accounting method in section 225.1 for charities or Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Schedule X, Part I, section 23 Prescribed Property

Section 23 provides for relief from self-assessment on prescribed property brought into a participating province, in prescribed circumstances. The regulations for purposes of this section are intended to parallel those that apply for purposes of importations into Canada by virtue of section 8 of Schedule VII (i.e., for purposes of certain temporary importations).

Schedule X, Part I, section 24 Motor Vehicles

This section ensures that there is no requirement to self-assess tax under section 220.05 or 220.06 in circumstances where a specified motor vehicle is brought into a participating province by a person after having been acquired in a non-participating province in circumstances in which GST was not payable by the person. This results in the same tax treatment as if the vehicle were acquired in the participating province from a person not required to charge tax.

Schedule X, Part I, section 25 Used Mobile or Floating Homes

By virtue of the expanded definition of "tangible personal property" in section 220.01, mobile and floating homes are subject to self-assessment under Division IV.1 when they are brought into a participating province. However, section 25 of Part I of Schedule X ensures that there is no requirement to self-assess tax under section 220.05 or 220.06 where a mobile or floating home is brought into a participating province after having been used or occupied in Canada by any individual as a place of residence. This effectively parallels the relief from tax which would apply to supplies of used floating or mobile homes made in a participating province.

Schedule X, Part I, section 26 Exclusive Products of Direct Sellers

Under the alternate collection method for direct selling organizations, which is provided for in sections 178.3 and 178.4 of the Act, tax on the direct seller’s exclusive products is accounted for at the direct seller or distributor level, based on the suggested retail price of the

products. Accordingly, where this method is in use, independent sales contractors of the direct seller who are not distributors who have elected to do this accounting are not responsible for remitting tax on their sales of the products to consumers. Section 26 of Part I of Schedule X ensures that such independent sales contractors are similarly not required to self-assess tax under section 220.05 or 220.06 when such products are brought into a participating province at a time when an election to use the alternate collection method is in effect.

Schedule X, Part II, section 1 Exclusive Use in Commercial Activities

This section provides that there is no requirement to self-assess tax under section 220.08 in circumstances where intangible personal property or a service is acquired by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant, provided that the registrant's net tax is not determined under section 225.1 or Part IV or V of the *Streamlined Accounting (GST) Regulations*.

Schedule X, Part II, section 2 Zero-rated Supplies

This section ensures that supplies of intangible personal property or services that are zero-rated for purposes of the tax under Division II of Part IX are likewise not subject to the provincial portion of the HST under Division IV.1.

Schedule X, Part II, section 3 Services in Respect of Goods Removed

This section applies to relieve the requirement to self-assess tax under section 220.08 on a service in respect of tangible personal property that is removed from the participating provinces within a reasonable time after the service is performed, where the property is not consumed, used or supplied in the participating provinces after the service is performed and before the property is removed. The relief provided under this section parallels that which applies for purposes of the tax under Division IV in relation to services performed in respected of exported goods by virtue of subparagraph (*a*)(iv) of the definition "imported taxable supply" in section 217.

Schedule X, Part II, section 4 Litigation Services

This section relieves the requirement to self-assess tax under section 220.08 in respect of services rendered in connection with, and after the commencement of criminal, civil or administrative litigation conducted outside the participating provinces. This is consistent with the treatment of such services for purposes of the tax under Division IV as a result of the exclusion in subparagraph (*a*)(vi) of the definition "imported taxable supply" in section 217.

Schedule X, Part II, section 5 Transportation Services

This section relieves the requirement to self-assess tax under section 220.08 in respect of transportation services. This is consistent with the treatment of such services for purposes of Division IV as a result of the exclusion under subparagraph (*a*)(v) of the definition "imported taxable supply" in section 217.

The provincial component of the HST is imposed on transportation services only under subsection 165(2) if it is determined, through the application of the place of supply rules in new Schedule IX, that the services have been supplied in a participating province.

Schedule X, Part II, section 6 Telecommunication Services

Section 6 provides a special exception to the requirement to self-assess tax under section 220.08 in the case of telecommunication services. The provincial component of the HST is imposed on telecommunication services only under subsection 165(2) if it is determined, through the application of the place of supply rules in new Schedule IX, that the services have been supplied in a participating province.

Schedule X, Part II, section 7 Prescribed Supplies

Section 7 provides for relief from the application of the tax under section 220.08 in the case of prescribed supplies acquired in prescribed circumstances, subject to any terms or conditions that may also be prescribed. The regulations made by the Governor in Council under this section are intended to address particular circumstances where it is determined to be appropriate to provide for relief from self-assessment in respect of the provincial component of the HST.

