Explanatory Notes Relating to the Income Tax Act, the Excise Tax Act and Related Acts and Regulations

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The Honourable James M. Flaherty, P.C., M.P.
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Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Excise Tax Act* and related acts and regulations. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable James M. Flaherty, P.C., M.P.
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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Clause 1

Short Title

The short title of this Act is the *Jobs, Growth and Long-term Prosperity Act*.

Part 1

Amendments to the Income Tax Act, a Related Act and the Income Tax Regulations

Income Tax Act

Clause 2

Definitions of certain expressions

ITA
76(5)

Section 76 of the *Income Tax Act* (the Act) provides special rules which apply in circumstances where a taxpayer has received a security, right or debt in consideration for the disposition of all or part of an existing debt that, if paid, would have been included in the taxpayer's income.

Subsection 76(5) defines a number of terms (e.g., "cash purchase ticket" and "grain") for the purposes of subsection 76(4). Under subsection 76(4), if a cash purchase ticket is issued upon the delivery to an elevator of certain listed grains produced in designated areas of Canada and the holder of the cash purchase ticket is entitled to payment after the end of the taxation year in which the grain is delivered, then the taxpayer may exclude the amount stated on the cash purchase ticket from income for the taxation year in which the grain was delivered, and instead include it in income for the immediately following taxation year.

Consequential on the implementation of the *Marketing Freedom for Grain Farmers Act*, subsection 76(5) is amended. The geographical restriction is removed; accordingly, subsection 76(4) applies to the grains listed in subsection 76(5) of the Act and produced anywhere in Canada. Also, the definition "grain" is updated to include canola.

These amendments apply in respect of cash purchase tickets and other forms of settlement issued to a taxpayer after December 14, 2011.

Clause 3

Governor General

ITA
81(1)

Paragraph 81(1)(*n*) of the Act provides that income received from the office of the Governor General is not to be included in computing the Governor General's income.

This paragraph is amended to provide that salary under the *Governor General's Act*, received from the office of the Governor General is to be included in computing the Governor General's income.

This amendment applies to the 2013 and subsequent taxation years.

Clause 4

Eligible dividends

ITA
89

Section 89 of the Act contains rules that are relevant for determining whether a corporation can pay a dividend to its shareholders that is an eligible dividend. In the hands of an individual resident in Canada, a taxable dividend that is an eligible dividend qualifies for the enhanced dividend tax credit (enhanced DTC) while a taxable dividend that is not an eligible dividend qualifies for the regular dividend tax credit (regular DTC).

In general terms and subject to certain conditions, an eligible dividend is a taxable dividend that is received by a person resident in Canada and that is paid by a corporation resident in Canada from income that has been subject to tax at the general corporate income tax rate. One condition is that the corporation has to designate the entire dividend, in the manner set out in subsection 89(14), as an eligible dividend at the time it is paid. If the corporation fails to designate a dividend as an eligible dividend, it cannot file a late eligible dividend designation, even if it had sufficient income to support the designation. In such a case, the dividend would only qualify for the regular DTC.

Two amendments are made to section 89 in respect of the current eligible dividend designation mechanism in order to allow:

- a portion of a dividend to be designated as an eligible dividend; and
- a late designation of an eligible dividend.

These amendments apply to dividends paid after March 28, 2012.

Definitions

ITA
89(1)

The definition “eligible dividend” in subsection 89(1) of the Act identifies those dividends that qualify, in the hands of an individual resident in Canada, for the enhanced DTC.

The definition is amended to allow for a portion of a taxable dividend to be an eligible dividend. The portion that is designated to be an eligible dividend will qualify for the enhanced DTC and the remaining portion will qualify for the regular DTC. Any portion of a taxable dividend that is designated as an eligible dividend could be subject to the current excessive eligible dividend designations rules, where applicable.

Dividend designation

ITA
89(14)

Subsection 89(14) of the Act provides that a corporation designates a dividend it pays at any time to be an eligible dividend by notifying in writing at that time each person or partnership to whom it pays the dividend that the dividend is an eligible dividend.

Subsection 89(14) is amended to allow for a portion of a taxable dividend to be designated as an eligible dividend. The corporation making the designation will be required to notify in writing each person or partnership to whom the dividend is paid that the portion of the dividend is an eligible dividend.

Late designation

ITA
89(14.1)

New paragraph 89(14.1) of the Act provides that a corporation that has not made an eligible dividend designation in respect of a taxable dividend that it has paid, despite having had sufficient income to make such a designation, can make a late eligible dividend designation, subject to certain conditions. Firstly, the corporation has to make the late designation within the three-year period immediately following the day on which the designation was first required to be made. Secondly, the Minister must be of the opinion that accepting the late designation would be just and equitable in the circumstances, taking into account the interests of affected shareholders and to the extent to which the corporation actually had income taxed at the general corporate income tax rate when the dividend was paid.

Clause 5

Investment tax credit

ITA
127

Section 127 of the Act permits deductions in computing tax payable in respect of logging taxes, political contributions and the investment tax credit (ITC).

Definitions

ITA
127(9)

Subsection 127(9) of the Act provides various definitions relevant for the purpose of calculating the ITC of a taxpayer.

"flow-through mining expenditure"

The definition "flow-through mining expenditure" in subsection 127(9) defines the expenses ("eligible expenses") that qualify for the 15% ITC in respect of specified surface "grass-roots" mineral exploration. Under the existing definition, the credit is available only in respect of eligible expenses renounced under a flow-through share agreement made after March 2011 and before April 2012.

The definition is amended to include eligible expenses incurred by a corporation after March 2012 and before 2014, where the expenses are incurred under a flow-through share agreement made after March 2012 and before April 2013.

Clause 6

Registered disability savings plan

ITA
146.4

Budget 2012 announced a temporary measure to enable certain family members to become the holder of a registered disability savings plan (RDSP) for an adult individual who might not be contractually competent to enter into an RDSP. The amendments to section 146.4 of the Act described below give effect to this measure. Generally, the amendments come into force on Royal Assent and will expire at the end of 2016. However, an individual who becomes a holder of an RDSP under these rules will generally be able to remain holder of the RDSP after 2016.

Definitions

ITA
146.4(1)

Subsection 146.4(1) of the Act provides definitions that are relevant for the purposes of registered disability savings plans (RDSPs). Several definitions are being amended to implement the Budget 2012 measure.

"disability savings plan"

In general terms, a "disability savings plan" of a beneficiary is an arrangement between a trust company (referred to as the issuer of the disability savings plan) and one or more entities listed in subparagraph (*a*)(ii) of the definition:

- the beneficiary;
- any entity that is, at the time the arrangement is entered into, a qualifying person in relation to the beneficiary; and
- a legal parent of the beneficiary who is not, at the time the arrangement is entered into, a qualifying person in relation to the beneficiary, but who is, at that time, a holder of another registered disability savings plan of the beneficiary.

When one of these entities enters into a disability savings plan with the issuer, the entity becomes a "holder" of the plan.

A disability savings plan that satisfies the conditions set out in subsection 146.4(2) is an RDSP.

Subparagraph (*a*)(ii) of the definition "disability savings plan" is amended to expand the list of entities who may establish a disability savings plan of a beneficiary, following the introduction of the new definition "qualifying family member" and new paragraph (*c*) of the definition "qualifying person" in subsection 146.4(1).

New clause (*a*)(ii)(B.1) allows, before 2017, a qualifying family member of a beneficiary who is a qualifying person in relation to the beneficiary to become the holder of a disability savings plan of the beneficiary (i.e., establish a disability savings plan of a beneficiary in certain circumstances).

Under new clause (*a*)(ii)(B.2), a qualifying family member of a beneficiary who is not a qualifying person in relation to the beneficiary but is a holder of an existing RDSP of the beneficiary may establish a disability savings plan of the beneficiary. This provision enables a holder of an RDSP to switch from one plan issuer to another without jeopardizing their status as holder of the RDSP.

Consequential on the introduction of new clauses (*a*)(ii)(B.1) and (B.2), clause (*a*)(ii)(B) is amended to preserve the existing rules regarding the other entities who may establish disability savings plans.

These amendments come into force on Royal Assent.

"qualifying family member"

Subsection 146.4(1) is amended to introduce a new definition "qualifying family member" in relation to a beneficiary of a disability savings plan. Under the Budget 2012 measure, qualifying family members are the individuals who may become holders of RDSPs for adult beneficiaries whose contractual competence is in doubt.

