# Explanatory Notes to Legislation Relating to the Goods and Services Tax

Issued by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

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Canada

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Department of Finance Canada
Ministère des Finances Canada

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

Cette publication est également offerte en français.

# PREFACE

The legislation to which these explanatory notes relate contains proposed amendments to the *Excise Tax Act* and a related statute. These amendments are intended to implement the sales tax measures announced on December 10, 1992, March 30, 1993, April 30, 1993 and September 3, 1993. In addition, the legislation contains a number of technical amendments that clarify and, in some cases, correct the application of the *Excise Tax Act* and a related statute.

The explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

It should be noted that amendments that are proposed to come into force on December 17, 1990, the day on which the legislation that enacted the Goods and Services Tax received Royal Assent, are described in these notes as having effect as of January 1, 1991, the day on which the tax was implemented.

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Minister of Finance

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## Part I : *Excise Tax Act*

### Clause 1

### FST New Housing Rebate

ETA
121(1)

Section 121 provides for a rebate in respect of certain new housing that was under construction before 1991 and therefore had an element of the previous federal sales tax in its costs but would also be subject to GST when first occupied, sold or leased after 1990.

Currently, some of the rules for determining the "estimated federal sales tax", on which the rebate is based, are set out in the Act and others are found in the Regulations made under the Act.

This amendment, in conjunction with related amendments to the *Federal Sales Tax New Housing Rebate Regulations*, will result in an amalgamation, in the Regulations, of all provisions necessary for the calculation of the estimated federal sales tax. This will not modify in any way the amounts rebated.

This amendment is effective January 1, 1991.

### Clause 2

### Definitions

ETA
123(1)

Subsection 123(1) defines a number of terms that apply for purposes of Part IX of the Act and Schedules V, VI and VII thereto.

**Subclause 2(1)**

ETA
123(1) Definition "capital property"

The 1993 budget created a new category of property for the purposes of deducting capital cost, under par. 20(1)(*a*) of the *Income Tax Act*, at an accelerated rate. New category 44 will include intellectual property that was previously included in category 14. Such property is not currently treated as capital property for GST purposes. To maintain that status, it is necessary to add a reference to category 44 in the definition "capital property" in subsection 123(1) of the *Excise Tax Act.*

This amendment, consistent with the related amendment to the *Income Tax Act*, applies to property acquired after April 26, 1993.

ETA
123(1) Definition "small supplier"

The amendment to the definition "small supplier" in subsection 123(1) of the Act is consequential to the introduction of a new small supplier test for charities. This new test, which is based on the charity's annual gross revenue, is set out in new section 148.1 and may be used only by charities. However, charities may also continue to use the current small supplier test in section 148, which is based on their taxable supplies. As a result of the addition of a reference to section 148.1 in the definition of small supplier in subsection 123(1), a charity may qualify as a small supplier under either of the two tests.

This amendment is effective April 1, 1993.

ETA
123(1) Definition "taxation year"

Subclause 2(1) amends paragraph (*a*) of the definition "taxation year" in subsection 123(1) of the Act, consequential to amendments made to the definition "person" in subsection 248(1) of the *Income Tax Act.* The amendment under subclause 2(1) ensures that the taxation year of an unincorporated person exempt from tax under Part I of the *Income*

*Tax Act* will, for GST purposes, continue to be the period that would be the person's taxation year if the person were a corporation.

This amendment is effective June 10, 1993, which is the effective date of the amendment to the definition "person" in subsection 248(1) of the *Income Tax Act*.

**Subclause 2(2)**

ETA
123(1) Definition « constructeur »

The definition "builder" in the *Excise Tax Act* is key to the determination of which supplies of real property are taxable and which are exempt from GST. Generally, a supply made by a builder is taxable. Builders are also required, under certain circumstances, to pay GST under the self-supply rules.

This amendment to paragraph (*d*) of the definition « constructeur » clarifies an ambiguity in the French version. Because of the use of the phrase "dans tous les cas" (in all cases) at the beginning of subparagraph (*d*)(ii), it is not clear if that subparagraph creates an additional condition in the case of condominiums or if it provides an alternative rule applicable to all buildings. Under the English version, the second interpretation is clearly intended.

This amendment is effective January 1, 1991.

**Clause 3**

**Small Supplier Division**

ETA
129(1)(*b*)

Paragraph 129(1)(*b*) is amended as a consequence of the introduction of a new small supplier test for charities. This new test, which is based on annual gross revenue, is set out in new section 148.1. The new test applies only to determine if a charity as a whole (i.e., the legal entity as opposed to each of its individual divisions) qualifies as

a small supplier under Part IX of the Act. It does not apply for the purposes of permitting a division to be treated as a small supplier pursuant to section 129. To qualify as a small supplier division under section 129, a division must qualify as a small supplier based on its taxable supplies as provided under section 148.

This amendment is effective April 1, 1993.

**Clause 4**

**Apportionment of Inputs**

**Subclause 4(1)**

ETA
141.01

New section 141.01 is designed to clarify and reinforce the requirement to apportion the use of inputs, based on the extent to which the inputs are used or consumed, or acquired or imported for consumption or use, for the purpose of making taxable and non-taxable supplies. This apportionment is relevant to the determination of input tax credits. Importantly, as the new section is added for greater certainty, it does not represent a change in policy or in the manner in which the tax is to be administered.

By virtue of section 169 of the *Excise Tax Act*, tax paid on business inputs can be recovered by way of input tax credits only to the extent that the inputs are acquired or imported for consumption, use or supply in the course of a "commercial activity". The necessity, in certain circumstances, to prorate tax on business inputs in determining input tax credits derives from the definition of "commercial activity", which is found in subsection 123(1) of the Act.