Clause 255

Property Brought Into a Participating Province

ETA
Definition "related convention supplies";
141.01(6)(*b*); 271(*b*); 272(*a*)

The Schedule referred to in clause 255 amends the above-noted provisions in Part IX of the *Excise Tax Act* to replace references to property "acquired or imported" with references to property "acquired, imported or brought into a participating province" since the bringing into a participating province of property is another occurrence that can result in tax becoming payable (under new Division IV.1).

These amendments come into force on April 1, 1997.

Part III

TRANSITIONAL PROVISIONS

Clause 256

Deregistration of Public Service Bodies

Amendments to sections 148 and 148.1 of the *Excise Tax Act,* under clauses 9 and 10 respectively, increase the thresholds for determining which public service bodies qualify as "small suppliers" under the GST and are thereby not required to be registered to collect the tax. These amendments enable many bodies that are currently registered for GST purposes to have their registration cancelled. Clause 256 provides that as long as they make their request within the two-year period commencing on April 23, 1996, they will not be subject to change-of-use rules provided for in section 171 of the Act. In addition, the clause allows public service bodies that have been registered for less than one year to de-register under these circumstances. However, public service bodies who have their registration cancelled within the two-year period will avoid the change-of-use rules only as long as that registration was not as a

result of an earlier request to be registered made within the same period.

Clause 256 also provides that, since public service bodies that de-register under the specified circumstances would not be required to self-assess tax in respect of property held at the time they de-register, they would not be entitled to claim input tax credits in respect of that property should they subsequently register again for the tax.

Clause 257

Small Supplier Divisions

The small supplier thresholds under Part IX of the *Excise Tax Act* are increased for public service bodies, effective April 23, 1996. This enables more public service bodies to have their divisions that fall below the threshold be designated as "small supplier divisions" under section 129 of the Act. As such, they would not be required to collect tax on supplies made through the division and would not be entitled to claim input tax credits for inputs used in making those supplies. Clause 257 provides that where this designation occurs within the two-year period commencing on April 23, 1996, the body will avoid the self-assessment rules that normally apply when a division becomes a small supplier division.

This clause also provides that, to the extent that property of the division held at the time of its designation continues to be used in that division, that use will not be considered to be use in a small supplier division. This avoids the application of the usual deeming rule under which property is considered to be used otherwise than in commercial activities by virtue of it being used in a small supplier division. For capital property, this ensures that the designation of the division does not cause a deemed change in use of the property. For example, if the new small supplier division’s activities were commercial activities and capital property of that division were transferred for use primarily in other commercial activities outside the division, there would not be any change in use. However, actual changes in use will be recognized in the normal manner, such as if property used primarily in a commercial activity of the new small supplier division subsequently began to be used primarily in an exempt activity.

Clause 258

Charities and Change in Use

This clause provides that, where the enactment of an amendment to the *Excise Tax Act* triggers a change in use of property of a charity (as newly defined in subsection 123(1)), and the charity is thereby deemed to have made a supply pursuant to the change-in-use provisions in Part IX of the Act, tax on that supply will be equal to zero. For example, an amendment to Part IX may exempt certain supplies made by a charity. On the day on which the amendment takes effect, the charity will be considered to have ceased or reduced its use of property in a commercial activity to the extent that the property is used in making the newly exempt supply. However, the change-in-use provisions will not result in the charity having to self-assess tax because the amount of such tax will be considered to be zero.

This transitional rule applies only to changes in use that occur as a result of the enactment of an amendment, that is, changes in use that are triggered on the day the amendment comes into force. Since the change-in-use provisions will still apply to deem the charity to have made and received a supply of the property, the charity will continue to be subject to any changes in use that occur subsequent to the day on which the amendment becomes effective.

Clause 259

Things Sent By Mail

Subsection 334(1) of the *Excise Tax Act* provides that anything sent by first class mail or its equivalent is deemed to be received by the person to whom it was sent on the day it was mailed. Under clause 259, this rule does not apply for the purpose of determining when the returns and rebate applications referred to in the provisions listed in this clause are considered to have been received by the Minister of National Revenue. Therefore, for example, if one of the listed provisions refers to a rebate application that was received by the Minister before April 23, 1996, it is referring to an application actually received at a Revenue Canada office before that day.

Clause 260

Application to Imported Goods

Clause 260 ensures that where an amended or newly enacted provision is to apply to goods imported on or after a particular day, it will also apply to goods accounted for under section 32 of the *Customs Act* on or after that day, even if they were physically imported before that day.

