Explanatory Notes to Legislative Proposals Relating to Income Tax and Sales Tax

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Preface

These explanatory notes are provided to assist in an understanding of legislative proposals relating to income and sales taxes. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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Department of Finance Canada | Ministère des Finances Canada

These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Part 1 - Income Tax

Income Tax Act

Clause 1

Canadian Film or Video Production Tax Credit

ITA
125.4

Section 125.4 of the Act sets out the rules that apply for the purpose of computing the Canadian film or video production tax credit ("CFVPTC"). Generally, this tax credit is available at a rate of 25% of qualified labour expenditures incurred by a qualified corporation for a production certified by the Minister of Canadian Heritage to be a Canadian film or video production.

Except as noted below, the amendments to subsection 125.4 generally apply in respect of productions for which development commences on or after November 14, 2003 or the first labour expenditures (as determined under subsections 125.4(1) and (2) as they applied before that date – the "old rules") of the production corporation are incurred after 2003. As well, if development commenced before November 14, 2003 and the first labour expenditures (as defined under the old rules) were incurred by the corporation in its taxation year that includes November 14, 2003, the corporation may elect to have the new rules apply. Subject to this election, corporations must continue to claim the CFVPTC under the old rules for productions that qualified under those rules. Where, in the case of a co-production, more than one qualified corporation is eligible to claim a CFVPTC in respect of the production, the election to have the new rules apply must be made jointly. A production cannot qualify under both schemes.

Definitions

ITA
125.4(1)

"assistance"

In computing the CFVPTC, qualified labour expenditures in respect of a film or video production are limited to 48% of the amount by which the cost of the production exceeds any "assistance" in respect of that cost that has not been repaid.

The definition "assistance" is amended to provide that the equity share of a production of a government or other public authority is treated in the same manner as government assistance. This could include, for example, a loan from a government agency where repayment of the loan is dependent on profit from the production.

"Canadian film or video production certificate"

A qualified corporation must file a Canadian film or video production certificate with its tax return for a taxation year in which it claims a Canadian film or video production tax credit in respect of the production. A "Canadian film or video production certificate", as defined in subsection 125.4(1) of the Act, is issued by the Minister of Canadian Heritage. The definition is amended to provide that that Minister will also certify that, generally, a qualified corporation or a related taxable Canadian corporation will retain an acceptable share of revenues from the exploitation of the production in non-Canadian markets. The Minister of Canadian Heritage will issue guidelines as to how these criteria can be met.

This amendment generally applies in respect of Canadian film or video productions for which certificates are issued by the Minister of Canadian Heritage after December 20, 2002.

The definition is also amended to remove the requirement for the Minister of Canadian Heritage to provide estimates relevant to the calculation of the CFVPTC, in respect of certificates issued after 2003.

“investor”

The definition “investor” describes a person who is not actively engaged on a regular, continuous, and substantial basis in a Canadian film or video production business carried on through a permanent establishment in Canada. A CFVPTC may not be claimed in respect of a Canadian film or video production where an investor, or a partnership in which an investor has an interest, may deduct an amount in respect of the production.

The definition of investor is repealed, applicable to taxation years that end after November 14, 2003, as well as to productions in respect of which a qualifying production corporation has, in a return of income filed before November 14, 2003, claimed an amount under subsection 125.4(3) of the Act in respect of a labour expenditure incurred after 1997 in respect of the production.

“labour expenditure”

The definition “labour expenditure” describes the underlying expenditures of a qualified corporation in respect of a film or video production that will be eligible for the CFVPTC. The definition is amended concurrently with the repeal of the definition “investor” in subsection 125.4(1) and the amendment of subsections 125.4(2) and (4) of the Act, to include those production expenditures incurred by the qualified corporation for or on behalf of another person. That is, labour expenditures are no longer limited to those included in the cost to the qualified corporation of the production. The definition is also amended concurrently with the introduction of the definition “production commencement time”, which represents the time after which an eligible expenditure will qualify for the CFVPTC.

Where a particular corporation is a co-producer with another qualified corporation, and that other corporation has incurred expenditures for or on behalf of the taxpayer, new paragraph 125.4(2)(*d*) of the Act prevents the particular corporation from claiming a CFVPTC in respect of those expenditures.

For more information on subsections 125.4(2) and (4) and the definitions “investor” and “production commencement time”, refer to the commentary for those provisions.