At any time, a qualifying family member in relation to a beneficiary is an individual who, at that time, is a legal parent of the beneficiary or a spouse or common-law partner of the beneficiary who is not living apart and separate from the beneficiary because of a breakdown of their marriage or common-law partnership.

The definition "qualifying family member" is relevant, in particular, for the purposes of new clauses (*a*)(ii)(B.1) and (B.2) of the definition "disability savings plan" in subsection 146.4(1), new paragraph (*c*) of the definition

"qualifying person" in subsection 146.4(1), new paragraph 146.4(13)(*e*) and subsection 146.4(14) (see commentary below).

This amendment comes into force on Royal Assent.

"qualifying person"

Subsection 146.4(1) defines "qualifying person" in relation to a beneficiary of a disability savings plan. Currently, entities described in subparagraphs (*a*)(ii) and (iii) of the definition are qualifying persons in relation to adult beneficiaries who are not contractually competent. There are no qualifying persons in relation to adult beneficiaries who are contractually competent. In other words, only an adult beneficiary is permitted to open an RDSP for themselves as beneficiary in cases where competency is not in question.

The definition "qualifying person" is amended to enable an individual who is a "qualifying family member" (see commentary above) in relation to a beneficiary and who meets certain conditions to be a qualifying person in relation to the beneficiary. Under new paragraph (*c*), a qualifying family member in relation to the beneficiary is a qualifying person in relation to the beneficiary at any time if

- at or before that time, the beneficiary had attained the age of majority and was not a beneficiary under another disability savings plan;
- at or before that time, there was no guardian, tutor, curator or other individual, or public department, agency or institution, appointed to represent the beneficiary; and
- after reasonable inquiry, the issuer is of the opinion that the beneficiary's contractual competence to enter into a disability savings plan is in doubt.

It is expected that the reasonable inquiry referred to in paragraph (*c*) may involve the issuer requiring medical information with respect to the beneficiary's condition or, where feasible, meeting with the beneficiary.

New paragraph (*c*) is relevant for the purposes of

- new clauses (*a*)(ii)(B.1) and (B.2) of the definition "disability savings plan" in subsection 146.4(1), which allow a disability savings plan to be established by a qualifying family member who, at the time the plan is established, is a qualifying person in relation to the plan's beneficiary;
- new subsections 146.4(1.5) and (1.6), which set out the circumstances in which a qualifying family member may be replaced as a plan holder; and
- existing paragraph 146.4(4)(*c*), which requires that an entity (other than a legal parent) cease to be a holder of an RDSP if the entity ceases to be a qualifying person in relation to the beneficiary.

However, paragraph (*c*) does not apply for the purposes of subparagraph 146.4(4)(*b*)(iv). That subparagraph allows an entity to acquire rights as a successor or assignee of a holder of a disability savings plan of a beneficiary if the entity is, at the time the rights are acquired, a qualifying person in relation to the beneficiary. As a consequence, a qualifying family member will not, by virtue of their qualifying person status under the Budget 2012 measure, have a right after 2016 to succeed or replace an existing holder.

This amendment comes into force on Royal Assent.

Beneficiary or entity replacing holder

ITA
146.4(1.5) and (1.6)

New subsections 146.4(1.5) and (1.6) of the Act set out the circumstances in which a holder of a disability savings plan who is a qualifying person only because of paragraph (*c*) of the definition "qualifying person" in subsection 146.4(1) (referred to below as the "existing holder") ceases to be the holder of the plan.

Under subsection 146.4(1.5), if the beneficiary of the plan is determined to be contractually competent by a competent tribunal or other authority under the laws of a province, or if after reasonable inquiry the issuer is of the opinion that the beneficiary's contractual competence to enter into a disability savings plan is no longer in doubt, and the beneficiary notifies the issuer that the beneficiary chooses to become the holder of the plan, then the existing holder of the plan ceases to be holder and the beneficiary becomes the new holder of the plan.

This rule could be relevant in situations where a physically-disabled beneficiary recovers from an accident or other trauma that temporarily affected their capacity, or where a beneficiary who has a mental impairment achieves significantly improved stability due to the availability of a new treatment or medication. It could also apply in cases where an issuer's doubt regarding competence turns out to be misplaced because of incomplete or inaccurate information.

Under subsection 146.4(1.6), if an entity described in subparagraph (*a*)(ii) or (iii) of the definition "qualifying person" in subsection 146.4(1) is legally authorized to act on behalf of the beneficiary of the plan (notably, a guardian, tutor, curator or other individual, or public department, agency or institution), then the entity must notify the issuer of its appointment, the existing holder of the plan ceases to be holder and the entity becomes the new holder of the plan. A legally-appointed representative of a beneficiary therefore takes precedence over a qualifying family member who becomes a holder under this temporary measure.

New subsections 146.4(1.5) and (1.6) come into force on Royal Assent.

Rules applicable in case of dispute

ITA
146.4(1.7)

New subsection 146.4(1.7) of the Act sets out rules applicable in respect of a disability savings plan entered into between an issuer and a qualifying family member who is a qualifying person in relation to the beneficiary of the plan only because of paragraph (*c*) of the definition "qualifying person" in subsection 146.4(1) if a dispute arises because of the issuer's acceptance of the qualifying family member as holder of the plan.

Subsection 146.4(1.7) provides that, while the dispute is ongoing, the qualifying family member, as holder of the plan, must use their best efforts to avoid any reduction in the fair market value of the property held by the plan trust, having regard to the needs of the beneficiary of the plan. While in large part similar duties already apply under provincial laws in relation to trustees of any property, this rule is intended to help ensure that plan assets are managed conservatively in situations where the appropriate holder of the plan is a subject of disagreement among the parties.

New subsection 146.4(1.7) comes into force on Royal Assent.

Obligations of issuer

ITA
146.4(13)

Subsection 146.4(13) of the Act imposes obligations on the issuer of a registered disability savings plan (RDSP).

New paragraph 146.4(13)(*e*) sets out the issuer's additional obligations if the issuer enters into a disability savings plan with a qualifying family member who is a qualifying person in relation to the beneficiary of the plan only because of paragraph (*c*) of the definition "qualifying person" in subsection 146.4(1).

Subparagraph 146.4(13)(*e*)(i) requires the issuer to notify the beneficiary in writing of the establishment of the disability savings plan and to include in the notification information setting out the circumstances under which the qualifying family member may potentially be replaced as holder of the plan under subsections 146.4(1.5) and (1.6). It is anticipated that this notification would normally be delivered by mail or in person.

Subparagraph 146.4(13)(*e*)(ii) requires the issuer to collect and use information that is relevant to the administration and operation of the plan that is provided by the qualifying family member. Given that the relationship between a qualifying family member and a beneficiary of the plan does not necessarily confer the same level of authority to share information as under a guardianship or similar decision-making arrangement, the provision of information by a qualifying family member to the issuer, which the issuer and the government need in order to administer RDSPs, is specifically contemplated by this rule.

These amendments come into force on Royal Assent.

Issuer's liability

ITA
146.4(14)

New subsection 146.4(14) of the Act limits the issuer's liability with respect to the issuer's decision to enter into a disability savings plan with a qualifying family member who is a qualifying person in relation to the beneficiary of the plan only because of paragraph (*c*) of the definition "qualifying person" in subsection 146.4(1) if after reasonable inquiry the issuer is of the opinion that the contractual competence of the beneficiary to enter into a plan is in doubt.

New subsection 146.4(14) comes into force on Royal Assent.

Clause 7

Qualified donees

ITA
149.1

Section 149.1 of the Act provides the rules that must be met for qualified donees to obtain and keep registered status. A qualified donee can issue receipts that entitle donors to claim tax relief in respect of their donations to the qualified donee.

Definitions

ITA
149.1(1)

Subsection 149.1(1) of the Act contains definitions that are relevant for the purposes of sections 149.1 and 149.2 and Part V of the Act.

"charitable purposes"

The definition "charitable foundation" in subsection 149.1(1) of the Act requires a corporation or trust to be constituted and operated exclusively for charitable purposes in order to be a charitable foundation.

Political activities are not considered to be charitable; however, the Act allows charitable foundations to be engaged incidentally in non-partisan political activities. In particular, subsection 149.1(6.1) provides that, for the purposes of the definition "charitable foundation" in subsection 149.1(1), a corporation or trust that devotes part of its resources to political activities will be considered to be constituted and operated for charitable purposes to the extent of its resources devoted to political activities, if the corporation or trust:

- devotes substantially all of its resources to charitable purposes (not including the part of those resources devoted to political activities);
- those political activities are ancillary and incidental to its charitable purposes; and
- those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office.