Under the definition of "commercial activity", a business is not a commercial activity to the extent that it involves the making of exempt supplies. (The same is, of course, true of adventures or concerns in the nature of trade and the making of supplies of real property. However, for explanatory purposes, only businesses are referred to here.) Clearly, one of the implications of this definition is

that anything used exclusively and directly in the making of "exempt" supplies is not used or consumed in the course of a commercial activity and, therefore, cannot give rise to an input tax credit. However, the definition of "commercial activity" also has implications for the entitlement to input tax credits in respect of other types of business inputs.

Many types of properties and services used in the operation of a business are not directly used in the making of supplies. These may be referred to as "indirect inputs". Examples include items of overhead and inputs used in the operation of "support" functions of a business such as a personnel department or an internal audit department. The personnel, management, administrative and other support functions of a business are part of what is involved in the making of supplies since these functions are undertaken in order for the business to achieve the ultimate end or purpose of making supplies. As noted above, a business is not a commercial activity to the extent that it involves the making of exempt supplies. This means that, for example, the internal audit department of a financial institution that makes both taxable and exempt supplies is, in part, within the scope of a commercial activity and, in part, outside that scope since it is part of what is involved in the making of both types of supplies in the course of the business.

New section 141.01 is added only to reinforce this concept that the ultimate purpose of making supplies of some kind involves all aspects of the business. The section, in effect, requires an attribution of all costs to the making of supplies. Only if, and to the extent that, those costs are incurred for the purpose of making taxable supplies are they eligible for input tax credits. Section 141.01, and the consequential amendments, apply as of January 1, 1991, with the exception of subsection 141.01(4), which applies to amounts claimed after the day on which the Ways and Means Motion that included this specific rule was tabled in the House of Commons. The specific provisions are explained in further detail below.

Subsection 141.01(1) Meaning of "endeavour"

New subsection 141.01(1) defines the term "endeavour", which is used in new subsections 141.01(2) to (4). The term refers to activities which would qualify as commercial activities (within the meaning of subsection 123(1)) before taking into account the extent

to which any exempt supplies are made in the course of the activity and, in the case of businesses and adventures or concerns in the nature of trade of individuals or partnerships, without taking into account whether the activity is engaged in for profit. However, an "endeavour" does not include a business that does not currently, and is not intended to, involve the making of supplies in the ordinary course of the business. This definition thus has the effect of excluding the latter types of activities from the application of subsections 141.01(2) to (4).

Subsection 141.01(2) Acquisition for Purpose of Making Supplies

The effect of new subsection 141.01(2) is that properties and services acquired or imported for consumption or use in the course of an endeavour (as defined in subsection 141.01(1)) must have been so acquired or imported for the purpose of making taxable supplies in order to give rise to an input tax credit. This is accomplished by treating the properties and services as having been acquired or imported for consumption or use in the course of a commercial activity to the extent that they were acquired or imported for the purpose of making taxable supplies. On the other hand, to the extent that the properties or services were acquired or imported for the purpose of making exempt supplies, they are treated as having been acquired or imported for consumption or use otherwise than in commercial activities. The same applies to the extent that properties or services are acquired or imported for a purpose other than the making of supplies in the course of an endeavour. For example, heat and light expenses in respect of a residential building may be incurred partly for the owner's personal use of the building as a residence and partly in operating the building as a place of business of the owner.

There are three important points to note regarding the interpretation of the phrase "for the purpose of making taxable supplies". First, properties and services, such as items of overhead, used in a business that makes supplies, but not directly used in the making of those supplies, are nevertheless considered to be used for the "purpose" of making supplies. The question is how the immediate use of the properties or services relates to the aim or objective of making supplies. Thus, for example, there is no doubt that general administrative expenses of a business that makes only taxable supplies are eligible for full input tax credits as these expenses are

incurred to achieve the purpose of making supplies. However, if the business also makes exempt supplies, its general administrative expenses are, in part, incurred for the purpose of making taxable supplies and, in part, for the purpose of making exempt supplies. Therefore, an apportionment of use based on these different purposes is required to determine the extent to which the expenses are considered to be incurred in the course of a commercial activity and thus eligible for input tax credits.

The second point to note about the "purpose" test is that it is not dependent on whether a registrant is actually making supplies at the time the test is applied (e.g., at the time the property or service is acquired). Rather, it is forward-looking, and based on the intention of the registrant to make supplies.

The final point regarding the "purpose" test is that it looks to the first-order supplies to which the particular properties or services relate. To illustrate, suppose a registrant that meets the definition of "financial institution" only because of its level of investment income issues promissory notes on the short-term money market to raise funds for use in a business of the registrant of making taxable supplies. The issuance of the financial instruments is an exempt supply of financial services. Therefore, properties and services acquired for use in that capital-raising function would be considered to have been acquired for the purpose of making exempt supplies. This should not be confused with the purpose for the making of the exempt supplies themselves, which may ultimately be related to the making of taxable supplies by the registrant.

Subsection 141.01(3) Use for Purpose of Making Supplies

New subsection 141.01(3) is the identical rule to that in subsection 141.01(2) except that it pertains to the actual consumption or use of properties and services rather than the intended consumption or use. This rule is pertinent to provisions of Part IX of the Act, such as the change-in-use rules for capital property, which are dependent on whether, and to what extent, properties or services are, at any given time, consumed or used in commercial activities. The points noted above with respect to the purpose test apply equally to the rule under this subsection.

Subsection 141.01(4) Free Supplies

New subsection 141.01(4) is added to provide specifically for the treatment of certain taxable supplies that are made for no consideration or for nominal consideration (referred to as "free supplies"). The provision applies where a free supply of property or a service is made in order to promote an endeavour [as defined in new subsection 141.01(1)] or to promote or facilitate the purchase, consumption or use of other property or services.