“production commencement time”

For the purpose of the definition “labour expenditure” in subsection 125.4(1) of the Act, in order to be eligible for the CFVPTC, expenditures in respect of a film or video production must be incurred by a qualified corporation from the time that is the “final script stage” of the production. The definition “labour expenditure” is amended to instead refer to expenditures incurred after the production commencement time. The new definition “production commencement time” describes the time that is the latest of the following:

1. The time at which a qualified corporation or its parent company first incurs development labour costs for the development of property of the corporation that is script material on which a Canadian film or video production is based.
2. The first time at which the qualified corporation or its parent company acquires a right in respect of the story that is the basis of the final script. Such rights might include a published literary work, play or screenplay.
3. Two years before the date on which principal photography of the production begins.

It is intended that the in-house development labour costs of an initial draft of a script, as well as the cost of modifications, should fall within the period of production for which labour expenditures qualify for the CFVPTC. These in-house costs could include the cost to hire an independent writer to create a script on the basis of some other story or literary work for which the rights have been acquired by the corporation.

Existing conditions on eligible labour expenditures also apply to scriptwriting labour. (See, for example, amounts excluded from the definition “salary and wages” in subsection 125.4(1) of the Act, such as amounts determined by reference to profits or revenues). As well, the cost to acquire an initial script or any other right referred to above will, like other rights, not qualify. Such an expenditure represents the cost of a property, not a labour expenditure.

The new definition "script material" in subsection 125.4(1) is defined for the purpose of the definition "production commencement time".

"qualified labour expenditure"

The definition "qualified labour expenditure" describes the portion of a qualified corporation's labour expenditures upon which it can claim a 25% investment tax credit for a Canadian film or video production. Under a formula in the definition, qualified labour expenditures in respect of a production are limited to 48% of the amount by which the cost of the production to the qualified corporation exceeds any "assistance" in respect of that cost that has not been repaid.

Variable A in the formula is amended to increase the maximum amount of labour expenditure that qualify for the CFVPTC from 48% to 60% of the cost of the production. The definition is also amended concurrently with the repeal of the definition "investor" in subsection 125.4(1) and the amendment of subsections 125.4(2) and (4) of the Act, to include in the production cost those production expenditures incurred by the qualified corporation for or on behalf of another person. That is, production expenditures are no longer limited to those included in the cost to the qualified corporation of the production.

Where the taxpayer corporation is a co-producer with another qualified corporation, and that other corporation has incurred expenditures for or on behalf of the taxpayer, those expenditures are excluded from the formula by new paragraph 125.4(2)(*b*) of the Act.

For more information on subsections 125.4(2) and (4) and the definition "investor", refer to the commentary for those provisions.

"salary or wages"

For the purposes of the Canadian film and video production tax credit, the definition "salary or wages", which is generally defined in subsection 248(1) of the Act, does not include an amount described in section 7 of the Act (share option benefits) or any amount determined by reference to profits or revenues.

The definition "salary or wages" is amended to provide that it also does not include an amount paid to a person in respect of services rendered by the person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

"script material"

The new definition "script material" applies for the purpose of determining the "production commencement time" of a production. Script material is written material describing the story on which the production is based and, for greater certainty, includes a draft script, original story, screen story, narration, television production concept, outline or scene-by-scene schematic, synopsis or treatment. These descriptions are terms commonly used in the film production industry.

Rules Governing Labour Expenditure of a Corporation

ITA
125.4(2)

Subsection 125.4(2) of the Act provides rules that apply for the purpose of the definition "labour expenditure" in subsection 125.4(1). Paragraph 125.4(2)(*a*) provides that remuneration does not include remuneration determined by reference to profits or revenues.

Subsection 125.4(2) is amended to provide that it also applies to the definition "qualified labour expenditure" in subsection 125.4(1). In addition, paragraph 125.4(2)(*a*) is amended to provide that remuneration also does not included remuneration in respect of services rendered by a person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

A film or video production may be produced jointly by two or more qualified corporations. New paragraph 125.4(2)(*d*) of the Act is added to ensure that only one qualified corporation may claim a CFVPTC in respect of any particular expenditure. Where another qualified corporation supplies goods to or renders services for or on behalf of the taxpayer corporation, new paragraph 125.4(2)(*d*) provides that the related expenditure by the taxpayer is not a labour expenditure, a cost or capital cost of the production to the taxpayer. This provision does not affect the calculation of the cost of the production for other purposes of the Act.

Exception

ITA
125.4(4)

Subsection 125.4(4) of the Act provides that a Canadian film or video production tax credit is not available for a production if an investor may deduct an amount in respect of the production in computing its income for any taxation year. An investor is defined in subsection 125.4(1) to include, generally, any person, other than a prescribed person, that does not carry on a film or video production basis in Canada on a substantial basis.