Part IV

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

Clause 261

Definition "sales tax harmonization agreement"

FPFA
2(1)

Subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* is amended by adding the definition "sales tax harmonization agreement". This term is used in new Part III.1 of that Act, added by clause 262, and in section 40 of that Act, as amended by clause 264. It refers to the agreements, authorized or ratified and confirmed by that new Part, between the Government of Canada and the governments of provinces participating in the Harmonized Sales Tax system.

Pursuant to clause 265, this new definition applies as of March 28, 1996.

Clauses 262 to 266

Sales Tax Harmonization Agreements

FPFA
8.2 to 8.7; 32; 40

Proposed new Part III.1 of the *Federal-Provincial Fiscal Arrangements Act* provides the authority for federal-provincial agreements respecting the harmonization of sales tax systems, including

- the accounting for, collection, administration and enforcement of the harmonized taxes;

- the sharing of information gathered in the administration and enforcement of Acts imposing taxes or relating to the advertisement of prices in respect of taxable property and services or Acts providing for rebates, refunds or reimbursements of sales taxes;

- the transition to the harmonized tax system;

- payments, and the eligibility for payments, by the Government of Canada to the government of the province in respect of the revenue from, and the transition costs incurred in converting to, the system of taxation contemplated under the agreement and to which the province is entitled under the agreement;

- the payment by the respective governments, and their agents and subservient bodies, of the sales taxes under the harmonized tax system, the accounting for the taxes so paid and the compliance by them with the legislation imposing the tax;

- the enactment, administration and enforcement of tax-inclusive pricing laws in respect of property and services taxable under the harmonized tax system; and

- the administration and enforcement of laws respecting the rebate, refund or reimbursement of sales taxes paid in respect of certain property or services.

Authority is provided for the payment out of the Consolidated Revenue Fund of the portion of the revenues raised from the harmonized system of taxation as is allocable to the province in accordance with the sales tax harmonization agreement, including advances in respect of those amounts.

Authority is also provided for the payment of amounts in respect of rebates, refunds or reimbursements provided for under provincial Acts that are administered federally in accordance with a sales tax harmonization agreement. This would apply to the provincial rebate in respect of printed books and other qualifying publications in the participating provinces of Nova Scotia, New Brunswick and Newfoundland.

Consequential amendments are also made to other provisions of the Act to include a reference where appropriate to the sales tax harmonization agreements.

The consequential amendment to section 32 of the Act respecting payments made to a participating province applies as of October 1, 1996. The remainder of the amendments to the Act apply as of March 28, 1996.

PART V

INCOME TAX ACT

Clause 267

Employee Benefits

ITA
6(1)(*e*.1), and 6(7)

Paragraph 6(1)(*e*.1) of the *Income Tax Act* applies where an individual receives a benefit in a taxation year that arises from the provision of property or a service to the individual or person related to the individual and that is required under paragraph 6(1)(*a*) or (*e*) of that Act to be included in computing the income of the individual for

that taxation year. Existing paragraph 6(1)(*e*.1) of that Act then requires that, except where the supply of the property or service is a zero-rated or exempt supply under Part IX of the *Excise Tax Act*, an additional amount be added to the income of the individual equal to 7 per cent of the value of the benefit net of any applicable provincial sales tax in respect of the property or service.

Under the revised treatment of employee and shareholder benefits, instead of a separate add-on of a GST component of the income tax benefit, any benefit to be included in income under section 6 is to be determined inclusive of the tax under Part IX of the *Excise Tax Act* paid by the employer or corporation for the property or service which gives rise to the benefit. This is achieved by repealing paragraph 6(1)(*e*.1) and amending subsection 6(7) of the *Income Tax Act* to provide that, where the cost of purchasing or leasing a property is taken into account in computing a benefit under section 6 of the Act, any tax on the cost or lease payment must be included in the calculation of the benefit. The calculation must include any tax under Part IX of the *Excise Tax Act* or provincial tax actually payable by the employer or corporation as well as such tax that would have been payable but for the fact that the employer or corporation is exempt from the payment of the tax because of the nature of the employer or corporation (e.g., where the employer is a provincial government) or the nature of the use of the property (e.g., if a provincial tax exemption applied to the purchase based on the use of the property).

These amendments apply to the 1996 and subsequent taxation years.

Clause 268

Automobile Benefits to Partners

ITA
12(1)(*y*)

Paragraph 12(1)(*y*) provides for the inclusion in the income of a partner for a taxation year the value of a benefit arising from the partnership making an automobile available to the partner. Such a benefit is calculated in the same manner as a similar employee benefit. This paragraph is amended by deleting the reference to

paragraph 6(1)(*e*.1), which provides for the additional inclusion of an amount equal to GST on the benefit. Paragraph 6(1)(*e*.1) is repealed since the benefit under paragraph 6(1)(*e*) is to be determined on a tax-included basis.