The definition “charitable purposes” in subsection 149.1(1) provides that “charitable purposes” includes the disbursement of funds to qualified donees. This may be the case even if the disbursement is a gift that is made to support political activities of the recipient of the gift. As a result, a charitable foundation may be able to support political activities beyond what would normally be permitted by subsection 149.1(6.1) if the charitable foundation were to engage in those political activities directly.

The definition “charitable purposes” is amended to provide that charitable purposes includes the disbursement of funds to a qualified donee, other than a gift the making of which is a political activity. In this regard, the new definition “political activity” in subsection 149.1(1) provides that a political activity includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee.

This amendment to the definition “charitable purposes” is not intended to prevent charitable foundations from carrying on political activities within the limits permitted by subsection 149.1(6.1).

This amendment comes into force on Royal Assent.

“political activity”

The new definition “political activity” in subsection 149.1(1) provides that a political activity includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee. The definition is introduced concurrently with amendments to the definition “charitable purposes” in subsection 149.1(1) and to paragraphs 149.1(6)(*b*) and (*c*) and subsection 149.1(10).

For further information, see the commentary for those amendments.

The new definition comes into force on Royal Assent.

“qualified donee”

The definition “qualified donee” in subsection 149.1(1) lists the entities that are eligible to issue receipts for the purposes of the charitable donations deduction under section 110.1 and the charitable donations tax credit under section 118.1. Subsection 248(1) provides that this definition applies for all purposes of the Act.

Subparagraph (*a*)(v) of the definition “qualified donee” provides that a charitable organization outside Canada is qualified donee for a period that ends 24 months after the time that Her Majesty in right of Canada made a gift to the organization if the organization is registered by the Minister of National Revenue as a qualified donee.

Subparagraph (*a*)(v) is amended to provide that a foreign organization is a qualified donee if it has applied to the Minister of National Revenue for registration and it has been so registered under new subsection 149.1(26). For further information, see the commentary for subsection 149.1(26).

This amendment comes into force on the later of the day on which the enabling legislation receives Royal Assent and January 1, 2013. A foreign organization registered before the later of those days will remain a qualified donee until the expiration of the period referred to above.

Devoting resources to charitable activity

ITA
149.1(6)(*b*) and (*c*) and 149.1(10)

The definition “charitable organization” in subsection 149.1(1) of the Act requires an organization to devote all of its resources to charitable activities carried on by the organization itself.

Political activities are not considered to be charitable; however, the Act allows charitable organizations to be engaged incidentally in non-partisan political activities. In particular, subsection 149.1(6.2) provides that a charitable organization that devotes part of its resources to political activities will be considered to be devoting

its resources to charitable activities to the extent of its resources devoted to political activities, if the organization:

- devotes substantially all of its resources to charitable activities carried on by it (not including the part devoted to political activities);
- those political activities are ancillary and incidental to its charitable activities; and
- those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office.

Paragraphs 149.1(6)(*b*) and (*c*) and subsection 149.1(10) provide that, under certain circumstances, when a charitable organization makes a disbursement to a qualified donee, the charitable organization will be considered to be devoting its resources to charitable purposes carried on by it. This may be the case even if the disbursement is a gift that is made to support political activities of the recipient of the gift. As a result, a charitable organization may be able to indirectly pursue political activities beyond what would normally be permitted by subsection 149.1(6.2) if the charitable organization were to engage in those political activities directly. Under the current rules:

- Paragraph 149.1(6)(*b*) provides that a charitable organization is considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.
- Paragraph 149.1(6)(*c*) provides that a charitable organization is considered to be devoting its resources to charitable activities carried on by it to the extent that it disburses income to a registered charity that the Minister of National Revenue has designated in writing as a charity associated with it.
- Subsection 149.1(10) provides that an amount paid by a charitable organization to a qualified donee that is not paid out of the income of the charitable organization is deemed to be a devotion of a resource of the charitable organization to a charitable activity carried on by it.

Paragraphs 149.1(6)(*b*) and (*c*) and subsection 149.1(10) are amended to so that they do not apply to disbursements by way of a gift the making of which is a political activity. In this regard, the new definition "political activity" in subsection 149.1(1) provides that a political activity includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee.

The amendments to paragraphs 149.1(6)(*b*) and (*c*) and subsection 149.1(10) are not intended to prevent charitable organizations from carrying on political activities within the limits permitted by subsection 149.1(6.2).

These amendments come into force on Royal Assent.

Designated foreign charitable organizations

ITA
149.1(26)

New subsection 149.1(26) of the Act provides the criteria under which the Minister of National Revenue, in consultation with the Minister of Finance, may register a foreign organization for the purposes of the definition "qualified donee" in subsection 149.1(1). The definition "qualified donee" in subsection 149.1(1) lists the entities that are eligible to issue receipts for the purposes of the charitable donations deduction under section 110.1 and the charitable donations tax credit under section 118.1.

Subsection 149.1(26) grants the Minister of National Revenue the discretion to register a foreign organization as a qualified donee for a 24-month period that includes the time at which Her Majesty in right of Canada has made a gift to the foreign organization, if:

- the organization is a charitable organization that is not resident in Canada; and
- the Minister of National Revenue is satisfied that the organization is
    - carrying on relief activities in response to a disaster,
    - providing urgent humanitarian aid, or
    - carrying on activities in the national interest of Canada.

The Minister of National Revenue may set the beginning and end of the 24-month period, but the 24-month period must include the time the gift was made by Her Majesty in right of Canada.

To maintain its registered status, a foreign organization must meet the requirements of subsection 168(1), which generally requires the organization to:

- continue to comply with the requirements of the Act for its registration;
- issue receipts only in accordance with the Act and the *Income Tax Regulations*; and
- comply with sections 230 to 231.5, relating to books and records.

This amendment comes into force on the later of the day on which the enabling legislation receives Royal Assent and January 1, 2013. A foreign organization registered before the later of those days will remain a qualified donee until 24 months after the time that Her Majesty in right of Canada made the gift to the organization that allowed the organization to be registered by the Minister of National Revenue as a qualified donee (i.e., the foreign organization will be subject to the existing rules).

Clause 8

Demands for returns

ITA
150(2)

Subsection 150(2) of the Act provides that a person must file an income tax return, regardless of whether the person is liable to pay tax under Part I of the Act or has already filed a return, if the Minister of National Revenue demands that the return be filed.

Subsection 150(2) is amended to relieve the Minister of the requirement that a demand be "served personally or by registered letter". As a result, the Minister may send the demand via online notice or regular mail.

This amendment comes into force on Royal Assent.

Clause 9

Electronic filing

ITA
150.1

Section 150.1 of the Act provides for the use of electronic media for filing tax returns. Section 150.1 is amended to require tax preparers to file, using electronic media, returns that they have prepared. These amendments apply in respect of returns of income for the 2012 and subsequent taxation years that are filed after 2012.

Definition "tax preparer"

ITA
150.1(2.2)

New subsection 150.1(2.2) of the Act defines a "tax preparer" for the purposes of this electronic filing requirement and the associated penalty for non-compliance under new subsection 162(7.3). A person or partnership is a tax preparer for a calendar year if, in the year, they accept consideration to prepare more than 10 returns of income of corporations or more than 10 returns of income for individuals (other than trusts). An employee who prepares returns of income in the course of performing their employment duties is not a tax preparer.

Electronic filing – tax preparer

ITA
150.1(2.3), (2.4)

New subsection 150.1(2.3) of the Act sets out a requirement for tax preparers that they file, using electronic media, any return of income that they prepare for consideration. This requirement is subject to the exception that a tax preparer may file in a calendar year by other means up to 10 corporate returns and 10 individual returns. The requirement is also subject to the following exceptions set out in new subsection 150.1(2.4):

- The Canada Revenue Agency may deny a tax preparer the authority to file electronically for the year because the tax preparer does not meet the criteria for filing referred to in subsection 150.1(2). This exception would apply if a tax preparer's application for the authority to file electronically has been denied or if the authority has been revoked for the year.
- Returns of income of corporations prescribed under paragraphs 205.1(2)(*a*) to (*c*) of the *Income Tax Regulations* will not be required to be filed electronically by a tax preparer. These corporations are not currently subject to the mandatory electronic filing requirement for corporations under subsection 150.1(2.1).
- The Canada Revenue Agency may specify that it does not accept certain types of returns in electronic format.