Subsection 125.4(4) is amended concurrently with the repeal of the definition "investor", to deny the CFVPTC only in circumstances where the production or a person or partnership holding an interest in the production is a tax shelter investment for the purpose of section 143.2 of the Act.

However, section 1106 of the *Income Tax Regulations* includes a requirement that, for a film or video production to qualify as a Canadian film or video production eligible for the CFVPTC, a prescribed taxable Canadian corporation must retain worldwide ownership of copyright.

This amendment applies to taxation years that end after November 14, 2003, or if a qualifying production corporation has, in a return of income filed before November 14, 2003, claimed an amount under subsection 125.4(3) in respect of a labour expenditure incurred after 1997 in respect of the production.

Revocation of a Certificate

ITA
125.4(6)

Subsection 125.4(6) of the Act provides that a Canadian film or video production certificate in respect of a production may be revoked by the Minister of Canadian Heritage. The revocation of a certificate may occur if an incorrect statement or an omission was made in order to obtain the certificate, or if the production is not a Canadian film or video production. A revoked certificate is considered never to have been issued, so a Canadian film or video production tax credit under new subsection 125.4(3) cannot be claimed in respect of the decertified production.

Subsection 125.4(6) is amended, applicable after November 14, 2003, to clarify that a Canadian film or video production certificate may be revoked in respect of one episode of a television series without affecting the eligibility of other episodes in the series and that, in such a case, the expenditures attributable to that episode do not qualify for the CFVPTC.

Guidelines

ITA
125.4(7)

New subsection 125.4(7) of the Act, which applies in respect of Canadian film or video productions for which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, requires the Minister of Canadian Heritage to issue guidelines respecting the circumstances under which new conditions in the definition "Canadian film or video production certificate" in subsection 125.4(1) are met. For further details, see the commentary for that definition.

Clause 2

Information That May Be Communicated

ITA
241(3.3)

New subsection 241(3.3) of the Act, which applies on Royal Assent, is added to provide authority to the Minister of Canadian Heritage to publish certain information relevant to the Canadian film or video production tax credit program. The information includes the title of a film or video production in respect of which a certificate has been issued or revoked by that Minister, as well as the names of producers and artists in respect of which that Minister has allotted "points" in determining whether the production is a "Canadian film or video production" under proposed section 1106 of the Regulations.

Disclosure of Taxpayer Information

ITA
241(4)

Subsection 241(4) of the Act authorizes the limited communication of information to government officials outside of the Canada Revenue Agency.

New subparagraph 241(4)(*d*)(xv) allows information in respect of film or video productions to be communicated to officials of an office or agency of the government of Canada or of a province that provides a program of assistance for such productions. The information may be communicated only for the purpose of administration or enforcement under the program. New subparagraph 241(4)(*d*)(xvi) extends this authority to communicate information to an official of the Canadian Radio-television and Telecommunications Commission, solely for the purpose of the administration or enforcement of a regulatory function of that Commission.

New subparagraphs 241(4)(*d*)(xv) and (xvi) apply on Royal Assent.

Income Tax Regulations

Clause 3

Certificates Issued by the Minister of Canadian Heritage – Treaty Co-production

ITR
1106(3)

Subsection 1106(3) of the Regulations is amended as a consequence of the amendment of the definition "Canadian film or video production certificate" in subsection 125.4(1) of the Act to add a reference to a "treaty co-production". For further information, refer to the commentary for subsection 125.4(1).

This amendment applies after December 20, 2002.

Part 2 - Sales Tax

Excise Tax Act

Clause 4

Definitions

ETA
123(1)

Subsection 123(1) of the *Excise Tax Act* (the Act) defines terms used in Part IX of the Act and in the Schedules to the Act relating to the goods and services tax/harmonized sales tax (GST/HST).

The definitions "builder" and "substantial renovation" in subsection 123(1) are amended.

"builder"

The definition "builder" in subsection 123(1) is integral to the GST/HST treatment of residential housing. Generally, residential housing that is newly constructed or substantially renovated by a builder is subject to GST/HST when it is sold by the builder prior to having been occupied as a place of residence or lodging or when it is first rented out or occupied by the builder as a place of residence. Residential housing that is sold by a person other than a builder or that is sold by a builder after it has been rented out or occupied by the builder as a place of residence is generally exempt from GST/HST.

