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EXCISE TAX ACT

New Harmonized Value-added Tax System Regulations

P.C. 2010-701 May 31, 2010

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to sections 277 (see footnote a) and 277.1 (see footnote b) of the *Excise Tax Act* (see footnote c), hereby makes the annexed *New Harmonized Value-added Tax System Regulations*.

NEW HARMONIZED VALUE-ADDED TAX SYSTEM REGULATIONS

INTERPRETATION

Definitions

1. The following definitions apply in these Regulations.

“Act”
« *Loi* »

“Act” means the *Excise Tax Act*.

“continuous journey”
« *voyage continu* »

“continuous journey” has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act.

PART 1

PLACE OF SUPPLY

DIVISION 1

INTERPRETATION

Definitions

2. The following definitions apply in this Part.

“Canadian element”
« *élément canadien* »

“Canadian element” of a service means the portion of the service that is performed in Canada.

“Canadian rights”
« *droits canadiens* »

“Canadian rights”, in respect of intangible personal property, means that part of the property that can be used in Canada.

“computer-related service”
« *service informatique* »

“computer-related service” means

(a) a technical support service that is provided by means of telecommunications and relates to the operation or use of computer hardware or software; or

(b) a service involving the electronic storage of information and computer-to-computer transfer of information.

“final recipient”
« *dernier acquéreur* »

“final recipient”, in respect of a computer-related service or access to the Internet, means a person that is the recipient of a supply of the service or access and that acquires it otherwise than for the purpose of supplying it to another person.

“RDSP”
« *REEI* »

“RDSP” means a registered disability savings plan as defined in subsection 248(1) of the *Income Tax Act*.

“RESP”
« *REEE* »

“RESP” means a registered education savings plan as defined in subsection 248(1) of the *Income Tax Act*.

“RRIF”
« *FERR* »

“RRIF” means a registered retirement income fund as defined in subsection 248(1) of the *Income Tax Act*.

“RRSP”
« *REER* »

“RRSP” means a registered retirement savings plan as defined in subsection 248(1) of the *Income Tax Act*.

“specified location”
« *emplacement déterminé* »

“specified location” of a supplier means

- (a) a permanent establishment of the supplier; or
- (b) a vending machine.

“TFSA”
« CÉLI »

“TFSA” has the same meaning as in subsection 248(1) of the *Income Tax Act*.

Deemed delivery

3. For the purposes of this Part, property is deemed to be delivered in a particular province by a supplier and is deemed not to be delivered in any other province by the supplier if the supplier

(a) ships the property to a destination in the particular province that is specified in the contract for carriage of the property or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination; or

(b) sends the property by mail or courier to an address in the particular province.

Application

4. (1) This Part applies for the purposes of section 3 of Part IX of Schedule IX to the Act.

Transition — Ontario and British Columbia

(2) For the purposes of applying the provisions of Part 3 in relation to the application of this Part between February 25, 2010 and July 1, 2010, the following rules apply:

(a) Ontario and British Columbia are deemed to be participating provinces;

(b) the tax rate for Ontario is deemed to be 8%; and

(c) the tax rate for British Columbia is deemed to be 7%.

DIVISION 2

INTANGIBLE PERSONAL PROPERTY

Application

5. This Division does not apply to intangible personal property to which Part VII or VIII of Schedule IX to the Act applies.

Canadian rights primarily in participating provinces

6. (1) A supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can only

be used primarily in participating provinces is made in a participating province if an equal or greater proportion of those Canadian rights cannot be used in another participating province.

Canadian rights primarily in participating provinces

(2) Subject to subsection (1), a supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can only be used primarily in participating provinces is made in a particular participating province if,

(a) in the case of a supply for which the value of the consideration is \$300 or less that is made through a specified location of the supplier in the particular participating province and in the presence of an individual who is, or who acts on behalf of, the recipient, the intangible personal property can be used in the particular participating province;

(b) in the case of a supply that is not determined under paragraph (a) to be made in a participating province, the following conditions are satisfied:

(i) in the ordinary course of business of the supplier, the supplier obtains an address (in this paragraph referred to as the “particular address”) that is

(A) if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier,

(B) if the supplier obtains more than one address described in clause (A), the address described in that clause that is most closely connected with the supply, or

(C) in any other case, the address in Canada of the recipient that is most closely connected with the supply,

(ii) the particular address is in the particular participating province, and

(iii) the intangible personal property can be used in the particular participating province; and

(c) in the case of a supply that is not determined under paragraph (a) or (b) to be made in a participating province, the tax rate for the particular participating province is the highest among the tax rates for the participating provinces in which the intangible personal property can be used.