Property and services acquired or imported to be given away as a free supply are considered, under new paragraph 141.01(4)(c), to have been acquired or imported, not for re-supply, but for use by the supplier for the same purposes as those for which the free supply is made. New paragraph 141.01(4)(d) provides a similar rule with respect to property and services acquired or imported for consumption or use directly or indirectly in making free supplies. In other words, in the case of a free supply that is made to promote an exempt service, any property or service acquired in order to be given away as the free supply or to be used as inputs to the free supply are treated, for the purposes of determining input tax credits, as inputs to the exempt supply. Then, to the same extent, those inputs are deemed, under subsection 141.01(2) or (3), to have been acquired or imported for use, or to have been used, otherwise than in the course of commercial activities. The input tax credit (ITC) under section 169 is restricted accordingly.

The effect of these rules is that the entitlement to ITCs in respect of property or services acquired with the intention of being provided as a free supply or being used directly or indirectly as inputs to a free supply depends on the extent to which the free supply is made to promote or facilitate the making of other taxable supplies by the supplier.

New subsection 141.01(4) is effective January 1, 1991, but does not apply to the determination of amounts claimed on or before the day on which the Notice of Ways and Means Motion that includes this amendment was tabled in the House of Commons. Subsection 141.01(4) also does not apply to the determination of changes in use occurring on or before that day.

Subsection 141.01(5) Method of Apportionment

As noted above, where properties or services are acquired or imported, or consumed or used, partly for the purpose of making taxable supplies and partly for other purposes, the interaction between subsections 141.01(2) and (3) and section 169 leads to an apportionment of the tax payable in respect of the properties or services in determining the related input tax credit. Subsection 141.01(5) essentially provides that the method used to apportion must be fair and reasonable and used consistently throughout the year. It is intended to impose the same onus on registrants as does existing section 147 of the Act which it replaces. The wording of the rule is simply modified to be consistent with new subsections 141.01(2) and (3).

Subsections 141.01(6) and (7) Application to Other Provisions

New subsection 141.01(6) sets out a rule for how new subsections 141.01(2) and (3) are to be read together with other similar deeming rules under Part IX of the Act. For example, paragraph 199(2)(b) is a provision that deems a registrant to have acquired or imported capital property for use exclusively in commercial activities if the registrant acquired or imported the property for use "primarily" in commercial activities. The intention is that if more than 50 percent of a registrant's use of capital property is in commercial activities, the registrant should be entitled to a full input tax credit. In this case, the rule under subsection 141.01(6) provides that subsection 141.01(2) applies to determine whether the condition that the property was acquired or imported "primarily" for use in commercial activities is met. Suppose that it is so determined that the property was acquired for use 60 percent in commercial activities. If only subsection 141.01(2) applied, the registrant would be entitled to claim only 60 percent of the tax on the property as an input tax credit. However, as noted, this is not the intended result. Therefore, the rule under subsection 141.01(6) further provides that, having determined under subsection 141.01(2) that the property was acquired for use primarily in commercial activities, the deeming under paragraph 199(2)(b) applies so that the registrant is considered to have acquired the property for use exclusively in commercial activities and is therefore entitled to a full input tax credit.

New subsection 141.01(7) ensures that where any provision deems a supply not to have been made by a person (which is normally for purposes of relieving that person of having to collect tax), or deems there to have been no consideration, that deeming does not apply for purposes of determining whether the person has made a free supply (within the meaning of subsection 141.01(4)) or to what extent properties and services are acquired or imported, or used or consumed, by the person for the purpose of making supplies. For example, under the provisions in section 273 dealing with joint ventures, the participants other than the operator of the venture are deemed not to have made supplies that are actually made on their behalf by the operator. However, registered participants would still be entitled to input tax credits determined in accordance with the rules under subsections 141.01(2) and (3) in respect of expenses incurred otherwise than through the operator and in relation to those supplies.

**Clause 5**

**Method of Determining Use**

ETA
147

Section 147 of the Act is repealed because it is replaced with a rule, having the same effect, under new subsection 141.01(5).

This amendment is effective January 1, 1991.

**Clause 6**

**Small Supplier Test**

ETA
148.1

This new section provides for a new small supplier rule that applies only to charities. This small supplier test will be based on a "gross revenue" test whereby charities can determine if they qualify as a small supplier by using their gross revenue as reported on their financial statements prepared for income tax reporting purposes. If

they received $175,000 or less in gross revenue in either of their previous two years, they can qualify as small suppliers and will not be required to register for GST purposes. They will still be entitled to claim rebates under section 259 of GST paid on their inputs.

This provision does not replace the existing small supplier rule in section 148, which generally permits those whose taxable supplies amount to less than $30,000 annually not to register. Rather, it provides for an alternative small supplier rule for charities that is easier for them to apply since it does not require them to determine whether their supplies are taxable in order to qualify as a small supplier.

Under this new section, all new charities will be considered as small suppliers in their first year of existence even if their gross revenue exceeds $175,000 in the first year. Charities in their second year will qualify as small suppliers for that year if their gross revenue for their first year was $175,000 or less. For charities in existence for more than two years, the new section provides that those whose gross revenue was $175,000 or less in either of the previous two fiscal years will be treated as small suppliers and thus they will not be required to register for GST. Any charity that has gross revenue exceeding $175,000 in both its previous two years and, therefore, does not meet the new test will still be entitled to small supplier status under section 148 if its taxable supplies amount to less than $30,000 annually.