The current definition "builder" includes persons that substantially renovate various types of housing but not persons that substantially renovate residential condominium units. This current definition could result in residential condominium units that are substantially renovated for resale or rental not being subject to GST/HST, with other types of housing (e.g., single homes and traditional apartment buildings) that are substantially renovated being subject to GST/HST.

To correct this disparity, paragraph (*a*) of the definition "builder" is amended so that a person who substantially renovates a residential condominium unit is a "builder" for GST/HST purposes where the other conditions in the definition "builder" are met.

"substantial renovation"

Residential housing that is substantially renovated is generally treated the same as newly constructed housing for GST/HST purposes and is therefore subject to GST/HST under the same rules and conditions as newly constructed housing. In addition, an owner who is an individual and who substantially renovates their home may qualify for the GST/HST new housing rebate in respect of GST/HST costs incurred during the renovation.

Under the current definition "substantial renovation" in subsection 123(1), for residential housing to be considered substantially renovated, "all or substantially all" of the building must be removed or replaced other than certain core structural components of the building.

The current definition "substantial renovation" refers to the entire building in applying the "all or substantially all" test, which could encompass any non-residential parts of a building (e.g., commercial space) and residential condominium units owned by other persons. As a result, certain renovations of residential housing units that would otherwise be considered a "substantial renovation" may fall outside of the current definition.

Accordingly, the definition "substantial renovation" is amended to apply the "all or substantially all" test with respect to the whole or part of a residential complex in which one or more residential units are located.

The amendments to the definitions "builder" and "substantial renovation" in subsection 123(1) apply to a person's sales of substantially renovated housing made after Announcement Date and to such sales (other than sales that are deemed to have been made under section 191 of the Act) made on or before Announcement Date that would have been taxable sales had the amended definitions applied and for which an amount as or on account of tax was charged, collected or remitted under Part IX of the Act. The amendments also apply to a

person's sales of substantially renovated housing that would be deemed to have been made under section 191 on or before Announcement Date if the definitions "builder" and "substantial renovation" were read as amended by this amending clause and the person reported an amount as or on account of GST/HST as a result of the person applying section 191 in respect of the substantially renovated housing, in the person's GST/HST return:

- that is filed or required to be filed on or before Announcement Date; or
- that is for a reporting period that begins on or before Announcement Date, that is required to be filed after Announcement Date and that is filed on or before the due date for the return.

In addition, under a transitional rule, a person that makes or is deemed to make a taxable sale of residential housing after Announcement Date may be allowed to claim input tax credits relating to the taxable sale that would normally be disallowed as of Announcement Date due to the limitation periods in which to claim the input tax credits. The transitional rule recognizes that a person that makes or is deemed to make taxable sales as a result of the amendments to the definitions "builder" and "substantial renovation" may not be able to claim the input tax credits in respect of those taxable sales within the statutory time limit. This transitional rule applies where a person makes or is deemed to make a taxable sale of a residential complex after Announcement Date that would not be a taxable sale if the definitions "builder" and "substantial renovation" applied as they read before this amending clause is assented to. The person must be entitled to claim an input tax credit, or amount that would be an input tax credit if the definitions "builder" or "substantial renovation" were read as amended by this amending clause, in respect of property or services acquired, imported or brought into a participating province by the person during a reporting period that ends on or before Announcement Date for consumption or use in making the taxable sale of the complex. However, input tax credits allowed under this transitional rule (referred to as "unclaimed credits") must not have been previously claimed or deducted in determining the person's net tax for any reporting period the return for which is filed or is required to be filed on or before Announcement Date. If these conditions are met, unclaimed credits in relation to the complex are deemed to be input tax credits for a reporting period of the person that includes Announcement Date and not to be input tax credits of the person for any other period. As a result, the person will be entitled to claim the unclaimed credits within the applicable limitation period that begins after the end of the reporting period that includes Announcement Date, in accordance with subsection 225(4) of the Act.

Clause 5

Subsidized Residential Complexes

ETA
191.1(2)

Under the self-supply rules in section 191 of the Act, when a builder constructs or substantially renovates residential housing and subsequently rents it out or occupies it as a place of residence before being sold, the builder is required to pay GST/HST as if the housing was sold and re-purchased by the builder (referred to as "self-supply"). The builder is deemed to have paid and collected GST/HST calculated based on the fair market value of the housing at the time of the self-supply and the GST/HST rate that is in effect at the time of the self-supply in the province in which the housing is situated.