Canadian rights primarily in non-participating provinces

7. A supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can only be used primarily in non-participating provinces is made in a non-participating province.

Canadian rights — no primary location of use

8. A supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can be used otherwise than only primarily in participating provinces and otherwise than only primarily outside participating provinces is made in a particular province if,

(a) in the case of a supply for which the value of the consideration is \$300 or less that is made through a specified location of the supplier in the particular province and in the presence of an individual who is, or who acts on behalf of, the recipient, the intangible personal property can be used in the particular province;

(b) in the case of a supply that is not determined under paragraph (a) to be made in a province, the following conditions are satisfied:

(i) in the ordinary course of business of the supplier, the supplier obtains an address (in this paragraph referred to as the "particular address") that is

(A) if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier,

(B) if the supplier obtains more than one address described in clause (A), the address described in that clause that is most closely connected with the supply, or

(C) in any other case, the address in Canada of the recipient that is most closely connected with the supply,

(ii) the particular address is in the particular province, and

(iii) the intangible personal property can be used in the particular province; and

(c) in the case of a supply that is not determined under paragraph (a) or (b) to be made in a province, the tax rate for the particular province is the highest among the tax rates for the provinces in which the intangible personal property can be used.

Intangible personal property that relates to real property

9. A supply of intangible personal property that relates to real property is made

(a) in a participating province if the real property that is situated in Canada is situated primarily in participating provinces and

(i) an equal or greater proportion of the real property is not situated in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the real property is situated in another participating province; and

(b) in a non-participating province if the real property that is situated in Canada is not situated primarily in participating provinces.

Intangible personal property that relates to tangible personal property

10. A supply of intangible personal property that relates to tangible personal property is made

(a) in a participating province if the tangible personal property that is ordinarily located in Canada is ordinarily located primarily in participating provinces and

(i) an equal or greater proportion of the tangible personal property is not ordinarily located in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the tangible personal property is ordinarily located in another participating province; and

(b) in a non-participating province if the tangible personal property that is ordinarily located in Canada is not ordinarily located primarily in participating provinces.

Same highest rate

11. If a supply of intangible personal property cannot be determined under paragraph 6(2)(c) or 8(c) or subparagraph 9(a)(ii) or 10(a)(ii) to be made in a single participating province because the tax rates for two or more participating provinces (each of which is referred to in this section as a “specified province”) are the same, the supply is made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

DIVISION 3

SERVICES

Application

12. This Division does not apply to a service to which any of sections 4 to 5 of Part VI or Part VII or VIII of Schedule IX to the Act applies.

General rule for services — address obtained

13. (1) Subject to sections 14 to 17, a supply of a service is made in a province if, in the ordinary course of business of the supplier, the supplier obtains an address (in this subsection referred to as the “particular address”) in the province that is

(a) if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier;

(b) if the supplier obtains more than one address described in paragraph (a), the address described in that paragraph that is most closely connected with the supply; or

(c) in any other case, the address in Canada of the recipient that is most closely connected with the supply.

General rule for services — no address obtained

(2) Subject to subsection (1) and sections 14 to 17, a supply of a service is made

(a) in a participating province if the Canadian element of the service is performed primarily in participating provinces and

(i) an equal or greater proportion of the Canadian element of the service is not performed in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the service is performed in another participating province; and

(b) in a non-participating province if the Canadian element of the service is not performed primarily in participating provinces.

Services in relation to real property

14. A supply of a service in relation to real property is made

(a) in a participating province if the real property that is situated in Canada is situated primarily in participating provinces and

(i) an equal or greater proportion of the real property is not situated in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the real property is situated in another participating province; and

(b) in a non-participating province if the real property that is situated in Canada is not situated primarily in participating provinces.