For purposes of section 148.1, the "gross revenue" for a fiscal year of a charity is the amount that the charity (i.e., the legal entity for GST purposes) will determine to be its gross revenue in its annual financial statements, which it is required to prepare in order to meet the reporting requirements for income tax purposes. The total gross revenue includes gross revenue from all sources, including all gifts and donations, grants and subsidies, gross revenue from related businesses and from property and investment income. Gross revenue can be calculated on a cash or accrual basis depending on the method used by the charity in preparing its annual financial statements for income tax reporting purposes.

This amendment is effective April 1, 1993.

**Clause 7**

**Feedlots**

ETA
164.1(1)

Section 164.1, in combination with section 2.1 of Part IV of Schedule VI, results in the zero-rating of that portion of a feedlot's charge for service that is reasonably attributable to feed for zero-rated livestock. This is to parallel the tax-free treatment under that Schedule of certain livestock feed when sold separately. The feed that qualifies for this treatment under the Schedule is described in the *Agriculture and Fishing Property (GST) Regulations*.

Subsection 164.1(1) is amended to ensure that the definition "feed" for the purposes of section 164.1 encompasses all the types of livestock feed included in the Regulations. The amended definition reflects draft regulations released on June 10, 1993, which add mineral feed (other than a trace mineral salt feed). Consistent with existing subsection 1(3) of the Regulations, the amended definition in subsection 164.1(1) also includes certain by-products of the food processing industry, and plant or animal products, used as feed for farm livestock.

This amendment applies to supplies of feed delivered to recipients after June 10, 1993.

**Clause 8**

**Effect of Election in Respect of Supply of Assets of a Business**

ETA
167(1.1)

Subsection 167(1.1) sets out the rules that apply when a supplier and a recipient under an agreement to supply a business or part of a business jointly elect under subsection 167(1) to treat certain supplies made under the agreement as non-taxable. The preamble to subsection 167(1.1) sets out the filing requirement that must be met in order for the provision to apply.

The subsection is amended to correct an erroneous reference to a return under Division II. The correct reference is to a return under Division V.

This amendment has the same application rule as the amendment that added subsection 167(1.1) (added by 1993, c. 27, subsection 32(1)). The subsection generally applies to any supply of a business or part of a business under which ownership, possession or use of all or substantially all of the assets of the business or part that are included in the supply is transferred to the recipient after September 1992. However, in the case of such supplies made before 1993, the supplier, and not the recipient, must file the election if the supplier is a registrant.

**Clause 9**

**Allowances and Reimbursements**

ETA
174 and 175

Existing sections 174 and 175 give rise to input tax credits and rebates in respect of allowances and reimbursements paid to employees and members of a partnership.

These sections are amended to entitle charities to also claim input tax credits (in respect of inputs to their taxable supplies), and rebates, with respect to allowances and reimbursements paid to volunteers for goods or services acquired or imported for use by the charity and for expenses incurred by volunteers relating to the performance of their volunteer function.

Section 174 Travel and Other Allowances

The amended section 174 provides that where a charity pays an allowance to a volunteer for expenses (e.g., meals or travel) incurred by the volunteer in relation to the activities of the charity, the charity will be deemed to have received a supply of the goods or services so acquired by the volunteer and, therefore, will be entitled to claim a rebate or an input tax credit based on 7/107ths of the allowance. However, the allowance must be an amount that would be deductible

in computing income from a business if the charity's activities were a business. Therefore, the allowance must be reasonable in the circumstances. Specifically, with respect to travel allowances, the charity must have considered that the allowance would meet the reasonableness tests under the *Income Tax Act* for purposes of subparagraphs 6(1)(b)(v), (vi), (vii) and (vii.1) of that Act. In particular, any allowance for the use of a motor vehicle will be considered reasonable only if it is based on the number of kilometres for which the vehicle is used in connection with the charity's activities.

Section 175 Reimbursements of Employees, Partners and Volunteers

Amended section 175 provides that where a charity reimburses a volunteer for an expense for a taxable good or service, the charity is deemed to have received a supply of the good or service and, therefore, is entitled to claim a rebate or an input tax credit based on the portion of the reimbursement that is on account of GST paid by the volunteer. The good or service must be purchased or imported by the volunteer for consumption or use in relation to activities of the charity. For instance, a rebate or input tax credit will be available for reimbursements for gas used in transporting persons on behalf of the charity or for supplies acquired for the charity's use in the course of charitable activities.

Charities will be required to maintain records sufficient to show that the allowance or reimbursement relates to an activity of the charity.

These amendments are effective January 1, 1991.

**Clause 10**

**Redemption of Coupons**

ETA
181(5)

Subsection 46(1) of Chapter 27 of the Statutes of Canada, 1993 added subsection 181(5) to the *Excise Tax Act*. This subsection incorporates the rules previously set out in subsection 181(1) of the Act, which provide that when an issuer of a discount coupon pays a vendor for

the redemption of the coupon, the payment is deemed not to be consideration for a supply and not to be a financial service. The amendment also added a rule allowing the issuer to claim an input tax credit in the case of a fixed dollar value coupon. Since the latter rule should not apply where the coupon is for a zero-rated property or service – since no GST would have been payable on the transaction for which the coupon is given – the subsection contains an exclusion for zero-rated supplies. However, this has the unintended effect of also taking coupons for zero-rated items out of the deeming rules.

The amendments under clause 10 rectify this by moving the exclusion for zero-rated supplies from the preamble of subsection 181(5) to paragraph 181(5)(c) which deals strictly with the input tax credit.

This amendment is effective January 1, 1991, which is the effective date of the amendment that added subsection 181(5).

**Clause 11**

**Non-financial Institutions**

ETA
185(1)

Subsection 185(1) is amended to clarify how it applies when read together with new subsection 141.01(2). Specifically, the subsection is amended to provide that the extent to which properties and services are acquired or imported for consumption, use or supply in the course of making supplies of certain financial services is to be determined in accordance with new subsection 141.01(2). To that same extent, those properties and services are then deemed by section 185 to have been acquired or imported for consumption, use or supply in the course of commercial activities.