Clause 10

Assessment

ITA
152

Section 152 contains rules relating to assessments and reassessments of tax, interest and penalties payable by a taxpayer and to determinations and redeterminations of income, losses and other amounts.

Waiver of determination limitation period

ITA
152(1.9)

Subsection 152(1.4) of the Act provides the Minister of National Revenue with the authority to determine any income or loss of a partnership, or other amount in respect of a partnership, for a fiscal period within three years after the later of the day on which an information return in respect of the partnership for the fiscal period is required to be filed under section 229 of the *Income Tax Regulations* and the day on which the return is actually filed. Subsection 152(1.2) provides that various provisions of the Act that relate to assessments and reassessments will apply in a similar manner to a determination or redetermination under Division I of Part 1 of the Act, including one under subsection 152(1.4). As a result, where the Canada Revenue Agency obtains a

waiver from each partner of a partnership, the time period for making a determination in respect of the partnership is extended.

New subsection 152(1.9) provides that a single designated partner of a partnership may waive, on behalf of all its partners, the three-year time limit for making a determination. The designated member of the partnership will be the member that is designated for that purpose in the partnership information return made under section 229 of the *Income Tax Regulations*, or the member that is otherwise expressly authorized by the partnership to so act.

New subsection 152(1.9) comes into force on Royal Assent.

Clause 11

Participation certificates

ITA
161(5)

Section 161 of the Act provides for the payment of interest on outstanding amounts of tax payable under Part I of the Act, as well as on late or deficient instalments in respect of such tax. Pursuant to subsection 161(5), no interest is payable by a person to the extent that their tax payable has been increased by a payment received from the Canadian Wheat Board on a participation certificate previously issued to the person, until 30 days after payment is made.

Consequential on the implementation of the *Marketing Freedom for Grain Farmers Act*, subsection 161(5) is repealed.

This amendment comes into force on Royal Assent.

Clause 12

Penalties

ITA
162

Section 162 of the Act imposes penalties for infractions such as the failure to file a return for a taxation year.

Repeated failure to file

ITA
162(2)

Subsection 162(2) of the Act imposes a penalty for a second or further occurrence of a failure to file a tax return. The penalty is equal to the sum of 10% of the unpaid tax plus 2% of the unpaid tax per month of default, not exceeding 20 months. This penalty may be applied where a taxpayer, at the time of the failure, has already been assessed a penalty under subsection 162(1) in respect of an earlier failure to file a return of income for any of the three preceding years and a demand for a return for the year has been made under subsection 150(2).

Paragraph 162(2)(*b*) is amended consequential on the amendment of subsection 150(2), such that the reference to a demand "served" under subsection 150(2) is replaced with a reference to a demand "sent".

This amendment comes into force on Royal Assent.

Failure to file in appropriate manner – tax preparer

ITA
162(7.3)

New subsection 162(7.3) of the Act provides a penalty for the failure of a tax preparer to file a return by way of electronic filing as required by new subsection 150.1(2.3). This penalty is set at

(a) $25 for each failure to file an individual return in electronic format; and

(b) $100 for each failure to file a corporate return in electronic format.

New subsection 162(7.3) comes into force on January 1, 2013.

Rules where partnership liable to a penalty

ITA
162(8.1)

Subsection 162(8.1) of the Act allows various penalties imposed under section 162 to be assessed against a partnership and applies the provisions of the Act relating to assessments, objections and appeals with respect to those penalties as if the partnership were a corporation.

Subsection 162(8.1) is amended to apply in respect of the penalty under new subsection 162(7.3) for the failure of a tax preparer to file a return by way of electronic filing.

Subsection 162(8.1) is also amended to apply in respect of the graduated penalties under 162(7.01) and (7.02) of the Act in respect of the failure to file certain prescribed information returns as and when required.

These amendments come into force on January 1, 2013.

Clause 13

Suspension of receipting privileges

ITA
188.2

Subsections 188.2(1) and (2) of the Act provide for the suspension, in certain circumstances, of the tax-receipting privileges of registered charities, registered Canadian amateur athletic associations and persons described in paragraphs (*a*) to (*c*) of the definition "qualified donee" in subsection 149.1(1). For a one-year period that begins seven days after notice of the suspension has been sent by the Minister of National Revenue, the qualified donee is prohibited from issuing official receipts, and other qualified donees are not permitted to provide them with gifts.

Subsections 188.2(1) and (2) do not currently allow the tax-receipting privileges of a registered charity or a registered Canadian amateur athletic association to be suspended if the charity or association devotes resources to political activities in excess of the limits set out under the Act, or if the charity or association provides inaccurate or incomplete information in its annual return filed with the Canada Revenue Agency.

Subsection 188.2(2) is amended to provide the Minister of National Revenue with the authority to suspend the tax-receipting privileges of a registered charity or a registered Canadian amateur athletic association if the charity or association devotes resources to political activities in excess of the limits set out under subsections 149.1(6.1), (6.2) and (6.201).

New subsection 188.2(2.1) is added to provide for the suspension of the tax-receipting privileges of a registered charity or a registered Canadian amateur athletic association if the charity or association fails to report information that is required to be filed annually under subsection 149.1(14). Subject to rights of objection, appeal and postponement of the suspension (discussed below), tax-receipting privileges will be reinstated only if the Minister of National Revenue receives the required information.

Subsection 188.2(3) sets out the consequences of a suspension under subsection 188.2(1) or (2). During the period of suspension, the registered charity, registered Canadian amateur athletic association or other person described in paragraphs (*a*) to (*c*) of the definition "qualified donee", is deemed not to be a qualified donee for the purposes of the Act and no charitable donations deduction or tax credit may be claimed by any person who makes a gift to the donee during that period. However, official receipts may continue to be issued in respect of gifts made before that period. If offered a gift while under suspension, a charity must inform the potential donor

of the suspension and that, if the gift is made during the suspension, no charitable donations deduction or tax credit may be claimed by the donor in respect of the gift.

Subsection 188.2(3) is amended so that it also applies in respect of a suspension under new subsection 188.2(2.1).

Subsection 188.2(4) provides that a charity may file an application to the Tax Court of Canada for a postponement of a suspension under subsection 188.2(1) or (2) if a notice of objection to the suspension has been filed. Subsection 188.2(4) is amended so that it also applies in respect of a suspension under new subsection 188.2(2.1).

These amendments come into force on Royal Assent.

Clause 14

Assessment

ITA
227(10)

Subsection 227(10) of the Act empowers the Minister of National Revenue to assess a person for various amounts including penalties and other amounts payable by the person in respect of the failure to comply with certain provisions of the Act.

Subsection 227(10) is amended to provide the Minister with the authority to assess a person or partnership who is liable to a penalty under new subsection 237.1(7.5) in respect of a failure to comply with reporting requirements for tax shelters.

This amendment comes into force on Royal Assent.

Clause 15

Tax Shelters

ITA
237.1

Section 237.1 of the Act provides administrative rules relating to tax shelters.

Sales prohibited

ITA
237.1(4)

Subsection 237.1(4) of the Act allows a person to sell, issue, or accept a contribution towards the acquisition of, an interest in a tax shelter only if an identification number for the tax shelter has first been obtained from the Minister of National Revenue.

Subsection 237.1(4) is amended to allow such sales, issuances and contributions only during the calendar year designated by the Minister as being applicable to the tax shelter identification number.

The amendment to subsection 237.1(4) generally applies in respect of tax shelters for which identification numbers have been applied for after March 28, 2012. If an identification number that is issued by the Minister was applied for before March 29, 2012, the person may sell or issue, or accept consideration in respect of, the tax shelter until the end of 2013.

Penalty

ITA
237.1(7.4)

Subsection 237.1(7.4) of the Act imposes a penalty on a person for filing false or misleading information in respect of an application for a tax shelter identification number under subsection 237.1(2). The penalty may also apply to any person (generally a promoter) acting as principal or agent who sells, issues, or accepts a contribution towards the acquisition of, an interest in a tax shelter, before obtaining an identification number as required under subsection 237.1(4). The penalty is equal to the greater of $500 and 25% of the total of the costs to all persons who acquire interests in the tax shelter before the correct information is provided or before the identification number is issued, as the case may be.