Services in relation to tangible personal property

15. If a person makes a supply of a service in relation to tangible personal property that is situated in one or more provinces at the particular time when the Canadian element of the service begins to be performed and, at all times when the Canadian element of the service is performed, the tangible personal property remains in the province in which it was situated at the particular time, the supply is made

(a) in a participating province if the tangible personal property is situated primarily in participating provinces at the particular time and

(i) an equal or greater proportion of the tangible personal property is not situated in another participating province at the particular time, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the tangible personal property is situated in another participating province at the particular time; and

(b) in a non-participating province if the tangible personal property is not situated primarily in participating provinces at the particular time.

Services in relation to tangible personal property

16. If a person makes a supply of a service in relation to tangible personal property that is situated in one or more provinces at the particular time when the Canadian element of the service

begins to be performed and, at any time during the period when the Canadian element of the service is performed, the tangible personal property does not remain in the province in which it was situated at the particular time, the supply is made

(a) in a participating province if the tangible personal property is situated primarily in participating provinces at any time when the service is performed, the Canadian element of the service is performed primarily in participating provinces and

(i) an equal or greater proportion of the service is not performed in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the service is performed in another participating province; and

(b) in a non-participating province if the tangible personal property is not situated primarily in participating provinces at all times when the service is performed or the Canadian element of the service is not performed primarily in participating provinces.

Personal services

17. A supply of a service (other than an advisory, consulting or professional service) all or substantially all of which is performed in the presence of the individual to whom it is rendered is made

(a) in a participating province if the Canadian element of the service is performed primarily in participating provinces and

(i) an equal or greater proportion of the service is not performed in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the service is performed in another participating province; and

(b) in a non-participating province if the Canadian element of the service is not performed primarily in participating provinces.

Same highest rate

18. If a supply of a service cannot be determined under any of subparagraphs 13(2)(a)(ii), 14(a)(ii), 15(a)(ii), 16(a)(ii) and 17(a)(ii) to be made in a single participating province because the tax rates for two or more participating provinces (each of which is referred to in this section as a "specified province") are the same, the supply is made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

DIVISION 4

TRANSPORTATION SERVICES

Application

19. This Division applies despite Divisions 2 and 3.

Definitions

20. The following definitions apply in this Division.

“leg”
« *étape* »

“leg” of a journey on a conveyance means a part of the journey that begins where passengers embark or disembark the conveyance or where it is stopped to allow for its servicing or refuelling and ends where it is next stopped for any of those purposes.

“origin”
« *point d’origine* »

“origin” of a continuous journey has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act.

“stopover”
« *escale* »

“stopover”, in respect of a continuous journey, has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act except that it does not include, in the case of a continuous journey of an individual or group of individuals that does not include transportation by air and the origin and termination of which are in Canada, any place outside Canada where, at the time the journey begins, the individual or group is not scheduled to be outside Canada for an uninterrupted period of at least 24 hours during the course of the journey.

“termination”
« *destination finale* »

“termination” of a continuous journey has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act.

Passenger transportation services

21. A supply of a passenger transportation service is made

(a) in a participating province if the passenger transportation service

(i) is part of a continuous journey in respect of which there is a ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

(A) the origin is a place in the participating province, and

(B) the termination and all stopovers in respect of the continuous journey are in Canada,

(ii) is part of a continuous journey in respect of which there is no ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

(A) the passenger transportation service included in the continuous journey that is provided first cannot begin otherwise than in the participating province, and

(B) the termination and all stopovers in respect of the continuous journey are in Canada, or

(iii) is not part of a continuous journey and

(A) the passenger transportation service begins in the participating province, and

(B) the passenger transportation service ends in Canada; and

(b) in a non-participating province if the passenger transportation service

(i) is part of a continuous journey in respect of which there is a ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

(A) the origin is a place outside the participating provinces, or

(B) the termination or a stopover in respect of the continuous journey is outside Canada,

(ii) is part of a continuous journey in respect of which there is no ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

(A) the passenger transportation service included in the continuous journey that is provided first cannot begin in a participating province, or

(B) the termination or a stopover in respect of the continuous journey is outside Canada, or

(iii) is not part of a continuous journey and

(A) the passenger transportation service begins outside the participating provinces, or

(B) the passenger transportation service ends outside Canada.

Passenger transportation pass — special case

22. (1) If, at the time when a supply of intangible personal property that is, or is similar to, a passenger transportation pass entitling an individual to one or more passenger transportation services is made, the supplier can determine that each passenger transportation service could not begin otherwise than in the same participating province and would terminate in Canada, the supply of the intangible personal property is made in that participating province.