This amendment is effective January 1, 1991.

**Clause 12**

**Prizes**

ETA
188(1) of the French version

Subsection 188(1) deems, under certain conditions, a registrant to have received a taxable supply of a service for use exclusively in a commercial activity consisting of taking bets or conducting games of chance. Unlike the English version, the French version of this subsection does not clearly convey that the commercial activity is one of the registrant. It is therefore amended, effective January 1, 1991, by substituting the words "de son" for the words "d'une".

**Clause 13**

**Election for Streamlined Accounting**

**Subclause 13(1)**

Cessation of Election

ETA
227(3)(*b*)

Section 227 of the Act provides the authority for registrants to elect to use streamlined methods of determining their net tax. Subsection 227(3) sets out the rules for determining when an election under section 227 ceases to have effect. Paragraph (*b*) of the subsection is amended as a consequence of restructuring the revocation provisions in order to allow registrants to revoke an election to use the Streamlined Input Tax Credit Method without filing a notice of revocation with the Minister of National Revenue.

This amendment is effective March 1, 1993.

**Subclause 13(2)**

Revocation

ETA
227(4) to (4.2)

Subsection 227(4) Revocation

Existing subsection 227(4) of the Act provides a special rule with respect to revocations of elections to use the streamlined accounting methods prescribed under section 227. This subsection is amended as a consequence of restructuring the revocation provisions in order to allow registrants to revoke an election to use the Streamlined Input Tax Credit Method without filing a notice of revocation with the Minister of National Revenue.

Subsection 227(4.1) Effective Date and Notice of Revocation

New subsection 227(4.1) sets out the rules regarding revocations of elections under section 227. These rules are unchanged from the rules provided in existing paragraph 227(3)(*b*) and subsection 227(4). The revocation provisions are restructured only to accommodate the rule, under new subsection 227(2), that allows a registrant to revoke an election to use the Streamlined Input Tax Credit Method without filing a notice of revocation with the Minister of National Revenue.

Subsection 227(4.2) Exception

New subsection 227(4.2) allows a registrant to make an election to use the Streamlined Input Tax Credit Method without filing an election with the Minister of National Revenue in the prescribed form containing prescribed information and to revoke such an election without filing a notice of revocation with the Minister. However, the subsection provides that the election must be made by the registrant before the return is filed for the reporting period in which it is to take effect. In other words, registrants are not permitted to retroactively

apply the method to reporting periods for which they have already filed returns.

These amendments are effective March 1, 1993.

**Clause 14**

**Food, Beverages and Entertainment**

ETA
236

Existing section 236 of the Act requires registrants to add, in determining their net tax, an amount equal to 20% of the input tax credits (ITCs) they have claimed in respect of meal and entertainment expenses incurred in the course of commercial activities. As a result, registrants are effectively entitled to ITCs only for 80% of their expenses for food, beverages and entertainment.

To simplify compliance with the GST for charities, section 236 is amended to relieve them from the requirement to add back 20% of their ITCs claimed for food, beverages and entertainment in respect of taxable activities.

This amendment applies in respect of tax that becomes payable, or is paid without having become payable, after 1992.

**Clause 15**

**Non-Resident Performers, etc.**

ETA
238(3)

Subsection 238(3) sets out filing and remittance obligations imposed on non-resident performers. The existing subsection provides that these rules apply notwithstanding subsection 238(2), which pertains to non-registrants. However, because of subsection 240(2), the non-resident performers described in subsection 238(3) are required to

register and are therefore registrants. The correct cross-reference is therefore to subsection 238(1), which pertains to registrants.

This amendment is effective January 1, 1991.

**Clause 16**

**Designated Reporting Periods**

ETA
238.1

Under new section 238.1 of the Act, a registrant may apply to the Minister of National Revenue to have one or more of the registrant's reporting periods in a fiscal year designated for the purposes of not having to file returns for those periods. Eligible reporting periods are those in which the total of the tax collectible and collected and other amounts required to be added in computing the registrant's net tax for the period does not exceed $1,000.

New section 238.1 applies to reporting periods commencing after March 1994.

Subsection 238.1(1) Definitions

Subsection 238.1(1) defines the expressions "cumulative amount" and "designated reporting period" for purposes of section 238.1. The term "cumulative amount" refers to the total amount required to be added in computing the registrant's net tax for the particular period, which is the amount that would be the net tax for the period if the registrant did not claim input tax credits or other allowable deductions.

Under subsection 238.1(2), the designation of a particular reporting period depends on the expectation that the cumulative amount for the period will not exceed $1,000. Pursuant to new subsection 238.1(4), where this total for a designated period in fact does not exceed $1,000, it is carried forward and added in determining the next period's cumulative amount and net tax. To illustrate, assume a registrant's reporting period is a fiscal month and the registrant has applied for (and the Minister of National Revenue has approved) the

designation of three reporting periods. Assume that the total amount to be added in computing the registrant's net tax for each of the periods is as follows:

- Period 1 : $400
- Period 2 : $500
- Period 3 : $350

Since the amount ($400) to be added in computing the registrant's net tax for period 1 is less than $1,000, it is carried forward to period 2 and added to the amount ($500) determined for period 2. As the resulting total or "cumulative amount" ($900) for period 2 is also under $1,000, it is carried forward to the third period to arrive at a cumulative amount of $1,250 for period 3 ($350 plus $900). Since the cumulative amount for period 3 exceeds the $1,000 threshold, the registrant would not be entitled to the waiver, under subsection 238.1(3), of the filing requirement for period 3 and the entire $1,250 would have to be remitted by the registrant on or before the due date for the return for period 3.

