

**Tax Measures:
Supplementary information**

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Overview

This annex provides detailed information on tax measures proposed in the Budget.

Table 1 lists these measures and provides estimates of their fiscal impact.

The annex also provides Notices of Ways and Means Motions to amend the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act, 2001*, the *Excise Act* and other legislation and draft amendments to various regulations.

In this annex, references to “Budget Day” are to be read as references to the day on which this Budget is presented.

Table 1

Revenue Impacts of Proposed Tax Measures^{1,2}

(millions of dollars)

	2021– 2022	2022– 2023	2023– 2024	2024– 2025	2025– 2026	2026– 2027	Total
Personal Income Tax							
Tax-Free First Home Savings Account	-	-	55	215	225	230	725
Home Buyers' Tax Credit	30	125	130	130	130	130	675
Multigenerational Home Renovation Tax Credit	-	5	25	25	25	25	105
Home Accessibility Tax Credit	3	15	15	15	15	15	78
Residential Property Flipping Rule	-	-4	-15	-15	-15	-15	-64
Labour Mobility Deduction for Tradespeople	25	110	110	115	115	120	595
Medical Expense Tax Credit for Surrogacy and Other Expenses	4	15	15	15	15	15	79
Annual Disbursement Quota for Registered Charities	-	-	-	-	-	-	-
Charitable Partnerships	-	7	13	35	45	65	165
Amendments to the <i>Children's Special Allowances Act</i> and to the <i>Income Tax Act</i>	-	-	-	-	-	-	-
Borrowing by Defined Benefit Pension Plans	-	-	-	-	-	-	-
Reporting Requirements for RRSPs and RRIFs	-	-	-	-	-20	-30	-50
Business Income Tax							
Canada Recovery Dividend	-	-810	-810	-810	-810	-810	-4,050
Additional Tax on Banks and Life Insurers	-	-290	-460	-430	-430	-445	-2,055
Investment Tax Credit for Carbon Capture, Utilization, and Storage	-	35	70	285	755	1,455	2,600
Clean Technology Incentives – Air Source Heat Pumps	-	9	15	10	10	9	53
Critical Mineral Exploration Tax Credit	-	65	45	110	90	90	400
Flow-Through Shares for Oil, Gas, and Coal Activities	-	-	-1	-2	-3	-3	-9
Small Business Deduction	-	10	165	160	160	165	660
International Financial Reporting Standards for Insurance Contracts (IFRS 17)	-	-	-575	-630	-565	-580	-2,350
Hedging and Short Selling by Canadian Financial Institutions	-	-65	-135	-140	-145	-150	-635
Application of the General Anti-Avoidance Rule to Tax Attributes	-	-	-	-	-	-	-
Genuine Intergenerational Share Transfers	-	-	-	-	-	-	-
Substantive CCPCs	-	-735	-965	-885	-825	-825	-4,235
International Tax Measures							
International Tax Reform							
Pillar One – Reallocation of Taxing Rights ³	-	-	-	-	-	-	-
Pillar Two – Global Minimum Tax ⁴	-	-	-	-	-	-	-
Exchange of Tax Information on Digital Economy Platform Sellers	-	-	-	-	-	-	-
Interest Coupon Stripping	-	-80	-125	-140	-145	-150	-640
Sales and Excise Tax Measures							
GST/HST Health Care Rebate	-	3	3	3	3	4	16
GST/HST on Assignment Sales by Individuals	-	-10	-10	-10	-10	-10	-50
Taxation of Vaping Products	-	-69	-145	-145	-145	-150	-654

Table 1

Revenue Impacts of Proposed Tax Measures^{1,2}

(millions of dollars)

	2021– 2022	2022– 2023	2023– 2024	2024– 2025	2025– 2026	2026– 2027	Total
Cannabis Taxation Framework and General Administration under the <i>Excise Act, 2001</i>	-	-	-	-	-	-	-
WTO Settlement on the 100-per-cent Canadian Wine Exemption	-	-55	-80	-80	-85	-90	-390
Beer Taxation	-	1	2	2	2	2	9
Other Tax Measure							
Amendments to the <i>Nisga'a Final Agreement Act to Advance Tax Measures in the Nisga'a Nation Taxation Agreement</i>	-	-	-	-	-	-	-

¹ A positive amount represents a decrease in revenue; a negative amount represents an increase in revenue.

² A “-” indicates a nil amount, a small amount (less than \$500,000) or an amount that cannot be determined in respect of a measure that is intended to protect the tax base.

³ In the Economic and Fiscal Update of December 2021, revenues previously projected for the Digital Services Tax for 2023-24 and subsequent years were provisioned as a proxy for revenues from the eventual Pillar One multilateral framework. This provisioning is unchanged.

⁴ It is not possible to reliably estimate the revenue impact at this time.

Personal Income Tax Measures

Tax-Free First Home Savings Account

Budget 2022 proposes to create the Tax-Free First Home Savings Account (FHSA), a new registered account to help individuals save for their first home. Contributions to an FHSA would be deductible and income earned in an FHSA would not be subject to tax. Qualifying withdrawals from an FHSA made to purchase a first home would be non-taxable.

Some key design features of the FHSA are described below. The government will release its proposals for other design elements in the near future.

Eligibility

To open an FHSA, an individual must be a resident of Canada, and at least 18 years of age. In addition, the individual must not have lived in a home that they owned either:

- at any time in the year the account is opened, or
- during the preceding four calendar years.

Individuals would be limited to making non-taxable withdrawals in respect of a single property in their lifetime.

Once an individual has made a non-taxable withdrawal to purchase a home, they would be required to close their FHSAs within a year from the first withdrawal and would not be eligible to open another FHSA.

Contributions

The lifetime limit on contributions would be \$40,000, subject to an annual contribution limit of \$8,000. The full annual contribution limit would be available starting in 2023.

Unused annual contribution room could not be carried forward, meaning an individual contributing less than \$8,000 in a given year would still face an annual limit of \$8,000 in subsequent years.

An individual would be permitted to hold more than one FHSA, but the total amount that an individual contributes to all of their FHSAs could not exceed their annual and lifetime FHSA contribution limits.

Withdrawals and Transfers

Amounts withdrawn to make a qualifying first home purchase would not be subject to tax. Amounts that are withdrawn for other purposes would be taxable.

To provide flexibility, an individual could transfer funds from an FHSA to a registered retirement savings plan (RRSP) (at any time before the year they turn 71) or registered retirement income fund (RRIF). Transfers to an RRSP or RRIF would not be taxable at the time of transfer, but amounts would be taxed when withdrawn from the RRSP or RRIF in the usual manner. Transfers would not reduce, or be limited by, the individual's available RRSP room. Withdrawals and transfers would not replenish FHSA contribution limits.

If an individual has not used the funds in their FHSA for a qualifying first home purchase within 15 years of first opening an FHSA, their FHSA would have to be closed. Any unused savings could be transferred into an RRSP or RRIF, or would otherwise have to be withdrawn on a taxable basis.

Individuals would also be allowed to transfer funds from an RRSP to an FHSA on a tax-free basis, subject to the \$40,000 lifetime and \$8,000 annual contribution limits. These transfers would not restore an individual's RRSP contribution room.

Home Buyers' Plan

The home buyers' plan (HBP) allows individuals to withdraw up to \$35,000 from an RRSP to purchase or build a home without having to pay tax on the withdrawal. Amounts withdrawn under the HBP must be repaid to an RRSP over a period not exceeding 15 years, starting the second year following the year in which the withdrawal was made.

The HBP will continue to be available as under existing rules. However, an individual will not be permitted to make both an FHSA withdrawal and an HBP withdrawal in respect of the same qualifying home purchase.

Effective Date

The government would work with financial institutions to have the infrastructure in place for individuals to be able to open an FHSA and start contributing at some point in 2023.

Home Buyers' Tax Credit

First-time home buyers who acquire a qualifying home can obtain up to \$750 in tax relief by claiming the First-Time Home Buyers' Tax Credit (HBTC). The value of this non-refundable credit is calculated by multiplying the credit amount of \$5,000 by the lowest personal income tax rate (15 per cent in 2022). Any unused portion of the HBTC may be claimed by an individual's spouse or common-law partner as long as the combined total does not exceed \$750 in tax relief.

An individual is a first-time home buyer if neither the individual nor the individual's spouse or common-law partner owned and lived in another home in the calendar year of the home purchase or in any of the four preceding calendar years. This credit is also available for certain acquisitions of a home by or for the benefit of an individual who is eligible for the Disability Tax Credit, even if the first-time home buyer condition is not met.

A qualifying home is one that the individual or individual's spouse or common-law partner intends to occupy as their principal residence no later than one year after its acquisition.

Budget 2022 proposes to double the HBTC amount to \$10,000, which would provide up to \$1,500 in tax relief to eligible home buyers. Spouses or common-law partners would continue to be able to split the value of the credit as long as the combined total does not exceed \$1,500 in tax relief.

This measure would apply to acquisitions of a qualifying home made on or after January 1, 2022.

Multigenerational Home Renovation Tax Credit

Budget 2022 proposes to introduce a new Multigenerational Home Renovation Tax Credit. The proposed refundable credit would provide recognition of eligible expenses for a qualifying renovation. A qualifying renovation would be one that creates a secondary dwelling unit to permit an eligible person (a senior or a person with a disability) to live with a qualifying relation. The value of the credit would be 15 per cent of the lesser of eligible expenses and \$50,000.

Eligible Persons

Seniors and adults with disabilities would be considered eligible persons for the purpose of the Multigenerational Home Renovation Tax Credit.

- Seniors are individuals who are 65 years of age or older at the end of the taxation year that includes the end of the renovation period.
- Adults with disabilities are individuals who are 18 years of age or older at the end of the taxation year that includes the end of the renovation period, and who are eligible for the Disability Tax Credit at any time in that year.

Qualifying Relations

For the purposes of this credit, a qualifying relation, in respect of an eligible person, would be an individual who is 18 years of age or older at the end of the taxation year that includes the end of the renovation period and is a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece or nephew of the eligible person (which includes the spouse or common-law partner of one of those individuals).

Eligible Claimants

The Multigenerational Home Renovation Tax Credit may be claimed by:

- an individual who ordinarily resides, or intends to ordinarily reside, in the eligible dwelling within twelve months after the end of the renovation period and who is:
 - an eligible person;
 - the spouse or common-law partner of the eligible person;
 - a qualifying relation, in respect of an eligible person; or
- a qualifying relation, in respect of an eligible person, who owns the eligible dwelling.

Where one or more eligible claimants make a claim in respect of an eligible renovation, the total of all amounts claimed in respect of the qualifying renovation must not exceed \$50,000. If the claimants cannot agree as to what portion of the amounts each can claim, the Minister of National Revenue would be allowed to fix the portions.

Eligible Dwelling

For the purposes of this credit, an eligible dwelling would be defined as a housing unit that is:

- owned (either jointly or otherwise) by the eligible person, the spouse or common-law partner of the eligible person or a qualifying relation in respect of the eligible person; and
- where the eligible person and a qualifying relation in respect of the eligible person ordinarily reside, or intend to ordinarily reside, within twelve months after the end of the renovation period.

An eligible dwelling would include the land adjacent to the housing unit and the immediately contiguous land, but would not include the portion of that land that exceeds the greater of ½ hectare and the portion of that land that the individual establishes is necessary for the use and enjoyment of the housing unit as a residence.

Qualifying Renovation

For the purposes of this credit, a qualifying renovation would be defined as a renovation or alteration of, or addition to, an eligible dwelling that is:

- of an enduring nature and integral to the eligible dwelling; and
- undertaken to enable an eligible person to reside in the dwelling with a qualifying relation, by establishing a secondary unit within the dwelling for occupancy by the eligible person or the qualifying relation.

A secondary unit would be defined as a self-contained dwelling unit with a private entrance, kitchen, bathroom facilities and sleeping area. The secondary unit could be newly constructed or created from an existing living space that did not already meet the requirements to be a secondary unit. To be eligible, relevant building permits for establishing a secondary unit must be obtained and renovations must be completed in accordance with the laws of the jurisdiction in which an eligible dwelling is located.

One qualifying renovation would be permitted to be claimed in respect of an eligible person over their lifetime.

Renovation Period

For the purposes of this credit, the renovation period means a period that:

- begins at the time that an application for a building permit for a qualifying renovation is submitted; and
- ends at the time when the qualifying renovation passes a final inspection, or proof of completion of the project according to all legal requirements of the jurisdiction in which the renovation was undertaken is otherwise obtained.

The credit would be available to be claimed for the taxation year that includes the end of the renovation period.

Eligible Expenses

Expenses would be eligible for the Multigenerational Home Renovation Tax Credit if they are made or incurred during the renovation period, for the purpose of a qualifying renovation, and are reasonable in the context of that purpose (i.e., enabling an eligible person to reside in the dwelling with a qualifying relation).

Eligible expenses would include the cost of labour and professional services, building materials, fixtures, equipment rentals and permits. Items such as furniture, as well as items that retain a value independent of the renovation (such as construction equipment and tools), would not be integral to the dwelling and expenses for such items would therefore not qualify for the credit.

The following are examples of other expenses that would not be eligible for the Multigenerational Home Renovation Tax Credit:

- the cost of annual, recurring or routine repair or maintenance;
- expenses for household appliances and devices, such as audio-visual electronics;
- payments for services such as outdoor maintenance and gardening, housekeeping or security;
- the costs of financing a renovation (e.g., mortgage interest costs);

- goods or services provided by a person not dealing at arm's length with the claimant, unless that person is registered for Goods and Services Tax/Harmonized Sales Tax purposes under the *Excise Tax Act*; and
- any expenses not supported by receipts.

Expenses that may be included in a claim must be reduced by any reimbursement or any other form of assistance that an individual is or was entitled to receive, including any related rebates, such as those for Goods and Services Tax/Harmonized Sales Tax. Expenses would not be eligible for the Multigenerational Home Renovation Tax Credit if they are claimed under the Medical Expense Tax Credit and/or Home Accessibility Tax Credit.

Coming into Force

This measure would apply for the 2023 and subsequent taxation years, in respect of work performed and paid for and/or goods acquired on or after January 1, 2023.

Home Accessibility Tax Credit

The Home Accessibility Tax Credit is a non-refundable tax credit that provides recognition of eligible home renovation or alteration expenses in respect of an eligible dwelling of a qualifying individual. A qualifying individual is an individual who is eligible to claim the Disability Tax Credit at any time in a tax year, or an individual who is 65 years of age or older at the end of a tax year. The value of the credit is calculated by applying the lowest personal income tax rate (15 per cent in 2022) to an amount that is the lesser of eligible expenses and \$10,000.

To better support independent living, Budget 2022 proposes to increase the annual expense limit of the Home Accessibility Tax Credit to \$20,000. This enhancement would provide additional tax support for more significant renovations undertaken to improve accessibility, such as building a bedroom and/or a bathroom to permit first-floor occupancy for a qualifying person who has difficulty accessing living spaces on other floors.

This measure would apply to expenses incurred in the 2022 and subsequent taxation years.

Residential Property Flipping Rule

Property flipping involves purchasing real estate with the intention of reselling the property in a short period of time to realize a profit. Profits from flipping properties are fully taxable as business income, meaning they are not eligible for the 50-per-cent capital gains inclusion rate or the Principal Residence Exemption.

The Government is concerned that certain individuals engaged in flipping residential real estate are not properly reporting their profits as business income. Instead, these individuals may be improperly reporting their profits as capital gains and, in some cases, claiming the Principal Residence Exemption.

Budget 2022 proposes to introduce a new deeming rule to ensure profits from flipping residential real estate are always subject to full taxation. Specifically, profits arising from dispositions of residential property (including a rental property) that was owned for less than 12 months would be deemed to be business income.

The new deeming rule would not apply if the disposition of property is in relation to at least one of the life events listed below:

- *Death*: a disposition due to, or in anticipation of, the death of the taxpayer or a related person.
- *Household addition*: a disposition due to, or in anticipation of, a related person joining the taxpayer's household or the taxpayer joining a related person's household (e.g., birth of a child, adoption, care of an elderly parent).
- *Separation*: a disposition due to the breakdown of a marriage or common-law partnership, where the taxpayer has been living separate and apart from their spouse or common-law partner because of a breakdown in the relationship for a period of at least 90 days.
- *Personal safety*: a disposition due to a threat to the personal safety of the taxpayer or a related person, such as the threat of domestic violence.
- *Disability or illness*: a disposition due to a taxpayer or a related person suffering from a serious disability or illness.
- *Employment change*: a disposition for the taxpayer or their spouse or common-law partner to work at a new location or due to an involuntary termination of employment. In the case of work at a new location, the taxpayer's new home must be at least 40 kilometres closer to the new work location.
- *Insolvency*: a disposition due to insolvency or to avoid insolvency (i.e., due to an accumulation of debts).
- *Involuntary disposition*: a disposition against someone's will, for example, due to, expropriation or the destruction or condemnation of the taxpayer's residence due to a natural or man-made disaster.

Where the new deeming rule applies, the Principal Residence Exemption would not be available.

Where the new deeming rule does not apply because of a life event listed above or because the property was owned for 12 months or more, it would remain a question of fact whether profits from the disposition are taxed as business income.

The measure would apply in respect of residential properties sold on or after January 1, 2023.

Labour Mobility Deduction for Tradespeople

Temporary relocations to obtain employment may not qualify for existing tax recognition for moving or travel expenses, particularly if they do not involve a change in an individual's ordinary residence and the employer does not provide relocation assistance.

Budget 2022 proposes to introduce a Labour Mobility Deduction for Tradespeople to recognize certain travel and relocation expenses of workers in the construction industry, for whom such relocations are relatively common. This measure would allow eligible workers to deduct up to \$4,000 in eligible expenses per year.

For the purposes of this deduction, an eligible individual would be a tradesperson or an apprentice who:

- makes a temporary relocation that enables them to obtain or maintain employment under which the duties performed by the taxpayer are of a temporary nature in a construction activity at a particular work location; and
- ordinarily resided prior to the relocation at a residence in Canada, and during the period of the relocation, at temporary lodging in Canada near that work location.

Eligible Temporary Relocation

To qualify as an eligible temporary relocation:

- the temporary lodging must be at least 150 kilometres closer than the ordinary residence to the particular work location;
- the particular work location must be located in Canada; and
- the temporary relocation must be for a minimum duration of 36 hours.

To ensure that the measure does not subsidize long-distance commuting or expenses of those who choose to live far from where they typically work, it would further be required that the particular work location not be in the locality in which the eligible individual principally works (i.e., carries on employment or business activity).

Eligible Expenses

Eligible expenses in respect of an eligible temporary relocation would be reasonable amounts associated with expenses incurred for:

- temporary lodging for the eligible individual near the particular work location;
- transportation for the individual for one round trip from the location where the individual ordinarily resides to the temporary lodging; and
- meals for the individual in the course of travel while making one round trip to and from the temporary lodging.

An individual would not be permitted to claim lodging expenses for a period of time under this measure unless they maintain an ordinary residence elsewhere that remains available for their or their immediate family's use during that time period.

An individual would not be allowed to claim expenses in respect of which they received financial assistance from an employer that is not included in income. The maximum amount of expenses that could be claimed in respect of a particular eligible temporary relocation would be capped at 50 per cent of the worker's employment income from construction activities at the particular work location in the year. Flexibility would be provided by allowing expenses to be claimed in a tax year before or after the year they were incurred provided they were not deductible in a prior year. This would enable workers to claim expenses in the tax year they earned the associated employment income and address cases where expenses related to a relocation span two tax years.

Amounts claimed under the Labour Mobility Deduction for Tradespeople would not be deductible under the existing Moving Expense Deduction. Similarly, amounts that are otherwise deducted could not be claimed under the Labour Mobility Deduction for Tradespeople.

Coming into Force

This measure would apply to the 2022 and subsequent taxation years.

Medical Expense Tax Credit for Surrogacy and Other Expenses

The Medical Expense Tax Credit (METC) is a 15-per-cent non-refundable tax credit that recognizes the effect of above-average medical or disability-related expenses on an individual's ability to pay tax. For 2022, the METC is available for qualifying medical expenses in excess of the lesser of \$2,479 and three per cent of the individual's net income. Eligible expenses must generally be in respect of products and services received by the patient, defined as the taxpayer, the taxpayer's spouse or common-law partner or certain dependants of the taxpayer.

Individuals who intend to be parents may pursue a number of approaches to build their families, including the use of assisted reproductive technologies. Many of the costs related to the use of reproductive technologies are already eligible expenses for the METC. For example, in vitro fertilization procedures and associated expenses are generally recognized as eligible expenses of the taxpayer under the credit, provided that the expenses relate to the patient, as described above. However, some approaches to building a family involve medical expenses for individuals other than the intended parents. Budget 2022 proposes to broaden the METC to recognize these circumstances.

Medical Expenses Related to a Surrogate Mother or Sperm, Ova or Embryo Donor

Budget 2022 proposes to provide a broader definition of patient in cases where an individual would rely on a surrogate or a donor in order to become a parent. In these cases, patient would be defined as:

- the taxpayer;
- the taxpayer's spouse or common-law partner;
- a surrogate mother; or
- a donor of sperm, ova or embryos.

This broader definition would allow medical expenses paid by the taxpayer, or the taxpayer's spouse or common-law partner, with respect to a surrogate mother or donor to be eligible for the METC. For example, expenses paid by the intended parent to a fertility clinic for an in vitro fertilization procedure with respect to a surrogate mother or for hormone medication for an ova donor would be eligible for the METC.

Reimbursement of Medical Expenses Incurred by a Surrogate Mother or Sperm, Ova or Embryo Donor

In Canada, it is illegal to pay consideration to surrogate mothers or donors; however, surrogate mothers and donors may receive reimbursement from intended parents of certain out-of-pocket expenses, including some medical expenses. Under current tax rules, reimbursements for medical expenses with respect to these individuals are not currently eligible to be claimed by the intended parents.

Budget 2022 proposes to allow reimbursements paid by the taxpayer to a patient, under the expanded definition proposed above, to be eligible for the METC, provided that the reimbursement is made in respect of an expense that would generally qualify under the credit. For example, the METC could be available for reimbursements paid by the taxpayer for expenses incurred by a surrogate mother with respect to an in vitro fertilization procedure or prescription medication related to their pregnancy.

Fees Paid to Acquire Donated Human Sperm or Ova

Budget 2022 also proposes to allow fees paid to fertility clinics and donor banks in order to obtain donor sperm or ova to be eligible under the METC. Such expenses would be eligible where the sperm or ova are acquired for use by an individual in order to become a parent.

Eligible Expenses

Only expenses incurred in Canada would be eligible. In Canada, surrogacy and gamete and embryo donation are regulated under the *Assisted Human Reproduction Act*. The *Reimbursement Related to Assisted Human Reproduction Regulations* outline which reimbursements are permissible under the *Assisted Human Reproduction Act*. All expenses claimed under the METC would be required to be in accordance with the *Assisted Human Reproduction Act* and associated regulations.

Coming into Force

This measure would apply to expenses incurred in the 2022 and subsequent taxation years.

Annual Disbursement Quota for Registered Charities

Registered charities are generally required to expend a minimum amount each year, referred to as the disbursement quota (DQ). The DQ is currently equal to 3.5 per cent of the registered charity's property not used directly in charitable activities or administration. The DQ is designed to ensure the timely disbursement of tax-assisted funds towards charitable purposes, while allowing for reasonable asset growth within the charitable sector to support charitable activities in the future.

Budget 2022 proposes to make a number of changes to increase expenditures by larger charities, and to improve the enforcement and operation of the DQ rules.

Modifying the Rate of the DQ

Budget 2022 proposes to increase the DQ rate from 3.5 per cent to 5 per cent for the portion of property not used in charitable activities or administration that exceeds \$1 million. This would increase expenditures by charities overall, while accommodating smaller grant-making charities that may not be able to realize the same investment returns as larger charities.

In addition, Budget 2022 proposes to amend the *Income Tax Act* to clarify that expenditures for administration and management are not considered qualifying expenditures for the purpose of satisfying a charity's DQ.

Relief for Certain Circumstances

Where a charity is unable to meet its DQ, it may apply to the CRA and request relief from the DQ requirement. If granted, a charity is deemed to have a charitable expenditure for the tax year.

To better reflect actual expenditures on charitable activities, Budget 2022 proposes to amend the existing rule such that the CRA will have the discretion to grant a reduction in a charity's DQ obligation for any particular tax year.

In addition, to improve transparency with respect to charities that have a reduction to their DQ, Budget 2022 proposes to allow the CRA to publicly disclose information relating to such a decision.

The *Income Tax Act* also allows a charity to apply to the CRA for permission to accumulate property for a specific purpose. If granted, any property accumulated in accordance with the approval, including any income earned, is not included in calculating a charity's DQ.

Given prior changes that simplified the DQ by removing a number of spending requirements, as well as existing provisions, which provide relief to charities, the accumulation of property rule is no longer necessary. Accordingly, Budget 2022 proposes to remove the accumulation of property rule.

Coming into Force

These measures would apply to charities in respect of their fiscal periods beginning on or after January 1, 2023. The amendment removing the accumulation of property rule would not apply to approved property accumulations resulting from applications submitted by a charity prior to January 1, 2023.

Charitable Partnerships

Under the *Income Tax Act*, registered charities are limited to devoting their resources to charitable activities they carry on themselves or providing gifts to qualified donees. Where charities conduct activities through an intermediary organization (other than a qualified donee), they must maintain sufficient control and direction over the activity such that it can be considered their own.

Budget 2022 proposes a number of changes to improve the operation of these rules, allowing charities to make qualified disbursements to organizations that are not qualified donees, provided that they meet certain accountability requirements under the *Income Tax Act*. Additional measures designed to ensure compliance by charities with these new rules are forthcoming.