Passenger transportation pass — special case

(2) If, at the time when a supply of intangible personal property that is, or is similar to, a passenger transportation pass entitling an individual to one or more passenger transportation

services is made, the supplier can determine that each passenger transportation service could not begin otherwise than in a non-participating province or would terminate outside Canada, the supply of the intangible personal property is made in a non-participating province.

Property or services supplied on board a conveyance

23. If a supply of property or a service (other than a passenger transportation service) is made to an individual on board a conveyance in the course of a business of supplying passenger transportation services and the property or service is delivered, performed or made available on board the conveyance during any leg of the journey that begins in any province and ends in any province, the supply is made in the province in which that leg of the journey begins.

DIVISION 5

SPECIAL CASES

Application

24. This Division applies despite Divisions 2 and 3.

Customs brokerage services

25. (1) If a supply of a service is made in respect of the importation of goods and the service is the arranging for their release (as defined in subsection 2(1) of the *Customs Act*) or the fulfilling, in respect of the importation, of any requirement under that Act or the *Customs Tariff* to account for the goods, to report, to provide information or to remit any amount,

(a) if the goods are accounted for as commercial goods (as defined in subsection 212.1(1) of the Act) under section 32 of the *Customs Act*, the supply is made in the province in which the goods are situated at the time of their release;

(b) if paragraph (a) does not apply and tax, calculated at the tax rate for a participating province, is imposed under subsection 212.1(2) of the Act, or would be so imposed if subsections 212.1(3) and (4) and section 213 of the Act did not apply, in respect of the importation, the supply is made in that participating province; and

(c) in any other case, the supply is made in a non-participating province.

Exception

(2) Subsection (1) does not apply to the supply of any service provided in relation to an objection, appeal, redetermination, re-appraisal, review, refund, abatement, remission or drawback, or in relation to a request for any of the foregoing.

Railway rolling stock

26. (1) A supply of railway rolling stock otherwise than by way of sale is made in a particular province if the supplier delivers the rolling stock or makes it available to the recipient of the supply in that province.

Place of supply for lease interval

(2) If a supply of railway rolling stock is made in a particular province by way of lease, licence or similar arrangement for the first lease interval (within the meaning of subsection 136.1(1) of the Act) in the period during which possession or use of the rolling stock is provided under the arrangement, the supply of the rolling stock for each of the other lease intervals in that period is, despite subsection (1), made in that province.

Renewal of agreement

(3) Subject to subsections (4) and (5), for the purposes of this section, if continuous possession or use of railway rolling stock is given by a supplier to a recipient throughout a period under two or more successive leases, licenses or similar arrangements entered into between the supplier and the recipient, the rolling stock is deemed to have been delivered or made available to the recipient under each of those arrangements at the location at which it is delivered or made available to the recipient under the first of those arrangements.

Agreements entered into before April 1, 1997

(4) If a supply of railway rolling stock otherwise than by way of sale is made under a particular agreement that is in effect on April 1, 1997 and, under the particular agreement, the rolling stock was delivered or made available to the recipient before that day,

(a) the rolling stock is deemed to have been delivered or made available to the recipient under the particular agreement outside the participating provinces; and

(b) if the recipient retains continuous possession or use of the rolling stock under an agreement (in this paragraph referred to as the “renewal agreement”) with the supplier that immediately succeeds the particular agreement, subsection (3) applies as if the renewal agreement were the first arrangement between the supplier and the recipient for the supply of the rolling stock.

Agreements entered into before July 1, 2010

(5) If a supply of railway rolling stock otherwise than by way of sale is made under a particular agreement that is in effect on July 1, 2010 and, under the particular agreement, the rolling stock was delivered or made available to the recipient in Ontario or British Columbia before that day,

(a) the rolling stock is deemed to have been delivered or made available to the recipient under the particular agreement outside the participating provinces; and

(b) if the recipient retains continuous possession or use of the rolling stock under an agreement (in this paragraph referred to as the “renewal agreement”) with the supplier that immediately succeeds the particular agreement, subsection (3) applies as if the renewal agreement were the first arrangement between the supplier and the recipient for the supply of the rolling stock.