Section 191.1 of the Act provides for a special rule that is used to determine the amount of GST/HST the builder is deemed to have paid and collected on the self-supply where the housing in question is government-funded housing (referred to as "subsidized housing") intended for certain target groups, such as seniors or individuals with a disability. This rule ensures that the builder's GST/HST liability on the self-supply of subsidized housing is at least equal to the input tax credits or rebates the builder would be entitled to claim in respect of the GST/HST paid in respect of the construction of the housing.

This is accomplished through the use of a special rule requiring the builder to pay, on the self-supply, the GST/HST payable in respect of the housing inputs (e.g., the land forming part of the subsidized housing and the

building materials and services used to construct or substantially renovate the subsidized housing) where the GST/HST calculated on the fair market value of the subsidized housing at the time of self-supply is less than total of the GST/HST payable in respect of the housing inputs.

Where the GST/HST payable in respect of the housing inputs is at a different tax rate than would otherwise be the case if the housing inputs were acquired at the time of self-supply and in the province where the subsidized housing is situated, this special rule can lead to anomalous results. For example, under the special rule, a particular builder that acquired land when the rate of GST was 7% would pay tax based on that higher rate even if a 5% GST rate was in effect at the time of self-supply whereas another builder of subsidized housing paying tax on self-supply that self-supplies housing at the same time as the particular builder but purchased the land at the 5% GST rate would only pay tax at the 5% GST rate. Also, due to varying rates of tax, similar anomalies can occur where housing inputs are acquired outside the province where the housing is located.

In addition, if a Canadian builder purchases housing inputs outside Canada and imports them exclusively for use in commercial activities (e.g., the construction of subsidized housing), the provincial component of the HST generally does not apply. Similarly, if the imported housing inputs are services (e.g., architectural services) imported for use exclusively in commercial activities, neither the GST nor the provincial component of the HST is payable. As a result, a builder that imported housing inputs may be required to pay a lower amount of GST/HST on self-supply of the housing than another builder of subsidized housing that pays tax on self-supply but purchased all of the housing inputs in the province where the housing is situated.

Similarly, anomalous results can occur if housing inputs are sourced from a province other than the province in which the housing is situated and the provincial component of the HST, if any, is different in the source province than in the province in which the subsidized housing is situated. For example, if a builder in Manitoba purchases housing inputs in Ontario to construct subsidized housing in Manitoba, the GST/HST payable upon self-supply of the subsidized housing would be higher (13%) than if the builder had purchased the same inputs in Manitoba (5%).

To address these anomalies this clause amends the special rule for subsidized housing in subsection 191.1(2) so that the GST/HST payable in respect of housing inputs for the purposes of this rule is equal to the total GST/HST that would have been payable on the acquisition of those housing inputs if:

- the GST/HST rate applicable for the housing inputs was the GST/HST rate applicable at the time of self-supply; and
- the housing inputs had been acquired in the province in which the housing is situated.

The amendment does not change any relief currently available for the acquisition of housing inputs that do not attract GST/HST where those inputs are relieved from GST/HST for reasons other than their importation, or bringing into a participating province, for use exclusively in the course of commercial activities.

For example, relief from GST/HST would still be available for:

- housing inputs (such as land) that were purchased before GST came into effect (pre-1991);
- housing inputs that are purchased GST/HST exempt (such as land that was previously used in exempt activities); or
- with respect to the provincial component of the HST, housing inputs that were purchased prior to the province joining the HST (such as land purchased in Ontario prior to July 1, 2010).

This amendment applies in respect of any self-supply of subsidized housing that occurs on or after April 1, 2013.

However, an exception would apply to self-supplies of subsidized housing where construction of the housing commenced on or before Announcement Date. For these transitional self-supplies, for the purpose of applying the special rule in subsection 191.1(2), the builder is permitted to determine the tax payable in respect of

housing inputs using either the current rule or the proposed rule, whichever results in a lower amount of tax payable.

A further transitional measure applies if an amount has been taken into account in assessing the net tax of a builder of subsidized housing under section 296 of the Act and the amount, or part of the amount, is deemed not to have been collected under the applicable self-supply rule as result of the application of the amended special rule for subsidized housing discussed above. The transitional measure allows the builder to request in writing, within one year after the day on which this amending clause is assented to, that the Minister of National Revenue assess, reassess, or make an additional assessment of, the net tax to take into account the effect of the amended special rule and, if a request is made, provides for an assessment, reassessment or additional assessment to be made.

Clause 6

Public Service Body Rebates

ETA
259

Existing section 259 of the Act provides for rebates of GST/HST to selected public service bodies, charities and substantially government-funded non-profit organizations.