The term "designated reporting period" is defined as a reporting period that has been designated by the Minister as eligible for the filing waiver under subsection 238.1(3) if the condition regarding the cumulative amount for that period is subsequently met. A reporting period in which a person ceases to be a registrant is not considered a designated reporting period (even if had been approved at an earlier time) and therefore is never eligible for the filing waiver.

Subsection 238.1(2) Designation by Minister

Subsection 238.1(2) sets out the conditions for the designation of a registrant's reporting period. First, the registrant must apply in prescribed form for the designation and the application must relate to a reporting period that is not a fiscal year of the registrant. Ministerial guidelines for the exercise of this discretion to designate periods will also generally limit the number of reporting periods in a fiscal year that may be designated so that the registrant is required to file at least one return per year. Secondly, the registrant must establish to the satisfaction of the Minister of National Revenue that the total of the amounts to be added in computing the registrant's net tax for the period (i.e., the tax collectible and tax collected in the period plus any other amounts required to be added, including any

amount carried over from the preceding period pursuant to subsection 238.1(4)), is not reasonably expected to exceed $1,000. Thirdly, the Minister will not approve an application for the designation of a registrant's reporting period in a fiscal year if the designation of another reporting period of the registrant in that year has already been revoked. Finally, at the time of the registrant's application, all amounts required to be paid or remitted before that time under the GST legislation, the *Customs Act*, the *Excise Act*, the *Income Tax Act*, sections 21 and 33 of the *Canada Pension Plan* and section 53 and Part VII of the *Unemployment Insurance Act* must have been paid or remitted and all GST returns required to have been filed before that time must have been filed.

Subsection 238.1(3) No Return

Subsection 238.1(3) stipulates that a registrant is not required to file a return under section 238 for a designated reporting period, as long as the registrant's "cumulative amount" (as defined in subsection 238.1(1)) for the period does not exceed $1,000.

Subsection 238.1(4) Determination of Net Tax

Subsection 238.1(4) provides the mechanism whereby amounts that would otherwise be required to be added to net tax for a period are instead carried forward to the next reporting period, provided that the total of such amounts does not exceed $1,000. Since the total carried forward is added to the net tax for the next period and deemed not to be part of the net tax for the current period, the registrant may avoid filing a return and remitting net tax for the current period, without incurring interest or penalty on the amount carried forward.

Subsection 238.1(5) and (6). Revocation by Minister

Subsection 238.1(5) deals with situations where the Minister of National Revenue may revoke a designation. This can occur if, after the initial designation of a period but before the beginning of that period, the Minister is no longer satisfied that the "cumulative amount" for the period can reasonably be expected not to exceed $1,000 or where, at the beginning of the period, the condition that the registrant be up to date with remittances and GST returns is no longer met. Subsection 238.1(6) then requires the Minister to inform the registrant in writing of a revocation of a designation.

Subsection 238.1(7) Automatic Revocation

Subsection 238.1(7) deals with situations where a designation is revoked automatically (i.e., without any particular action or notice). This occurs where a registrant has chosen to file a return for a preceding designated reporting period (for example, in order to claim input tax credits) or is served a demand under section 282 to file such a return. Also, once the Minister revokes a designation of a registrant's reporting period ending in a fiscal year, all designations of subsequent reporting periods ending in the same fiscal year are automatically revoked.

Subsection 238.1(8) Filing Deadlines

Subsection 238.1(8) stipulates that where a provision of the GST legislation refers to the day on or before which a return is required to be filed, it shall be read as a reference to the day on or before which the return would have been required to have been filed if the related reporting period had not been designated.

**Clause 17**

**Reporting Period of Registrant**

ETA
245(2)

Subsection 245(2) of the Act establishes the reporting periods of registrants. A registrant's reporting period depends on the registrant's threshold amounts determined under section 249. Under existing section 245, a registrant who qualifies for annual filing on the basis of the registrant's threshold amount must elect for that option. If the registrant does not so elect, the default is quarterly filing.

This amendment changes the default period in these cases to the registrant's fiscal year. This means that new registrants who qualify for annual filing will be able to file on that basis without having to make an election. Of course, if the registrant so chooses, the registrant may still elect to have reporting periods that are fiscal months or quarters.

This amendment applies to reporting periods commencing after March 1994.

**Clause 18**

**Election for Fiscal Years**

ETA
248(1)

Under existing subsection 248(1) of the Act, a person is allowed to elect to have the reporting period of the registrant be the fiscal year of the registrant if the total taxable supplies in the preceding year (i.e., the threshold amount for the current year) does not exceed $500,000. An election for annual reporting under this subsection takes effect on the first day of a person's fiscal year or on the day on which the person becomes a registrant.

This amendment to subsection 248(1) is consequential to the amendment to subsection 245(2) (see comments under clause 17), which provides that persons who qualify for annual filing and also become registrants after March 1994, will automatically be annual filers unless they elect otherwise. Paragraph 248(1)(*b*), which refers to elections by new registrants, is therefore no longer necessary and is repealed.

This amendment applies to reporting periods commencing after March 1994.

**Clause 19**

**Administration of Oaths**

ETA
275(4) of the French version

This amendment corrects a grammatical error in the French version of subsection 275(4). The amendment is effective January 1, 1993.

**Clause 20**

**Filing and Remittance**

ETA
278

Section 278 of the Act provides that GST payments or remittances be made to the Receiver General. Many registrants with GST remittances of $50,000 or more have been bringing their remittances to a Revenue Canada office late in the day on the due date. This has the effect of extending the due date since the remittances would not be deposited to the Receiver General's account until the following business day, which could be as much as three days later. To address a similar problem with respect to remittances of source deductions for income tax purposes by employers and payroll service companies, the *Income Tax Act* was amended in 1993 to require such persons with average monthly withholdings of $50,000 or more to make their remittances through financial institutions.