Accountability Requirements

Budget 2022 proposes to allow charities to make qualifying disbursements to organizations that are not qualified donees, provided that these disbursements are in furtherance of the charity's charitable purposes and the charity ensures that the funds are applied to charitable activities by the grantee.

In addition, in order to be considered a qualifying disbursement, charities will be required to meet certain mandatory accountability requirements defined in the *Income Tax Act* that are designed to ensure that their resources will be used for charitable purposes, including:

- Conducting a pre-grant inquiry sufficient to provide reasonable assurances that the charity's resources will be used for the purposes set out in the

written agreement. This will include a review of the identity, past history, practices, activities and areas of expertise of the grantee.

- Having a written agreement between the charity and the grantee, including:
 - the terms and conditions of the funding provided;
 - a description of the charitable activities that the recipient will undertake;
 - a requirement that any funds not used for the purposes for which they were granted be returned to the charity; and
 - a requirement that records relating to the use of the charity's resources be maintained and accessible for a minimum of six years following the end of the relevant taxation year.
- Monitoring the grantee, which would include receiving periodic reports on the use of the charity's resources, at least annually (e.g., details on the use of the funds, compliance with the terms of the grant, and progress made toward the purposes of the grant) and taking remedial action as required.
- Receiving full and detailed final reports from the grantee, including outlining the results achieved with the charity's resources, detailing how the funds were spent, and providing sufficient documentary evidence to demonstrate that funds were used for the purposes for which they were granted. The charity would also be required to demonstrate that these final reports and supporting documentation were reviewed and approved by the charity.
- Publicly disclosing on its annual information return information relating to grants above \$5,000.

Books and Records

To ensure that the CRA is able to verify that charitable resources have been applied to the purposes for which they have been granted, Budget 2022 proposes to require charities to, upon request by the CRA, take all reasonable steps to obtain receipts, invoices, or other documentary evidence from grantees to demonstrate amounts were spent appropriately.

Directed donations

Modifications to the current framework could increase the risk of a charity acting as a conduit for donations to other organizations. To address this issue, Budget 2022 proposes to extend an existing provision in the *Income Tax Act*, which currently applies to registered Canadian amateur athletic associations and registered journalism organizations, to registered charities. This rule would prohibit registered charities from accepting gifts, the granting of which was expressly or implicitly conditional on making a gift to a person other than a qualified donee.

Coming into Force

These changes would apply as of royal assent of the enacting legislation.

Amendments to the *Children's Special Allowances Act* and to the *Income Tax Act*

As a consequence of *An Act respecting First Nations, Inuit and Métis children, youth and families*, which came into force on January 1, 2020, Budget 2022 proposes legislative amendments to the *Children's Special Allowances Act* and its regulations and to the *Income Tax Act* to ensure that the special allowance, the Canada Child Benefit and the Canada Workers Benefit amount for families continue to support children in need of protection. Budget 2022 also proposes to amend the *Income Tax Act* to ensure consistent tax treatment of kinship care providers and foster parents who receive financial assistance from Indigenous communities.

Children's Special Allowance

The Government of Canada pays the Children's Special Allowance in respect of children who are in the care of, and maintained by, a federal, provincial, territorial or First Nations agency or institution (e.g., a child protection agency).

The *Children's Special Allowances Act* currently requires an agency or institution to be licensed, or authorized to operate, under a federal, provincial or territorial law in order to be eligible for the special allowance.

Budget 2022 proposes to amend the *Children's Special Allowances Act* and its regulations to allow the payment of the special allowance in respect of a child who is maintained under Indigenous laws where an Indigenous governing body has provided notice of intent to exercise its legislative authority in relation to child and family services to the Government of Canada (or has done so implicitly by requesting to enter into a coordination agreement for such services), under *An Act respecting First Nations, Inuit and Métis children, youth and families* (referred to hereafter as an "Indigenous governing body").

Proposed amendments would also provide for adjustments to be made to the definition of Indigenous governing body, for the purpose of the special allowance, through the regulations. This would provide some flexibility for the Government of Canada to adapt to future developments in this evolving area as Indigenous communities work to establish their delivery models for child and family services.

Budget 2022 also proposes to amend the *Children's Special Allowance Regulations* to allow:

- An Indigenous governing body to be recognized, where all other eligibility requirements are met, as:
 - an eligible applicant for the special allowance; and
 - maintaining a child for the purpose of the special allowance.
- For the exchange of information between the Government of Canada and an Indigenous governing body for the purpose of the administration of a social, income assistance or health insurance program of the Indigenous governing body, under certain conditions.

Tax Measures for Kinship Care Providers and Foster Parents of Indigenous Children

To ensure consistent treatment between kinship care providers and foster parents receiving financial assistance from an Indigenous governing body and those receiving such assistance from a provincial/territorial government, Budget 2022 proposes to amend the *Income Tax Act* to:

- clarify that a kinship care provider may be considered to be the parent of a child in their care for the purposes of the Canada Workers Benefit amount for families and the Canada Child Benefit, regardless of whether they receive financial assistance from an Indigenous governing body, provided they meet all other eligibility requirements; and
- ensure that financial assistance payments for the care of a child received by kinship care providers or foster parents from an Indigenous governing body are neither taxable, nor included in income for the purposes of determining entitlement to income-tested benefits and credits.

Coming into Force

These measures would apply for the 2020 and subsequent taxation years.

Borrowing by Defined Benefit Pension Plans

The rules in the *Income Tax Regulations* currently restrict a registered pension plan from borrowing money, except in limited circumstances. First, borrowing is allowed for the acquisition of income-producing real property where the borrowed amount does not exceed the cost of the real property and only the real property is used as security for the loan. Second, borrowing is permitted where the term of the loan does not exceed 90 days and the property of the plan is not pledged as security for the loan (unless the money is borrowed to avoid the distress sale of plan assets). Temporary rules permit borrowing for terms longer than 90 days if repaid by April 30, 2022.

Budget 2022 proposes to provide more borrowing flexibility to administrators of defined benefit registered pension plans (other than individual pension plans) by maintaining the borrowing rule for real property acquisitions and replacing the 90-day term limit with a limit on the total amount of additional borrowed money (for purposes other than acquiring real property), equal to the lesser of:

- 20 per cent of the value of the plan's assets (net of unpaid borrowed amounts); and
- the amount, if any, by which 125 per cent of the plan's actuarial liabilities exceeds the value of the plan's assets (net of unpaid borrowed amounts).

The new borrowing limit would be redetermined on the first day of each fiscal year of the plan, based on the value of assets and unpaid borrowed amounts on that day and the actuarial liabilities on the effective date of the plan's most

recent actuarial valuation report. Each redetermined limit would not apply to borrowings entered into before that time.

Plan administrators must continue to comply with the provisions of federal or provincial pension benefit standards legislation which ensure that pension funds are administered with a duty of care, investments are made in a reasonable and prudent manner and the plan is funded in accordance with prescribed funding standards. These standards are designed to manage the risks to the promised benefits of plan members and ensure the stability of registered pension plans. They would be unaffected by the proposed measure.

This measure would apply to amounts borrowed by defined benefit registered pension plans (other than individual pension plans) on or after Budget Day.

Reporting Requirements for RRSPs and RRIFs

Registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) form an important part of Canada's retirement income system. The tax deferral provided by these savings vehicles assists and encourages Canadians to save for retirement and achieve their retirement income goals.

Financial institutions are currently required to report annually to the Canada Revenue Agency the payments out of, and contributions to, each RRSP and RRIF that they administer. By comparison, financial institutions file a comprehensive annual information return in respect of each tax-free savings account that they administer, which includes the fair market value of property held in the account.

Budget 2022 proposes to require financial institutions to annually report to the Canada Revenue Agency the total fair market value, determined at the end of the calendar year, of property held in each RRSP and RRIF that they administer. This information would assist the Canada Revenue Agency in its risk-assessment activities regarding qualified investments held by RRSPs and RRIFs.

This measure would apply to the 2023 and subsequent taxation years.

Business Income Tax Measures

Canada Recovery Dividend and Additional Tax on Banks and Life Insurers

Budget 2022 proposes to introduce the one-time Canada Recovery Dividend (CRD) and an additional tax on banks and life insurers.

Canada Recovery Dividend

Budget 2022 proposes to introduce the CRD in the form of a one-time 15-percent tax on bank and life insurer groups. A group would include a bank or life insurer and any other financial institution (for the purposes of Part VI of the *Income Tax Act*) that is related to the bank or life insurer.

The CRD would be determined based on a corporation's taxable income for taxation years ending in 2021. A proration rule would be provided for short taxation years. Bank and life insurer groups subject to the CRD would be permitted to allocate a \$1 billion taxable income exemption by agreement amongst group members.

The CRD liability would be imposed for the 2022 taxation year and would be payable in equal amounts over five years.

Additional Tax on Banks and Life Insurers

Budget 2022 proposes to introduce an additional tax of 1.5 per cent of the taxable income for members of bank and life insurer groups (determined in the same manner as the CRD). Bank and life insurer groups subject to the additional tax would be permitted to allocate a \$100 million taxable income exemption by agreement amongst group members.

The proposed additional tax would apply to taxation years that end after Budget Day. For a taxation year that includes Budget Day, the additional tax would be prorated based on the number of days in the taxation year after Budget Day.

Investment Tax Credit for Carbon Capture, Utilization, and Storage

Carbon capture, utilization, and storage (CCUS) is a suite of technologies that capture carbon dioxide (CO₂) emissions from fuel combustion, industrial processes or directly from the air, to either store the CO₂ (typically deep underground) or use the CO₂ in industry.

Budget 2022 proposes to introduce an investment tax credit for CCUS (the CCUS Tax Credit). The CCUS Tax Credit would be refundable and available to businesses that incur eligible expenses starting on January 1, 2022.

Eligible Expenses

The CCUS Tax Credit would be available in respect of the cost of purchasing and installing eligible equipment (see "Eligible Equipment" section) used in an eligible CCUS project (see "Eligible Project" section), so long as the equipment was part of a project where the captured CO₂ was used for an eligible use (see "Eligible CO₂ Uses" section).

The project would also be subject to the required validation and verification process (see "Validation and Verification" section), would need to meet the storage requirements (see "Storage Requirements" section), and a climate-related financial disclosure report would need to be produced (see "Climate Risk Disclosure" section), in order for the CCUS Tax Credit to be claimed.

Credit Rates

The following rates would apply to eligible expenses incurred after 2021 through 2030:

- 60 per cent for eligible capture equipment used in a direct air capture project;
- 50 per cent for all other eligible capture equipment; and
- 37.5 per cent for eligible transportation, storage, and use equipment.

Eligible expenses that are incurred after 2030 through 2040 would be subject to the lower rates set out below:

- 30 per cent for eligible capture equipment used in a direct air capture project;
- 25 per cent for all other eligible capture equipment; and
- 18.75 per cent for eligible transportation, storage, and use equipment.

Eligible Equipment

Equipment that will be used solely to capture, transport, store, or use CO₂ as part of an eligible CCUS project would be considered eligible equipment.

Investors in CCUS technologies would be able to claim the CCUS Tax Credit on eligible expenses in respect of the tax year in which the expenses are incurred, regardless of when the equipment becomes available for use. The CCUS Tax Credit would not be available for equipment in respect of which a previous owner has received the CCUS Tax Credit.

CCUS equipment would be included in two new capital cost allowance classes:

- 8-per-cent capital cost allowance rate on a declining-balance basis:
 - capture equipment: equipment that solely captures CO₂, including required processing and compression equipment (not including dual purpose equipment that supports CCUS and production);
 - transportation equipment: pipelines or dedicated vehicles for transporting CO₂;
 - storage equipment: injection and storage equipment; and
- 20-per-cent capital cost allowance rate on a declining-balance basis:
 - use equipment: equipment required for using CO₂ in an eligible use.

These classes would also include the cost of:

- converting existing equipment for use in a CCUS project or refurbishing eligible equipment;
- equipment for monitoring and tracking CO₂; and
- buildings or other structures that solely support a CCUS project.

These classes would be eligible for enhanced first year depreciation under the Accelerated Investment Incentive.

Equipment that is required for hydrogen production, natural gas processing, acid gas injection or that does not support CCUS would be ineligible.

Other expenses that may be related to a CCUS project would not be eligible for the CCUS Tax Credit, including feasibility studies, front end engineering design studies and operating expenses.

Exploration and development expenses associated with storing CO₂ would also not be eligible for the CCUS Tax Credit. Nonetheless, in recognition of these expenses that relate to a CCUS project, two new capital cost allowance classes would be established for intangible exploration expenses and development expenses associated with storing CO₂. These would be depreciable at rates of 100 per cent and 30 per cent respectively, on a declining-balance basis.

Eligible Project

An eligible CCUS project is a new project that captures CO₂ that would otherwise be released into the atmosphere, or captures CO₂ from the ambient air, prepares the captured CO₂ for compression, compresses and transports the captured CO₂, and stores or uses the captured CO₂. Direct air capture projects, which are eligible for a higher credit rate on capture equipment, must capture CO₂ directly from the ambient air. Taxpayers may be involved in one or more of the activities that constitute a CCUS project.

Equipment will only be eligible if it is part of a CCUS project and is put in use in Canada. CO₂ must be captured in Canada but can be stored or used outside of Canada (provided the project satisfies the requirements discussed under the "Eligible CO₂ Uses" section and is located in a jurisdiction that satisfies the requirements discussed under the "Storage Requirements" section).

CCUS projects would not be eligible where emissions reductions are necessary in order to achieve compliance with the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations* and the *Regulations Limiting Carbon Dioxide Emissions from Natural Gas-fired Generation of Electricity*.

Eligible CO₂ Uses

The extent to which the CCUS Tax Credit is available for eligible equipment would depend on the end use of the CO₂ being captured. Eligible uses would initially include dedicated geological storage and storage in concrete. Enhanced oil recovery would not be eligible.

Where eligible equipment is part of a project that plans to store CO₂ through both eligible and ineligible uses, the CCUS Tax Credit would be reduced by the portion of CO₂ expected to go to ineligible uses over the life of the project, as set out in initial project plans.

Once the project begins operating, taxpayers would be required to track and account for the amount of CO₂ being captured, and the portions that end up going to eligible and ineligible uses. To the extent that the portion of CO₂ going to an ineligible use exceeds what was set out in the initial project plans, taxpayers may be required to repay CCUS Tax Credit amounts that were previously paid.

Recovery of the CCUS Tax Credit

Once projects begin to capture CO₂, they would be assessed at five-year intervals, to a maximum of 20 years, to determine if a recovery of the CCUS Tax Credit is warranted. Assessments would be based on the total amount of CO₂ going to an ineligible use over the five-year period being assessed.

A recovery would be calculated if the portion of CO₂ going to an ineligible use is more than five percentage points higher than set out in the initial project plans (i.e., the basis on which the CCUS Tax Credit was paid).

Specific design features of the recovery will be released at a later date.

Storage Requirements

In the case of qualifying dedicated geological storage, the CCUS Tax Credit will only be available to projects in jurisdictions where there are sufficient regulations to ensure that CO₂ is permanently stored as determined by Environment and Climate Change Canada. Initially, the CCUS Tax Credit will only be available to CCUS projects that store the CO₂ in Saskatchewan or Alberta. All projects will be subject to relevant federal, provincial and territorial regulations.

For storage in concrete to be considered an eligible use, the process for using and storing CO₂ in concrete must be approved by Environment and Climate Change Canada and demonstrate that at least 60 per cent of the CO₂ that is injected into the concrete is mineralized and locked into the concrete produced. The CCUS Tax Credit would be available in all jurisdictions so long as the process for storing CO₂ in this manner is approved.

Validation and Verification

Projects that expect to have eligible expenses of \$100 million or greater over the life of the project based on project plans would generally be required to undergo an initial project tax assessment. The tax assessment would identify the expenses that are eligible for the CCUS Tax Credit, and the tax credit rate that is expected to apply, based on initial project design. Projects could also choose to undergo an initial project tax assessment on a voluntary basis.

Prior to claiming CCUS Tax Credit amounts, eligible expenses would need to be verified by Natural Resources Canada. Verification would occur as soon as possible after the end of the taxpayer's tax year, and in advance of filing its tax return, in order for the refund to be processed upon filing. Administrative details of this process would be provided at a later date.

Knowledge Sharing

CCUS projects that expect to have eligible expenses of \$250 million or greater over the life of the project based on project plans would be required to contribute to public knowledge sharing in Canada in order to be eligible for the CCUS Tax Credit.

Details on this process and information to be shared would be provided at a later date.

Climate Risk Disclosure

In order to be eligible for the CCUS Tax Credit, taxpayers would be required to produce a climate-related financial disclosure report highlighting how their corporate governance, strategies, policies and practices will help manage climate-related risks and opportunities and contribute to achieving Canada's commitments under the Paris Agreement and goal of net zero by 2050.

Details on this process and information to be shared would be provided at a later date.

Coming into Force

This measure would apply to eligible expenses incurred after 2021 and before 2041.

Strategic Environmental Assessment Statement

This measure is expected to have a positive environmental impact by encouraging investment in technologies that would reduce emissions of greenhouse gases. This would help advance the government's Federal Sustainable Development Strategy target to reduce greenhouse gas emissions by 40 to 45 per cent below 2005 levels by 2030, and achieve net-zero greenhouse gas emissions by 2050.

Clean Technology Tax Incentives – Air-Source Heat Pumps

An air-source heat pump is a device that uses electrical energy to provide interior space heating or cooling by exchanging heat with the outside air. As a means to displace the use of fossil fuels for heating, or of providing a more efficient means of heating with electricity (e.g., compared to electric baseboard heaters), air-source heat pumps can play a role in reducing emissions of greenhouse gases and air pollutants associated with heating buildings in Canada.

Capital Cost Allowance for Clean Energy Equipment

Under the *Income Tax Act*, taxpayers are entitled to deduct a portion of the capital cost of a depreciable property, as capital cost allowance (CCA), in computing their income for each taxation year. With some exceptions, CCA deductions are claimed by class of property and are calculated on a declining-balance basis.

Under the CCA regime, Classes 43.1 and 43.2 of Schedule II to the *Income Tax Regulations* provide accelerated CCA rates (30 per cent and 50 per cent, respectively) for investments in specified clean energy generation and energy conservation equipment. Property in these classes that is acquired after November 20, 2018 and that becomes available for use before 2024 is eligible for immediate expensing while property that becomes available for use after 2023 and before 2028 is subject to a phase-out from these immediate expensing rules.

In addition, if the majority of the tangible property in a project is eligible for inclusion in Class 43.1 or 43.2, certain intangible project start-up expenses (e.g., engineering and design work, and feasibility studies) are treated as Canadian Renewable and Conservation Expenses. These expenses can generally be deducted in full in the year incurred, carried forward indefinitely for use in future years, or transferred to investors using flow-through shares.

Budget 2022 proposes to expand eligibility under Classes 43.1 and 43.2 to include air-source heat pumps primarily used for space or water heating. Eligible property would include equipment that is part of an air-source heat pump system that transfers heat from the outside air, including refrigerant piping, energy conversion equipment, thermal energy storage equipment, control equipment and equipment designed to enable the system to interface with other heating and cooling equipment. Eligible property would not include:

- buildings or parts of buildings;
- energy equipment that backs up an air-source heat pump system; or
- equipment that distributes heated or cooled air or water within a building.

This expansion of Classes 43.1 and 43.2 would apply in respect of property that is acquired and that becomes available for use on or after Budget Day, where it has not been used or acquired for use for any purpose before Budget Day.

Rate Reduction for Zero-Emission Technology Manufacturers

Budget 2021 proposed a temporary measure to reduce corporate income tax rates for qualifying zero-emission technology manufacturers. Specifically, taxpayers would be able to apply reduced tax rates on eligible zero-emission technology manufacturing and processing income of:

- 7.5 per cent, where that income would otherwise be taxed at the 15-per-cent general corporate tax rate; and
- 4.5 per cent, where that income would otherwise be taxed at the 9-per-cent small business tax rate.

The reduced tax rates would apply to taxation years that begin after 2021, subject to a phase-out starting in taxation years that begin in 2029, and would be fully phased out for taxation years that begin after 2031.

Budget 2022 proposes to include the manufacturing of air-source heat pumps used for space or water heating as an eligible zero-emission technology manufacturing or processing activity. Eligible activities would include the manufacturing of components or sub-assemblies only if such equipment is purpose-built or designed exclusively to form an integral part of an air-source heat pump.

Strategic Environmental Assessment Statement

These measures are expected to have a positive environmental impact by encouraging investment in a technology that would reduce emissions of greenhouse gases and air pollutants. These measures would also contribute to the Federal Sustainable Development Strategy goal of growing the clean technology industry in Canada.

Critical Mineral Exploration Tax Credit

Flow-through share agreements allow corporations to renounce or "flow through" specified expenses to investors, who can deduct the expenses in calculating their taxable income.

The Mineral Exploration Tax Credit (METC) provides an additional income tax benefit for individuals who invest in mining flow-through shares, which augments the tax benefits associated with the deductions that are flowed through. The METC is equal to 15 per cent of specified mineral exploration expenses incurred in Canada and renounced to flow-through share investors. The METC facilitates the raising of equity to fund exploration by enabling companies to issue shares at a premium.

Budget 2022 proposes to introduce a new 30-per-cent Critical Mineral Exploration Tax Credit (CMETC) for specified minerals. The specified minerals that would be eligible for the CMETC are: copper, nickel, lithium, cobalt, graphite, rare earth elements, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, platinum group metals and uranium. These minerals are used in the production of batteries and permanent magnets, both of which are used in zero-emission vehicles, or are necessary in the production and processing of advanced materials, clean technology, or semi-conductors.

Eligible expenditures would not benefit from both the proposed CMETC and the METC. The administration of the CMETC would generally follow the rules in place for the METC. However, the CMETC would only apply in relation to exploration expenditures for the minerals listed above.

In order for exploration expenses to be eligible for the CMETC, a qualified person (as defined under National Instrument 43-101 published by the Canadian Securities Administrators as of Budget Day) would need to certify that the expenditures that will be renounced will be incurred as part of an exploration project that targets the specified minerals. If the qualified person cannot demonstrate that there is a reasonable expectation that the minerals targeted by the exploration are primarily specified minerals, then the related exploration expenditures would not be eligible for the CMETC. Any credit provided for ineligible expenditures would be recovered from the flow-through share investor that received the credit.

The CMETC would apply to expenditures renounced under eligible flow-through share agreements entered into after Budget Day and on or before March 31, 2027.

Strategic Environmental Assessment Statement

Mineral exploration, as well as new mining and related processing activities that could follow from successful exploration efforts, can be associated with a variety of environmental impacts to soil, water and air and, as a result, could have an impact on the targets and actions in the Federal Sustainable Development Strategy. All such activities, however, are subject to applicable federal and provincial environmental regulations, including project-specific environmental assessments.

Flow-Through Shares for Oil, Gas, and Coal Activities

Flow-through share agreements allow corporations to renounce or “flow through” both Canadian exploration expenses and Canadian development expenses to investors, who can deduct the expenses in calculating their taxable income (at a 100-per-cent or 30-per-cent rate on a declining-balance basis, respectively). This facilitates the raising of equity to fund eligible exploration and development by enabling companies to issue shares at a premium.

Budget 2022 proposes to eliminate the flow-through share regime for oil, gas, and coal activities by no longer allowing oil, gas and coal exploration or development expenditures to be renounced to a flow-through share investor.

This change would apply to expenditures renounced under flow-through share agreements entered into after March 31, 2023.

Strategic Environmental Assessment Statement

Oil, gas and coal exploration and development is associated with environmental impacts, including the release of air and water contaminants, the emission of greenhouse gases and the disturbance of natural habitat and wildlife. The tax treatment of oil, gas and coal exploration and development costs is only one of many factors that influence investment decisions, but to the extent that the revised treatment impacts investment decisions, this measure could reduce environmental impacts. This measure supports Canada's international commitments to phase out or rationalize inefficient fossil fuel subsidies, and indirectly supports the targets and actions in the Federal Sustainable Development Strategy, including those related to reducing emissions of greenhouse gases.

Small Business Deduction

Small businesses may benefit from a reduced corporate income tax rate of 9 per cent – a preference relative to the general corporate income tax rate of 15 per cent. This rate reduction is provided through the “small business deduction” and applies on up to \$500,000 per year of qualifying active business income (i.e., the “business limit”) of a Canadian-controlled private corporation (CCPC). There is a requirement to allocate the business limit among associated CCPCs.

In order to target the preferential tax rate to small businesses, the business limit is reduced on a straight-line basis when:

- the combined taxable capital employed in Canada of the CCPC and its associated corporations is between \$10 million and \$15 million; or
- the combined “adjusted aggregate investment income” of the CCPC and its associated corporations is between \$50,000 and \$150,000.

The business limit is the lesser of the two amounts determined by these business limit reductions.

The reduction in the business limit can significantly increase a CCPC's marginal tax rate as the combined taxable capital of the CCPC and its associated corporations increases from \$10 million to \$15 million.