This amendment applies to the 1996 and subsequent taxation years.

Clause 269

Shareholder Benefits

ITA
15

Section 15 of the *Income Tax Act* provides that the value of a benefit in respect of an automobile made available to a shareholder is to be determined in the same manner as the value of similar benefits to employees. The section is amended as a consequence of amendments to section 6 of that Act which provide that any benefit to be included in employment income is to be determined inclusive of any tax payable by the employer. Accordingly, subsections 15(1.3) and (1.4), which currently provide that the benefit is to be calculated on a tax-excluded basis with a separate add-on of an amount equal to the GST, are replaced by new subsection 15(1.3) which provides that where the cost to a person of purchasing or leasing a property or service is taken into account in determining an amount required under section 15 to be included in income, that cost shall include any tax payable in respect of the property or service by the person or that would have been payable if the person were not exempt from the payment of the tax.

In keeping with these changes, subsection 15(5) is also amended to reference subsection 6(7) and ensure that the rule requiring the value of the benefit to be calculated on a tax-included basis applies for purposes of the calculation of shareholder benefits under section 15.

These amendments apply to the 1996 and subsequent taxation years.

PART VI

DEBT SERVICING AND REDUCTION ACCOUNT ACT

Clause 270

Payments to Participating Provinces

DSRA
5

Generally, revenues raised from the tax imposed under Part IX of the *Excise Tax Act* are required to be credited to the Debt Servicing and Reduction Account as opposed to the Consolidated Revenue Fund. This amendment provides an exception for the amounts raised from the imposition of the HST that are authorized to be paid to participating provinces under new section 8.4 or 8.5 of the *Federal-Provincial Fiscal Arrangements Act* (see commentary on clause 262) in accordance with Sales Tax Harmonization Agreements entered into between the Government of Canada and the governments of participating provinces.

This amendment comes into force on Royal Assent.

PART VII

AN ACT TO AMEND THE EXCISE TAX ACT

Clause 271

GST Implementation Rules

S.C., 1990, c. 45, section 12

Subsection 12(2) of the Act that implemented the GST sets out the application rules for Part IX of the *Excise Tax Act* under which the GST is imposed. That subsection is amended as a consequence of amendments to section 182 of Part IX (see commentary on clause 32). That section applies tax to any amount that is paid or forfeited or by which a debt or other obligation is reduced or

extinguished as a consequence of a breach, modification or termination of an agreement for a taxable supply.

The amendment to the GST application rules ensures that section 182 applies with respect to such amounts paid, forfeited, reduced or extinguished after 1990, despite when the agreement for the supply was entered into. This application rule is not necessary under the existing legislation because existing subsection 182(1) deems a new supply to be made and the transitional rules for the GST specify that the tax applies to any supply deemed to have been made. In contrast, amended subsection 182(1) treats the amount paid or forfeited, or by which the debt or obligation is reduced or extinguished, as consideration for the original supply.

This amendment comes into force on April 24, 1996.

PART VIII

AN ACT TO AMEND THE EXCISE TAX ACT

Clause 272

Free Supplies

S.C., 1994, c. 9, subsection 4(2)

The coming into force provision for the amendment that added subsection 141.01(4) to Part IX of the *Excise Tax Act* relating to "free supplies" is amended so that the subsection applies, without exception, as of January 1, 1991.

Part IX

INCOME TAX BUDGET AMENDMENT ACT

Clause 273

De Minimis Financial Institutions

S.C., 1996, c. 21, section 69

The *Income Tax Budget Amendment Act*, 1996 contained amendments that had the effect of requiring certain partnerships, among others, to adopt, for income tax purposes, a fiscal year for the partnership's business that coincided with a calendar year, beginning with the 1996 calendar year. Generally, the fiscal year of a partnership for GST purposes is the same as the fiscal year of the business of the partnership for income tax purposes. However, a special transitional rule deferred the change in fiscal year for GST purposes until the 1997 calendar year. For any affected partnership, this resulted in a short fiscal year, for GST purposes, ending on December 31, 1996.

This short year would distort the test under section 149 of the *Excise Tax Act* of whether the partnership is a *de minimis* financial institution throughout its 1997 fiscal year, since that test is based on the preceding taxation year. To address this, section 69 of the *Income Tax Budget Amendment Act* contains a special rule for the purpose of determining if an affected partnership is a *de minimis* financial institution for GST purposes throughout its taxation year beginning on January 1, 1997. Clause 273 amends that special transitional rule to conform to the new structure of section 149, as amended by clause 11. There is no substantive change in the transitional rule itself.