Subsection 237.1(7.4) is amended such that for a tax shelter that is a gifting arrangement (as defined in subsection 237.1(1)) the penalty will be equal to the greater of the amount determined under the existing rules and 25% of the amount asserted by the promoter to be the value of property that participants in the tax shelter can transfer to a qualified donee.

This amendment applies in respect of applications for identification numbers made, sales or issuances of tax shelters made and consideration in respect of tax shelters accepted, after Royal Assent.

Penalty

ITA
237.1(7.5)

New subsection 237.1(7.5) of the Act introduces a penalty that applies if a person fails, in response to a demand by the Minister of National Revenue under section 233, to file an information return in respect of a tax shelter as required under subsection 237.1(7) of the Act. The new penalty also applies if a person fails to report in an information return the information required under paragraphs 237.1(7)(*a*) or (*b*).

The penalty is equal to 25% of the greater of:

- the total of the consideration received by the person from tax shelter participants in respect of whom information is required under paragraph 237.1(7)(*a*) or (*b*) but that has not been reported at or before the time the Minister issued the demand or the return was filed, as the case may be; and
- if the tax shelter is a gifting arrangement (as defined in subsection 237.1(1)), the total of all amounts asserted by the promoter to be the value of property that the tax shelter participants referred to above could transfer to a qualified donee.

New subsection 237.1(7.5) applies in respect of demands made, and information returns filed, after Royal Assent.

Governor General's Act

Clause 16

Salary

GGA
4(1)

Subsection 4(1) of the *Governor General's Act* (the GGA) set the Governor General's salary at $83,800 as of January 1, 1989.

This section is amended to set the salary as of January 1, 2013 at $270,602. This amount compensates for the income tax a Governor General would pay if his or her total income from all sources (e.g., pensions from previous employment) was taxed at the top marginal rate. Its purpose is to ensure that the Governor General's after-tax salary is not reduced as a result of the taxation measures.

Clause 17

Annual adjustment of salary

GGA
4.1(1)

Subsection 4.1(1) of the GGA sets out the formula for calculating annual adjustments to the Governor General's salary.

This section is amended so that the formula will apply to the new salary on January 1, 2014 and all subsequent years.

GGA
4.1(4) & (5)

Subsections 4.1(4) and 4.1(5) of the GGA froze the Governor General's salary for the period between 1993-1997 at the level established on January 1, 1992.

These sections are being repealed for housekeeping purposes as they are no longer in effect.

Income Tax Regulations

Clause 18

Medical Expense Tax Credit

ITR
5700(*s.1*)

Part LVII of the *Income Tax Regulations* (the Regulations) provides rules for the purposes of the medical expense tax credit under section 118.2 of the *Income Tax Act*. The medical expense tax credit recognizes the effect of above-average medical and disability-related expenses on a taxpayer's ability to pay income tax. The medical expense tax credit provides federal income tax relief equal to 15 per cent of eligible medical and disability related expenses in excess of a threshold that is the lesser of 3 per cent of the taxpayer's net income and an indexed dollar amount ($2,109 in 2012).

Section 5700 of the Regulations provides a list of medical devices and equipment the cost of which are eligible for inclusion in the calculation of the medical expense tax credit under paragraph 118.2(1)(*m*) of the *Income Tax Act*. Section 5700 is amended by adding to the list blood coagulation monitors, including disposable peripherals, for use by individuals who require anti-coagulation therapy.

Part 2

Measures Relating to Sales and Excise Taxes

Excise Tax Act

Clause 19

Demand for Return

ETA
79(4)

Subsection 79(4) of the *Excise Tax Act* (the Act) provides that the Minister of National Revenue (the Minister) may, by a demand served personally or by registered or certified mail, require that a person file a return under the non- goods and services tax/harmonized sales tax (GST/HST) portion of the Act for any designated period, and within any reasonable time, stipulated in the demand.

Subsection 79(4) is amended to relieve the Minister of the requirement that the demand be "served personally or by registered or certified mail". As a result, the Minister may send the demand via online notice or regular mail.

This amendment comes into force on Royal Assent.

Clause 20

Harmonization Date

ETA
123(1)

The definition "harmonization date" specifies the implementation date of the HST as April 1, 1997 for the provinces of Nova Scotia, New Brunswick and Newfoundland and Labrador and July 1, 2010 for the provinces of Ontario and British Columbia, and allows flexibility to add a new implementation date by regulation for a province that chooses to adopt the HST.

The definition is amended to remove the reference to British Columbia consequential to the Province's decision to exit the HST.

This amendment generally comes into force on April 1, 2013.

Clause 21

Tax in Participating Province

ETA
212.1(2) to (4)

Existing subsection 212.1(2) of the Act imposes a tax under Division III of Part IX of the Act that 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 of the Act.

Subsection 212.1(2) is restructured such that the provincial component of the HST in respect of goods imported by residents of a participating province continues to be imposed under paragraph 212.1(2)(*b*) at the tax rate (as defined in subsection 123(1) of the Act) for that participating province, except where the goods are prescribed for the purposes of new paragraph 212.1(2)(*a*). New paragraph 212.1(2)(*a*) is added to impose the provincial component of the HST in respect of prescribed goods (for example, goods prescribed under new section 6.1 of the *New Harmonized Value-Added Tax System Regulations, No. 2*) imported at a place in a participating province. In this case, the tax is imposed at the tax rate for the participating province where the goods are imported.

Existing subsections 212.1(3) and (4) provide exceptions to the imposition of the provincial component of the HST under subsection 212.1(2). Subsections 212.1(3) and (4) are amended, as a consequence of the amendment to subsection 212.1(2), to continue the current exceptions in respect of goods described in new paragraph 212.1(2)(*b*), which are not goods prescribed by regulation for the purposes of paragraph 212.1(2)(*a*).

These amendments apply to goods imported on or after June 1, 2012.

Clause 22

Rebate for Printed Books

ETA
259.1

Section 259.1 of the Act provides for a 100-per-cent rebate of the GST or the federal component of the HST that becomes payable by specified persons (e.g., universities, school authorities or literacy organizations prescribed by regulation) upon their acquisition or importation of certain items (printed books, audio recordings of spoken readings of printed books and printed versions of religious scriptures) if they are acquired or imported otherwise than for the purpose of supply by way of sale.

Section 259.1 is amended to expand the rebate to allow charities, or qualifying non-profit organizations, whose primary purpose is the promotion of literacy and that are prescribed by regulation to claim the rebate in respect of these items if they are acquired or imported to be given away for free.

These amendments apply to acquisitions and importations of property in respect of which tax becomes payable after March 29, 2012.

Definitions

ETA
259.1(1)

Subsection 259.1(1) defines certain expressions used in section 259.1 of the Act.

Subsection 259.1(1) is amended by adding the new definition “specified property” listing items that were previously listed in subsection 259.1(2) as the property in respect of which a rebate under subsection 259.1(2) can apply. The items listed in subsection 259.1(2) have been replaced with a reference to “specified property”.

Rebate

ETA
259.1(2)

Subsection 259.1(2) provides authority for the Minister to pay to specified persons rebates equal to the GST or the federal component of the HST payable in respect of their acquisitions or importations of “specified property” (as defined in subsection 259.1(1)), except where the specified persons have acquired or imported the property for the purpose of supply by way of sale. The definition “sale” in respect of property is defined in subsection 123(1) of the Act and includes any transfer of ownership of property, including giving the property away for free.

Subsection 259.1(2) is amended to expand the scope of the rebate to include specified property acquired or imported to be given away for free by a literacy organization that is a charity or qualifying non-profit organization whose primary purpose is the promotion of literacy and that is prescribed under paragraph (*f*) of the definition “specified person” in subsection 259.1(1).

Clause 23

Rebate in Respect of Goods Imported at a Place in a Province

ETA
261.2

Existing section 261.2 of the Act provides for a rebate of the provincial component of the HST paid under existing subsection 212.1(2) of the Act in respect of property that is imported, by a resident of a particular participating province, at a place in another province for consumption or use in any province other than the particular participating province. Section 261.2 is amended, as a consequence of the amendment to subsection 212.1(2), to continue the rebate in respect of property described in new paragraph 212.1(2)(*b*).

This amendment applies to property imported on or after June 1, 2012.

Clause 24

Demand for Return

ETA
282

Section 282 of the Act provides that the Minister may, on demand served personally or by registered or certified mail, require that any person file a return with respect to any period or transaction.