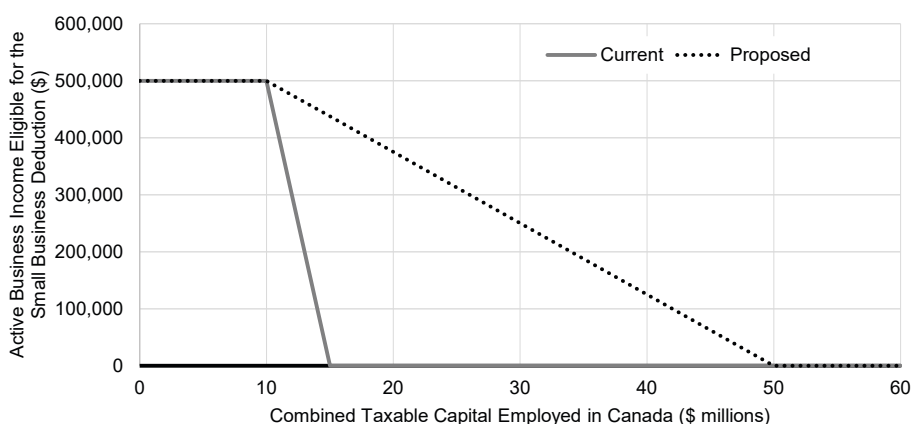
In order to facilitate small business growth, Budget 2022 proposes to extend the range over which the business limit is reduced based on the combined taxable capital employed in Canada of the CCPC and its associated corporations. The new range would be \$10 million to \$50 million (see Chart 1 below). This change would allow more medium-sized CCPCs to benefit from the small business deduction. Furthermore, it would increase the amount of qualifying active business income that can be eligible for the small business deduction. For example, under the new rules:

- a CCPC with \$30 million in taxable capital would have up to \$250,000 of active business income eligible for the small business deduction, compared to \$0 under current rules; and
- a CCPC with \$12 million in taxable capital would have up to \$475,000 of active business income eligible for the small business deduction, compared to up to \$300,000 under current rules.

This measure would apply to taxation years that begin on or after Budget Day.

Chart 1

Current and Proposed Reductions of the Business Limit Based on Taxable Capital



International Financial Reporting Standards for Insurance Contracts (IFRS 17)

On January 1, 2023, IFRS 17, the new accounting standards for insurance contracts, will substantially change financial reporting for all Canadian insurers. In broad terms, generally accepted accounting principles typically serve as the basis for computing a corporation’s income for tax purposes. With the introduction of a new IFRS 17 reserve, known as the contract service margin (CSM), a large portion of the profits earned on underwritten insurance contracts will be deferred and gradually released into income over the estimated life of the insurance contracts. The CSM arises primarily for insurance contracts greater than one year. If deductible for tax purposes, the CSM would lead to an undue income tax deferral.

On May 28 2021, the Government issued a news release (May 2021 Release) to announce that it intends to generally support the use of IFRS 17 accounting for income tax purposes. However, adjustments would be made to recognize underwriting profits as taxable income so that it remains aligned with economic

activities. More specifically, the CSM would not be considered a deductible reserve for tax purposes. The Government's overall objective is to recognize income for tax purposes when the key economic activities occur.

Following extensive consultations with the insurance industry, Budget 2022 proposes to maintain the policy intent described in the May 2021 Release, but proposes to make certain relieving modifications, as well as consequential changes to protect the minimum tax base for life insurers.

Life Insurance

Segregated Funds

Segregated funds are life insurance policies as a matter of law because they are in effect a pooled investment product with a death benefit or living benefit guarantees for the policyholder. The income-earning activities for segregated funds are primarily investment management activities rendered to policyholders after inception of the contract. Currently, fee income on segregated funds is recognized as earned each year, and expenses are deducted when incurred. Budget 2022 proposes that the CSM associated with segregated funds be fully deductible on the basis that this income will continue to be recognized as the relevant economic activities occur.

Ten per cent of CSM Deductible

Consistent with the May 2021 Release, the CSM would not be deductible for tax purposes (with the exception of the CSM for segregated funds). However, in recognition of future so-called non-attributable expenses that are included in deductible reserves at the inception of the contract under current rules, Budget 2022 proposes that ten per cent of the CSM associated with life insurance contracts (other than segregated funds) be deductible for tax purposes. The ten-per-cent deductible portion of the CSM will be included in income for tax purposes when the non-attributable expenses are incurred in the future.

Transition

Budget 2022 proposes transitional rules in the following circumstances:

- A transition period of five years to smooth out the tax impact of converting insurance reserves from IFRS 4 to IFRS 17, including the non-deductible portion of the CSM on transition;
- A transition period of five years for the mark-to-market gains or losses on certain fixed-income assets on the effective date, since insurers will also be required to adopt IFRS 9 effective January 1, 2023; and

- Certain reserves will be reclassified from insurance contracts under IFRS 4 to investment contracts under IFRS 17. A deduction for the investment contract amount will be allowed on transition since the premiums for these contracts have been included in income for accounting and tax purposes.

Adjustments to Maintain Minimum Tax

The Part VI federal tax is a capital-based tax on large financial institutions, which ensures that they pay a minimum amount of tax to the federal government each year. The Part VI tax base is partly comprised of surplus which includes after-tax retained earnings.

The Part VI tax base for life insurers will decrease as a consequence of IFRS 17. This is attributable primarily to the increase in total reserves, including the CSM, and the reclassification of gains and losses on certain fixed income assets from retained earnings to accumulated other comprehensive income (AOCI).

Deferred tax assets are income taxes anticipated to be recovered in future periods when temporary differences between income for accounting and tax purposes reverse. Deferred tax assets often arise because insurance contract liabilities recognized for accounting purposes exceed the amount of insurance reserves claimed for tax purposes. Deferred tax assets are currently deducted from the Part VI minimum tax base.

In order to avoid the erosion of the Part VI tax base due to IFRS 17, Budget 2022 proposes to include the non-deductible CSM and AOCI in the tax base. In addition, deferred tax assets will not be deducted from the minimum tax base for life insurers.

Mortgage and Title Insurance

Consistent with the changes for long-term insurance contracts, Budget 2022 proposes a deduction of ten per cent of the CSM for mortgage and title insurance contracts. The deductible portion of the CSM will be included in income when the non-attributable expenses are incurred in the future in the same manner described above in the context of life insurers.

Budget 2022 also proposes a transition period of five years to smooth out the tax impact of the non-deductible portion of the CSM.

Property and Casualty (P&C) Insurance

Budget 2022 proposes to maintain the current tax treatment for P&C insurance contracts (other than title and mortgage insurance contracts) on the basis that the CSM reserve is largely insignificant for these short-term contracts that are typically not longer than a year.

Budget 2022 also proposes a transition period of five years to smooth out the tax impact of converting P&C insurance reserves from IFRS 4 to IFRS 17.

Coming into Force

Budget 2022 proposes that all of these measures, including the transitional rules discussed above, would apply as of January 1, 2023.

Hedging and Short Selling by Canadian Financial Institutions

The *Income Tax Act* generally permits a Canadian corporation, in computing its taxable income, to claim a deduction (the “dividend received deduction”) for the amount of a taxable dividend received on a share (a “Canadian share”) that it holds in another Canadian corporation. This dividend received deduction is intended to limit the imposition of multiple levels of corporate taxation on earnings distributed from one corporation to another. There are exceptions from the availability of this deduction, including under certain circumstances where the economic exposure (that is, the risk of loss or opportunity for gain or profit) with respect to the share accrues to someone other than the taxpayer. In addition, under the securities lending arrangement rules, registered securities dealers are allowed to claim a deduction for two-thirds of a dividend compensation payment. This is an exception to the general rule whereby dividend compensation payments are not deductible.

The Government is concerned that certain taxpayers in financial institution groups are engaging in aggressive tax planning arrangements whereby a dividend received deduction is claimed in circumstances giving rise to an unintended tax benefit. For example, where a Canadian bank owns Canadian shares, a registered securities dealer in the Canadian bank’s corporate group will borrow identical shares under a securities lending arrangement and sell the borrowed shares short. The corporate group thereby eliminates its economic exposure to the Canadian shares. The registered securities dealer will generally hold the short position during the entire period that the Canadian bank owns the Canadian shares.

In this scenario, the Canadian bank claims a dividend received deduction for the dividends received on the Canadian shares, resulting in tax-free dividend income. The registered securities dealer deducts two-thirds of the amount of the dividend compensation payments made to the lender that reflect the same dividends paid on the shares. In sum, the Canadian banking group generates an artificial tax deduction under the arrangement equal to two-thirds of the amount of dividend compensation payments made to the lender over the term of the arrangement.

A registered securities dealer could carry out a similar transaction on its own with respect to Canadian shares owned by it. That is, it could borrow and sell short identical shares, claiming both the dividend received deduction for dividends received on its shares and a two-thirds deduction for dividend compensation payments made to the lender.

Although these arrangements can be challenged by the Government based

on existing rules in the *Income Tax Act*, these challenges could be both time-consuming and costly. Accordingly, the Government is introducing specific legislation to prevent taxpayers from realizing artificial tax deductions through the use of these hedging and short selling arrangements.

Budget 2022 proposes amendments to the *Income Tax Act* to

- deny the dividend received deduction for dividends received by a taxpayer on Canadian shares if a registered securities dealer that does not deal at arm's length with the taxpayer enters into transactions that hedge the taxpayer's economic exposure to the Canadian shares, where the registered securities dealer knew or ought to have known that these transactions would have such an effect;
- deny the dividend received deduction for dividends received by a registered securities dealer on Canadian shares that it holds if it eliminates all or substantially all of its economic exposure to the Canadian shares by entering into certain hedging transactions; and
- provide that in the above situations, the registered securities dealer will be permitted to claim a full, rather than a two-thirds, deduction for a dividend compensation payment it makes under a securities lending arrangement entered into in connection with the above hedging transactions.

The proposed amendments would apply to dividends and related dividend compensation payments that are paid, or become payable, on or after Budget Day, unless the relevant hedging transactions or related securities lending arrangement were in place before Budget Day, in which case the amendment would apply to dividends and related dividend compensation payments that are paid after September 2022.

Application of the General Anti-Avoidance Rule to Tax Attributes

The general anti-avoidance rule (GAAR) is intended to prevent abusive tax avoidance transactions while not interfering with legitimate commercial and family transactions. If abusive tax avoidance is established, the GAAR applies to deny the tax benefit created by the abusive transaction. The GAAR is generally applied by the Canada Revenue Agency (CRA) on an assessment of tax.

Where the GAAR applies to a transaction, the *Income Tax Act* contains a set of rules that are intended to allow the CRA to determine the amount of a tax attribute, such as the adjusted cost base of a property and the paid-up capital of a share, relevant for the purpose of computing tax. This is done through a notice of determination which, like a notice of assessment, is subject to rights of objection and appeal. The objective of these rules is that when these determined amounts become relevant to the future computation of tax, such determinations are to be binding on the taxpayer and the CRA.

A 2018 Federal Court of Appeal decision held that the GAAR did not apply to a transaction that resulted in an increase in a tax attribute that had not yet been

utilized to reduce taxes. The reasoning behind this decision has been applied in subsequent cases. The limitation of the GAAR to circumstances where a tax attribute has been utilized runs counter to the policy underlying the GAAR and the determination rules. This limitation also reduces certainty for both taxpayers and the CRA, as they could have to wait several additional years to confirm the tax consequences of a transaction.

To address these concerns, Budget 2022 proposes that the *Income Tax Act* be amended to provide that the GAAR can apply to transactions that affect tax attributes that have not yet become relevant to the computation of tax. For greater certainty, determinations made before Budget Day, where the rights of objection and appeal in respect of the determination were exhausted before Budget Day, would remain binding on taxpayers and the CRA.

This measure would apply to notices of determination issued on or after Budget Day.

Genuine Intergenerational Share Transfers

The *Income Tax Act* contains a rule to prevent people from converting dividends into lower-taxed capital gains using certain self-dealing transactions—a practice referred to as “surplus stripping.” Private Member’s Bill C-208, which received Royal Assent on June 29, 2021, introduced an exception to this rule in order to facilitate intergenerational business transfers. However, the exception may unintentionally permit surplus stripping without requiring that a genuine intergenerational business transfer takes place.

Budget 2022 announces a consultation process for Canadians to share views as to how the existing rules could be modified to protect the integrity of the tax system while continuing to facilitate genuine intergenerational business transfers. The government is committed to bringing forward legislation to address these issues, which would be included in a bill to be tabled in the fall after the conclusion of the consultation process.

The Department of Finance is interested to hear from all stakeholders, and will engage directly with key affected sectors, in particular the agriculture industry. Please send your comments to: intergenerational-transfers-transferts-intergenerationnels@fin.gc.ca. Comments should be received by June 17, 2022.

Substantive CCPCs

The Canadian income tax system aims to achieve neutrality by ensuring that income earned directly by a Canadian-resident individual is taxed at roughly the same rate as income that is earned through a corporation.

The active business income of a private corporation is integrated only once dividends are paid out to shareholders. In contrast, additional refundable taxes apply to investment income earned by private corporations in the year in which

it is earned. These taxes generally aim to remove any advantage for Canadian individuals of earning investment income in a private corporation (where the investment income would otherwise be subject to a lower tax rate compared to earning such income personally). These refundable taxes form part of an integrated system of measures that link the taxation of income earned by private corporations and their individual shareholders. More specifically:

- portfolio dividends earned by all private corporations are subject to a special refundable tax under Part IV of the *Income Tax Act*; and
- other passive income (e.g., capital gains, interest, rent, royalties and amounts in respect of foreign accrual property income (FAPI)), referred to below as “investment income”, earned by Canadian-controlled private corporations (CCPCs) is subject to a special refundable tax mechanism under Part I of the *Income Tax Act*.

These taxes under Parts I and IV of the *Income Tax Act* are fully or partially refundable to corporations to the extent that they pay taxable dividends.

Deferring Tax Using Foreign Entities

Some taxpayers are manipulating the status of their corporations in an attempt to avoid qualifying as a CCPC to achieve a tax-deferral advantage on investment income earned in their corporations. The approach taken may involve effecting a change in status of the corporation in anticipation of capital gains on a sale of assets. Some planning may seek to avoid “Canadian corporation” status by, for example, continuing a corporation under foreign corporate law (while maintaining Canadian residency by maintaining central management and control in Canada). Other planning may seek to avoid “Canadian-controlled” status by interposing a non-resident corporation in the corporate structure or by issuing options to a non-resident. If effective, avoiding either status would mean that the corporation would no longer qualify as a CCPC and thus would not be subject to the refundable tax mechanisms under Part I of the *Income Tax Act*.

Although the manipulation of CCPC status can be challenged by the Government based on existing rules in the *Income Tax Act*, these challenges can be both time-consuming and costly. As a result, the Government is proposing a specific legislative measure.

Budget 2022 proposes targeted amendments to the *Income Tax Act* to align the taxation of investment income earned and distributed by “substantive CCPCs” with the rules that currently apply to CCPCs. Substantive CCPCs would be private corporations resident in Canada (other than CCPCs) that are ultimately controlled (in law or in fact) by Canadian-resident individuals. Similar to the CCPC definition, the test would contain an extended definition of control that would aggregate the shares owned, directly or indirectly, by Canadian resident individuals, and would therefore deem a corporation to be controlled by a Canadian resident individual where Canadian individuals own, in aggregate, sufficient shares to control the corporation. This measure would address tax planning that manipulates CCPC status without affecting genuine non-CCPCs (e.g., private corporations

that are ultimately controlled by non-resident persons and subsidiaries of public corporations). It would also cause a corporation to be a substantive CCPC in circumstances where the corporation would have been a CCPC but for the fact that a non-resident or public corporation has a right to acquire its shares.

Substantive CCPCs earning and distributing investment income would be subject to the same anti-deferral and integration mechanisms as CCPCs, with respect to such income. Specifically, investment income would be subject to a federal tax rate of 38 $\frac{2}{3}$ per cent, of which 30 $\frac{2}{3}$ per cent would be refundable upon distribution. Furthermore, the investment income earned by substantive CCPCs would be added to their "low rate income pool" such that distributions of such income would not entitle the shareholders to the enhanced dividend tax credit. Substantive CCPCs would continue to be treated as non-CCPCs for all other purposes of the *Income Tax Act*.

In other words, investment income earned and distributed by corporations that are, in substance, CCPCs would be taxed in the same manner as CCPCs. This would ensure that private corporations cannot effectively opt out of CCPC status and inappropriately circumvent the existing anti-deferral rules applicable to CCPCs.

In addition, these new rules would be supported by:

- a targeted anti-avoidance rule to address particular arrangements or transactions where it is reasonable to consider that the particular arrangement, transaction, or series of transactions was undertaken to avoid the anti-deferral rules applicable to investment income; and
- targeted amendments to facilitate administration of the rules applicable to investment income earned and distributed by substantive CCPCs, including a one year extension of the normal reassessment period for any consequential assessment of Part IV tax that arises from a corporation being assessed or reassessed a dividend refund.

This measure would apply to taxation years that end on or after Budget Day. To provide certainty for genuine commercial transactions entered into before Budget Day, an exception would be provided where the taxation year of the corporation ends because of an acquisition of control caused by the sale of all or substantially all of the shares of a corporation to an arm's length purchaser. The purchase and sale agreement pursuant to which the acquisition of control occurs must have been entered into before Budget Day and the share sale must occur before the end of 2022.

Deferring Tax Using Foreign Resident Corporations

The FAPI rules aim to prevent Canadian taxpayers from gaining a tax deferral advantage by earning certain types of highly-mobile income (including investment income) through controlled foreign affiliates (i.e., a non-resident corporation in which the taxpayer has, or participates in, a controlling interest). The rules do this by including the Canadian shareholder's participating share of the foreign affiliate's FAPI in the Canadian shareholder's income in the year

it is earned. If the Canadian shareholder is a CCPC, this amount is subject to the same additional refundable tax described above. In other words, the FAPI regime seeks to address any deferral advantage by subjecting FAPI earned in a controlled foreign affiliate to tax on a current basis and at the same level as if it was earned in Canada.

To avoid double taxation, such income inclusions in respect of FAPI are subject to a deduction in respect of foreign tax paid in respect of the FAPI (referred to as “foreign accrual tax”). This deduction is a proxy for a foreign tax credit on the FAPI amount included in the Canadian resident taxpayer’s income. The proxy amount is calculated based on the amount of foreign income that was subject to a sufficient level of foreign tax, determined based on the “relevant tax factor”. The relevant tax factor is calibrated to the tax rate to which the taxpayer would have been subject had the income been earned in Canada. To account for the fact that different types of taxpayers are generally subject to different tax rates in Canada, there are two different relevant tax factors:

- the relevant tax factor applicable to corporations (and partnerships all the members of which, other than non-resident persons, are corporations) is 4. As a result, the corporate relevant tax factor, when multiplied by the foreign accrual tax, provides for a deduction that fully offsets FAPI income inclusions where the foreign tax rate equals or exceeds 25 per cent; and
- the relevant tax factor applicable to all other taxpayers, including individuals, is 1.9. As a result, a foreign tax rate lower than 52.63 per cent will result in net FAPI income inclusions for other taxpayers.

Unlike the domestic anti-deferral rules, the FAPI rules (and more specifically the relevant tax factor) do not differentiate between different tax rates applicable to different types of Canadian corporations. This provides a tax-deferral advantage for CCPCs and their individual shareholders earning passive investment income through non-resident corporations.

In addition, the inclusion of certain amounts in respect of FAPI in a CCPC’s “general rate income pool” entitles the CCPC to distribute FAPI in the form of lower-taxed eligible dividends, providing a further advantage on a fully distributed basis (compared to investment income earned by a CCPC in Canada and distributed as higher-taxed non-eligible dividends).

Budget 2022 proposes targeted amendments to the *Income Tax Act* to eliminate the tax-deferral advantage available to CCPCs and their shareholders earning investment income through controlled foreign affiliates. The deferral advantage would be addressed by applying the same relevant tax factor to individuals, CCPCs and substantive CCPCs (i.e., the relevant tax factor currently applicable to individuals). This relevant tax factor is calibrated based on the highest combined federal and provincial or territorial personal income tax rate and would thus eliminate any tax incentive for CCPCs and their shareholders to earn investment income in a controlled foreign affiliate.

This rule would be accompanied by amendments to address the integration of FAPI as it is repatriated to and distributed by CCPCs and substantive CCPCs to their individual shareholders. Under the current rules, amounts repatriated from foreign affiliates to CCPCs and distributed to individual shareholders are generally integrated through the system of deductions available for dividends received from foreign affiliates and the enhanced gross-up and dividend tax credit. However, due to the new relevant tax factor for CCPCs and substantive CCPCs, the current rules would not effectively integrate such amounts.

Integration would be addressed by adding an amount to the capital dividend account (from which amounts may be received tax-free by Canadian resident individual shareholders) of a CCPC or a substantive CCPC. The amount added would approximate the portion of the after-tax earnings repatriated to the corporation from its foreign affiliate to the extent such earnings had been subject to a notional tax rate of 52.63 per cent. This addition to the capital dividend account would represent after-tax income that was subject to tax at the highest combined personal income tax rate and therefore, to achieve integration, should not be subject to additional Canadian income tax upon its distribution to the corporation's Canadian resident individual shareholders.

In addition, other dividend income from foreign affiliates for which a foreign tax credit is effectively provided through the relevant tax factor mechanism (dividends paid out of hybrid surplus and taxable surplus other than FAPI) would be treated in the same manner. All such dividends, to the extent not deductible in computing taxable income, will continue to be subject to the refundable tax system. The treatment of dividends paid out of exempt surplus and pre-acquisition surplus would be unaffected.

More specifically, Budget 2022 proposes to:

- remove from the general rate income pool of a CCPC an amount equal to the deductions claimed in respect of repatriations of a foreign affiliate's hybrid surplus (representing certain capital gains) and taxable surplus (generally representing FAPI and active business income earned in a country with which Canada does not have a tax treaty or tax information exchange agreement), and in respect of the payment of withholding tax to a foreign government on inter-corporate dividends received from a foreign affiliate prescribed to be paid out of taxable surplus; and
- include in the capital dividend account of a CCPC (and a substantive CCPC) upon repatriation:
 - the amount of an inter-corporate dividend deduction claimed with respect to a dividend paid out of hybrid surplus less the amount of withholding tax paid with respect to the dividend (representing the non-taxable half of hybrid surplus plus the after-tax portion of the taxable half of hybrid surplus that was subject to sufficient foreign tax, as determined based on the new relevant tax factor less any withholding tax paid in respect of the dividend prescribed to have been paid out of hybrid surplus);

- the amount of an inter-corporate dividend deduction claimed with respect to a dividend paid out of taxable surplus (representing the after-tax amount of the foreign accrual tax-sheltered FAPI (i.e., the amount of foreign accrual tax-sheltered FAPI less foreign accrual tax) repatriated to Canada as well as other non-FAPI amounts included in taxable surplus that were subject to sufficient foreign tax, as determined based on the new relevant tax factor); and
- the amount of a withholding tax deduction claimed less the withholding tax paid in respect of repatriations of taxable surplus (representing the after-tax amount of withholding tax sheltered amounts, i.e., the amount of the deduction for withholding tax paid on dividends prescribed to have been paid out of taxable surplus less the withholding tax paid).

These measures would apply to taxation years that begin on or after Budget Day.

International Tax Measures

International Tax Reform

Canada is one of 137 members of the Organisation for Economic Co-operation and Development (OECD)/Group of 20 (G20) Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework) that have joined a two-pillar plan for international tax reform agreed to on October 8, 2021. The historic “Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy” (the October Statement) agreed to that day has since been endorsed by G20 Finance Ministers and Leaders.

Pillar One is intended to reallocate a portion of taxing rights over the profits of the largest and most profitable multinational enterprises (MNEs) to market countries (i.e., where their users and customers are located). Pillar Two is intended to ensure that the profits of large MNEs are subject to an effective tax rate of at least 15 per cent, regardless of where they are earned.

Pillar One – Reallocation of Taxing Rights

Under longstanding rules reflected in bilateral tax treaties, a country is generally entitled to tax only those business profits of a foreign MNE that are associated with a subsidiary or “permanent establishment” in the country. This concept, and the associated rules for attributing profits to the local taxable presence using the arm’s length principle, were designed for traditional bricks-and-mortar businesses. Their application has become increasingly strained with the digitalization of the economy.

The result is that market countries have limited ability to tax the profits of certain large MNEs that carry out important value-generating activities in the country through remote means or rely on the exploitation of intangible property held outside the country.

Pillar One is intended to update the framework for profit allocation underlying current income tax treaties. It aims to ensure that the largest and most profitable MNEs pay a fair share of tax in the countries where their users and customers are located.

Specifically, the October Statement provides that a new allocation framework will apply to MNEs with global revenues above €20 billion and a profit margin (i.e., profit before tax as a share of revenue) above 10 per cent. Extractives and regulated financial services will be excluded. For in-scope MNEs, 25 per cent of residual profit, defined as profit in excess of 10 per cent of revenue, will be allocated to market countries using a revenue-based allocation key. Taxable profit will be determined by reference to financial accounting income, with a small number of adjustments.

Under this new framework, double taxation of the profit reallocated to market countries (referred to as Amount A) will be avoided through relief provided by the countries where residual profit is taxed under traditional rules. Mandatory and binding dispute prevention and resolution mechanisms will ensure that Amount A is taxed in a coordinated manner by participating countries.

The government is actively working with its international partners to develop the model rules and the multilateral convention needed to establish the new multilateral tax framework for Amount A and bring it into effect. The government is encouraged by the progress being made and will continue to press forward and be prepared to introduce implementing legislation after the terms are multilaterally agreed.

To ensure that Canadians' interests are protected, as a back-up plan the government released draft legislative proposals for a Digital Services Tax (DST) in December 2021. A period for public input on the proposals closed in February and the government is reviewing the feedback received. Consistent with the October Statement, the DST could be imposed as of January 1, 2024, but only if the multilateral convention implementing the Amount A tax framework has not come into force. (In that event, the DST would be payable as of 2024 in respect of revenues earned as of January 1, 2022.) It remains the government's hope and underlying assumption that the timely implementation of the new international tax framework will make this unnecessary.

Pillar Two – Global Minimum Tax

Background

Pillar Two is a framework for a minimum tax applicable to MNEs with annual revenues of €750 million or more. It is designed to ensure these MNEs are subject to a minimum effective tax rate (ETR) of 15 per cent on their profits in every jurisdiction in which they operate.