Rebate for Health Care Facility

ETA
259(4.11)

Under subsection 259(1), "charity" is defined, for the purposes of section 259, to include non-profit organizations that operate non-profit facilities described in paragraph (*c*) of the definition "health care facility" in Part II of Schedule V to the Act so that these organizations are eligible for the same public service body rebates in respect of the operation of these facilities that are available to organisations that qualify as registered charities under the *Income Tax Act*.

New subsection 259(4.11) is added to clarify that a non-profit organization that qualifies as a charity for the purposes of section 259 only because it operates such a health care facility is entitled to claim a public service body rebate as a charity only to the extent that the GST/HST it incurs relates to its intended consumption, use or supply of property or services in the course of activities engaged in by the non-profit organization in the course of operating the health care facility.

Extent of Consumption, Use or Supply – Relevant Time

ETA
259(4.12)

New subsection 259(4.12) is added consequential to the addition of new subsection 259(4.11), which clarifies that a non-profit organization that qualifies as a charity for purposes of section 259 only because it operates a health care facility described in paragraph (*c*) of the definition "health care facility" in Part II of Schedule V to the Act is entitled to claim a public service body rebate as a charity only to the extent that the GST/HST it incurs relates to its intended consumption, use or supply of property or services in the course of activities engaged in by the non-profit organization in the course of operating the health care facility.

New subsection 259(4.12) describes the relevant times for determining the extent to which a property or a service is intended for consumption, use or supply in the course of activities engaged in by the non-profit organization in the course of operating the health care facility. The relevant times for making this determination are consistent with the relevant times (e.g., the time of importation in relation to tax attributable to the

importation of a good) for determining the extent of intended consumption, use or supply in the course of other activities for which a public service body rebate can be claimed.

New subsections 259(4.11) and (4.12) apply for the purposes of determining a rebate under section 259 for which an application is filed on or after the day that is ten years before Announcement Date.

Clause 7

Refining Services

ETA
Sch. VI, Pt.V, section 6.3

New section 6.3 of Part V of Schedule VI to the Act has the effect of zero-rating services of refining a metal, including a precious metal, to produce a precious metal where the services are supplied to an unregistered non-resident person. An assaying, gem removal, or similar service supplied in conjunction with such refining services is also zero-rated.

New section 6.3 applies to any supply made after Announcement Date and to any supply made on or before that day if the supplier did not, on or before that day, charge or collect any amount as or on account of GST/HST.

A special rule applies to any supplier who has not charged or collected GST/HST in respect of a supply of a service that is zero-rated under new section 6.3 but who has accounted for tax in respect of the supply in determining the supplier's net tax in a return filed on or before Announcement Date for a reporting period that ended after 2010. Such a supplier can apply for a rebate under section 261 of the Act in respect of that tax, even if the normal time limit for the rebate has expired or the amount has been assessed, before the later of the day that is one year after the day that this Act receives royal assent and the day that is two years after the day on which the supplier's return for the reporting period was filed.

Non-Taxable Imported Goods (GST/HST) Regulations

Clause 8

Definitions

Non-Taxable Imported Goods (GST/HST) Regulations
2

Existing section 2 of the *Non-Taxable Imported Goods (GST/HST) Regulations* (the Regulations) contains definitions of terms used in the Regulations.

Section 2 is amended by adding the definition "tax-relieved supply". This term means a supply of goods in respect of which tax is relieved generally because the goods are exported or because the supply was made outside Canada.

This amendment comes into force on Announcement Date.

Clause 9

Prescribed Goods

Non-Taxable Imported Goods (GST/HST) Regulations
3

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

Repeal

Non-Taxable Imported Goods (GST/HST) Regulations
3(*h*)(iv)

Subparagraph 3(*h*)(iv) is repealed. Generally, this subparagraph prescribed railway cars that met the conditions for remission that were described in the *Railway Rolling Stock (Canadian Domestic Use) Remission Order No. 2*. Railway cars that meet those conditions are now prescribed under new paragraph 3(*h.1*).

This amendment is deemed to have come into force on January 1, 1998.

Prescribed Railway Cars

Non-Taxable Imported Goods (GST/HST) Regulations
3(*h.1*)

Section 3 is amended by adding new paragraph (*h.1*), which prescribes railway cars that meet the conditions for remission that were described in the *Railway Rolling Stock (Canadian Domestic Use) Remission Order No. 2*. Generally, railway passenger, baggage or freight cars that are imported temporarily for Canadian domestic use are prescribed if railway cars manufactured or produced in Canada of the same kind are not available in Canada at a reasonable cost. This amendment replaces the reference to the remission order with specific rules in the GST/HST regulations.