Section 282 is amended to relieve the Minister of the requirement that the demand be "served personally or by registered or certified mail". As a result, the Minister may send the demand via online notice or regular mail.

This amendment comes into force on Royal Assent.

Clause 25

Definitions

ETA
Sch. I, section 1

New section 1 of Schedule I to the Act defines the terms "commercial goods", "qualifying data" and "qualifying vehicle" for the purposes of Schedule I, relating to the non-GST/HST portion of the Act.

New section 1 comes into force on June 1, 2012 or, if Royal Assent is before June 1, 2012, new section 1 comes into force on Royal Assent, except that:

- if Royal Assent is before June 1, 2012, new section 1 is to be read (before June 1, 2012) without reference to the new definitions "commercial goods" and "qualifying vehicle"; and
- if Royal Assent is after June 1, 2012, new section 1 is to be read (before Royal Assent) without reference to the new definition "qualifying data".

"commercial goods"

The term "commercial goods" has the same meaning as in subsection 212.1(1) of the GST/HST portion of the Act. Generally, any goods that are imported for sale or for any commercial, industrial, occupational, institutional or other similar use are commercial goods.

This new definition applies as of June 1, 2012.

"qualifying data"

The term "qualifying data" is relevant for the purposes of calculating the Green Levy under section 6 of Schedule I, relating to the non-GST/HST portion of the Act. The Green Levy applies to certain vehicles in accordance with the vehicle's fuel-efficiency rating. For purposes of the Green Levy, this rating is calculated as

a weighted average taking into account 55 per cent of city fuel consumption and 45 per cent of highway fuel consumption. Under existing provisions in section 6 of Schedule I, the city fuel consumption and highway fuel consumption ratings of a vehicle that may be subject to the Green Levy are determined in accordance with information published by the Government of Canada under the EnerGuide mark.

The term "qualifying data" is introduced in section 6 of Schedule I to ensure that changes to the standardized fuel consumption test method used for the EnerGuide, as announced on February 17, 2012 by the Minister of Natural Resources, do not affect the application of the Green Levy. When new section 1 of Schedule I comes into force, the city fuel consumption and highway fuel consumption ratings of a vehicle that may be subject to the Green Levy are to be determined in accordance with the qualifying data published by the Government of Canada in respect of those vehicles.

As long as the fuel consumption data under the EnerGuide mark continues to be based on a test method composed of two – but not five – test cycles, the qualifying data in respect of vehicles that may be subject to the Green Levy is the fuel consumption data published by the Government of Canada under the EnerGuide mark in respect of those vehicles. In any other case (e.g., if at some point the fuel consumption data under the EnerGuide mark becomes based on a test method composed of five test cycles), the qualifying data in respect of vehicles that may be subject to the Green Levy is the fuel consumption data in respect of those vehicles based on a test method composed of only two test cycles and published by the Government of Canada, as specified by the Minister of National Revenue, on the basis of information adjusted and provided by the Minister of Natural Resources.

This new definition applies as of Royal Assent.

"qualifying vehicle"

The term "qualifying vehicle" generally means a vehicle (other than a racing car) registered under the laws of a foreign jurisdiction that: (*a*) is described in any of heading No. 87.02, subheading Nos. 8703.21 to 8703.90, 8704.21, 8704.31, 8704.90 and 8711.20 to 8711.90 and tariff item Nos. 8716.39.30 and 8716.39.90 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff*; (*b*) is described in subheading No. 8704.22 or 8704.32 of that List and has a gross vehicle weight rating not exceeding 10 tonnes; or (*c*) is described in tariff item No. 8716.10.00 of that List and is a vehicle for camping.

In general, paragraph (*a*) covers most passenger vehicles, including motorcycles, cars, vans, sport utility vehicles and motorhomes, and paragraph (*b*) covers trucks not exceeding 10 tonnes.

This new definition applies as of June 1, 2012.

Clause 26

Weighted Fuel Consumption Rating of a Vehicle that may be Subject to the Green Levy

ETA
Sch. I, subsection 6(2)

The amount of the weighted fuel consumption rating of a vehicle that may be subject to the Green Levy is determined by the formula under subsection 6(2) of Schedule I to the Act. The applicable rate of the Green Levy on certain vehicles depends on the weighted fuel consumption rating of the vehicle. The amount of this rating is a weighted average, taking into account 55 per cent of city fuel consumption and 45 per cent of highway fuel consumption. The description of A in subsection 6(2) is the vehicle's city fuel consumption rating and the description of B in subsection 6(2) is the vehicle's highway fuel consumption rating, each of which as determined in accordance with data published by the Government of Canada under the EnerGuide mark.

The descriptions of A and B in subsection 6(2) are amended to replace the reference to data published by the Government of Canada under the EnerGuide mark with the term "qualifying data" (as defined in section 1 of Schedule I, relating to the non-GST/HST portion of the Act). This amendment ensures that any changes to the

standardized fuel consumption test method used for the EnerGuide, as announced on February 17, 2012 by the Minister of Natural Resources, do not affect the application of the Green Levy.

As long as the fuel consumption data under the EnerGuide mark continues to be based on a test method composed of two – but not five – test cycles, the city fuel consumption and highway fuel consumption ratings under the descriptions of A and B in subsection 6(2) continue to be determined in accordance with data published by the Government of Canada under the EnerGuide mark. In any other case (e.g., if at some point the fuel consumption data under the EnerGuide mark becomes based on a test method composed of five test cycles), the city fuel consumption and highway fuel consumption ratings under the descriptions of A and B in subsection 6(2) are to be determined in accordance with the fuel consumption data based on a test method composed of only two test cycles and published by the Government of Canada, as specified by the Minister of National Revenue, on the basis of information adjusted and provided by the Minister of Natural Resources.

This amendment comes into force on Royal Assent.

Clause 27

Exemption from Excise Tax on Air Conditioners Designed for Use in Certain Vehicles

ETA
Sch. I, section 8

The excise tax generally applied on an air conditioner designed for use in automobiles, station wagons, vans or trucks (as described under section 7 of Schedule I, relating to the non-GST/HST portion of the Act) does not apply if the conditions set out in a paragraph under section 8 of Schedule I to the Act are met.

Section 8 is amended by adding new paragraph (*d*). Under this paragraph, in order for an air conditioner ordinarily subject to the excise tax to qualify for the relief, the air conditioner must be included as permanently installed equipment in an automobile, station wagon, van or truck that is a qualifying vehicle (as defined in section 1 of Schedule I). In addition, the qualifying vehicle must be imported temporarily for non-commercial purposes by a Canadian resident, must have been rented by the resident for a period of less than 180 days and must be exported within 30 days from the time of importation.

This amendment applies to any air conditioner that is included as permanently installed equipment in an automobile, station wagon, van or truck imported into Canada on or after June 1, 2012.

Clause 28

Exemption from the Green Levy

ETA
Sch. I, section 10

The Green Levy generally applied on fuel-inefficient vehicles (as described under section 6 of Schedule I, relating to the non-GST/HST portion of the Act) does not apply if the conditions set out in a paragraph under section 10 of Schedule I to the Act are met.

Section 10 is amended by adding new paragraph (*d*). Under this paragraph, in order for a vehicle ordinarily subject to the Green Levy to qualify for the relief, it must be a qualifying vehicle (as defined in section 1 of Schedule I). In addition, the qualifying vehicle must be imported temporarily for non-commercial purposes by a Canadian resident, must have been rented by the resident for a period of less than 180 days and must be exported within 30 days from the time of importation. As a consequence of this amendment to section 10 of Schedule I, an amendment is also made in the parallel provision of the French version of the Act to ensure consistency with the English version of the Act.

This amendment applies to qualifying vehicles imported into Canada on or after June 1, 2012.

Clause 29

Pharmacists' Services

ETA
Sch. V, Pt. II, section 7.3

New section 7.3 of Part II of Schedule V to the Act adds pharmacists' services to the list of exempt health care services. The services are exempt when rendered by an individual entitled under the laws of a province to practice pharmacy if the service is rendered to another individual within a pharmacist-patient relationship for the promotion of the patient's health or the prevention or treatment of a disease, disorder or dysfunction of the patient. Examples of pharmacist services that could be exempted if they meet the conditions of this provision are administering medications or vaccinations, changing drug dosages and prescribing drugs. Excluded from the exemption are services described in section 4 of Part I of Schedule VI to the Act, which provides for the zero-rating of pharmacists' services of dispensing zero-rated drugs. This has the effect of continuing the zero-rating of pharmacists' services of dispensing prescription drugs.