Pillar Two builds on the OECD/G20 Base Erosion and Profit Shifting project, and helps to further reduce the incentive for MNEs to shift profits into low-

tax jurisdictions. At the same time, it seeks to end the “race to the bottom” in international corporate taxation by setting a floor on tax competition, while leaving appropriate flexibility for governments to design their income tax systems to support business investment and innovation.

Pillar Two is generally intended to be implemented through changes to each country’s domestic tax laws. To facilitate coordinated implementation and ensure consistency, the Inclusive Framework approved detailed model rules (the Model Rules), published on December 20, 2021, as well as a commentary (the Commentary) providing guidance on their interpretation and operation, published on March 14, 2022. The October Statement provides that Inclusive Framework countries implementing Pillar Two are required to do so in a way that is consistent with the outcomes provided for under the Model Rules and Commentary.

Basic Elements of the Pillar Two Rules

Under Pillar Two, an MNE is generally required to calculate the ETR on its profits in each jurisdiction in which it operates. If the ETR for a particular jurisdiction is below 15 per cent, the MNE is subject to a “top-up tax” that brings the ETR on its profits in the jurisdiction up to the 15–per-cent minimum rate.

There is an exclusion (the Substance-based Income Exclusion) from the application of the top-up tax for an amount of income equal to a fixed percentage of the carrying value of an MNE’s tangible assets and of its expenditures on labour in a jurisdiction. This is intended as a measure of the MNE’s substantive economic activities in the jurisdiction.

Pillar Two is comprised of two core charging rules for the top-up tax: the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR).

The IIR is the primary rule. In general terms, if the country where the ultimate parent entity of an MNE is located has implemented the IIR, it has the primary right to impose a top-up tax on the ultimate parent entity with respect to income from the MNE’s operations in any jurisdiction where it is taxed at an ETR below 15 per cent. The top-up tax brings the ETR of this low-taxed income up to 15 per cent. If the ultimate parent jurisdiction has not implemented the IIR, the right to impose the top-up tax under the IIR shifts to the jurisdiction of the highest-tier intermediate parent entity within the MNE’s structure that has adopted the IIR.

The UTPR is a “backstop” rule that generally applies where neither the ultimate parent jurisdiction nor any intermediate parent jurisdiction of an MNE has implemented the IIR. In that case, other jurisdictions in which the MNE operates that have implemented the UTPR would impose the top-up tax on the group entities located in their jurisdiction, with the top-up tax being allocated among those jurisdictions on a formulary basis. The UTPR provides a strong incentive for countries to adopt Pillar Two, as it ensures that MNEs whose parent entities are located in non-implementing jurisdictions are nonetheless subject to top-up tax in respect of their low-taxed income.

Pillar Two also contains a treaty-based rule called the subject-to-tax rule. Where applicable, this rule allows a country to impose a higher rate of withholding tax than the negotiated tax treaty rate on certain payments (including interest, royalties and a defined set of other payments) made between related entities, if the payment is subject to tax in the payee country at a nominal tax rate below nine per cent. The subject-to-tax rule is to be implemented in a country's bilateral tax treaty at the request of a developing country, and a developing country may make this request only if the partner country has a nominal tax rate below nine per cent that applies to any of the types of payments covered by the rule. Based on discussions to date, the subject-to-tax rule is not expected to impact Canada, and thus is not further discussed here.

The Model Rules also explicitly contemplate that a jurisdiction may enact a domestic minimum top-up tax that would apply a top-up tax on low-taxed income of its domestic entities. If such a tax is designed to achieve the intended outcomes under Pillar Two, it is treated as a "qualified" domestic minimum top-up tax and is creditable dollar-for-dollar against the top-up tax liability otherwise arising under Pillar Two. In effect, this allows a jurisdiction to collect the top-up tax applicable to any low-taxed income of its domestic entities, rather than allowing the top-up tax to accrue to the treasuries of other countries under the IIR or UTPR.

Further details concerning the Model Rules are set out in the Consultation section below.

Implementation Timeline and Framework

The Pillar Two project has now entered the implementation phase. The October Statement provides that countries should implement Pillar Two effective in 2023, with the UTPR coming into effect in 2024.

In accordance with the Detailed Implementation Plan accompanying the October Statement, work is ongoing at the OECD to develop an Implementation Framework for public release by the end of 2022. The Implementation Framework is intended to address issues around administration of Pillar Two, including filing obligations, multilateral review processes and safe harbours that would be designed to reduce administration and compliance costs by relieving MNEs of the obligation to compute their jurisdictional ETRs in certain circumstances.

Recent International Developments

Countries have begun to take steps towards the implementation of Pillar Two.

Members of the European Union are currently debating a draft Directive that, if adopted, would require member states to implement Pillar Two in their national laws effective in 2023.

The U.K. launched a public consultation on January 11, 2022 regarding the implementation of Pillar Two and a proposed domestic minimum tax. The anticipated effective date for the IIR in the U.K. is April 1, 2023, with the

UTPR and domestic minimum tax to be introduced no earlier than April 1, 2024.

The U.S. has a minimum tax called the Global Intangible Low-Taxed Income (GILTI) regime, which is similar to Pillar Two but less stringent in certain key respects. The *Build Back Better Act*, passed by the House of Representatives in November 2021, includes proposed amendments that would bring GILTI into closer alignment with Pillar Two, effective in 2023, principally by raising the GILTI minimum rate to roughly 15 per cent (from the current rate of 10.5-13.125 per cent) and applying the regime on a jurisdictional, rather than global, basis. However, these amendments have not yet been enacted. The October Statement indicated that the Inclusive Framework will consider the conditions under which the GILTI regime will “co-exist” with Pillar Two “to ensure a level playing field”. These conditions remain to be settled.

Implementation in Canada

In light of these international developments, and in accordance with the timeline and parameters set out in the October Statement, Budget 2022 proposes to implement Pillar Two, along with a domestic minimum top-up tax that would apply to Canadian entities of MNEs that are within the scope of Pillar Two.

The government anticipates that draft implementing legislation would be publicly released for consultation and the IIR and domestic minimum top-up tax would come into effect in 2023 as of a date to be fixed. The UTPR would come into effect no earlier than 2024.

Consultation on Pillar Two

To allow the government to implement Pillar Two in accordance with the intended timeline, Budget 2022 is launching a public consultation on the implementation in Canada of the Model Rules and a domestic minimum top-up tax.

The Model Rules are the product of extensive international negotiation and have been agreed to by Inclusive Framework members. A country’s failure to adhere in its domestic implementing legislation to the common approach set out in the Model Rules runs the risk of the implementing country’s IIR not being a “qualified” IIR under the Model Rules, leaving MNEs based in that country open to the application of other countries’ UTPRs.

In light of the above considerations, the principal purpose of this consultation is to ensure that the draft legislation takes account of any necessary adaptations of the Model Rules to the Canadian legal and income tax context, rather than to seek views on the major design aspects of the Model Rules or broader policy considerations.

The government welcomes comments on all aspects of the implementation of these rules in the Canadian income tax system. To help guide respondents, set out below are questions on specific aspects of the Model Rules identified as being of particular interest. Following a series of general questions, specific

questions are organized according to the corresponding chapters of the Model Rules and are preceded by a brief summary of the chapter. Where appropriate, the questions include a reference to the relevant article in the Model Rules. Certain defined terms in the Model Rules are capitalized below.

The full text of the Model Rules is available on the OECD website at <https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>.

General

- Are there any specific ways in which the Canadian legislation should vary from, or expand on, particular provisions of the Model Rules, bearing in mind the importance of ensuring consistency and coordination with other countries' rules, and the limited flexibility permitted by the common approach reflected in the Model Rules?
- Do respondents have any comments regarding specific interactions of the Model Rules with existing Canadian laws, including specific provisions of the *Income Tax Act*?
- Do respondents have suggestions as to existing *Income Tax Act* provisions that should or should not be made applicable for the purposes of the Canadian legislation on Pillar Two, including any of the administrative and enforcement provisions in Part XV and the interpretive provisions in Part XVII of the *Income Tax Act*?
- Do respondents have any suggestions regarding the design of the domestic minimum top-up tax in Canada?
- Are there any issues or uncertainties with how a domestic minimum top-up tax is treated under the Model Rules?

Scope (Chapter 1)

Chapter 1 of the Model Rules determines the groups and entities that are within the scope of Pillar Two.

Generally, an MNE Group with annual revenues of at least €750 million (computed according to the rules under this chapter) is within the scope of Pillar Two. An MNE Group is defined essentially as a group of entities whose financial results are fully consolidated in the Ultimate Parent Entity's consolidated financial statements, and that operates in more than one jurisdiction.

The members of an MNE Group that are within the scope of Pillar Two are known as Constituent Entities, and can be corporations or arrangements, such as partnerships, trusts or permanent establishments. However, the following types of entities (referred to as Excluded Entities) are excluded from the application of the rules: a Governmental Entity; an International Organization; a Non-profit Organization; a Pension Fund; an Ultimate Parent Entity that is an Investment Fund or a Real Estate Investment Vehicle; and certain holding

entities owned by Excluded Entities.

- Do respondents have any comments on the Excluded Entity provisions in the Model Rules?

Charging Provisions (Chapter 2)

Chapter 2 sets out the operation of the IIR and the UTPR. Generally, the IIR imposes Top-up Tax (as calculated in Chapter 5) on the Ultimate Parent Entity or, if the ultimate parent jurisdiction has not implemented the IIR, on an Intermediate Parent Entity. However, if a Parent Entity's ownership stake in another Parent Entity (referred to as a Partially-Owned Parent Entity) is less than 80 per cent, the IIR is applied at the level of the Partially-Owned Parent Entity.

Chapter 2 also includes rules for allocating Top-up Tax to be imposed under the UTPR between UTPR jurisdictions on a formulary basis, based on the relative number of employees and relative net book value of tangible assets located in a given UTPR jurisdiction.

- Do respondents have views as to the appropriate design of the UTPR in Canadian legislation, including in particular the design of the charging mechanism for Top-up Tax under the UTPR (e.g., as a separate levy, or as a denial of deductions under Part I of the *Income Tax Act*)?

Computation of GloBE Income or Loss (Chapter 3)

Chapter 3 comprises the rules for computing the GloBE Income or Loss of each Constituent Entity of an MNE Group (which is used in the calculations in Chapter 5). Generally, this is the net income or loss of the Constituent Entity determined in preparing the consolidated financial statements of the Ultimate Parent Entity, adjusted in accordance with Articles 3.2 to 3.5 of the Model Rules.

This chapter also sets out the rules for computing the exclusion for certain international shipping income, which is generally not subject to Top-up Tax under Pillar Two.

In addition, this chapter includes rules for allocating income or loss between a head office and a permanent establishment, as well as rules for allocating income or loss from a Flow-through Entity such as a partnership.

- Do respondents have comments, or suggestions for clarifications that could be made in the Canadian legislation, regarding the adjustments required to accounting profits under Articles 3.2 to 3.5 (including the various elections available under those provisions), while respecting the intended outcomes in the Model Rules?

Computation of Adjusted Covered Taxes (Chapter 4)

Chapter 4 provides rules to determine Covered Taxes, meaning taxes that are taken into consideration in determining an MNE Group's jurisdictional ETR in Chapter 5. Covered Taxes are generally defined as income or profits taxes, taxes in lieu of income taxes, certain taxes on corporate distributions and taxes on equity.

The computation of Covered Taxes of a Constituent Entity begins with certain amounts accrued in current tax expense in its financial statements, which are

then subject to a number of adjustments. These include adjustments to address loss carryovers and timing differences in the recognition of income and expense between financial and tax accounting, based on deferred tax accounting principles (subject to certain exceptions and modifications).

Chapter 4 also reallocates certain Covered Taxes from one jurisdiction to another, where the Covered Tax is in respect of income recognized in the other jurisdiction. Covered taxes paid by a head office in respect of a permanent establishment's profits, or under a controlled foreign company tax regime in respect of the income of a controlled foreign company, are reallocated to the jurisdiction of the permanent establishment or controlled foreign company, respectively, subject to a limitation based on the 15-per-cent minimum rate in the case of passive income of a controlled foreign company.

- Do respondents have comments, or suggestions for clarifications in the Canadian legislation, regarding the computation of Adjusted Covered Taxes under Article 4.1, and the allocation of Covered Taxes between Constituent Entities under Article 4.3?
- Do respondents have views on how rules to address temporary differences in Article 4.4 work, including whether there are any uncertainties as to their operations that could be further clarified in the Canadian legislation?
- Do respondents have any suggestions as to clarifications required in relation to post-filing adjustments under Article 4.6 of the Model Rules?

Computation of Effective Tax Rate and Top-up Tax (Chapter 5)

Chapter 5 provides rules to compute an MNE Group's ETR in each jurisdiction in which it operates. It also sets out rules to compute the amount of any Top-up Tax with respect to the low-taxed entities in a jurisdiction in which the ETR falls below 15 per cent.

The computation of Top-up Tax takes into account the Substance-based Income Exclusion, which is also computed under the rules in this chapter. For 2023, the Substance-based Income Exclusion will exclude from the application of Top-up Tax an amount of income equal to 8 per cent of the carrying value of Eligible Tangible Assets and 10 per cent of payroll expenditures; these percentages will decline annually over the course of a 10-year transition period to end at 5 per cent for both tangible assets and payroll as of 2032.

In addition, Chapter 5 provides for a *de minimis* exclusion from Top-up Tax where the MNE Group's average revenue and income in a jurisdiction are less than €10 million and €1 million, respectively, for the year and the two preceding years.

- Do respondents have any comments on the computation of the Substance-based Income Exclusion under Article 5.3?

Corporate Restructurings and Holding Structures (Chapter 6)

Chapter 6 provides rules governing the treatment of certain corporate restructurings, as well as special rules for joint ventures and Multi-Parented MNE Groups.

- Do respondents have any comments with respect to the rules on corporate restructurings in Articles 6.1 to 6.3?
- Do respondents have any comments, or suggestions for clarifications in the Canadian legislation, as to the treatment of joint ventures under the rules?

Tax Neutrality and Distribution Regimes (Chapter 7)

Chapter 7 provides special rules applicable to certain tax neutrality and distribution taxation regimes. It also provides special rules for computing the ETR of Investment Funds and other Investment Entities, which generally is calculated separately from the ETR of the jurisdiction where the entity is located.

- Do respondents have any comments, or suggestions for clarifications in the Canadian legislation, on how the rules apply in relation to Investment Funds and other Investment Entities, including the provisions in Articles 7.4 (computation of ETR for Investment Entities), 7.5 (tax transparency election) and 7.6 (Taxable Distribution Method election)?

Administration (Chapter 8)

Chapter 8 provides reporting requirements, including the obligation to file a standardized information return within 15 months of the end of the MNE Group's reporting period and the ability for the MNE Group to appoint a Designated Filing Entity to fulfill this obligation on behalf of the group.

Chapter 8 also contemplates the development of one or more "safe harbours" to mitigate compliance and reporting obligations in respect of an MNE Group's operations in particular jurisdictions where certain criteria are met. The criteria to qualify for the safe harbour and other details are to be further developed under the Implementation Framework.

- Do respondents have comments on the reporting requirements?
- Do respondents have views on an appropriate payment deadline for Pillar Two liabilities under the Canadian legislation, and any views regarding instalment payments in relation to such liabilities?
- What are respondents' views on how to design a potential safe harbour

that would allow for a simplified ETR calculation based on information reported in country-by-country reports?

- Do respondents have views as to the appropriate design of the administrative power in Article 8.2.2 to override the safe harbour election?

Transition Rules (Chapter 9)

Chapter 9 provides transitional rules that ensure MNE Groups get appropriate recognition for losses incurred prior to Pillar Two coming into effect, as well as other deferred tax assets and liabilities.

This chapter also provides for a five-year deferral in the application of the UTPR in relation to MNE Groups in the initial stage of international expansion, and the transitional rates for the Substance-based Income Exclusion described in Chapter 5.

- Are there any issues or uncertainties regarding the operation of the transitional rules that could be clarified in the Canadian legislation?
- Do respondents have views as to whether Canada should adopt the optional transitional rule in Article 9.3.5., in relation to MNE Groups in the initial phase of their international activity?

Definitions (Chapter 10)

Chapter 10 sets out definitions for various terms used in the Model Rules.

- Do respondents have any comments regarding clarifications to any of these definitions that could be included in the Canadian legislation?

How to Participate in the Consultation

Interested parties are invited to send written representations by July 7, 2022 to the Department of Finance Canada, Tax Policy Branch at Pillar2Consultation.ConsultationPilier2@fin.gc.ca.

Exchange of Tax Information on Digital Economy Platform Sellers

Technological developments related to the digital economy are making it possible for a wider share of the population to carry on business through online platforms. The digital economy includes the sharing and gig economies, and online sellers of goods. The sharing economy is an economic model involving peer-to-peer based activity of acquiring, providing, or sharing access to goods and services that is often facilitated by an online platform. The gig economy is based on flexible, temporary or freelance jobs, often involving connecting with clients or customers through online platforms. Online sellers of goods often make use of digital platforms, rather than maintaining their own websites.

In Canada, the onus is generally on taxpayers earning business income, including those carrying on business through online platforms (i.e., platform sellers), to report to the Canada Revenue Agency (CRA) the income they have

earned. However, not all platform sellers are aware of the tax implications of their online activities. In addition, transactions occurring digitally through online platforms may not be visible to tax administrations, making it difficult for the CRA to identify non-compliance.

To address these concerns, which are shared by other jurisdictions, the Organisation for Economic Co-operation and Development (OECD) has developed model rules for reporting by digital platform operators with respect to platform sellers. The model rules require online platforms to collect and report relevant information to tax administrations in order to ensure that revenues earned by taxpayers through those platforms can be properly taxed. The OECD's framework for the model rules is designed to minimize administrative burden by providing for the sharing of information between tax administrations. An online platform would generally need to report the information to only one jurisdiction, and that jurisdiction would then share the information with partner jurisdictions based on the residence of each platform seller earning revenue through the platform (and, in the case of a rental property, the jurisdiction where the rental property is located).

Other jurisdictions have announced their intention to implement the model rules or a similar framework, including the European Union, the United Kingdom and Australia.

Budget 2022 proposes to implement the model rules in Canada. The measure would require reporting platform operators that provide support to reportable sellers for relevant activities to determine the jurisdiction of residence of their reportable sellers and report certain information on them.

Reporting platform operators would be entities that are engaged in the following activities:

- contracting directly or indirectly with sellers to make the software that runs a platform available for the sellers to be connected to other users; or
- collecting compensation for the relevant activities facilitated through the platform.

Software that exclusively facilitates the processing of compensation in relation to relevant activities, the mere listing or advertising of relevant activities or the transfer of users to another platform would not be subject to the rules, provided in each case that there is no further intervention in the provision of relevant activities. For example, this would generally exclude pure payment processors, classified ads boards, and online aggregators.

The measure would generally apply to platform operators that are resident for tax purposes in Canada. The measure would also apply to platform operators that are not resident in Canada or a partner jurisdiction and that facilitate relevant activities by sellers resident in Canada or with respect to rental of

immovable property located in Canada. A partner jurisdiction would be a jurisdiction that has implemented similar reporting requirements on platform operators and that has agreed to exchange information with the CRA on reportable platform sellers.

The measure would not apply to platform operators that demonstrate to the CRA that their business model does not allow sellers to profit from compensation received or that the platform does not have any reportable sellers. The measure would also exclude platform operators that facilitate the provision of relevant activities for which the total compensation over the previous year is less than €1 million, and that elect to be excluded from reporting.

Relevant activities would be relevant services and sales of goods.

Relevant services would be:

- personal services (i.e., services involving time- or task-based work performed by one or more individuals at the request of a user, unless such work is purely ancillary to an overall transaction or it is provided by a seller pursuant to an employment relationship with the platform operator or a related entity of the platform operator), for example, transportation and delivery services, manual labour, tutoring, data manipulation and clerical, legal or accounting tasks;
- rental of immovable property (residential or commercial property, as well as parking spaces); and
- rental of means of transportation.

A reportable seller would be an active user who is registered on a platform to provide relevant services or sell goods. Sellers that represent a limited compliance risk would not be reportable sellers. These are:

- governmental entities;
- entities the stock of which is regularly traded on an established securities market;
- large providers of hotel accommodation that provide accommodation at a high frequency (i.e., more than 2,000 per year in respect of a property listing on an online platform); and
- with respect to the sales of goods, sellers who make less than 30 sales a year for a total of not more than €2,000.

Reporting platform operators would need to complete due diligence procedures to identify reportable sellers and their jurisdiction of residence. For platform operators that become reporting platform operators for the first time, the due diligence procedures would be required to be completed by December 31 of the second calendar year in which the platform operator is subject to the reporting rules. A reporting platform operator could continue to rely on the due diligence procedures from a previous year as long as it has verified the seller's address within the last 36 months and it does not have reason to know that its

information on the seller has become unreliable or incorrect.

Reporting platform operators would be required to report to the CRA specified information on reportable sellers by January 31 of the year following the calendar year for which a seller is identified as a reportable seller. Reporting platform operators would also be required to provide the information relating to each reportable seller to that seller by the same date.

To avoid duplicative reporting, a reporting platform operator would generally not have to report information about a seller if another platform operator will be reporting the required information about that seller. The reporting platform operator would need to obtain adequate assurances from the other platform operator that it will report the required information.

The CRA would automatically exchange with partner jurisdictions the information received from Canadian platform operators on sellers resident in the partner jurisdiction and rental property located in the partner jurisdiction. Likewise, the CRA would receive information on Canadian sellers and rental property located in Canada from partner jurisdictions. The exchanges would take place under the exchange of information provisions in tax treaties and similar international instruments, which provide important safeguards to protect taxpayer confidentiality and ensure that the exchanged information is not used inappropriately.

This measure would apply to calendar years beginning after 2023. This would allow the first reporting and exchange of information to take place in early 2025 with respect to the 2024 calendar year.

Interest Coupon Stripping

Part XIII of the *Income Tax Act* generally imposes a 25-per-cent withholding tax on interest paid or credited by a Canadian resident to a non-arm's length non-resident. The 25-per-cent withholding tax rate is generally reduced for interest paid to a resident in a country with which Canada has a tax treaty. These Canadian tax treaties typically reduce this withholding tax rate to either 10 per cent or 15 per cent. Exceptionally, for interest paid to U.S. residents, the Canada-U.S. tax treaty generally reduces the withholding tax rate to nil.

Some taxpayers have sought to avoid Part XIII interest withholding tax on non-arm's length debt using so-called interest coupon stripping arrangements. These arrangements generally involve a non-resident lender selling its right to receive future interest payments (interest coupons) in respect of a loan made to a non-arm's length Canadian-resident borrower to a party that is not subject to withholding tax. The non-resident lender generally retains its right to the principal amount under the loan.

While an amendment was made in 2011 to address a particular interest coupon stripping arrangement that was the subject of a court decision, it did not deal with two other variations of the arrangement.

The first variation generally involves a non-resident lender, not resident in the U.S., selling the interest coupons in respect of a loan made to a non-arm's length Canadian-resident borrower to another person who is resident in the U.S. This U.S.-resident interest coupon holder could be either arm's length or non-arm's length with the Canadian-resident borrower. To the extent that the interest paid by the Canadian-resident borrower to the U.S. interest coupon holder under this arrangement is eligible for benefits under the Canada-U.S. tax treaty, the withholding tax rate to which it is subject would be reduced from 25 per cent to nil. This variation could also involve a lender resident in a non-treaty country - or in a treaty country where the treaty provides for a relatively high rate of withholding tax on interest - selling interest coupons to a purchaser in any country with a lower treaty rate.

The second variation involves a non-resident lender, not resident in the U.S., selling the interest coupons in respect of a loan made to a non-arm's length Canadian-resident borrower to a person resident in Canada. Under this variation, interest paid by the Canadian-resident borrower to the Canadian-resident interest coupon holder is not subject to withholding tax since it is not paid to a non-resident. In these circumstances, taxpayers take the position that certain potentially applicable provisions in the *Income Tax Act* do not apply to deem an interest payment to be made by the Canadian-resident interest coupon holder to the non-resident lender.

Depending on the particular facts, these two variations of interest coupon stripping arrangements could be challenged by the Government based on existing rules in the *Income Tax Act*. However, to avoid the uncertainty and costs associated with such challenges, the Government is proposing a specific legislative measure to ensure that the appropriate tax consequences apply to these arrangements.

Budget 2022 proposes an amendment to the interest withholding tax rules to ensure that the total interest withholding tax paid under an interest coupon stripping arrangement is the same as if the arrangement had not been undertaken and instead the interest had been paid to the non-resident lender.

In general terms, an interest coupon stripping arrangement would be considered to exist where the following conditions are met:

- a Canadian-resident borrower pays or credits a particular amount to a person or partnership (interest coupon holder) as interest on a debt (other than a publicly offered debt obligation) owed to a non-resident person with whom the Canadian-resident borrower is not dealing at arm's length (non-resident lender); and
- the tax that would be payable under Part XIII in respect of the particular amount, if the particular amount were paid or credited to the non-resident lender, is greater than the tax payable under Part XIII on the particular

amount paid or credited to the interest coupon holder.

Where an interest coupon stripping arrangement exists, the Canadian-resident borrower would be deemed, for the purposes of the interest withholding tax rules, to pay an amount of interest to the non-resident lender such that the Part XIII tax on the deemed interest payment equals the Part XIII tax otherwise avoided as a result of the interest coupon stripping arrangement.

This measure would apply to interest paid or payable by a Canadian-resident borrower to an interest coupon holder to the extent that such interest accrued on or after Budget Day, unless the interest payment meets the following conditions:

- it is in respect of a debt or other obligation incurred by the Canadian-resident borrower before Budget Day; and
- it is made to an interest coupon holder that deals at arm's length with the non-resident lender and that acquired the interest coupon as a consequence of an agreement or other arrangement entered into by the interest coupon holder, and evidenced in writing, before Budget Day.