This amendment is deemed to have come into force on January 1, 1998.

Goods Returned to Canada

Non-Taxable Imported Goods (GST/HST) Regulations
3(*n*)

Tariff item Nos. 9813.00.00 and 9814.00.00 of the *Customs Tariff* describe goods that originated in Canada or were previously accounted for under the *Customs Act* and are returned to Canada without having been advanced in value or improved in condition. Such goods are commonly referred to as “Canadian goods returned”.

Section 3 is amended by adding new paragraph (*n*), which sets out the conditions for goods that are classified under tariff item No. 9813.00.00 or 9814.00.00, or that would be so classified if the goods were not previously relieved of customs duties, to qualify as prescribed goods and therefore be relieved from GST/HST imposed on importations under Division III of Part IX of the Act.

In the case where the goods are being imported for the first time since the goods were last supplied and were delivered or made available to the recipient of that last supply, the goods are generally prescribed in the following situations:

- The last supply of the goods before the importation was made in Canada and was not zero-rated under Part V of Schedule VI to the Act and the recipient of that supply was not entitled under subsection 252(1) of the Act to claim a rebate. This situation mainly covers goods purchased in Canada in respect of which tax was paid and not subsequently relieved.
- The last supply of the goods before the importation was made by way of sale to a recipient that is returning the goods to the supplier because the sale was cancelled, the goods are defective or the recipient exported the goods intending to sell them but was unsuccessful.
- The last supply of the goods before the importation was made by the importer outside Canada by way of lease and the goods are being imported after the termination of that lease.

In the case where the goods have never been supplied or there has not been a supply of the goods since their last importation, the goods are prescribed if the goods were not previously imported or, in respect of the last importation of the goods, the value of the goods was not determined under the *Value of Imported Goods*

(GST/HST) Regulations (other than under sections 7, 8 and 12 of those Regulations). This case mainly covers goods that were not previously imported temporarily.

This amendment is deemed to have come into force on December 31, 1990.

Updated Cross-References

Non-Taxable Imported Goods (GST/HST) Regulations
3(*n*)

The preamble of new paragraph 3(*n*) is amended to update cross-references to the *Customs Tariff* consequential to changes made to that Act.

The amendment applies to goods imported on or after January 1, 1998 and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

Tax-Relieved Supply

Non-Taxable Imported Goods (GST/HST) Regulations
3(*n*)(i)(A)

Clause 3(*n*)(i)(A) of new paragraph 3(*n*) is amended to specify that the only condition for goods to qualify as prescribed goods under that clause is that the last supply of the goods must not have been a tax-relieved supply (as newly defined in amended subsection 2(1) of the Regulations).

This amendment applies to goods imported on or after Announcement Date and to goods imported before that day that are, on or after that day, accounted for under the *Customs Act* or released in the circumstances set out in paragraph 32(2)(*b*) of that Act.

Tax-Relieved Supply

Non-Taxable Imported Goods (GST/HST) Regulations
3(*n*)(i)(B)

The preamble of clause 3(*n*)(i)(B) of new paragraph 3(*n*) is amended to specify that, for goods to qualify as prescribed goods under that clause, the supplier of the goods must not have acquired the goods by way of a tax-relieved supply (as newly defined in amended subsection 2(1)).

This amendment applies to goods imported on or after Announcement Date and to goods imported before that day that are, on or after that day, accounted for under the *Customs Act* or released in the circumstances set out in paragraph 32(2)(*b*) of that Act.

Tax-Relieved Supply

Non-Taxable Imported Goods (GST/HST) Regulations
3(*n*)(i)(C)

Clause 3(*n*)(i)(C) of new paragraph 3(*n*) is amended by renumbering existing subclauses (I) and (II) as subclauses (II) and (III) respectively and by adding new subclause (I), which specifies that, for goods to qualify as prescribed goods under clause 3(*n*)(i)(C), the importer of the goods must not have acquired the goods by way of a tax-relieved supply (as newly defined in amended subsection 2(1)).

This amendment applies to goods imported on or after Announcement Date and to goods imported before that day that are, on or after that day, accounted for under the *Customs Act* or released in the circumstances set out in paragraph 32(2)(*b*) of that Act.