Consistent with the income tax requirement, section 278 of the *Excise Tax Act* is amended in order to provide that GST remittances of $50,000 or more that are due after August 1994 be made to the account of the Receiver General at a financial institution. The amendment also re-structures the section and, for greater certainty, makes it clear that the requirement to pay an amount to the Receiver General does not apply to recipients in respect of amounts paid to suppliers who are required to collect those amounts as agents of the Crown and include them in the suppliers' net tax to be remitted to the Receiver General.

**Clause 21**

**Penalty and Interest**

ETA
280(1) of the French version

Subsection 280(1) imposes penalty and interest for failure to "pay or remit" an amount to the Receiver General. However, the French version of this subsection currently refers only to the requirement to remit. This amendment adds a reference to "pay" for consistency with the English version.

This amendment is effective January 1, 1991.

**Clause 22**

**Period of Assessment**

ETA
298(4)(*c*)

This amendment corrects a faulty reference. Paragraph 298(4)(*c*) contains a reference to a waiver under subsection 298(6). However, the provision dealing with a waiver is in fact in subsection 298(7).

This amendment is effective January 1, 1991.

**Clause 23**

**Property and Services**

ETA
Heading before section 337

The current heading "Personal Property and Services" preceding section 337 is misleading since some provisions falling under that heading – e.g., subsection 340(1) – apply to both personal and real property. The heading is therefore changed to refer to all property.

This amendment is effective January 1, 1991.

**Clause 24**

**Agreements Before August 8, 1989**

ETA
340(6)

Subsection 340(6) is intended to grandfather from the application of the GST lease payments and lease buy-out payments for capital property under agreements entered into before August 8, 1989 when the first GST Technical Paper was released. However, the existing subsection does not cover sub-lease agreements due to the stipulation that the property be capital property of the supplier under the agreement. This amendment extends the application of the grandfathering rule to those sub-lease agreements where the property in question is capital property of the person who supplied the property to the sublessor.

This amendment is effective January 1, 1991.

**Clause 25**

**Definition "institutional health care service"**

ETA
Schedule V, Part II, Section 1

Section 2 of Part II of Schedule V exempts the supply of an institutional health care service by the operator of a health care facility, except when the service is rendered for cosmetic rather than medical or reconstructive purposes. The definition "institutional health care service" is contained in section 1 of that Part.

The amendment to this definition clarifies that when a medical or surgical prosthesis is installed in a health care facility in conjunction with an exempt institutional health care service, the supply of the prosthesis is also exempt. This amendment ensures, for example, that if a medical treatment in a hospital involves the installation of a

prosthesis such as an artificial hip, the supply of the prosthesis by the hospital is exempt.

This amendment is effective January 1, 1991.

**Clause 26**

**Supplies Paid Under Provincial Health Care Plan**

ETA
Schedule V, Part II, Section 9

Section 9 of Part II of Schedule V to the Act currently exempts supplies of property or services that are paid or reimbursed under a provincial health care plan. Section 9 is amended to exclude otherwise zero-rated supplies of property or services (e.g., the sale and dispensing of prescription drugs by a pharmacist) so that these supplies continue to be zero-rated, and not exempt, when covered by a provincial health care plan.

This amendment is effective January 1, 1991 except that, where a registrant took such supplies into account as exempt supplies for purposes of determining net tax under a streamlined accounting method, the amendment will not alter that determination.

**Clause 27**

**Homemaker Services**

ETA
Schedule V, Part II, section 13

Under existing section 13 of Part II of Schedule V to the Act, homemaker services funded by a government or a municipality are exempt, whether the service is actually provided by the government or municipality or by a private company on the government's or municipality's behalf. Frequently, however, funding by the government or the municipality is insufficient to cover the entire cost of the homemaker services needed by the individual. In such circumstances, individuals must pay the additional costs.

Furthermore, under some assistance programs, payments are made directly to individuals who then, in turn, acquire the homemaker service. In these circumstances, under the existing exemption, the individual must also pay GST on the subsidized service.

The legislation is therefore being amended so that individuals receiving services under government or municipal assistance programs are not required to pay the GST on the additional costs they incur for the homemaker service. In addition, in the cases where assistance payments are made directly to individuals, both the subsidized service and any additional services paid by the individual would be exempt.

This amendment applies to supplies all or part of the consideration for which becomes due after 1992 or is paid after 1992 without having become due.

**Clause 28**

**General Exemption for Supplies by Charities**

ETA
Schedule V, Part VI, section 2

Section 2 of Part VI of Schedule V to the Act provides a general exemption for supplies made by charities with the exception of a number of specific supplies that are set out under paragraphs (*a*) to (*m*) of that section. Paragraph (*b*) refers to supplies deemed under Part IX of the Act to have been made, such as a supply deemed to have been made upon ceasing to use a capital property in a commercial activity. The purpose for deeming supplies to have been made is generally to trigger a tax liability or effectively recapture input tax credits, thus the reason for excluding these deemed supplies from the general exempting provision.

Section 133 deems every actual supply to have been made at the time the agreement for the supply is entered into. Paragraph (*b*) of the general charity exemption cannot reasonably be interpreted as referring to all such deemed supplies since that would give the absurd result of effectively negating the exemption and making the other exclusions from the exemption totally redundant. However, for clarity purposes only, the reference to deemed supplies is amended,

effective on Royal Assent, to explicitly refer to those supplies deemed to have been made under any provision of Part IX other than section 133.