For cases falling within the above exception, the measure would apply to interest paid or payable by a Canadian-resident borrower to an interest coupon holder to the extent that such interest accrued on or after the day that is one year after Budget Day.

Sales and Excise Tax Measures

GST/HST Health Care Rebate

Under the Goods and Services Tax/Harmonized Sales Tax (GST/HST), hospitals can claim an 83-per-cent rebate and charities and non-profit organizations can claim a 50-per-cent rebate of the GST and the federal component of the HST that they pay on inputs used in their exempt supplies. In recognition of restructuring in the delivery of health care services, the 83-per-cent hospital rebate was expanded in 2005 to cover eligible charities and non-profit organizations that provide health care services similar to those traditionally performed in hospitals.

One of the conditions to be eligible for the expanded hospital rebate is that a charity or non-profit organization must deliver the health care service with the active involvement of, or on the recommendation of, a physician, or in a geographically remote community, with the active involvement of a nurse practitioner.

Budget 2022 proposes to amend the GST/HST eligibility rules for the expanded hospital rebate to recognize the increasing role of nurse practitioners in delivering health care services, including in non-remote areas. It is proposed that to be eligible for the expanded hospital rebate, a charity or non-profit organization must deliver the health care service with the active involvement

of, or on the recommendation of, either a physician or a nurse practitioner, irrespective of their geographical location. In other words, the expanded hospital rebate would no longer distinguish between health care services rendered by physicians and nurse practitioners.

This measure would generally apply to rebate claim periods ending after Budget Day in respect of tax paid or payable after that date.

GST/HST on Assignment Sales by Individuals

An assignment sale in respect of residential housing is a transaction in which a purchaser (an “assignor”) under an agreement of purchase and sale with a builder of a new home sells their rights and obligations under the agreement to another person (an “assignee”).

Under the current Goods and Services Tax/Harmonized Sales Tax (GST/HST) rules, an assignment sale in respect of newly constructed or substantially renovated residential housing may be either taxable or exempt. An assignment sale made by an individual would generally be taxable if the individual had originally entered into the agreement of purchase and sale with the builder for the primary purpose of selling their interest in the agreement. If, on the other hand, the individual had originally entered into the agreement for another primary purpose, such as to occupy the home as a place of residence, the assignment sale would generally be exempt.

Budget 2022 proposes to amend the *Excise Tax Act* to make all assignment sales in respect of newly constructed or substantially renovated residential housing taxable for GST/HST purposes. As a result, the GST/HST would apply to the total amount paid for a new home by its first occupant and there would be greater certainty regarding the GST/HST treatment of assignment sales.

Typically, the consideration for an assignment sale includes an amount attributable to a deposit that had previously been paid to the builder by the assignor. Since the deposit would already be subject to GST/HST when applied by the builder to the purchase price on closing, Budget 2022 proposes that the amount attributable to the deposit be excluded from the consideration for a taxable assignment sale.

As is currently the case, the assignor in respect of a taxable assignment sale would generally continue to be responsible for collecting the GST/HST and remitting the tax to the Canada Revenue Agency (CRA). Where an assignor is non-resident, the assignee would continue to be required to self-assess and pay the GST/HST directly to the CRA.

The amount of a new housing rebate under the GST/HST legislation is determined based on the total consideration payable for a taxable supply of a home, as well as the total consideration payable for any other taxable supply of an interest in the home (e.g., the consideration for a taxable assignment

sale). Accordingly, these changes may affect the amount of a GST New Housing Rebate or of a new housing rebate in respect of the provincial component of the HST that may be available in respect of a new home.

This measure would apply in respect of any assignment agreement entered into on or after the day that is one month after Budget Day.

Taxation of Vaping Products

The Government consulted Canadians in Budget 2021 on a proposal for a new excise duty on vaping products. Key refinements to the proposed taxation framework, informed by the public consultation that took place following Budget 2021, are below.

Tax Base

The taxation base would be comprised of vaping products that include either liquid or solid vaping substances (whether or not they contain nicotine), with an equivalency of 1 ml of liquid = 1 gram of solids. Vaping products that are already subject to the cannabis excise duty framework, as well as those produced by individuals for their personal use, would be excluded.

Duty Rates

A federal excise duty rate of \$1 per 2 ml, or fraction thereof, is proposed for the first 10 ml of vaping substance, and \$1 per 10 ml, or fraction thereof, for volumes beyond that. The excise duty would be based on the volume of vaping substance in each vaping product (e.g., a pod, a bottle, or a disposable vape pen).

If a province or territory were to choose to participate in a coordinated vaping taxation regime administered by the federal government as discussed below, an additional duty rate would be imposed in respect of dutiable vaping products intended for sale in that participating jurisdiction.

- The additional duty rate in respect of that participating province or territory would be equal to the proposed federal excise duty rate, so that the proposed combined rate would be \$2 per 2 ml, or fraction thereof, for the first 10 ml of vaping substance, and \$2 per 10 ml, or fraction thereof, for volumes beyond that.

Illustrative Duty Rates

Sale in a non-participating province or territory

If a retail package contains four separate pods of 1.0 ml of vaping liquid, each pod would be considered a separate vaping product for the purpose of the duty. The federal duty would be calculated based on the volume of liquid in each separate pod (i.e., \$1.00 per 2 ml, or fraction thereof, per pod, for a total of \$4.00 for the retail package), and not on the total volume of liquid in the retail package.

For a 30 ml bottle of vaping liquid, the federal excise duty would be \$7.00: \$5.00 for the first 10 ml, and an additional \$2.00 for the remaining 20 ml.

Sale in a participating province or territory

For a retail package containing four separate pods of 1.0 ml of vaping liquid, the combined federal and provincial/territorial duty would be \$2.00 per pod, for a total of \$8.00 for the retail package.

For a 30 ml bottle, the combined federal and provincial/territorial excise duty would be \$14.00: \$10.00 for the first 10 ml, and an additional \$4.00 for the remaining 20 ml.

Travellers' Exemption

Budget 2022 proposes to allow duty-free importations by travellers returning to Canada of unstamped vaping products for personal use, as outlined below.

For an absence of less than 48 hours:

- No duty-free importation of vaping products for personal use.

For an absence of 48 hours or more:

- Duty-free importation for personal use of up to twelve vaping products (e.g., pods, bottles, or disposable vape pens) of less than 10 ml each (for a total of 120 ml); or, any combination of vaping products of 10 ml or more, so long as the total volume imported is below 120 ml.

Federal-provincial-territorial Taxation Coordination

The government will work collaboratively with provinces and territories that may be interested in a federally coordinated approach to taxing these products, which could be achieved through the implementation, under federal legislation and administration, of taxation on a common product base.

- An agreement between the federal government and a province or territory could be signed and come into effect after the proposed federal excise duty framework for vaping products is in place.

Licensees would be required to apply an excise stamp with a specific colour and other unique markings indicating the provincial or territorial market in which the vaping product is intended to be sold.

Coming-into-force and Transition Period

The proposed federal excise duty framework for vaping products would come into force on October 1, 2022.

It is also proposed that retailers may continue to sell until January 1, 2023 unstamped products that are in inventory as of October 1, 2022.

Cannabis Taxation Framework and General Administration under the *Excise Act, 2001*

As the legal cannabis industry in Canada grows and evolves, there are opportunities to streamline, strengthen, and adapt the cannabis excise duty framework specifically, and other excise duty regimes under the *Excise Act, 2001* accordingly.

Excise Duty Quarterly Remittances

Cannabis producers licensed under the excise duty regime must remit excise duties on a monthly basis, not later than the last day of the month following the month in which a product is delivered to a buyer. However, not all buyers – which are primarily provincial Crown entities – pay for those products on a monthly basis; in some cases, buyer payment terms extend well beyond one month, which may lead to cash-flow issues for smaller licensed producers.

Budget 2022 proposes to allow licensed cannabis producers to remit excise duties on a quarterly rather than monthly basis, starting from the quarter that began on April 1, 2022. This option would only be available in respect of a fiscal quarter, beginning on or after April 1, 2022, of a licensee that was required to remit less than a total of \$1M in excise duties during the four fiscal quarters immediately preceding that fiscal quarter.

Technical Amendments

Contracts-for-Service – Cannabis Framework

Under the cannabis excise duty framework, packaged but unstamped cannabis products may not be transferred between licensed cannabis producers. Transferring excise duty stamps from one licensed producer to another is also prohibited. These restrictions, while intended to ensure the security and integrity of the supply chain, have also led to inventory management issues and inefficiencies in the supply chain for the cannabis industry.

Budget 2022 proposes to allow the Canada Revenue Agency to approve certain contract-for-service arrangements between two licensed cannabis producers. These approved arrangements would permit, as the case may be, two licensed producers to:

- transfer stamps, and packaged but unstamped products, between them;
- stamp and enter cannabis products into the retail market that have been packaged by the other producer; and,

- pay the excise duty on cannabis products that were stamped by the other producer.

This proposal would come into force upon royal assent to the enabling legislation.

Penalties – Cannabis Framework

Penalties are imposed on licensees when they lose excise stamps. The penalties are higher where the lost stamps are in respect of jurisdictions that opted for the inclusion of an additional cannabis duty adjustment clause in their Coordinated Cannabis Taxation Agreement (CCTA).

Additional Cannabis Duty Adjustments

This adjustment is meant to reflect in whole or in part differences between the general sales tax rate applied to cannabis in the particular jurisdiction, and the highest prevailing general provincial sales tax rate (or rate of the provincial component of the HST) in Canada – which is currently 10 per cent.

- Some jurisdictions do not have a sales tax adjustment clause in their CCTA, such as Quebec and Nova Scotia.
- Some jurisdictions with a prevailing general provincial sales tax rate of less than 10 per cent opted for the adjustment: Ontario (a 3.9 per cent adjustment), Alberta (16.8 per cent), Saskatchewan (6.45 per cent), and Nunavut (19.3 per cent).
- Some jurisdictions with a prevailing general provincial sales tax rate already at 10 per cent asked that the adjustment clause be included in their CCTA, although at a current rate of 0 per cent. These were New Brunswick, Prince Edward Island, and Newfoundland and Labrador.

In practice, licensees remitting excise duties in respect of sales to provinces with an adjustment must remit an additional duty amount in respect of those sales, calculated on the value of the product sold.

However, the higher penalties in these cases are the same whether a province has an adjustment of 0 per cent (i.e., stamps for New Brunswick, Prince Edward Island, and Newfoundland and Labrador) or an actual adjustment that is greater than 0 per cent (i.e., Ontario, Alberta, Saskatchewan, and Nunavut). This lost stamp penalty therefore does not properly reflect the difference in the value of excise duties owed.

Budget 2022 proposes to amend the penalty provision for lost stamps so that the higher penalty for losing stamps for a province or territory with an additional cannabis duty adjustment only applies if the adjustment rate is greater than 0 per cent.

In addition, there are currently no penalty provisions for situations where unlicensed parties illegally possess or purchase cannabis products, or where licensed parties illegally distribute such products.

Budget 2022 proposes that existing cannabis penalty provisions would also apply to situations where unlicensed parties illegally possess or purchase cannabis products, and where licensed parties illegally distribute cannabis products.

These proposals would come into force upon royal assent to the enabling legislation.

Licences – Cannabis Framework

Entities that hold a Health Canada-issued Research Licence or Cannabis Drug Licence are required to also hold a cannabis excise duty licence, issued by the Canada Revenue Agency (CRA). These licensees must post financial security, and most of them file excise duty returns that only contain information on the movement of insignificant quantities of inventory. In general, holders of a Research Licence or Cannabis Drug Licence use relatively small amounts of cannabis, and pose little risk of cannabis product diversion (i.e., illegal sale or use).

Budget 2022 proposes to exempt holders of a Health Canada-issued Research Licence or Cannabis Drug Licence from the requirement to be licensed under the excise duty regime.

Excise duty licences issued by the CRA for cannabis producers are only valid for up to two years, while Health Canada-issued licences, which are a necessary prerequisite for receiving a CRA-issued excise licence, may be granted for up to five years at a time.

Budget 2022 proposes to allow the CRA to issue licences that would be valid for up to the lesser of five years or the longest period for which the relevant Health Canada licence or licences are valid.

These proposals would come into force upon royal assent to the enabling legislation.

General Administration – *Excise Act, 2001*

The *Excise Act, 2001* currently imposes excise duties on spirits, wine, tobacco, and cannabis products. The following proposals would apply in respect of all these excisable goods under the Act.

The CRA may cancel an excise licensee's licence with 90 days' notice. However, the grounds for suspension are not as broad as those for cancellation.

Budget 2022 proposes to add all cancellation criteria for an excise licence, other than a proactive request by a licensee to cancel its licence, to the criteria that may be used to suspend an excise licence.

Under the *Regulations Respecting Excise Licences and Registrations*, tobacco, spirits, wine and cannabis excise licensees and applicants to such licences are required to comply with federal and provincial legislation and regulations respecting the taxation and control of alcohol and tobacco products. Cannabis products are not currently part of this group of products.

Budget 2022 proposes to require all excise licensees and excise applicants to comply with federal and provincial legislation and regulations regarding the taxation and control of cannabis products.

In practice, the CRA no longer has the ability to accept cash, or transferable bonds issued by the Government of Canada, as financial security. There are cash and bond equivalents the CRA accepts instead.

Budget 2022 proposes to remove cash and transferable bonds issued by the Government of Canada, and add bank drafts and Canada Post money orders, to the types of financial security that could be accepted by the CRA.

As a result of the ongoing pandemic, the CRA has conducted virtual audits and reviews of excise licensees. Remote due diligence activities are often a more efficient and cost-effective option.

Budget 2022 proposes to confirm the ability of the CRA to carry out virtual audits and reviews of all licensees, where the Agency deems it appropriate.

These proposals would come into force upon royal assent to the enabling legislation.

WTO Settlement on the 100-per-cent Canadian Wine Exemption

Under the *Excise Act, 2001*, wine is subject to excise duties. For a typical 750mL bottle of wine, as of April 1, 2022, the excise duty is \$0.688 per litre or about 52 cents per bottle. The duty is imposed at the time of packaging or, in the case of bulk wine, when the wine is taken for use (e.g., consumed). Wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada (i.e., 100-per-cent Canadian wine) is exempt from excise duties.

In 2018, the 100-per-cent Canadian wine excise duty exemption was challenged at the World Trade Organization (WTO). Canada reached a settlement on this dispute in July 2020, in which it agreed to repeal the excise duty exemption by June 30, 2022.

To give effect to the settlement, Budget 2022 proposes to repeal the 100-per-cent Canadian wine excise duty exemption.

The proposed measure would come into force on June 30, 2022.

Beer Taxation

Under the *Excise Act, 2001*, wine and spirits containing no more than 0.5 per cent alcohol by volume (ABV) are not subject to federal excise duty. Meanwhile, under the *Excise Act*, beer containing no more than 0.5 per cent ABV is subject to duty.

Budget 2022 proposes to eliminate excise duty for beer containing no more than 0.5 per cent ABV, bringing the tax treatment of such beer into line with the treatment of wine and spirits with the same alcohol content.

The proposed measure would come into force on July 1, 2022.

Other Tax Measure

Amendments to the *Nisga'a Final Agreement Act* to Advance Tax Measures in the Nisga'a Nation Taxation Agreement

The Nisga'a Final Agreement (2000) was negotiated between the Nisga'a Nation, British Columbia and Canada, and became one of the first modern treaties in Canada. Accompanying the Nisga'a treaty, the Nisga'a Nation Taxation Agreement was the first instance of a tax treatment agreement being concluded with a self-governing Indigenous government. At the time it was enacted, the *Nisga'a Final Agreement Act*, which is the federal settlement legislation giving effect to the Nisga'a treaty, provided force-of-law to specific provisions of the Nisga'a Nation Taxation Agreement, rather than the entire agreement.

For all other modern treaties negotiated following the Nisga'a treaty, comparable federal settlement legislation provided force-of-law to the entire tax treatment agreement, to accommodate the inclusion of additional tax treatment measures in the future.

Budget 2022, therefore, proposes to amend the *Nisga'a Final Agreement Act* to provide force-of-law to all provisions of the Nisga'a Nation Taxation Agreement, including a forthcoming amendment with respect to an income tax exemption for amounts received by citizens of the Nisga'a Nation from a registered pension plan to the extent that the employment income on which the pension amounts are based was itself exempt from tax. The proposed amendment to the *Nisga'a Final Agreement Act* would also enable any future potential tax-related amendments to the Nisga'a Nation Taxation Agreement to have effect.

Previously Announced Measures

Budget 2022 confirms the government's intention to proceed with the following previously announced tax and related measures, as modified to take into account consultations and deliberations since their release:

- Legislative proposals relating to the *Select Luxury Items Tax Act* released on March 11, 2022.
- Legislative proposals released on February 4, 2022 in respect of the following measures:
 - electronic filing and certification of tax and information returns;
 - immediate expensing;

- the Disability Tax Credit;
 - a technical fix related to the GST Credit top-up;
 - the rate reduction for zero-emission technology manufacturers;
 - film or video production tax credits;
 - postdoctoral fellowship income;
 - fixing contribution errors in registered pension plans;
 - a technical fix related to the revocation tax applicable to charities;
 - capital cost allowance for clean energy equipment;
 - enhanced reporting requirements for certain trusts;
 - allocation to redeemers methodology for mutual fund trusts;
 - mandatory disclosure rules;
 - avoidance of tax debts;
 - taxes applicable to registered investments;
 - audit authorities;
 - interest deductibility limits; and
 - crypto asset mining.
- Legislative proposals tabled in a Notice of Ways and Means Motion on December 14, 2021 to introduce the *Digital Services Tax Act*.
 - Legislative proposals released on December 3, 2021 with respect to Climate Action Incentive payments.
 - The income tax measure announced in Budget 2021 with respect to Hybrid Mismatch Arrangements.
 - The transfer pricing consultation announced in Budget 2021.
 - The anti-avoidance rules consultation announced on November 30, 2020 in the Fall Economic Statement.
 - The income tax measure announced on December 20, 2019 to extend the maturation period of amateur athletes trusts maturing in 2019 by one year, from eight years to nine years.
 - Measures confirmed in Budget 2016 relating to the Goods and Services Tax/ Harmonized Sales Tax joint venture election.

Budget 2022 also reaffirms the government's commitment to move forward as required with technical amendments to improve the certainty and integrity of the tax system.

Notices of Ways and Means Motions

Notice of Ways and Means Motion to amend the *Income Tax Act* and Other Legislation

That it is expedient to amend the *Income Tax Act* (the “Act”) and other legislation as follows:

Tax-Free First Home Savings Account

1 The Act is modified to give effect to the proposals relating to the Tax-Free First Home Savings Account as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Home Buyers’ Tax Credit

2 (1) Subsection 118.05(3) of the Act is replaced by the following:

First-time homebuyers’ tax credit

(3) In computing the tax payable under this Part by an individual for a taxation year in which a qualifying home in respect of the individual is acquired, there may be deducted the amount determined by multiplying \$10,000 by the appropriate percentage for the taxation year.

(2) Subsection (1) applies to the 2022 and subsequent taxation years.

Multigenerational Home Renovation Tax Credit

3 The Act is modified to give effect to the proposals relating to the Multigenerational Home Renovation Tax Credit as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Home Accessibility Tax Credit

4 (1) Paragraph (a) of the description of B in subsection 118.041(3) of the Act is replaced by the following:

(a) \$20,000, and

(2) Paragraphs 118.041(5)(a) and (b) of the Act are replaced by the following:

(a) a maximum of \$20,000 of qualifying expenditures for a taxation year in respect of a qualifying individual can be claimed under subsection (3) by the qualifying individual and all eligible individuals in respect of the qualifying individual;

(b) if there is more than one qualifying individual in respect of an eligible dwelling, a maximum of \$20,000 of qualifying expenditures for a taxation year in respect of the eligible dwelling can be claimed under subsection (3) by the qualifying individuals and all eligible individuals in respect of the qualifying individuals; and

(3) Subsections (1) and (2) apply to the 2022 and subsequent taxation years.

Residential Property Flipping Rule

5 The Act is modified to give effect to the proposals relating to the Residential Property Flipping Rule as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Labour Mobility Deduction for Tradespeople

6 The Act is modified to give effect to the proposals relating to the Labour Mobility Deduction for Tradespeople as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Medical Expense Tax Credit for Surrogacy and Other Expenses

7 (1) Subsection 118.2(2) of the Act is amended by striking out “or” at the end of paragraph (t), by adding “or” at the end of paragraph (u) and by adding the following after paragraph (u):

(v) to a fertility clinic, or donor bank, in Canada as a fee or other amount paid or payable, to obtain sperm or ova to enable the conception of a child by the individual, the individual’s spouse or common-law partner or a surrogate mother on behalf of the individual.

(2) Section 118.2 of the Act is amended by adding the following after subsection (2.2):

Surrogacy expenses

(2.21) An amount is deemed to be a medical expense of an individual for the purposes of this section if the amount

(a) is paid by the individual or the individual’s spouse or common-law partner;

(b) is

(i) an expenditure described under any of sections 2 to 4 of the *Reimbursement Related to Assisted Human Reproduction Regulations*, or

(ii) paid in respect of a surrogate mother or donor, and would be an expenditure described in subparagraph (i) if it was paid to the surrogate mother or donor;

(c) would be a medical expense of the individual (within the meaning of subsection (2)) if the amount was paid in respect of a good or service provided to the individual or the individual’s spouse or common-law partner;

(d) is an expense incurred in Canada; and

(e) is paid for the purpose of the individual becoming a parent.

(3) Subsections (1) and (2) apply to the 2022 and subsequent taxation years.

Annual Disbursement Quota for Registered Charities

8 The Act is modified to give effect to the proposals relating to the Annual Disbursement Quota for Registered Charities as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Charitable Partnerships

9 The Act is modified to give effect to the proposals relating to Charitable Partnerships as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Amendments to the *Children's Special Allowances Act* and to the *Income Tax Act*

10 (1) The portion of paragraph 81(1)(h) of the Act before subparagraph (i) is replaced by the following:

Social assistance

(h) where the taxpayer is an individual (other than a trust), a social assistance payment (other than a prescribed payment) ordinarily made on the basis of a means, needs or income test under a program provided for by an Act of Parliament, a law of a province or a law of an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*), to the extent that it is received directly or indirectly by the taxpayer for the benefit of another individual (other than the taxpayer's spouse or common-law partner or a person who is related to the taxpayer or to the taxpayer's spouse or common-law partner), if

(2) The portion of paragraph 81(1)(h.1) of the Act before subparagraph (i) is replaced by the following:

Social assistance for informal care programs

(h.1) if the taxpayer is an individual (other than a trust), a social assistance payment ordinarily made on the basis of a means, needs or income test provided for under a program of the Government of Canada, the government of a province or of an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*), to the extent that it is received directly or indirectly by the taxpayer for the benefit of a particular individual, if

(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.

11 (1) Paragraph (i) of the definition *eligible individual* in section 122.6 of the Act is replaced by the following:

(i) an individual shall not fail to qualify as a parent (within the meaning assigned by section 252) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada, the government of a province or an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*) for the benefit of the other individual; (*particulier admissible*)

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

12 (1) Subsection 122.7(1.2) of the Act is replaced by the following:

Receipt of social assistance

(1.2) For the purposes of applying the definitions *eligible dependant* and *eligible individual* in subsection (1) for a taxation year, an individual shall not fail to qualify as a parent (within the meaning assigned by section 252) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada, the government of a province or an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*) for the benefit of the other individual, unless the amount is a special allowance under the *Children's Special Allowances Act* in respect of the other individual in the taxation year.

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

13 (1) Section 2 of the *Children's Special Allowances Act* is amended by adding the following in alphabetical order:

Indigenous governing body means an *Indigenous governing body* (as defined in section 1 of *An Act respecting First Nations, Inuit and Métis children, youth and families*) that

- | **(a)** has given notice under subsection 20(1) of that Act;
- | **(b)** has requested a coordination agreement under subsection 20(2) of that Act; or
- | **(c)** meets prescribed conditions. (*corps dirigeant autochtone*)

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

14 (1) Paragraphs 3(1)(a) and (b) of the *Children's Special Allowances Act* are replaced by the following:

(a) resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal and is maintained by

(i) a department or agency of the government of Canada or a province, or

(ii) an agency appointed by a province, including an authority established under the laws of a province, or by an agency appointed by such an authority, for the purpose of administering any law of the province for the protection and care of children;

(b) is maintained by an institution licensed or otherwise authorized under the law of the province to have the custody or care of children; or

(c) resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under the laws of an Indigenous governing body, and is maintained by

(i) the Indigenous governing body,

(ii) a department or agency of the Indigenous governing body, or

(iii) an agency appointed by the Indigenous governing body, including an authority established under the laws of the Indigenous governing body, or by an agency appointed by such an authority, for the purpose of administering any law of the Indigenous governing body for the protection and care of children.

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

15 (1) Paragraph 4(1)(a) of the *Children's Special Allowances Act* is replaced by the following:

(a) an application therefor has been made in the prescribed manner by the department, agency, institution or Indigenous governing body referred to in subsection 3(1) that maintains the child; and

(2) Subsection 4(3) of the *Children's Special Allowances Act* is replaced by the following:

No allowance payable

(3) No special allowance is payable for the month in which the child in respect of whom the special allowance is payable commences to be maintained by a department, agency, institution or Indigenous governing body, and no special allowance is payable in respect of a child for the month in which the child is born or commences to reside in Canada.

(3) Paragraph 4(4)(a) of the *Children's Special Allowances Act* is replaced by the following:

(a) ceases to be maintained by the department, agency, institution or Indigenous governing body;

(4) Subsections (1) to (3) are deemed to have come into force on January 1, 2020.