This amendment applies to any supply made after March 29, 2012.

Clause 30

Prescribed Health Care Service

ETA
Sch. V, Pt. II, paragraph 10(*c*)

Section 10 of Part II of Schedule V to the Act has the effect of exempting supplies of health care services that are prescribed by regulation when rendered to an individual and made on the order of a "medical practitioner" or "practitioner" (as those terms are defined in section 1 of that Part) or on the order of a registered nurse authorized under the laws of a province to order the services if the order is made within a nurse-patient relationship. The prescribed health care services include laboratory, radiological or other diagnostic services generally available in a health care facility (e.g., blood tests and x-rays) as well as the administration of drugs, biologicals or related preparations in conjunction with the provision of those services.

New paragraph 10(*c*) has the effect of expanding the exemption for these prescribed health care services to include supplies of those services when made on the order of a person entitled under the laws of a province to practise the profession of pharmacy and authorized under the laws of the province to order the service if the order is made within a pharmacist-patient relationship.

This amendment applies to any supply made after March 29, 2012.

Clause 31

Isosorbide-5-mononitrate

ETA
Sch. VI, Pt. I, subparagraph 2(*e*)(vi.1)

Paragraph 2(*e*) of Part I of Schedule VI to the Act enumerates a list of non-prescription drugs used to treat life-threatening illnesses that are zero-rated at all levels of production and distribution.

New subparagraph 2(*e*)(vi.1) adds the drug "isosorbide-5-mononitrate" to the list.

This amendment applies to any supply made after March 29, 2012, or any supply made on or before March 29, 2012 if no amount was charged, collected or remitted on or before that day as or on account of tax under Part IX of the Act in respect of the supply.

Clause 32

Definitions

ETA
Sch. VI, Pt. II, section 1

Section 1 of Part II of Schedule VI to the Act contains definitions referred to in that Part, which enumerates a number of supplies of medical and assistive devices that are zero-rated for the purposes of the GST/HST.

Section 1 of Part II of Schedule VI is amended to repeal the definition "medical practitioner" and to replace it with the definition "specified professional". Consequentially, the term "medical practitioner" is replaced with the term "specified professional" in sections 3, 4, 5.1, 7, 14.1, 21.1, 21.2, 23, 24.1, 30, 35, 36 and 41 of that Part.

The new definition "specified professional" means a person that is entitled under the laws of a province to practice the profession of medicine (formerly a "medical practitioner"), but also includes a person that is entitled under the laws of a province to practice the profession of physiotherapy or occupational therapy, or an individual who is a registered nurse. This amendment has the effect of replacing the condition that in order for supplies of the medical and assistive devices listed in sections 3, 4, 5.1, 7, 14.1, 21.1, 21.2, 23, 24.1, 30, 35, 36 and 41 of Part II of Schedule VI to be zero-rated they must be supplied on the written order, or certificate in the case of section 30, of a medical practitioner, with the condition that they must be supplied on the written order, or certificate in the case of section 30, of a specified professional.

This amendment applies to any supply made after March 29, 2012.

Clause 33

Heart Monitoring Device

ETA
Sch. VI, Pt. II, section 3

Section 3 of Part II of Schedule VI to the Act lists the supply of a heart monitoring device, if the device is supplied on the written order of a medical practitioner for use by a consumer with heart disease who is named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 3 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where a heart monitoring device can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Hospital Beds

ETA
Sch. VI, Pt. II, section 4

Section 4 of Part II of Schedule VI to the Act lists the supply of a hospital bed, if the bed is supplied to the operator of a health care facility (within the meaning assigned by section 1 of Part II of Schedule V to the Act) or on the written order of a medical practitioner for use by an incapacitated individual named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 4 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where a hospital bed can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 34

Aerosol Chamber

ETA
Sch. VI, Pt. II, section 5.1

Section 5.1 of Part II of Schedule VI to the Act lists the supply of an aerosol chamber or a metered dose inhaler for use in the treatment of asthma, if the chamber or inhaler is supplied on the written order of a medical practitioner for use by a consumer named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 5.1 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such devices can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 35

Device to Convert Sound to Light Signals

ETA
Sch. VI, Pt. II, section 7

Section 7 of Part II of Schedule VI to the Act lists the supply of a device that is designed to convert sound to light signals, if the device is supplied on the written order of a medical practitioner for use by a consumer with a hearing impairment who is named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 7 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such a device can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 36

Eyeglasses and Contact Lenses

ETA
Sch. VI, Pt. II, section 9

Existing section 9 of Part II of Schedule VI to the Act has the effect of zero-rating supplies of corrective eyeglasses or contact lenses that are, or are to be, supplied under a prescription issued to a consumer.

The amendment to section 9 has the effect of also zero-rating supplies of corrective eyeglasses and contact lenses that are or are to be supplied under the authority of an assessment record such as that produced using an automated refraction system. The assessment record must name the consumer that it applies to and be produced by a person who is entitled under the laws of a province in which the person practises to produce an assessment record to be used for the dispensing of corrective eyeglasses or contact lenses.

This amendment applies to any supply made after March 29, 2012 or any supply made on or before March 29, 2012 if no amount was charged, collected or remitted on or before that day as or on account of tax under Part IX of the Act in respect of the supply.

Clause 37

Specially Designed Chair

ETA
Sch. VI, Pt. II, section 14.1

Section 14.1 of Part II of Schedule VI to the Act lists the supply of a chair that is specially designed for use by an individual with a disability, if the chair is supplied on the written order of a medical practitioner for use by a consumer named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 14.1 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such a chair can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 38

Extremity Pumps

ETA
Sch. VI, Pt. II, section 21.1

Section 21.1 of Part II of Schedule VI to the Act lists the supply of an extremity pump, intermittent pressure pump or similar device for use in the treatment of lymphedema, if the pump or device is supplied on the written order of a medical practitioner for use by a consumer named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 21.1 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such pumps or similar devices can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Catheters

ETA
Sch. VI, Pt. II, section 21.2

Section 21.2 of Part II of Schedule VI to the Act lists the supply of a catheter for subcutaneous injections, if the catheter is supplied on the written order of a medical practitioner for use by a consumer named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 21.2 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such a catheter can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 39

Orthotic and Orthopaedic Devices

ETA
Sch. VI, Pt. II, section 23

Section 23 of Part II of Schedule VI to the Act lists the supply of an orthotic or orthopaedic device, if it is made to order for an individual or is supplied on the written order of a medical practitioner for use by a consumer named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 23 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such devices can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 40

Specially Designed Footwear

ETA
Sch. VI, Pt. II, section 24.1

Section 24.1 of Part II of Schedule VI to the Act lists the supply of footwear that is specially designed for use by an individual who has a crippled or deformed foot or other similar disability, if the footwear is supplied on the written order of a medical practitioner, as a supply that is zero-rated for the purposes of the GST/HST.

Section 24.1 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such footwear can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 41

Blood Coagulation Monitors

ETA
Sch. VI, Pt. II, section 29.1

New section 29.1 of Part II of Schedule VI to the Act has the effect of zero-rating blood coagulation monitors and meters specially designed for use by an individual requiring blood coagulation monitoring. It also has the effect of zero-rating testing strips or reagents compatible with such monitors and meters.

This amendment applies to any supply made after March 29, 2012.

Articles Specially Designed for Blind Individuals

ETA
Sch. VI, Pt. II, section 30

Section 30 of Part II of Schedule VI to the Act lists the supply of any article that is specially designed for the use of blind individuals, if the article is supplied for use by a blind individual to or by the Canadian National Institute for the Blind or any other bona fide institution or association for blind individuals or on the order or certificate of a medical practitioner, as a supply that is zero-rated for the purposes of the GST/HST.