**Clause 29**

**Vehicle Conversion**

ETA
Schedule VI, Part II, section 18.1

New section 18.1 of Part II of Schedule VI zero-rates the service of modifying a motor vehicle (e.g., a car or a mini-van) to meet the needs of a disabled individual using a wheelchair. Goods supplied together with the modification service would also be zero-rated when they are used in so modifying the vehicle and are supplied especially to meet the needs of the disabled individual. Goods that are supplied in conjunction with the modification but that are not related to the special needs of the disabled individual, such as air conditioning, remain taxable. The vehicle itself also remains taxable.

The disabled individual for which the modifications are made can be the driver or a passenger of the vehicle. It does not matter who pays for the modifications. However, the vehicle must be owned by a private citizen and not by a corporation, an association or municipal or government organization.

This amendment applies to supplies for which consideration becomes due after December 10, 1992 or is paid after that day without having become due.

**Clause 30**

**Blood and Urine Testing Devices**

ETA
Schedule VI, Part II, section 29 of the French version

To ensure consistency with the English version, this amendment adds a reference to "reagents or tablets" which was missing from the list of zero-rated items in the French version of section 29.

This amendment is effective January 1, 1991.

**Clause 31**

**Zero-Rated Services in Respect of Medical Devices**

ETA
Schedule VI, Part II, section 34

Section 34 of Part II of Schedule VI to the Act zero-rates certain services in respect of tax-free medical devices but excludes medical services that are, instead, treated as exempt under Part II of Schedule V to the Act. The amendment carves out of this exception those services that are exempt only by virtue of the fact that they are paid for under a provincial health care plan. In those cases, the service will be treated as zero-rated, and not exempt, if it is included in section 34, even though it is covered by a provincial plan.

This amendment is effective January 1, 1991 except that, where a registrant took such supplies into account as exempt supplies for purposes of determining net tax under a streamlined accounting method, the amendment will not alter that determination.

**Clause 32**

**Farm Livestock**

ETA
Schedule VI, Part IV, sections 1 and 1.1

Section 1 of Part IV of Schedule VI to the Act zero-rates a supply of farm livestock that is ordinarily raised or kept to produce, or to be used as, food for human consumption. The amendment clarifies that a supply of rabbits is not zero-rated under section 1. Certain supplies of rabbits are zero-rated under new section 1.1.

This amendment is effective January 1, 1991.

ETA
Schedule VI, Part IV, Section 1.1

Section 1 of Part IV of Schedule VI to the Act zero-rates a supply of farm livestock that is ordinarily raised or kept to produce, or to be used as, food for human consumption. There was some uncertainty as to whether this provision applies to rabbits that are raised to produce food since it is not clear that rabbits are "ordinarily" raised or kept for this purpose. New section 1.1, in conjunction with the amendment to section 1 of the Part, eliminates any uncertainty by providing that a supply of a rabbit is zero-rated except when made in the course of a business in which the supplier regularly sells animals as pets.

This amendment is effective January 1, 1991.

**Clause 33**

**Non-Taxable Importations**

ETA
Schedule VII, section 1

The *NAFTA Implementation Act of 1993* amended chapter 98 of Schedule I to the *Customs Tariff* with the effect of changing the tariff items under which certain goods are classified. As a consequence,

section 1 of Schedule VII to the *Excise Tax Act* is amended to reference certain of the new tariff items. Goods included in the existing section will retain their non-taxable status, although in some cases under the amended tariff classifications.

The NAFTA changes also resulted in some minor broadening of certain items. For example, goods classified under existing tariff item 9819.00.00 must be imported for a period not exceeding six months and must be for display at a convention or a public exhibition at which the goods of various manufacturers or producers are displayed. Display goods, when imported by residents or nationals of Mexico or the U.S., can now alternatively be classified under new tariff item 9823.60.00, which refers simply to goods intended for display or demonstration and does not contain the six-month limitation.

This amendment applies to goods imported after 1993.

**Clause 34**

**Importations of Drugs and Biologicals**

ETA
Schedule VII, section 6

Existing section 6 of Schedule VII to the Act ensures that certain drugs that are zero-rated under Part I of Schedule VI when sold in Canada are likewise not taxable on importation. The section currently refers only to section 2 of Part I. This amendment replaces the reference to section 2 with a reference to all of Part I, thus including section 5 of that Part (added by 1993, c.27, s.180).

This amendment applies to importations after April 1991.

**Clause 35**

**Parking Spaces**

ETA
Schedule V to the French version

The expression "espace de stationnement" in section 8 and 8.1 of Part I, and paragraph 25(*f*) of Part VI, of Schedule V to the French version of the Act is replaced by the more appropriate expression "aire de stationnement".

## Part II: An Act to Amend the *Excise Tax Act*

**Clause 36**

AETA
17(2)

This amendment corrects an oversight in the coming into force rule for the amendment under section 17 of Chapter 27 of the Statutes of Canada, 1993. That provision amended section 140 of the *Excise Tax Act,* which is intended to ensure that the full value of a taxable supply of a membership in an organization, such as a private recreational club, is subject to tax if the cost of obtaining the membership consists partly of the cost of acquiring otherwise exempt financial securities. The section was amended, effective November 5, 1991, to clarify the circumstances under which it applies. However, the amendment also had the effect of excluding shares in cooperative corporations whose main purpose is not to provide dining, recreational or sporting facilities from the rule under section 140 and, as this change was relieving in nature, it was intended to apply as of January 1, 1991. Therefore, the coming-into-force rule in subsection 17(2) of the amending Act is amended to achieve those two different effective dates for the changes to section 140 of the *Excise Tax Act.*

This amendment is effective June 10, 1993, the day on which the Act that amended section 140 of the *Excise Tax Act* received Royal Assent.