16 (1) Sections 5 and 6 of the *Children's Special Allowances Act* are replaced by the following:

Recipient of special allowance

5 Where payment of a special allowance is approved in respect of a child, the special allowance shall, in such manner and at such times as are determined by the Minister, be paid to the department, agency, institution or Indigenous governing body referred to in section 3 that maintains the child or, in the prescribed circumstances, to a foster parent.

Report to be made

6 Where a special allowance ceases to be payable in respect of a child for a reason referred to in paragraph 4(4)(a), (b) or (c), the chief executive officer of the department, agency, institution or Indigenous governing body that made the application under paragraph 4(1)(a) in respect of the child shall, as soon as possible after the special allowance ceases to be payable in respect of the child, notify the Minister in the prescribed form and manner.

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

17 (1) Subsections 9(1) and (2) of the English version of the *Children's Special Allowances Act* are replaced by the following:

Return of special allowance where recipient not entitled

9 (1) Any person, department, agency, institution or Indigenous governing body that has received or obtained by cheque or otherwise payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, shall, as soon as possible, return the cheque or the amount of the payment, or the excess amount, as the case may be.

Recovery of amount of payment as debt due to Her Majesty

(2) Where a person, department, agency, institution or Indigenous governing body has received or obtained payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, the amount of the special allowance or the amount of the excess, as the case may be, constitutes a debt due to Her Majesty.

(2) Subsection 9(3) of the *Children's Special Allowances Act* is replaced by the following:

Deduction from subsequent special allowance

(3) Where any person, department, agency, institution or Indigenous governing body has received or obtained payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, the amount of the special allowance or the amount of the excess, as the case may be, may be deducted and retained in such manner as is prescribed out of any special allowance to which the person, department, agency, institution or Indigenous governing body is or subsequently becomes entitled under this Act.

(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.

18 (1) Section 11 of the *Children's Special Allowances Act* is replaced by the following:

Agreements for exchange of information

11 The Minister may enter into an agreement with the government of any province, or an Indigenous governing body, for the purpose of obtaining information in connection with the administration or enforcement of this Act or the regulations and of furnishing to that government, or Indigenous governing body, under prescribed conditions, any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations, if the Minister is satisfied that the information to be furnished to that government, or Indigenous governing body, under the agreement is to be used for the purpose of the administration of a social program, income assistance program or health insurance program in the province or of the Indigenous governing body.

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

19 (1) Paragraph 13(a) of the English version of the *Children's Special Allowances Act* is replaced by the following:

(a) providing for the suspension of payment of a special allowance during any investigation respecting the eligibility of a department, agency, institution or Indigenous governing body to receive the special allowance and specifying the circumstances in which payment of a special allowance, the payment of which has been suspended, may be resumed;

(2) Paragraph 13(c) of the *Children's Special Allowances Act* is replaced by the following:

(c) specifying for the purposes of this Act the circumstances in which a child shall be considered to be maintained by a department, agency, institution or Indigenous governing body; and

(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.

20 (1) The definition *applicant* in section 2 of the *Children's Special Allowance Regulations* is replaced by the following:

applicant means a department, agency, institution or Indigenous governing body referred to in subsection 3(1) of the Act; (*demandeur*)

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

21 (1) The portion of section 7 of the *Children's Special Allowance Regulations* before paragraph (a) is replaced by the following:

Communication of Information

7 The information referred to in section 11 of the Act may be furnished to the government of a province or to an Indigenous governing body, under the terms of an agreement between the Minister and that government or Indigenous governing body, for the purpose of the administration of a social, income assistance or health insurance program of that province or Indigenous governing body that is specified in the agreement, on condition that

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

22 (1) Paragraphs 9(a) and (b) of the *Children's Special Allowance Regulations* are replaced by the following:

(a) the applicant, at the end of the month, provides for the child's care, maintenance, education, training and advancement to a greater extent than any other department, agency, institution, Indigenous governing body or any person; or

(b) the applicant is an entity referred to in any of paragraphs 3(1)(a) to (c) of the Act that has applied in respect of a child who

(i) was formerly in the care of foster parents or was formerly maintained by an entity referred to in any of paragraphs 3(1)(a) to (c) of the Act, and

(ii) has been placed in the permanent or temporary custody of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal, or under the laws of an Indigenous governing body, who has received financial assistance from the applicant for the month in respect of the child's maintenance.

(2) Subsection (1) is deemed to have come into force on January 1, 2020.

Borrowing by Defined Benefit Pension Plans

23 (1) The portion of paragraph 8502(i) of the *Income Tax Regulations* before subparagraph (i) is replaced by the following:

Borrowing

(i) in the case of a money purchase provision of the plan or in the case of an individual pension plan, a trustee or other person who holds property in connection with the plan does not borrow money for the purposes of the money purchase provision or the individual pension plan, as the case may be, except where

(2) Section 8502 of the *Income Tax Regulations* is amended by adding the following after paragraph (i.1):

Borrowing — defined benefit provision

(i.2) in the case of a defined benefit provision of the plan (other than an individual pension plan), a trustee or other person who holds property in connection with the provision does not borrow money for the purposes of the defined benefit provision, except

(i) in the case where money is borrowed for the purpose of acquiring real property, if

(A) the property may reasonably be considered to be acquired for the purpose of producing income from property,

(B) the aggregate of all amounts borrowed for the purpose of acquiring the property and any indebtedness incurred as a consequence of the acquisition of the property does not exceed the cost to the person of the property, and

(C) none of the property that is held in connection with the plan, other than the real property, is used as security for the borrowed money, and

(ii) in any other case, at any time that an amount is borrowed, if the total of that amount and the amount of any other outstanding borrowings in respect of the provision (other than those described in subparagraph (i)) does not exceed the lesser of the following amounts:

(A) the amount determined by the formula

$$0.20 (A - B)$$

where

A is the value of the plan assets in respect of the provision on the first day of the fiscal period of the plan in which the amount is borrowed, and

B is the amount of outstanding borrowings in respect of the provision, determined on the first day of the fiscal period in which the amount is borrowed, and

(B) the amount determined by the formula

$$1.25 \times C - (D - E)$$

where

C is the amount of actuarial liabilities in respect of the provision, determined on the effective date of the plan's most recent actuarial report,

D is the amount determined for A in clause (A), and

E is the amount determined for B in clause (A);

(3) Subsection (1) is deemed to come into force on May 1, 2022.

(4) Subsection (2) is deemed to come into force on Budget Day.

Reporting Requirements for RRSPs and RRIFs

24 The Act is modified to give effect to the proposals relating to the Reporting Requirements for RRSPs and RRIFs as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Canada Recovery Dividend and Additional Tax on Banks and Life Insurers

25 The Act is modified to give effect to the proposals relating to the Canada Recovery Dividend and Additional Tax on Banks and Life Insurers as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Investment Tax Credit for Carbon Capture, Utilization, and Storage

26 The Act is modified to give effect to the proposals relating to the Investment Tax Credit for Carbon Capture, Utilization, and Storage as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Clean Technology Tax Incentives — Air-Source Heat Pumps

27 The Act is modified to give effect to the proposals relating to the Clean Technology Tax Incentives — Air-Source Heat Pumps as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Critical Minerals Exploration Tax Credit

28 The Act is modified to give effect to the proposals relating to the Critical Minerals Exploration Tax Credit as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Flow-Through Shares for Oil, Gas and Coal Activities

29 The Act is modified to give effect to the proposals relating to Flow-Through Shares for Oil, Gas and Coal Activities as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Small Business Deduction

30 The Act is modified to give effect to the proposals relating to the Small Business Deduction as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

International Financial Reporting Standards for Insurance Contracts (IFRS 17)

31 The Act is modified to give effect to the proposals relating to the International Financial Reporting Standards for Insurance Contracts (IFRS 17) as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Hedging and Short Selling by Canadian Financial Institutions

32 (1) The definition *dividend rental arrangement* in subsection 248(1) of the Act is amended by adding the following after paragraph (b):

(b.1) any specified hedging transaction, in respect of a DRA share of the person,

(2) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

specified hedging transaction, in respect of a DRA share of a person or partnership (referred to in this definition as the “particular person”), means a *transaction* (in this definition, as defined in subsection 245(1)) or series of transactions

(a) that is entered into by

(i) the particular person if the particular person is a registered securities dealer or a partnership each member of which is a registered securities dealer, or

(ii) a registered securities dealer or a partnership each member of which is a registered securities dealer (in either case, referred to in this definition as the “connected dealer”), where such connected dealer does not deal at arm’s length with, or is affiliated with, the particular person,

(b) that has the effect, or would have the effect if the transaction or series were entered into by the particular person instead of the connected dealer, of eliminating all or substantially all of the particular person’s risk of loss and opportunity for gain or profit in respect of the DRA share, and

(c) if the transaction or series is entered into by the connected dealer, it can reasonably be considered to have been entered into with the knowledge, or where there ought to have been the knowledge, that the effect described in paragraph (b) would result; (*opération de couverture déterminée*)

(3) Subsections (1) and (2) apply in respect of dividends that are paid or become payable on or after Budget Day. However, subsections (1) and (2) do not apply in respect of dividends paid or payable before October 2022, if the specified hedging transaction was entered into before Budget Day.

33 (1) Paragraph 260(6)(a) of the Act is replaced by the following:

(a) if the taxpayer is a registered securities dealer and the particular amount is deemed by subsection (5.1) to have been received as a taxable dividend, no more than 2/3 of the particular amount (unless, for greater certainty, the particular amount is an amount for which a deduction in computing income may be claimed under subsection (6.1) or (6.2) by the taxpayer); or

(2) Section 260 of the Act is amended by adding the following after subsection (6.1):

Deductible amount for registered securities dealer

(6.2) If a registered securities dealer enters into a specified hedging transaction in respect of a DRA share of the registered securities dealer or a person that does not deal at arm’s length with, or is affiliated with, the registered securities dealer, there may be deducted in computing the income of the registered securities dealer under Part I from a business or property for a taxation year an amount (other than any portion of the amount for which a deduction in computing income may be claimed under subsection (6.1) by the registered securities dealer) equal to the lesser of

(a) the total of all amounts each of which is an amount that the registered securities dealer becomes obligated in the taxation year to pay to another person as compensation for a dividend under the specified hedging transaction that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend, and

(b) the amount of the dividends that were received in respect of the DRA share by the registered securities dealer or the person that does not deal at arm’s length with, or is affiliated with, the registered securities dealer (as the case may be, referred to as the “dividend recipient” in this paragraph) and that were identified in the dividend recipient’s return of income under Part I for the year as an amount in respect of which no amount was deductible because of subsection 112(2.3) in computing the dividend recipient’s taxable income or taxable income earned in Canada.

(3) The portion of subsection 260(7) of the Act before paragraph (a) is replaced by the following:

Dividend refund

(7) For the purpose of section 129, if a corporation pays an amount for which no deduction in computing the corporation's income may be claimed under subsection (6.1) or (6.2) and subsection (5.1) deems the amount to have been received by another person as a taxable dividend,

(4) Paragraphs 260(1)(b) and (c) of the Act are replaced by the following:

(b) for the purpose of applying paragraphs (6.1)(a) and (6.2)(a) in respect of the taxation year, to become obligated to pay its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of the amount the partnership becomes, in that fiscal period, obligated to pay to another person under the arrangement described in that paragraph; and

(c) for the purpose of applying section 129 in respect of the taxation year, to have paid

(i) if the partnership is not a registered securities dealer, the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) or (6.2) by the corporation), and

(ii) if the partnership is a registered securities dealer, 1/3 of the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) or (6.2) by the corporation).

(5) Subsections (1) to (4) apply in respect of amounts paid or credited on or after Budget Day.

Application of the General Anti-Avoidance Rule to Tax Attributes

34 (1) Subsection 152(1.11) of the Act is replaced by the following:

Determination under subsection 245(2)

(1.11) If at any time the Minister ascertains the tax consequences to a taxpayer because of subsection 245(2) with respect to a transaction, the Minister

(a) shall, in the case of a determination under subsection 245(8), determine any amount that is, or could at a subsequent time be, relevant for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act;

(b) may, in any case not described in paragraph (a), determine any amount referred to in paragraph (a); and

(c) shall, if a determination is made under this subsection, send to the taxpayer, with all due dispatch, a notice of determination stating the amount so determined.

(2) Subsection (1) applies in respect of determinations made on or after Budget Day. For greater certainty, determinations made under subsection 152(1.11) of the Act prior to Budget Day continue to be binding, to the extent provided under subsection 152(1.3) of the Act.

35 (1) The definitions *tax benefit* and *tax consequences* in subsection 245(1) of the Act are replaced by the following:

tax benefit means

(a) a reduction, avoidance or deferral of tax or other amount payable under this Act, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act but for a tax treaty,

(b) an increase in a refund of tax or other amount under this Act, and includes an increase in a refund of tax or other amount under this Act as a result of a tax treaty, or

(c) a reduction, increase or preservation of an amount that could at a subsequent time

(i) be relevant for the purpose of computing an amount referred to in paragraph (a) or (b), and

(ii) result in any of the effects described in paragraph (a) or (b); (*avantage fiscal*)

tax consequences, to a person, means

(a) the amount of income, taxable income or taxable income earned in Canada of the person under this Act,

(b) the tax or other amount payable by, or refundable to, the person under this Act, or

(c) any other amount that is, or could at a subsequent time be, relevant for the purpose of computing an amount referred to in paragraph (a) or (b); (*attribut fiscal*)

(2) Subsection (1) applies in respect of transactions that occur

(a) on or after Budget Day; or

(b) before Budget Day if a determination is made under subsection 152(1.11) of the Act on or after Budget Day in respect of the transaction.

Substantive CCPCs

36 (1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

Substantive CCPC means a private corporation (other than a Canadian-controlled private corporation) that at any time in a taxation year

(a) is controlled, directly or indirectly in any manner whatever, by one or more Canadian resident individuals, or

(b) would, if each share of the capital stock of a corporation that is owned by a Canadian resident individual were owned by a particular individual, be controlled by the particular individual. (*SPCC en substance*)

(2) Section 248 of the Act is amended by adding the following after subsection (42):

Substantive CCPC — anti-avoidance

(43) For the purposes of this Act, a corporation (other than a Canadian-controlled private corporation) that is resident in Canada and would not, in the absence of this subsection, be a substantive CCPC, is deemed to be a substantive CCPC if it is reasonable to consider that one of the purposes of any *transaction* (as defined in subsection 245(1)), or series of transactions, was to cause the corporation not to qualify as a substantive CCPC.

(3) Subsections (1) and (2) apply to

(a) taxation years of a corporation that begin on or after Budget Day, if

(i) the corporation's first taxation year that ends on or after Budget Day ends due to a loss restriction event caused by a sale of all or substantially all of the shares of a corporation to a purchaser before 2023,

(ii) the purchaser deals at arm's length (determined without reference to a right referred to in paragraph 251(5)(b)) with the corporation immediately prior to the loss restriction event, and

(iii) the sale occurs pursuant to a written purchase and sale agreement entered into before Budget Day; and

(b) in any other case, taxation years that end on or after Budget Day.

37 The Act is further modified to give effect to the proposals relating to Substantive CCPCs as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Exchange of Tax Information on Digital Economy Platform Sellers

38 The Act is modified to give effect to the proposals relating to the Exchange of Tax Information on Digital Economy Platform Sellers as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Interest Coupon Stripping

39 (1) Section 212 of the Act is amended by adding the following after subsection (20):

Interest coupon stripping arrangement – conditions

(21) Subsection (22) applies at any time in respect of a taxpayer if

(a) the taxpayer pays or credits a particular amount at that time as, on account or in lieu of payment of, or in satisfaction of, interest to a person or partnership (in this subsection and subsection (22) referred to as the “interest coupon holder”) in respect of a debt or other obligation, other than a specified publicly offered debt obligation, owed to another person or partnership (in this subsection and subsection (22) referred to as the “non-arm’s length creditor”) that is

(i) a non-resident person with whom the taxpayer is not dealing at arm’s length, or

(ii) a partnership other than a Canadian partnership; and

(b) the tax that would be payable under this Part in respect of the particular amount, if the particular amount were paid or credited to the non-arm’s length creditor rather than the interest coupon holder, is greater than the tax payable under this Part (determined without reference to subsection (22)) in respect of the particular amount.

Interest coupon stripping arrangement – application

(22) If this subsection applies at any time in respect of a taxpayer, then for the purpose of paragraph (1)(b), the taxpayer is deemed, at that time, to pay interest to the non-arm’s length creditor, the amount of which is determined by the formula

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

where

A is the particular amount referred to in paragraph (21)(a);

B is the rate of tax that would be imposed under this Part in respect of the particular amount if the particular amount were paid by the taxpayer to the non-arm’s length creditor rather than the interest coupon holder at that time; and

C is the rate of tax imposed under this Part in respect of the particular amount paid or credited to the interest coupon holder at that time.

Specified publicly offered debt obligation

(23) For the purposes of subsection (21), *specified publicly offered debt obligation* means a debt or other obligation that meets the following conditions:

(a) it was issued by the taxpayer as part of an offering that is lawfully distributed to the public in accordance with a prospectus, registration statement or similar document filed with and, where required by law, accepted for filing by a public authority; and

(b) it can reasonably be considered that none of the main purposes of a transaction or event, or series of transactions or events, as a part of which the taxpayer pays or credits an amount as, on account or in lieu of payment of, or in satisfaction of, interest to a person or partnership in respect of the debt or other obligation is to avoid or reduce tax that would otherwise be payable under this Part by a non-resident person or partnership to whom the debt or other obligation is owed.

(2) Subsection (1) applies in respect of interest that accrues on or after Budget Day and is paid or payable by a taxpayer to an interest coupon holder in respect of a debt or other obligation owed to a non-arm's length creditor. However, subsection (1) does not apply to interest that accrues before April 7, 2023, if the interest is paid or payable

(a) in respect of a debt or other obligation incurred by the taxpayer before Budget Day; and

(b) to an interest coupon holder that deals at arm's length with the non-arm's length creditor and that acquired the entitlement to the interest as a consequence of an agreement or other arrangement entered into by the interest coupon holder, and evidenced in writing, before Budget Day.

Notice of Ways and Means Motion to amend the *Excise Tax Act*

That it is expedient to amend the *Excise Tax Act* as follows:

GST/HST Health Care Rebate

1 (1) Clause (a)(ii)(C) of the definition *facility supply* in subsection 259(1) of the *Excise Tax Act* is replaced by the following:

(C) a nurse practitioner acting in the course of the practise of a nurse practitioner, or

(2) Clause (a)(iii)(B) of the definition *facility supply* in subsection 259(1) of the Act is replaced by the following:

(B) a physician or nurse practitioner be at, or be on-call to attend at, the public hospital or qualifying facility at all times when the individual is at the public hospital or qualifying facility,

(3) Subparagraph (a)(ii) of the definition *home medical supply* in subsection 259(1) of the Act is replaced by the following:

(ii) after a physician acting in the course of the practise of medicine, a nurse practitioner acting in the course of the practise of a nurse practitioner or a prescribed person acting in prescribed circumstances has identified or confirmed that it is appropriate for the process to take place at the individual's place of residence or lodging (other than a public hospital or a qualifying facility),

(4) Paragraph (b) of the definition *home medical supply* in subsection 259(1) of the Act is replaced by the following:

(b) in respect of which the property is made available, or the service is rendered, to the individual at the individual's place of residence or lodging (other than a public hospital or a qualifying facility), on the authorization of a person who is responsible for coordinating the process and under circumstances in which it is reasonable to expect that the person will carry out that responsibility in consultation with, or with ongoing reference to instructions for the process given by, a physician acting in the course of the practise of medicine, a nurse practitioner acting in the course of the practise of a nurse practitioner or a prescribed person acting in prescribed circumstances,

(5) Subsections (1) to (4) apply for the purposes of determining a rebate of a person under section 259 of the Act for claim periods ending after Budget Day, except that, in determining a rebate of a person for the claim period that includes Budget Day, the rebate is to be determined as if those subsections did not apply in respect of

(a) an amount of tax that became payable by the person on or before Budget Day;

(b) an amount that is deemed to have been paid or collected by the person on or before Budget Day; and

(c) an amount that is required to be added in determining the person's net tax

(i) as a result of a branch or division of the person becoming a small supplier division on or before Budget Day, or

(ii) as a result of the person ceasing to be a registrant on or before Budget Day.

GST/HST on Assignment Sales by Individuals

2 (1) The Act is amended by adding the following after section 192:

New housing — assignment of agreement

192.1 If a taxable supply by way of sale of a *single unit residential complex* (as defined in subsection 254(1)) or of a residential condominium unit is made in Canada under an agreement of purchase and sale (in this section referred to as the “purchase agreement”) entered into with a builder of the single unit residential complex or of the residential condominium unit and if another supply by way of assignment of the purchase agreement is made by a person (other than the builder) under another agreement, then the following rules apply for the purposes of this Part:

(a) the other supply is deemed to be a taxable supply, by way of sale, of real property that is an interest in the single unit residential complex or residential condominium unit; and

(b) the consideration for the other supply is deemed to be equal to the amount determined by the formula

$$A - B$$

where

A is the consideration for the other supply as otherwise determined for the purposes of this Part, and

B is

(i) if the other agreement indicates in writing that a part of the consideration for the other supply is attributable to the reimbursement of a deposit paid under the purchase agreement, the part of the consideration for the other supply, as otherwise determined for the purposes of this Part, that is solely attributable to the reimbursement of the deposit paid under the purchase agreement, and

(ii) in any other case, zero.

(2) Subsection (1) applies in respect of any supply by way of assignment of an agreement of purchase and sale if the supply is made on or after the day that is one month after Budget Day.

Notice of Ways and Means Motion to amend the *Excise Act, 2001*

That it is expedient to amend the *Excise Act, 2001* and other related texts as follows:

Taxation of Vaping Products

Excise Act, 2001

1 (1) The definitions *container*, *excise stamp* and *manufacture* in section 2 of the *Excise Act, 2001* are replaced by the following:

container, in respect of a tobacco product, a cannabis product or a vaping product, means a wrapper, package, carton, box, crate, bottle, vial or other container that contains the tobacco product, cannabis product or vaping product. (*contenant*)

excise stamp means a tobacco excise stamp, a cannabis excise stamp or a vaping excise stamp. (*timbre d'accise*)

manufacture includes

(a) in respect of a tobacco product, any step in the preparation or working up of raw leaf tobacco into the tobacco product, including packing, stemming, reconstituting, converting or packaging the raw leaf tobacco or tobacco product; and

(b) in respect of a vaping product, any step in the production of the vaping product, including inserting a vaping substance into a vaping device or packaging the vaping product. (*fabrication*)

(2) Paragraph (a) of the definition *packaged* in section 2 of the Act is replaced by the following:

(a) in respect of raw leaf tobacco, a tobacco product, a cannabis product or a vaping product, packaged in a prescribed package; or

(3) The definition *stamped* in section 2 of the Act is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) in respect of a vaping product, that a vaping excise stamp, and all prescribed information in a prescribed format in respect of the vaping product, are stamped, impressed, printed or marked on, indented into or affixed to the vaping product or its container in the prescribed manner to indicate that duty has been paid on the vaping product. (*estampillé*)

(4) Paragraph (b) of the definition *take for use* in section 2 of the Act is replaced by the following:

(b) in respect of a cannabis product or a vaping product, to consume, analyze or destroy the cannabis product or vaping product. (*utilisation pour soi*)

(5) Section 2 of the Act is amended by adding the following in alphabetical order:

additional vaping duty means a duty imposed under section 158.58. (*droit additionnel sur le vapotage*)

immediate container of a vaping substance means the container that is in direct contact with the vaping substance. It does not include a vaping device. (*contenant immédiat*)

| **specified vaping province** means a prescribed province. (*province déterminée de vapotage*)

| **vaping device** means property (other than prescribed property) that is

| (a) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol;

| (b) a vaping pod or another part that may be used with a device referred to in paragraph (a); or

| (c) a prescribed property. (*dispositif de vapotage*)

| **vaping duty** means a duty imposed under section 158.57. (*droit sur le vapotage*)

| **vaping excise stamp** means a stamp that is issued by the Minister under subsection 158.36(1) and that has not been cancelled under section 158.4. (*timbre d'accise de vapotage*)

| **vaping product** means

| (a) a vaping substance that is not contained within a vaping device; or

| (b) a vaping device that contains a vaping substance.

| It does not include a cannabis product. (*produit de vapotage*)

| **vaping product drug** means a vaping product (other than a prescribed vaping product) that is

| (a) a drug that has been assigned a drug identification number under the *Food and Drug Regulations*; or

| (b) a prescribed vaping product. (*drogue de produit de vapotage*)

| **vaping product licensee** means a person that holds a vaping product licence issued under section 14. (*titulaire de licence de produits de vapotage*)

| **vaping product marking** means prescribed information that is required under this Act to be printed on, or affixed to, a container of vaping products that are not required under this Act to be stamped. (*mention obligatoire pour vapotage*)

| **vaping substance** means

| (a) a substance or mixture of substances, whether or not it contains nicotine, that is produced to be used, or sold for use, with a vaping device to produce emissions in the form of an aerosol; or

| (b) a prescribed substance, material or thing.

| It does not include a prescribed substance, material or thing. (*substance de vapotage*)

2 (1) Subsection 5(1) of the Act is replaced by the following:

Constructive possession

5 (1) For the purposes of section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37, subsections 158.38(1) and 158.44(1) and (2), sections 230 and 231 and subsection 238.1(1), if one of two or more persons, with the knowledge and consent of the rest of them, has anything in the person's possession, it is deemed to be in the custody and possession of each and all of them.