Section 30 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such articles can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 42

Graduated Compression Stockings

ETA
Sch. VI, Pt. II, section 35

Section 35 of Part II of Schedule VI to the Act lists the supply of a graduated compression stocking, an anti-embolic stocking or similar article, if the stocking or article is supplied on the written order of a medical practitioner for use by a consumer named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 35 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such stockings or similar articles can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Specially Designed Clothing

ETA
Sch. VI, Pt. II, section 36

Section 36 of Part II of Schedule VI to the Act lists the supply of clothing that is specially designed for use by an individual with a disability, if the clothing is supplied on the written order of a medical practitioner for use by a consumer named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 36 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such clothing can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 43

Neuromuscular Stimulation Therapy Device

ETA
Sch. VI, Pt. II, section 41

Section 41 of Part II of Schedule VI to the Act lists the supply of a device that is specially designed for neuromuscular stimulation therapy or standing therapy, if supplied on the written order of a medical practitioner for use by a consumer with paralysis or a severe mobility impairment who is named in the order, as a supply that is zero-rated for the purposes of the GST/HST.

Section 41 is amended to replace the term "medical practitioner" with the broader term "specified professional" (as the term is defined in section 1 of that Part), expanding the circumstances where such a device can be supplied on a zero-rated basis.

This amendment applies to any supply made after March 29, 2012.

Clause 44

Participating Provinces and Applicable Tax Rates

ETA
Sch. VIII

Schedule VIII to the Act sets out the names of participating provinces under the HST and opposite the name of each participating province the tax rate of the provincial component of the HST for the province. The rates set out in Schedule VIII apply unless another rate is prescribed for a participating province under the GST/HST regulations made under the Act.

Schedule VIII is amended by removing British Columbia and the tax rate of 7 per cent consequential to the Province's decision to exit the HST as of April 1, 2013.

This amendment implements a legislative requirement, that cannot be made by regulation, relating to the Government of British Columbia's decision to exit the HST framework. The transitional rules, as announced by the Department of Finance on February 17, 2012, are proposed to be implemented through regulations made under the Act.

Air Travellers Security Charge Act

Clause 45

Demand for Return

ATSCA
26

Section 26 of the *Air Travellers Security Charge Act* provides that the Minister of National Revenue (the Minister) may, on demand served personally or by registered or certified mail, require any person to file a return for any designated period, and within any reasonable time, stipulated in the demand.

Section 26 is amended to relieve the Minister of the requirement that the demand be "served personally or by registered or certified mail". As a result, the Minister may send the demand via online notice or regular mail.

The amendment comes into force on Royal Assent.

Excise Act, 2001

Clause 46

Demand for Return

EA, 2001
169

Section 169 of the *Excise Act, 2001* provides that the Minister of National Revenue (the Minister) may, on demand served personally or by registered or certified mail, require any person to file a return for any designated period, and within any reasonable time, stipulated in the demand.

Section 169 is amended to relieve the Minister of the requirement that the demand be "served personally or by registered or certified mail". As a result, the Minister may send the demand via online notice or regular mail.

The amendment comes into force on Royal Assent.

Value of Imported Goods (GST/HST) Regulations

Clause 47

Interpretation

VIGR
2

The *Value of Imported Goods (GST/HST) Regulations* (the Regulations) prescribe the manner for determining the value of certain imported goods under subsection 215(2) of the *Excise Tax Act*.

Subclause 47(1)

Definitions

VIGR
2(1)

Existing subsection 2(1) of the Regulations contains definitions of terms used in the Regulations. Subsection 2(1) is amended by adding the definition "qualifying vehicle". This term has the same meaning as in section 2 of the *Non-Taxable Imported Goods (GST/HST) Regulations* (see commentary on that section).

This amendment comes into force on June 1, 2012.

Subclause 47(2)

Interpretation

VIGR

2(2)

Existing subsection 2(2) of the Regulations provides an interpretation rule that is used in the Regulations to determine the number of months in a period. Subsection 2(2) is amended so that the interpretation rule also determines the number of weeks in a period. The amended rule is required for the application of new section 15 of the Regulations.

This amendment comes into force on June 1, 2012.

Clause 48

Prescribed Manner

VIGR
15

New section 15 is added to the Regulations to prescribe the manner for determining the value of a qualifying vehicle (as newly defined in subsection 2(1) of the Regulations) that is imported temporarily for non-commercial purposes by a Canadian resident. The qualifying vehicle must also have been rented by the resident for a period of less than 180 days and the qualifying vehicle must be exported within 30 days.

The value of such a qualifying vehicle is determined by multiplying the value, which is specified in paragraph (*a*) or (*b*) of element A of the formula, for the type of the qualifying vehicle by the number of weeks, including a part of a week, that the qualifying vehicle remains in Canada. Generally, paragraph (*a*) of element A of the formula covers most passenger vehicles, including motorcycles, cars, vans, trucks for the transport of persons, sport utility vehicles and motorhomes, and paragraph (*b*) of element A of the formula covers trucks for the transport of goods and trailers, and passenger vehicles for carrying 10 or more persons. Duties, other than the GST/HST, that are payable in respect of the importation of the qualifying vehicle are added to the product of that multiplication. For example, the value of a sport utility vehicle that is imported temporarily, with no duties payable other than the GST/HST, and that remains in Canada for 14 days would be $600 ($300 × 2 + $0).

This amendment applies to goods imported on or after June 1, 2012.

Non-Taxable Imported Goods (GST/HST) Regulations

Clause 49

Definitions

NTIGR
2

Existing section 2 of the *Non-Taxable Imported Goods (GST/HST) Regulations* (the Regulations) contains definitions of terms used in the Regulations. Section 2 is amended by adding the definition "qualifying vehicle". This term means a vehicle (other than a racing car) registered under the laws of a foreign jurisdiction that

(*a*) is described in any of heading No. 87.02, subheading Nos. 8703.21 to 8703.90, 8704.21, 8704.31, 8704.90 and 8711.20 to 8711.90 and tariff item Nos. 8716.39.30 and 8716.39.90 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff*,

(*b*) is described in subheading No. 8704.22 or 8704.32 of that List and has a gross vehicle weight rating not exceeding 10 tonnes, or

(*c*) is described in tariff item No. 8716.10.00 of that List and is a vehicle for camping.

Generally, paragraph (*a*) covers most passenger vehicles, including motorcycles, cars, vans, sport utility vehicles and motorhomes, and paragraph (*b*) covers trucks not exceeding 10 tonnes.

This amendment comes into force on June 1, 2012.

Clause 50

Prescribed Goods

NTIGR
3

Existing section 3 of the Regulations prescribes goods for the purposes of section 8 of Schedule VII to the *Excise Tax Act*. These goods are relieved of the GST/HST imposed on importations under Division III of Part IX of that Act.

Section 3 is amended by adding new paragraph (*m*), which sets out the conditions for a qualifying vehicle (as newly defined in section 2 of the Regulations) to qualify as a prescribed good. In order to qualify as a prescribed good, the qualifying vehicle must be imported temporarily for non-commercial purposes by a Canadian resident that was outside of Canada for at least 48 hours. The qualifying vehicle must also have been rented by the resident for a period of less than 180 days and the qualifying vehicle must be exported within 30 days.

This amendment applies to goods imported on or after June 1, 2012.

New Harmonized Value-Added Tax System Regulations, No. 2

Clause 51

Prescribed Goods

NHVATSR2
6.1

New section 6.1 is added to the *New Harmonized Value-added Tax System Regulations, No. 2* to prescribe the goods in respect of which the provincial component of the HST is imposed under new paragraph 212.1(2)(*a*) of the *Excise Tax Act*. Goods are prescribed for the purposes of paragraph 212(2)(*a*) if their value is determined for the purposes of Division III of Part IX of that Act under new section 15 of the *Value of Imported Goods (GST/HST) Regulations* (see commentary on that section).

This amendment applies to goods imported on or after June 1, 2012.

Part 3

Various Measures

Excise Tax Act

Clauses 54 and 55

Consequential Amendment to the *Excise Tax Act* Following Amendments to the *Food and Drugs Act*

ETA
Sch. VI, Pt. I, paragraph 2(*b*)

Existing paragraph 2(*b*) of Part I of Schedule VI to the *Excise Tax Act* provides relief from the goods and services tax/harmonized sales tax (GST/HST) for drugs that can be sold to a consumer only under a prescription and that are included in Schedule F to the *Food and Drug Regulations* (FDR).

New section 29.1 of the *Food and Drugs Act* allows for listing of prescription drugs on a list established by the Minister of Health, rather than on Schedule F to the FDR. In order to maintain the GST/HST-free status of these prescription drugs, a consequential amendment is required to replace the reference in paragraph 2(*b*) to drugs included in Schedule F to the FDR with a reference to drugs set out on the list established under section 29.1 of the *Food and Drugs Act*.

This amendment comes into force on a day to be fixed by order of the Governor in Council.