Updated Cross-References

Non-Taxable Imported Goods (GST/HST) Regulations
3(*n*)(ii)

Subparagraph 3(*n*)(ii) of new paragraph 3(*n*) is amended so that goods can qualify as prescribed goods under that subparagraph where, in respect of the last importation of the goods, the value of the goods was determined under section 13 of the *Value of Imported Goods (GST/HST) Regulations*, which was added to those regulations effective March 1991.

This amendment applies to goods that are released after March 1991.

Last Importation

Non-Taxable Imported Goods (GST/HST) Regulations
3(*n*)(ii)

Subparagraph 3(*n*)(ii) of new paragraph 3(*n*) is further amended to specify that, in order for goods to qualify as prescribed goods under that subparagraph, the goods that have been imported previously must not have been last imported in circumstances in which tax under section 212 of the Act

- was payable but was relieved only because the goods were subsequently exported; or
- was not payable only because the goods were subsequently exported.

Where tax was relieved in respect of the last importation of goods because the goods were subsequently exported, the goods should be subject to tax in respect of their current importation to ensure that their use or consumption in Canada is not tax-free.

This amendment applies to goods imported on or after Announcement Date and to goods imported before that day that are, on or after that day, accounted for under the *Customs Act* or released in the circumstances set out in paragraph 32(2)(*b*) of that Act.

Taxes, Duties and Fees (GST/HST) Regulations

Clause 10

Federal and Provincial Taxes

Taxes Duties and Fees (GST/HST) Regulations
3

Existing section 3 of the *Taxes Duties and Fees (GST/HST) Regulations* prescribes certain provincial taxes that are excluded from the GST/HST base. The main exclusions from the GST/HST base are provincial land transfer taxes, general provincial sales taxes and any specific ad valorem provincial tax that is imposed on property or a service in lieu of a general provincial sales tax.

Subparagraphs 3(*a*)(xvii) and 3(*c*)(xiii) are amended to update the references to the *St. John's Assessment Act*, R.S.N.L. 1990, c. S-1, which has been replaced by the *City of St. John's Municipal Taxation Act*, S.N.L. 2006, c. C-17.1. The amended subparagraph 3(*c*)(xiii) is then repealed as the accommodation tax referred to in that subparagraph is not a land transfer tax, a general provincial sales tax or a specific tax imposed on property or a service in lieu of a general provincial sales tax.

The amendments correcting the outdated references are deemed to have come into force on January 1, 2007 and the repeal of subparagraph 3(*c*)(xiii) comes into force on the first day of the first calendar month that begins on or after the day that is 60 days after Announcement Date.

Publications Supplied by a Registrant (GST/HST) Regulations

Clause 11

Definitions

Publications Supplied by a Registrant (GST/HST) Regulations
2

The *Publications Supplied by a Registrant (GST/HST) Regulations* (the Regulations) relate to the GST/HST treatment of imported publications. Existing section 2 of the Regulations contain definitions of terms used in the Regulations.

The definition "registration number" in section 2 is amended to replace the reference to subsection 241(1) of the Act with a reference to section 241. This amendment is consequential to the addition, effective July 1, 2010, of the authority to assign a registration number to a group of certain selected listed financial institutions under subsection 241(1.1).

This amendment is deemed to have come into force on July 1, 2010.

Credit Note and Debit Note Information (GST/HST) Regulations

Clause 12

Prescribed Information

Credit Note and Debit Note Information (GST/HST) Regulations
3

The *Credit Note and Debit Note Information (GST/HST) Regulations* (the Regulations) prescribe information that must be contained in a credit or debit note issued for the purposes of section 232 of the Act.

Existing paragraph 3(*b*) of the Regulations is amended to replace the reference to the registration number assigned under subsection 241(1) of the Act with a reference to the registration number assigned under section 241. This amendment is consequential to the addition, effective July 1, 2010, of the authority to assign a registration number to a group of certain selected listed financial institutions under subsection 241(1.1).

This amendment is deemed to have come into force on July 1, 2010.

Input Tax Credit Information (GST/HST) Regulations

Clause 13

Prescribed Information

Input Tax Credit Information (GST/HST) Regulations
3

The *Input Tax Credit Information (GST/HST) Regulations* (the Regulations) prescribe the information that a registrant is to obtain before filing a return in which an input tax credit is claimed.

Existing subparagraph 3(*b*)(i) of the Regulations is amended to replace the reference to the registration number assigned under subsection 241(1) of the Act with a reference to the registration number assigned under section 241. This amendment is consequential to the addition, effective July 1, 2010, of the authority to assign a registration number to a group of certain selected listed financial institutions under subsection 241(1.1).

This amendment is deemed to have come into force on July 1, 2010.