(2) The portion of subsection 5(2) of the Act before paragraph (a) is replaced by the following:

Definition of *possession*

(2) In this section and in section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37 and subsections 158.38(1), 158.44(1) and (2) and 238.1(1), ***possession*** means not only having in one's own personal possession but also knowingly

3 Subsection 14(1) of the Act is amended by striking out “or” at the end of paragraph (d), by adding “or” at the end of paragraph (e) and by adding the following after paragraph (e):

(f) a vaping product licence, authorizing the person to manufacture vaping products.

4 Subsection 19(1) of the Act is replaced by the following:

Issuance of licence

19 (1) Subject to the regulations, on application, the Minister may issue an excise warehouse licence to a person that is not a retailer of alcohol authorizing the person to possess in their excise warehouse manufactured tobacco, cigars or vaping products that are not stamped or non-duty-paid packaged alcohol.

5 Paragraph 23(3)(b) of the Act is replaced by the following:

(b) shall, in the case of a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence, require security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations; and

6 The Act is amended by adding the following after section 158.34:

PART 4.2

Vaping Products

Manufacturing and Stamping

Manufacturing without licence prohibited

158.35 (1) No person shall, other than in accordance with a vaping product licence issued to the person, manufacture vaping products.

Deemed manufacturer

(2) A person that, whether for consideration or otherwise, provides or offers to provide in their place of business equipment for use in that place by another person in the manufacturing of a vaping product is deemed to be manufacturing the vaping product and the other person is deemed not to be manufacturing the vaping product.

Exception — manufacture for personal use

(3) An individual who is not a vaping product licensee may manufacture vaping products for their personal use.

Exception — regulations

(4) Subsection (1) does not apply in respect of a prescribed person that manufactures prescribed vaping products in prescribed circumstances or for a prescribed purpose.

Issuance of vaping excise stamps

158.36 (1) On application in the prescribed form and manner, the Minister may issue, to a vaping product licensee or to a prescribed person that is importing vaping products, stamps the purpose of which is to indicate that vaping duty and, if applicable, additional vaping duty have been paid on a vaping product.

Quantity of vaping excise stamps

(2) The Minister may limit the quantity of vaping excise stamps that may be issued to a person under subsection (1).

Security

(3) No person shall be issued a vaping excise stamp unless the person has provided security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations.

Supply of vaping excise stamps

(4) The Minister may authorize a producer of vaping excise stamps to supply, on the direction of the Minister, vaping excise stamps to a person to which those stamps are issued under subsection (1).

Design and construction

(5) The design and construction of vaping excise stamps shall be subject to the approval of the Minister.

Counterfeit vaping excise stamps

158.37 No person shall produce, possess, sell or otherwise supply, or offer to supply, without lawful justification or excuse the proof of which lies on the person, anything that is intended to resemble or pass for a vaping excise stamp.

Unlawful possession of vaping excise stamps

158.38 (1) No person shall possess a vaping excise stamp that has not been affixed to the container of a vaping product in the manner prescribed for the purposes of the definition *stamped* in section 2 to indicate that duty has been paid on the vaping product.

Exceptions — possession

(2) Subsection (1) does not apply to the possession of a vaping excise stamp by

- (a) the person that lawfully produced the vaping excise stamp;
- (b) the person to which the vaping excise stamp is issued;
- (c) a sufferance warehouse licensee that possesses the vaping excise stamp in their sufferance warehouse on behalf of the person described under paragraph (b); or
- (d) a prescribed person.

Unlawful supply of vaping excise stamps

158.39 No person shall dispose of, sell or otherwise supply, or offer to supply, a vaping excise stamp otherwise than in accordance with this Act.

Cancellation of vaping excise stamps

158.4 The Minister may

- (a) cancel a vaping excise stamp that has been issued; and
- (b) direct that it be returned or destroyed in a manner specified by the Minister.

Unlawful packaging or stamping

158.41 No person shall package or stamp a vaping product unless

- (a) the person is a vaping product licensee;
- (b) the person is the importer or owner of the vaping product and the vaping product has been placed in a sufferance warehouse for the purpose of being stamped; or

- | (c) the person is a prescribed person.

Unlawful removal

158.42 (1) Except as permitted under section 158.52 or if prescribed circumstances exist, no person shall remove a vaping product from the premises of a vaping product licensee unless it is packaged and

- | (a) if the vaping product is intended for the duty-paid market,
 - | (i) it is stamped to indicate that vaping duty has been paid, and
 - | (ii) if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid; or
- | (b) if the vaping product is not intended for the duty-paid market, all vaping product markings that are required under this Act to be printed on, or affixed to, its container are so printed or affixed.

Exceptions

(2) Subsection (1) does not apply to a vaping product licensee that removes from their premises a vaping product if it is

- | (a) being removed for
 - | (i) delivery to another vaping product licensee,
 - | (ii) export, or
 - | (iii) delivery to a person for analysis or destruction in accordance with subparagraph 158.66(a)(iv); or
- | (b) a vaping product drug.

Removal by Minister

(3) Subsection (1) does not apply to the removal of a vaping product for analysis or destruction by the Minister.

Prohibition — vaping products for sale

158.43 No person shall purchase or receive for sale a vaping product

- | (a) from a manufacturer that the person knows, or ought to know, is not a vaping product licensee;
- | (b) that is required under this Act to be packaged and stamped unless it is packaged and stamped in accordance with this Act; or
- | (c) that the person knows, or ought to know, is fraudulently stamped.

Unlawful possession or sale of vaping products

158.44 (1) Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession a vaping product unless

- | (a) it is packaged; and
- | (b) it is stamped to indicate that vaping duty has been paid.

Unlawful possession or sale — specified vaping province

(2) Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession a vaping product in a specified vaping province unless it is stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

Exception — possession of vaping products

(3) Subsections (1) and (2) do not apply to the possession of vaping products

(a) in the case of imported vaping products,

(i) by an excise warehouse licensee in their excise warehouse,

(ii) by a sufferance warehouse licensee in their sufferance warehouse, or

(iii) by a customs bonded warehouse licensee in their customs bonded warehouse;

(b) by a prescribed person that is transporting the vaping products under prescribed circumstances and conditions;

(c) by a person that possesses the vaping products for analysis or destruction in accordance with subparagraph 158.66(a)(iv);

(d) by an accredited representative for their personal or official use;

(e) by an individual who has imported the vaping products for their personal use in quantities not in excess of prescribed limits;

(f) by an individual who has manufactured the vaping products in accordance with subsection 158.35(3); or

(g) if the vaping products are vaping product drugs.

Exception — sale or offer to sale

(4) Subsections (1) and (2) do not apply to the disposal, sale, offering for sale or purchase of a vaping product if

(a) the vaping product is an imported vaping product, an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product for export and the vaping product is exported by the licensee in accordance with this Act;

(b) the vaping product is an imported vaping product and an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product to an accredited representative for their personal or official use; or

(c) the vaping product is a vaping product drug.

Sale or distribution by licensee

158.45 (1) Except if prescribed circumstances exist, no vaping product licensee shall distribute a vaping product or sell or offer for sale a vaping product to a person unless

(a) it is packaged;

(b) it is stamped to indicate that vaping duty has been paid; and

(c) if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid.

Exceptions

(2) Subsection (1) does not apply to the distribution, sale or offering for sale of a vaping product by a vaping product licensee

(a) to another vaping product licensee;

(b) to an accredited representative for their personal or official use;

- | (c) if the vaping product is exported by the vaping product licensee in accordance with this Act; or
- | (d) if the vaping product is a vaping product drug.

Packaging and stamping of vaping products

158.46 A vaping product licensee that manufactures a vaping product shall not enter the vaping product into the duty-paid market unless

- | (a) the vaping product has been packaged by the licensee;
- | (b) the package has printed on it prescribed information;
- | (c) the vaping product is stamped at the time of packaging to indicate that vaping duty has been paid; and
- | (d) if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped at the time of packaging to indicate that additional vaping duty in respect of the specified vaping province has been paid.

Packaging and stamping of imported vaping products

158.47 (1) Except if prescribed circumstances exist, if a vaping product is imported, it must, before it is released under the *Customs Act* for entry into the duty-paid market,

- | (a) be packaged in a package that has printed on it prescribed information;
- | (b) be stamped to indicate that vaping duty has been paid; and
- | (c) if the vaping product is to be entered in the duty-paid market of a specified vaping province, be stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

Exceptions for certain importations

(2) Subsection (1) does not apply to a vaping product

- | (a) that is imported by a vaping product licensee for further manufacturing by the licensee;
- | (b) that a vaping product licensee is authorized to import under subsection 158.53(2); or
- | (c) that is imported by an individual for their personal use in quantities not in excess of prescribed limits.

Notice — absence of stamping

158.48 (1) The absence on a vaping product of stamping that indicates that vaping duty has been paid is notice to all persons that vaping duty has not been paid on the vaping product.

Notice — absence of stamping

(2) The absence on a vaping product of stamping that indicates that additional vaping duty in respect of a specified vaping province has been paid is notice to all persons that additional vaping duty in respect of the specified vaping province has not been paid on the vaping product.

Unstamped products to be warehoused

158.49 If vaping products manufactured in Canada are not stamped by a vaping product licensee, the vaping product licensee must immediately enter the vaping products into the licensee's excise warehouse.

No warehousing of vaping products without markings

158.5 (1) Subject to subsection (4), no person shall enter into an excise warehouse a container of vaping products unless the container has printed on it, or affixed to it, vaping product markings and other prescribed information.

No delivery of imported vaping products without markings

(2) Subject to subsections (3) and (4), no person shall deliver a container of imported vaping products that does not have printed on it, or affixed to it, vaping product markings and other prescribed information to

(a) an accredited representative; or

(b) a customs bonded warehouse.

Delivery of imported stamped vaping products

(3) A container of imported vaping products that were manufactured outside Canada and are stamped may be delivered to a customs bonded warehouse.

Exception in prescribed circumstances

(4) A container of vaping products does not require vaping product markings to be printed on it, or affixed to it, if prescribed circumstances exist.

Non-compliant imports

158.51 (1) If an imported vaping product intended for the duty-paid market is not stamped to indicate that vaping duty has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

Non-compliant imports — specified vaping province

(2) If an imported vaping product intended for the duty-paid market of a specified vaping province is not stamped to indicate that additional vaping duty in respect of the province has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

Exception

(3) Subsections (1) and (2) do not apply in prescribed circumstances.

Vaping products — waste removal

158.52 (1) No person shall remove a vaping product that is waste from the premises of a vaping product licensee other than the licensee or a person authorized by the Minister.

Removal requirements

(2) If a vaping product that is waste is removed from the premises of a vaping product licensee, it shall be dealt with in the manner authorized by the Minister.

Re-working or destruction of vaping products

158.53 (1) A vaping product licensee may re-work or destroy a vaping product in the manner authorized by the Minister.

Importation for re-working or destruction

(2) The Minister may authorize a vaping product licensee to import vaping products manufactured in Canada by the licensee for re-working or destruction by the licensee in accordance with subsection (1).

Responsibility for Vaping Products

Responsibility — vaping products manufactured in Canada

158.54 (1) Subject to section 158.55, a person is responsible for a vaping product manufactured in Canada at any time if

(a) the person is

- (i) the vaping product licensee that owns the vaping product at that time, or
 - (ii) if the vaping product is not owned at that time by a vaping product licensee, the vaping product licensee that last owned it; or
- (b) the person is a prescribed person.

Responsibility — imported vaping products

(2) Subject to sections 158.55 and 158.56, a person is responsible for an imported vaping product at any time if the person

- (a) imported the vaping product; or
- (b) is a prescribed person.

Person not responsible

158.55 A person that is responsible for a vaping product ceases to be responsible for it if

- (a) it is packaged and stamped and the duty on it is paid;
- (b) it is consumed or used in the manufacturing of a vaping product that is
 - (i) a vaping product drug, or
 - (ii) a prescribed vaping product;
- (c) it is taken for use and the duty on it is paid;
- (d) it is taken for use in accordance with any of subparagraphs 158.66(a)(i) to (iv);
- (e) it is exported;
- (f) it is delivered to an accredited representative for their personal or official use;
- (g) it is lost in prescribed circumstances and the person fulfils any prescribed conditions; or
- (h) prescribed circumstances exist.

Imports for personal use

158.56 An individual that imports vaping products for their personal use in quantities not in excess of prescribed limits is not responsible for those vaping products.

Imposition and Payment of Duty on Vaping Products

Imposition

158.57 Duty is imposed on vaping products manufactured in Canada or imported in the amount determined under Schedule 8 and is payable

- (a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and
- (b) in the case of imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

Imposition — additional vaping duty

158.58 In addition to the duty imposed under section 158.57, a duty in respect of a specified vaping province is imposed on vaping products manufactured in Canada, or imported, in prescribed circumstances in the amount determined in a prescribed manner and is payable

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and

(b) in the case of imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

Application of *Customs Act*

158.59 The duties imposed under sections 158.57 and 158.58 on imported vaping products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duties were a duty levied under section 20 of the *Customs Tariff*; and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

Duty on vaping products taken for use

158.6 (1) If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, the following rules apply:

(a) if the vaping products are packaged, they are relieved of the duty imposed under subsection 158.57; and

(b) duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

Specified vaping province — taken for use

(2) If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. This duty is in addition to the duty imposed under subsection (1).

Duty payable

(3) The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

Duty on unaccounted vaping products

158.61 (1) If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), the following rules apply:

(a) if the vaping products are packaged, they are relieved of the duty imposed under subsection 158.57; and

(b) duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

Specified vaping province — duty on unaccounted vaping products

(2) If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. This duty is in addition to the duty imposed under subsection (1).

Duty payable

(3) The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

Exception

(4) Subsection (1) does not apply in circumstances in which the particular person referred to in that subsection is convicted of an offence under section 218.2.

Duty relieved — unstamped vaping products

158.62 (1) The duties imposed under sections 158.57 and 158.58 are relieved on a vaping product that is not stamped.

Vaping products imported by individual for personal use

(2) Subsection (1) does not apply to the importation of vaping products by an individual for their personal use to the extent that the quantity of the products imported exceeds the quantity permitted under Chapter 98 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff* to be imported without the payment of *duties*, as defined in Note 4 to that Chapter.

Duty relieved — stamped vaping product imported by individual

158.63 (1) The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured in Canada and are stamped.

Duty relieved — reimportation

(2) The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured outside Canada, were previously imported into Canada and are stamped.

Duty relieved — importation for destruction

158.64 The duties imposed under paragraphs 158.57(b) and 158.58(b) are relieved on a stamped vaping product that was manufactured in Canada by a vaping product licensee and that is imported for re-working or destruction in accordance with section 158.53.

Duty relieved — prescribed circumstances

158.65 The duties imposed under section 158.57 or 158.58 are relieved on a vaping product in prescribed circumstances.

Duty not payable

158.66 Duty is not payable on a vaping product

(a) that is

(i) taken for analysis, or destroyed, by the Minister,

(ii) taken for analysis by a vaping product licensee in a manner approved by the Minister,

(iii) destroyed by a vaping product licensee in a manner approved by the Minister,

(iv) delivered by a vaping product licensee to another person for analysis or destruction by that person in a manner approved by the Minister,

(v) a vaping product drug, or

(vi) a prescribed vaping product; or

(b) in prescribed circumstances.

Excise Warehouses

Restriction — entering vaping products

158.67 No person shall enter into an excise warehouse

- (a) a vaping product that is stamped; or
- (b) any other vaping product except in accordance with this Act.

Prohibition on removal

158.68 (1) Except if prescribed circumstances exist, no person shall remove from an excise warehouse vaping products manufactured in Canada.

Removal of Canadian manufactured vaping products

(2) Subject to the regulations, a vaping product manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured it only if it is

- (a) for export by the licensee in accordance with this Act; or
- (b) for delivery to an accredited representative for their official or personal use.

Removal from warehouse for re-working or destruction

(3) Subject to the regulations, vaping products manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured them if they are removed for re-working or destruction by the licensee in accordance with section 158.53.

Removal of imported vaping products

158.69 (1) Except if prescribed circumstances exist, no person shall remove imported vaping products from an excise warehouse.

Exception

(2) Subject to the regulations, imported vaping products may be removed from an excise warehouse

- (a) for delivery to another excise warehouse;
- (b) for delivery to an accredited representative for their official or personal use; or
- (c) for export by the excise warehouse licensee in accordance with this Act.

7 (1) The portion of subsection 159(1) of the Act before paragraph (a) is replaced by the following:

Determination of fiscal months

159 (1) The fiscal months of a person other than a cannabis licensee or a vaping product licensee shall be determined in accordance with the following rules:

(2) Subsection 159(1.01) of the Act is replaced by the following:

Fiscal months — cannabis or vaping product licensee

(1.01) For the purposes of this Act, the fiscal months of a cannabis licensee or a vaping product licensee are calendar months.

8 Section 180 of the Act is replaced by the following:

No refund — exportation

180 Subject to this Act, the duty paid on any tobacco product, cannabis product, vaping product or alcohol entered into the duty-paid market shall not be refunded on the exportation of the tobacco product, cannabis product, vaping product or alcohol.

9 The Act is amended by adding the following after section 187.1:

Refund of duty — destroyed vaping product

187.2 The Minister may refund to a vaping product licensee the duty paid on a vaping product that is re-worked or destroyed by the licensee in accordance with section 158.53 if the licensee applies for the refund within two years after the vaping product is re-worked or destroyed.

10 (1) Paragraph 206(1)(d) of the Act is replaced by the following:

(d) every person that transports a tobacco product, cannabis product or vaping product that is not stamped or non-duty-paid packaged alcohol.

(2) Subsection 206 of the Act is amended by adding the following after subsection (2.01):

Keeping records — vaping product licensee

(2.02) Every vaping product licensee shall keep records that will enable the determination of the amount of vaping product manufactured, received, used, packaged, re-worked, sold or disposed of by the licensee.

11 (1) The portion of section 214 of the Act before paragraph (a) is replaced by the following:

Unlawful production, sale, etc.

214 Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1 and 158.37 to 158.39 is guilty of an offence and liable

(2) The portion of section 214 of the Act before paragraph (a), as enacted by subsection (1), is replaced by the following:

Unlawful production, sale, etc.

214 Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1, 158.35, 158.37 to 158.39, 158.41 and 158.43 is guilty of an offence and liable

12 The Act is amended by adding the following after section 218.1:

Punishment — sections 158.44 and 158.45

218.2 (1) Every person that contravenes section 158.44 or 158.45 is guilty of an offence and liable

(a) on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$500,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

Minimum amount

(2) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the offence relates, using the rates of duty applicable at the time the offence was committed, and

B is

- (i) if the offence occurred in a specified vaping province, the amount determined for A, and
- (ii) in any other case, 0; and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

Maximum amount

(3) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the amount determined by the formula

$$(A + B) \times 300\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the offence relates, using the rates of duty applicable at the time the offence was committed, and

B is

- (i) if the offence occurred in a specified vaping province, the amount determined for A, and
- (ii) in any other case, 0; and

(b) \$2,000 in the case of an indictable offence and \$1,000 in the case of an offence punishable on summary conviction.

13 Paragraph 230(1)(a) of the Act is replaced by the following:

(a) the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1), 218.2(1) or 231(1); or

14 Paragraph 231(1)(a) of the Act is replaced by the following:

(a) the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1) or 218.2(1); or

15 Subsection 232(1) of the Act is replaced by the following:

Part XII.2 of *Criminal Code* applicable

232 (1) Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence under section 214, subsection 216(1), 218(1), 218.1(1) or 218.2(1) or section 230 or 231.

16 The Act is amended by adding the following after section 233.1:

Contravention of section 158.46 or 158.49

233.2 Every vaping product licensee that contravenes section 158.46 or 158.49 is liable to a penalty equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

B is

- (a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

17 (1) Subsection 234(1) of the Act is replaced by the following:

Contravention of certain sections

234 (1) Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5 or 158.67 is liable to a penalty of not more than \$25,000.

(2) Subsection 234(1) of the Act, as enacted by subsection (1), is replaced by the following:

Contravention of certain sections

234 (1) Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5, 158.52 or 158.67 is liable to a penalty of not more than \$25,000.

(3) Section 234 of the Act is amended by adding the following after subsection (3):

Failure to comply

(4) Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b) is liable to a penalty of not more than \$25,000.

(4) Subsection 234(4) of the Act, as enacted by subsection (3), is replaced by the following:

Failure to comply

(4) Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b), or that fails to re-work or destroy a vaping product in the manner authorized by the Minister under section 158.53, is liable to a penalty of not more than \$25,000.

18 The Act is amended by adding the following after section 234.1:

Contravention — sections 158.35 and 158.43 to 158.45

234.2 Every person that contravenes section 158.35, that receives for sale vaping products in contravention of section 158.43 or that sells or offers to sell vaping products in contravention of section 158.44 or 158.45 is liable to a penalty equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

B is

(a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

19 Subsection 237(6) of the Act is replaced by the following:

Diversion of unstamped vaping products

(5.1) Every vaping product licensee is liable to a penalty on a vaping product manufactured in Canada that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.68(2) if the product is not delivered or exported, as the case may be, for that purpose.

Diversion of imported vaping products

(5.2) Every excise warehouse licensee is liable to a penalty on an imported vaping product that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.69(2) if the product is not delivered or exported, as the case may be, for that purpose.

Amount of penalty for diversion of vaping products

(5.3) The amount of a penalty for each vaping product that is removed from an excise warehouse for a purpose referred to in subsection (5.1) or (5.2) and that is not delivered or exported, as the case may be, for that purpose is equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is removed from the excise warehouse; and

B is

- (a) if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is removed from the excise warehouse, the amount determined for A, and
- (b) in any other case, 0.

Exception

(6) A licensee that would otherwise be liable to a penalty under this section is not liable if the licensee proves to the satisfaction of the Minister that the alcohol, tobacco product or vaping product that was removed from their excise warehouse or special excise warehouse was returned to that warehouse.

20 The Act is amended by adding the following after section 238:

Penalty in respect of unaccounted vaping products

238.01 (1) Every excise warehouse licensee is liable to a penalty on a vaping product entered into their excise warehouse if the licensee cannot account for the vaping product

- (a) as being in the warehouse;
- (b) as having been removed from the warehouse in accordance with this Act; or
- (c) as having been destroyed by fire while kept in the warehouse.

Amount of penalty

(2) The amount of a penalty for each vaping product that cannot be accounted for is equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is entered into the excise warehouse; and

B is

- (a) if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is entered into the excise warehouse, the amount determined for A, and
- (b) in any other case, 0.

21 (1) Paragraph 238.1(1)(a) of the Act is replaced by the following:

(a) the person can demonstrate that the stamps were affixed to tobacco products, cannabis products, vaping products or their containers in the manner prescribed for the purposes of the definition *stamped* in section 2 and that duty, other than special duty, has been paid on the tobacco products, cannabis products or vaping products; or

(2) Subsection 238.1(2) of the Act is amended by striking out “or” at the end of paragraph (a), by adding “or” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) in the case of a vaping excise stamp

(i) if the stamp is in respect of a specified vaping province, \$10.00, and

(ii) in any other case, \$5.00.

22 The portion of section 239 of the Act before paragraph (a) is replaced by the following:

Other diversions

239 Unless section 237 applies, every person is liable to a penalty equal to 200% of the duty that was imposed on packaged alcohol, a tobacco product, a cannabis product or a vaping product if

23 Section 264 of the Act is replaced by the following:

Certain things not to be returned

264 Despite any other provision of this Act, any alcohol, specially denatured alcohol, restricted formulation, raw leaf tobacco, excise stamp, tobacco product, cannabis product or vaping product that is seized under section 260 must not be returned to the person from whom it was seized or any other person unless it was seized in error.

24 Subsection 266(2) of the Act is amended by striking out “and” at the end of paragraph (d), by adding “and” at the end of paragraph (e) and by adding the following after paragraph (e):

(f) a seized vaping product only to a vaping product licensee.

25 (1) Paragraph 304(1)(c.1) of the Act is replaced by the following:

(c.1) respecting the types of security that are acceptable for the purposes of subsection 158.03(3) or 158.36(3), and the manner by which the amount of the security is to be determined;

(2) Paragraph 304(1)(f) of the Act is replaced by the following:

(f) respecting the information to be provided on tobacco products, packaged alcohol, cannabis products and vaping products and on containers of tobacco products, packaged alcohol, cannabis products and vaping products;

(3) Paragraph 304(1)(i) of the Act is replaced by the following:

(i) respecting the entry and removal of tobacco products, alcohol or vaping products from an excise warehouse or a special excise warehouse;

(4) Paragraph 304(1)(n) of the Act is replaced by the following:

(n) respecting the sale under section 266 of alcohol, tobacco products, raw leaf tobacco, specially denatured alcohol, restricted formulations, cannabis products or vaping products seized under section 260;

26 The Act is amended by adding the following after section 304.2:

Definition of *coordinated vaping duty system*

304.3 (1) In this section, *coordinated vaping duty system* means the system providing for the payment, collection and remittance of duty imposed under any of section 158.58 and subsections 158.6(2) and 158.61(2) and any provisions relating to duty imposed under those provisions or to refunds in respect of any such duty.

Coordinated vaping duty system regulations – transition

(2) The Governor in Council may make regulations, in relation to the joining of a province to the coordinated vaping duty system,

- (a)** prescribing transitional measures, including
 - (i)** a tax on the inventory of vaping products held by a vaping product licensee or any other person, and
 - (ii)** a duty or tax on vaping products that are delivered prior to the province joining that system; and
- (b)** generally to effect the implementation of that system in relation to the province.

Coordinated vaping duty system regulations – rate variation

(3) The Governor in Council may make regulations

- (a)** prescribing rules in respect of whether, how and when a change in the rate of duty for a specified vaping province applies (in this section any such change in the rate of duty is referred to as a “rate variation”), including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is imposed or payable and when duty is required to be reported and accounted for;
- (b)** if a manner of determining an amount of duty is to be prescribed in relation to the coordinated vaping duty system,
 - (i)** specifying the circumstances or conditions under which a change in the manner applies, and
 - (ii)** prescribing transitional measures in respect of a change in the manner, including
 - (A)** a tax on the inventory of vaping products held by a vaping product licensee or any other person, and
 - (B)** a duty or tax on vaping products that are delivered prior to the change; and
- (c)** prescribing amounts and rates to be used to determine any refund that relates to, or is affected by, the coordinated vaping duty system, excluding amounts that would otherwise be included in determining any such refund, and specifying circumstances under which any such refund shall not be paid or made.

Coordinated vaping duty system regulations – general

(4) For the purpose of facilitating the implementation, application, administration and enforcement of the coordinated vaping duty system or a rate variation or the joining of a province to the coordinated vaping duty system, the Governor in Council may make regulations

- (a)** prescribing rules in respect of whether, how and when that system applies and rules in respect of other aspects relating to the application of that system in relation to a specified vaping province, including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is imposed or payable and when duty is required to be reported and accounted for;
- (b)** prescribing rules related to the movement of vaping products between provinces, including a duty, tax or refund in respect of such movement;
- (c)** providing for refunds relating to the application of that system in relation to a specified vaping province;
- (d)** adapting any provision of this Act or of the regulations made under this Act to the coordinated vaping duty system or modifying any provision of this Act or those regulations to adapt it to the coordinated vaping duty system;
- (e)** defining, for the purposes of this Act or the regulations made under this Act, or any provision of this Act or those regulations, in its application to the coordinated vaping duty system, words or expressions used in this Act or those regulations including words or expressions defined in a provision of this Act or those regulations;

- (f) providing that a provision of this Act or of the regulations made under this Act, or a part of such a provision, does not apply to the coordinated vaping duty system;
- (g) prescribing compliance measures, including penalties and anti-avoidance rules; and
- (h) generally in respect of the application of that system in relation to a province.

Conflict

(5) If a regulation made under this Act in respect of the coordinated vaping duty system states that it applies despite any provision of this Act, in the event of a conflict between the regulation and this Act, the regulation prevails to the extent of the conflict.

27 The Act is amended by adding, after Schedule 7, the Schedule 8 set out in the Schedule to this Motion.

Criminal Code

28 (1) Subparagraph (g)(i) of the definition *offence* in section 183 of the *Criminal Code* is replaced by the following:

- (i) section 214 (unlawful production, sale, etc., of tobacco, alcohol, cannabis or vaping products),

(2) Paragraph (g) of the definition *offence* in section 183 of the Act is amended by adding the following after subparagraph (iii.1):

- (iii.2) section 218.2 (unlawful possession, sale, etc., of unstamped vaping products),

Excise Tax Act

29 The definition *excisable goods* in subsection 123(1) of the *Excise Tax Act* is replaced by the following:

excisable goods means beer or malt liquor (within the meaning assigned by section 4 of the *Excise Act*) and spirits, wine, tobacco products, cannabis products and vaping products (within the meaning assigned by section 2 of the *Excise Act, 2001*); (*produit soumis à l'accise*)

Federal-Provincial Fiscal Arrangements Act

30 Subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* is amended by adding the following in alphabetical order:

coordinated vaping product taxation agreement means an agreement or arrangement entered into by the Minister on behalf of the Government of Canada under Part III.3, including any amendments or variations to the agreement or arrangement made in accordance with that Part; (*accord de coordination de la taxation des produits de vapotage*)

31 The Act is amended by adding the following after section 8.82:

PART III.3

Coordinated Vaping Product Taxation Agreements

Coordinated Vaping Product Taxation Agreement

8.9 (1) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement or arrangement with the government of a province respecting the taxation of vaping products and, without restricting the generality of the foregoing, respecting

- (a)** the collection, administration and enforcement of taxes on vaping products in respect of the province under a single Act of Parliament;
- (b)** the provision to the Government of Canada by the government of the province, or to the government of the province by the Government of Canada, of
 - (i)** information acquired in the administration and enforcement of Acts imposing taxes on vaping products and Acts providing for rebates, refunds or reimbursements of taxes on vaping products, paid or payable, or of amounts paid or payable as or on account of the taxation of vaping products, and
 - (ii)** other information related to the regulation of vaping and the distribution of vaping products relevant to the system of taxation of vaping products under a single Act of Parliament;
- (c)** the accounting for taxes collected in accordance with the agreement;
- (d)** the implementation of and transition to the system of taxation of vaping products contemplated under the agreement;
- (e)** payments, and the eligibility for payments, by the Government of Canada to the government of the province in respect of the revenues from the system of taxation contemplated under the agreement and to which the province is entitled under the agreement, the time when such payments will be made, and the remittance by the government of the province to the Government of Canada of any overpayments by the Government of Canada or the right of the Government of Canada to set off any overpayments against other amounts payable by the Government of Canada to the government of the province, whether under the agreement or any other agreement or arrangement or any Act of Parliament;
- (f)** the payment by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, of the taxes on vaping products payable under the system of taxation of vaping products contemplated under the agreement and the accounting for the taxes on vaping products so paid;
- (g)** the compliance by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, with the Act of Parliament under which the system of taxation of vaping products is administered and regulations made under that Act; and
- (h)** other matters that relate to, and that are considered advisable for the purposes of implementing or administering, the system of taxation of vaping products contemplated under the agreement.

Amending agreements

(2) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement with the government of a province amending or varying an agreement or arrangement with the province entered into under subsection (1) or this subsection.

Payments

8.91 If there is a coordinated vaping product taxation agreement with the government of a province, the appropriate minister may pay to the province out of amounts received in a fiscal year under the Act of Parliament referred to in paragraph 8.9(1)(a)

- (a)** amounts determined in accordance with the agreement as provided, and at such times as are specified, in the agreement; and
- (b)** subject to the regulations, advances in respect of the amounts referred to in paragraph (a).

Statutory authority to make payments

8.92 Despite any other Act, the payments paid under a coordinated vaping product taxation agreement under the authority of section 8.91 may be made without any other or further appropriation or authority.

32 (1) Paragraph 40(b) of the Act is replaced by the following:

(b) respecting the calculation and payment to a province of advances on account of any amount that may become payable to the province under this Act, an administration agreement, a reciprocal taxation agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement and the adjustment, by way of reduction or set off, of other payments to the province because of those advances;

(2) Paragraph 40(d) of the Act is replaced by the following:

(d) prescribing the time and manner of making any payment under this Act, an administration agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement;

Customs Act

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

| **immediate container** has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

| **vaping device** has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

| **vaping product** has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

| **vaping product licensee** has the same meaning as in section 2 of the *Excise Act, 2001*; (*titulaire de licence de produits de vapotage*)

| **vaping substance** has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

34 Subsection 97.25(3) of the Act is amended by adding the following after paragraph (c):

| (c.1) if the good is a vaping product, to a vaping product licensee;

35 Subsection 109.2(2) of the Act is replaced by the following:

Contravention relating to tobacco, cannabis and vaping products and to designated goods

(2) Every person that

(a) removes tobacco products, cannabis products, vaping products or designated goods or causes tobacco products, cannabis products, vaping products or designated goods to be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or

(b) sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts,

is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products, cannabis products, vaping products or designated goods released in like condition at the rates of duties applicable to like tobacco products, cannabis products, vaping products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct.

36 Subsection 117(2) of the Act is replaced by the following:

No return of certain goods

(2) Despite subsection (1), if spirits, wine, specially denatured alcohol, restricted formulations, cannabis, raw leaf tobacco, excise stamps, tobacco products or vaping products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

37 Subsection 119.1(1.1) of the Act is amended by striking out “and” at the end of paragraph (c) and by adding the following after paragraph (c):

| (c.1) a vaping product may only be to a vaping product licensee; and

38 The portion of subsection 142(1) of the Act before paragraph (a) is replaced by the following:

Disposal of things abandoned or forfeit

142 (1) Unless the thing is spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, an excise stamp, a tobacco product or a vaping product, anything that has been abandoned to Her Majesty in right of Canada under this Act and anything the forfeiture of which is final under this Act shall

39 (1) Subsection 142.1(1) of the Act is replaced by the following:

Dealing with abandoned or forfeited alcohol, etc.

142.1 (1) If spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, a tobacco product or a vaping product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it.

(2) Subsection 142.1(2) of the Act is amended by striking out “and” at the end of paragraph (c) and by adding the following after paragraph (c):

| (c.1) a vaping product may only be to a vaping product licensee; and

40 Paragraph 164(1)(h.2) of the Act is replaced by the following:

(h.2) respecting the sale of alcohol, a tobacco product, raw leaf tobacco, specially denatured alcohol, a restricted formulation or a vaping product detained, seized, abandoned or forfeited under this Act;

Customs Tariff

41 Paragraph 83(a) of the Customs Tariff is replaced by the following:

(a) in the case of goods that would have been classified under tariff item No. 9804.10.00 or 9804.20.00, the value for duty of the goods shall be reduced by an amount equal to that maximum specified value and, in the case of alcoholic beverages, vaping products and tobacco, the quantity of those goods shall, for the purposes of assessing duties other than a duty under section 54 of the *Excise Act, 2001*, be reduced by the quantity of alcoholic beverages, vaping products and tobacco and up to the maximum quantities specified in tariff item No. 9804.10.00 or 9804.20.00, as the case may be;

42 Subsection 89(2) of the Act is replaced by the following:

Exception

(2) Relief of the duties or taxes levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise Tax Act* may not be granted under subsection (1) on tobacco products, vaping products or designated goods.

43 Subsection 113(2) of the Act is replaced by the following:

No refund

(2) No refund or drawback of the duties imposed on tobacco products or vaping products under the *Excise Act, 2001* shall be granted under subsection (1), except if a refund of the whole or the portion of the duties is required to be granted under Division 3.

44 (1) The Description of Goods of tariff item No. 9804.10.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “For the purpose of this tariff item,” and ending with “of manufactured tobacco.” with a reference to “For the purpose of this tariff item, goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding

1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers.”

(2) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9804.20.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:

(a) goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if included in the baggage accompanying the person at the time of return to Canada; and

(b) if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) acquired abroad are not included in the baggage accompanying the person, they may be classified under this tariff item if they are reported by the person at time of return to Canada.

(3) The Description of Goods of tariff item No. 9804.30.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “For the purpose of this tariff item,” and ending with “or manufactured tobacco.” with a reference to “For the purpose of this tariff item, goods shall not include those which could otherwise be imported into Canada free of duties, nor alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products.”

(4) The Description of Goods of tariff item No. 9804.40.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “For the purpose of this tariff item,” and ending with “or manufactured tobacco.” with a reference to “For the purpose of this tariff item, goods shall not include alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products.”

(5) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9805.00.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:

(a) the provisions shall apply to either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if they are included in the baggage accompanying the importer, and no relief from payment of duties is being claimed in respect of alcoholic beverages, tobacco or vaping products under another item in this Chapter at the time of importation;

(b) if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) are not accompanying the person returning from abroad, they may be classified under this item when imported at a later time if they are reported by the person at the time of return to Canada; and

(6) The Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by striking out “and” at the end of subparagraph (a)(i), by adding “and” at the end of subparagraph (a)(ii), and by adding the following after subparagraph (a)(ii):

(iii) vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers;

(7) Paragraph (c) of the Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “(other than alcoholic beverages, cigars, cigarettes, tobacco sticks and manufactured tobacco)” with a reference to “(other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products)”.

(8) The Description of Goods of tariff item No. 9816.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “and not being advertising matter, tobacco or alcoholic beverages,” with a reference to “and not being advertising matter, tobacco, alcoholic beverages or vaping products.”

(9) The Description of Goods of heading 98.25 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “alcoholic beverages; tobacco; tobacco products;” with a reference to “alcoholic beverages; tobacco; tobacco products; vaping products;”.

(10) The Description of Goods of heading 98.26 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “alcoholic beverages; tobacco; tobacco products;” with a reference to “alcoholic beverages; tobacco; tobacco products; vaping products;”.

(11) The Description of Goods of tariff item No. 9827.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “Goods, which may include” and ending with “of manufactured tobacco,” with a reference to “Goods, which may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco products not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers,”

(12) The Description of Goods of tariff item No. 9906.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “other than alcoholic beverages and tobacco products,” with a reference to “other than alcoholic beverages, tobacco products and vaping products,”.

Amendments to Various Regulations

Tariff Item No. 9805.00.00 Exemption Order

45 Section 3 of the *Tariff Item No. 9805.00.00 Exemption Order* is amended by adding the following after paragraph (b):

(b.1) vaping products owned by and in the possession of the importer;

Postal Imports Remission Order

46 (1) Paragraph (a) of the definition *goods* in section 2 of the *Postal Imports Remission Order* is replaced by the following:

(a) alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

(2) Section 2 of the Order is amended by adding the following in alphabetical order:

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

Courier Imports Remission Order

47 (1) Paragraph (a) of the definition *goods* in section 2 of the *Courier Imports Remission Order* is replaced by the following:

(a) alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

(2) Section 2 of the Order is amended by adding the following in alphabetical order:

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

Customs Sufferance Warehouses Regulations

48 Subsection 15(4) of the *Customs Sufferance Warehouses Regulations* is replaced by the following:

(4) For the purposes of subsection 39.1(1) of the Act, firearms, prohibited ammunition, prohibited devices, prohibited or restricted weapons, tobacco products and vaping products are goods of a prescribed class that are forfeit if they are not removed from a sufferance warehouse within 14 days after the day on which they were reported under section 12 of the Act.

49 Paragraph 17(a) of the Regulations is replaced by the following:

(a) stamping the goods, if the goods consist of

(i) imported raw leaf tobacco or imported tobacco products that are placed in the sufferance warehouse in accordance with section 39 of the *Excise Act, 2001*, or

(ii) imported vaping products that are placed in the sufferance warehouse in accordance with section 158.51 of the *Excise Act, 2001*;

Non-residents' Temporary Importation of Baggage and Conveyances Regulations

50 Section 2 of the *Non-residents' Temporary Importation of Baggage and Conveyances Regulations* is amended by adding the following in alphabetical order:

immediate container has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

vaping device has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

vaping substance has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

51 Subsection 4(1) of the Regulations is amended by striking out “or” at the end of paragraph (b) and by adding the following after that paragraph:

(b.1) 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers; or

Tariff Item No. 9807.00.00 Exemption Order

52 Paragraph 2(b) of the *Tariff Item No. 9807.00.00 Exemption Order* is replaced by the following:

(b) tobacco products and vaping products;

Customs Bonded Warehouses Regulations

53 Section 2 of the *Customs Bonded Warehouses Regulations* is amended by adding the following in alphabetical order:

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

54 Section 14 of the Regulations is amended by striking out “and” at the end of paragraph (e), by adding “and” at the end of paragraph (f) and by adding the following after paragraph (f):

(g) vaping products that are not stamped.

55 The Regulations are amended by adding the following after section 16:

16.1 No licensee shall receive into or remove from a bonded warehouse imported vaping products unless they are to be removed from the warehouse for sale to a foreign diplomat in Canada or export from Canada.

56 Section 18 of the Regulations is replaced by the following:

18 For the purposes of subsections 37(2) and 39.1(2) of the *Customs Act*, tobacco products, packaged spirits and vaping products are a prescribed class of goods and are forfeit if they have not been removed from the bonded warehouse within five years of the day on which the goods are described in the form prescribed under subsection 19(2) of that Act.

Regulations Respecting Excise Licences and Registrations

57 Subparagraph 2(2)(b)(i) of the Regulations Respecting Excise Licenses and Registrations is replaced by the following:

(i) failed to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of or controls on alcohol, tobacco products or vaping products or any regulations made under it, or

58 Section 4 of the Regulations is replaced by the following:

4 A licence is valid for the period specified in the licence, which period shall not exceed

- (a) in the case of a vaping product licence, three years; and
- (b) in any other case, two years.

59 (1) The portion of subsection 5(1) of the Regulations before paragraph (a) is replaced by the following:

5 (1) For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence is an amount of not less than \$5,000 and

(2) Paragraph 5(1)(b) of the Regulations is replaced by the following:

(b) in the case of a tobacco licence, a cannabis licence or a vaping product licence, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of \$5 million per licence.

60 Paragraph 12(1)(e) of the Regulations is replaced by the following:

(e) fails to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of or controls on alcohol, tobacco products or vaping products, or any regulations made under it; or

Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped

61 The title of the Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped is replaced by the following:

Regulations Respecting the Possession of Tobacco, Cannabis or Vaping Products That Are Not Stamped

62 The Regulations are amended by adding the following after section 1.3:

1.4 For the purposes of paragraph 158.44(3)(b) of the *Excise Act, 2001*, a person may possess a vaping product that is not stamped if

- (a) the person is authorized by an officer under section 19 of the *Customs Act* to transport vaping products that have been reported under section 12 of that Act and is acting in accordance with that authorization; or
- (b) the person has in their possession documentation that provides evidence that the person is transporting the vaping product on behalf of
 - (i) a vaping product licensee,

(ii) an excise warehouse licensee, or

(iii) an accredited representative.

Stamping and Marking of Tobacco and Cannabis Products Regulations

63 The title of the *Stamping and Marking of Tobacco and Cannabis Products Regulations* is replaced by the following:

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

64 Paragraph 2(c) of the Regulations is replaced by the following:

(c) a cannabis product or a vaping product is packaged in a prescribed package when it is packaged in the smallest package — including any outer wrapper, package, box or other container — in which it is sold to the consumer.

65 (1) Subsection 4(1) of the Regulations is replaced by the following:

4 (1) For the purposes of subsections 25.1(1) and 158.36(1) of the Act, a prescribed person is a person that satisfies the requirements set out in paragraphs 2(2)(a) to (e) of the *Regulations Respecting Excise Licences and Registrations*.

(2) Section 4 of the Regulations is amended by adding the following after subsection (3):

(4) For the purposes of paragraph 158.38(2)(d) of the Act, the following persons are prescribed:

(a) a person that transports a vaping excise stamp on behalf of a person described in paragraph 158.38(2)(a) or (b) of the Act; and

(b) a person that has in their possession vaping excise stamps only for the purpose of applying adhesive to the stamps on behalf of the vaping product licensee to which the stamps are issued.

66 The Regulations are amended by adding the following after section 4:

4.01 (1) If the Minister holds, at any time in a calendar month, security that a person has provided under subsection 158.36(3) of the Act and if the person is not a vaping product licensee throughout the calendar month, the person must file with the Minister an information return for the calendar month in respect of the possession and use of any vaping excise stamps issued to the person.

(2) The information return of a person for a particular calendar month must

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

(b) be filed in prescribed manner on or before the last day of the first calendar month following the particular calendar month.

67 The Regulations are amended by adding the following after section 4.1:

4.11 (1) Subject to subsections (2) to (4), the amount of security for the purpose of subsection 158.36(3) of the Act is the greater of

(a) \$1.00 multiplied by the number of vaping excise stamps that either are in the applicant's possession at the time of application or are to be issued in respect of the application, and

(b) \$5,000.

(2) Subject to subsections (3) and (4), if the amount determined under paragraph (1)(a) is greater than \$5 million, the amount of security for the purpose of subsection 158.36(3) of the Act is \$5 million.

(3) If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is equal to or greater than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is nil.

(4) If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is less than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is the difference between the amount of security determined in accordance with subsections (1) and (2) and the amount of security provided by the person under paragraph 23(3)(b) of the Act.

68 The portion of section 4.2 of the Regulations before paragraph (a) is replaced by the following:

4.2 For the purposes of the definition *stamped* in section 2 of the Act and subsections 25.3(1), 158.05(1) and 158.38(1) of the Act, the prescribed manner of affixing an excise stamp to a package is by affixing the stamp

69 The Regulations are amended by adding the following after section 5:

5.1 (1) For the purposes of paragraphs 158.44(3)(e) and 158.47(2)(c) and section 158.56 of the Act, the prescribed limit is five units of vaping products.

(2) For the purposes of subsection (1), a unit of vaping products consists of 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers.

70 The heading after section 7 of the Regulations is replaced by the following:

Vaping Product Marking

8 (1) For the purposes of subsection 158.5(1) of the Act, the required vaping product markings are

- (a) for containers of vaping products manufactured in Canada, the marking set out in Schedule 7; and
- (b) for containers of vaping products manufactured outside Canada, the marking set out in Schedule 8.

(2) The vaping product markings must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in the appropriate Schedule.

9 (1) For the purposes of subsection 158.5(2) of the Act, the required vaping product marking is the marking set out in Schedule 8.

(2) The vaping product marking must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in Schedule 8.

71 The heading of Schedule 7 to the Regulations is replaced with the following:

SCHEDULE 7

(Sections 6 and 8)

Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured in Canada

72 The heading of Schedule 8 to the Regulations is replaced with the following:

SCHEDULE 8

(Sections 6 to 9)

Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured Outside Canada, Containers of Cigars Manufactured in Canada and Intended for Delivery to a Duty Free Shop or as Ships' Stores and Containers of Imported Manufactured Tobacco and Cigars Referred to in Subsection 38(2) of the Act

Application

73 (1) Sections 158.35, 158.51 to 158.53, 158.68 and 158.69 of the *Excise Act, 2001*, as enacted by section 6, subsection 11(2), sections 12 to 16, subsections 17(2) and (4), sections 18, 19 and 22, subsection 28(2) and sections 29, 34 to 52, 62 and 69 come into force on October 1, 2022.

(2) Sections 158.41, 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 6, apply in respect of vaping products manufactured in Canada that are packaged on or after October 1, 2022 and to vaping products that are imported into Canada or *released* (as defined in the *Customs Act*) on or after that day. Those sections of the *Excise Act, 2001* also apply in respect of

(a) vaping products manufactured in Canada that are packaged before October 1, 2022 if the vaping products are stamped after the day on which section 6 receives royal assent; and

(b) vaping products that are imported into Canada or *released* (as defined in the *Customs Act*) after the day on which section 6 receives royal assent but before October 1, 2022 if the vaping products are stamped when they are reported under that Act.

(3) Sections 158.42 to 158.47 and 158.49, subsection 158.5(2), sections 158.54 to 158.56, 158.6 and 158.61 of the *Excise Act, 2001*, as enacted by section 6, subsection 10(1) and sections 54 to 56 come into force on October 1, 2022. However, those provisions of that Act, subsection 10(1) and sections 54 to 56 do not apply before 2023 in respect of

(a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and

(b) vaping products that are imported into Canada or *released* (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

(4) In applying sections 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 6, in respect of vaping products manufactured in Canada that are packaged before October 1, 2022, paragraph (a) of each of those sections 158.57 and 158.58 is to be read as follows:

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the later of the beginning of October 1, 2022 and the time they are stamped; and

WTO Settlement on the 100-per-cent Canadian Wine Exemption

74 (1) Section 87 of the *Excise Act, 2001* is amended by adding “and” at the end of paragraph (a) and by repealing paragraph (a.1).

(2) Subsection (1) comes into force, or is deemed to have come into force, on June 30, 2022.

75 (1) Paragraph 88(2)(i) of the Act is replaced by the following:

(i) that is wine referred to in paragraph 135(2)(b) may be possessed by any person; and

(2) Subsection (1) comes into force, or is deemed to have come into force, on June 30, 2022, but does not apply to wine packaged before that day.

76 (1) Subsection 134(3) of the Act is replaced by the following:

Exception

(3) Subsection (1) does not apply to wine that is produced by an individual for their personal use and that is consumed in the course of that use.

(2) Subsection (1) applies to wine taken for use on or after June 30, 2022.

77 (1) Paragraph 135(2)(a) of the Act is repealed.

(2) Subsection (1) applies to wine packaged on or after June 30, 2022.

SCHEDULE

(Section 27)

SCHEDULE 8

(Sections 158.57, 158.6, 158.61, 218.2, 233.2, 234.2 and 238.1)

Duty on Vaping Products

1 Vaping products that are vaping devices that contain vaping substances or that are vaping substances in immediate containers: for each vaping device or immediate container of vaping substance

(a) if the vaping substance is in liquid form, the amount equal to the total of:

(i) for the first 10 millilitres of vaping substance in the vaping device or immediate container: \$1.00 per two millilitres of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance in the vaping device or immediate container: \$1.00 per ten millilitres of vaping substance or fraction thereof; and

(b) if the vaping substance is in solid form, the amount equal to the total of:

(i) for the first 10 milligrams of vaping substance in the vaping device or immediate container: \$1.00 per two milligrams of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance in the vaping device or immediate container: \$1.00 per ten milligrams of vaping substance or fraction thereof.

2 Vaping products that are vaping substances not in any vaping device or container:

(a) if the vaping substance is in liquid form, the amount equal to the total of:

(i) for the first 10 millilitres of vaping substance: \$1.00 per two millilitres of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance: \$1.00 per ten millilitres of vaping substance or fraction thereof; and

(b) if the vaping substance is in solid form, the amount equal to the total of:

(i) for the first 10 milligrams of vaping substance: \$1.00 per two milligrams of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance: \$1.00 per ten milligrams of vaping substance or fraction thereof.

Notice of Ways and Means Motion to amend the *Excise Act*

That it is expedient to amend the *Excise Act* as follows:

Beer Taxation

1 (1) The portion of the definition *beer* or *malt liquor* in section 4 of the *Excise Act* before paragraph (a) is replaced by the following:

beer or *malt liquor* means any product (other than *wine*, as defined in section 2 of the *Excise Act, 2001*) containing more than 0.5% absolute ethyl alcohol by volume that is

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2022.

2 (1) Subsection 170.1(3) of the Act is replaced by the following:

Exclusion of exports

(3) In subsection (1), the reference to “first 75,000 hectolitres of beer and malt liquor brewed in Canada” does not include beer or malt liquor that is exported or deemed to be exported under section 173.

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2022.

Canada 