Services rendered in connection with litigation

27. A supply of a service rendered in connection with criminal, civil or administrative litigation (other than a service rendered before the commencement of such litigation) that is under the jurisdiction of a court or other tribunal established under the laws of a province, or in the nature of an appeal from a decision of a court or other tribunal established under the laws of a province, is made in that province.

Services in relation to a location-specific event

28. A supply of a service in relation to a performance, athletic or competitive event, festival, ceremony, conference or similar event is made in a province if the service is to be performed primarily at a location of the event in the province.

Photographic-related good, repair service, etc.

29. If a supplier receives particular tangible personal property of another person for the purpose of supplying a service of repairing, maintaining, cleaning, adjusting or altering the property or of producing a negative, transparency, photographic print or other photographic-related good, the supply of the service (and of any property supplied in connection with it) or of the photographic-related good is made in a particular province if the supplier delivers the particular tangible personal property or the photographic-related good, as the case may be, in that province to the recipient of the supply after the service or production of the photographic-related good is completed.

Service of trustee of RRSP, RRIF, RESP, RDSP or TFSA

30. A supply of a service in respect of a trust governed by an RRSP, an RRIF, an RESP, an RDSP or a TFSA provided by a trustee of the trust is made in a particular province if the mailing address of the annuitant of the RRSP or RRIF, of the subscriber of the RESP or of the holder of the RDSP or TFSA is in that province.

1-900 or 976 service

31. A supply of a service provided by telephone and accessed by calling a number beginning with the digits 1-900 or containing the local telephone prefix 976 is made in a particular province if the telephone call originates in that province.

Single final recipient of computer-related service or Internet access

32. (1) When a particular supplier makes a particular supply of a computer-related service or access to the Internet and there is to be only one final recipient of the service or access, as the case may be, that acquires it under an agreement either with the particular supplier or another supplier,

(a) if there is a single ordinary location at which the final recipient avails themselves of the service or access, that location is in a particular province and either the particular supplier maintains information sufficient to determine that location or it is the normal business practice of the particular supplier to obtain information sufficient to determine that location, the particular supply is made in that province; and

(b) in any other case, the particular supply is made in a particular province if the mailing address of the recipient of the particular supply is in that province.

Multiple final recipients of computer-related service or Internet access

(2) When a particular supplier makes a particular supply of a computer-related service or access to the Internet and there are to be multiple final recipients of the service or access, each of which acquires it under an agreement with the particular supplier or another supplier,

(a) if, in the case of each of those final recipients, there is a single ordinary location at which the final recipient avails themselves of the service or access and either the particular supplier maintains information sufficient to determine that location or it is the normal business practice of

the particular supplier to obtain information sufficient to determine that location, the particular supply is made in the province, if any, that would be determined under Division 2 or 3 to be the province in which the particular supply is made if the service were performed, or the access were attainable, as the case may be, in each province in which, and to the same extent to which, the final recipients avail themselves of the service or access; and

(b) if a province in which the particular supply is made is not determined under paragraph (a), the particular supply is made in a particular province if the mailing address of the recipient of the particular supply is in that province.

Definition of “leg”

33. (1) In this section, “leg” means a part of a flight of an aircraft that begins where passengers embark or disembark the aircraft, where freight is loaded on the aircraft or unloaded from it or where the aircraft is stopped to allow for its servicing or refuelling, and that ends where it is next stopped for any of those purposes.

Air navigation services

(2) A supply of air navigation services (as defined in subsection 2(1) of the *Civil Air Navigation Services Commercialization Act*) is made in a particular province if the leg of the flight in respect of which the services are performed originates in the province.

PART 2

ANTI-AVOIDANCE RULES RELATING TO HARMONIZATION

Application

34. This Part applies despite any provision of the Act.

Variation of agreement — new harmonized province

35. If

(a) at any time before the harmonization date for a participating province, a supplier and a recipient enter into an agreement for a taxable supply of property or a service,

(b) the supplier and the recipient at a later time either directly or indirectly

(i) vary or alter the agreement for the supply, or

(ii) terminate the agreement and enter into one or more new agreements with each other or with other persons and under one or more of those agreements the supplier supplies, and the recipient receives, one or more supplies that includes all or substantially all the property or service referred to in paragraph (a),

(c) the supplier, the recipient and, if applicable, the other persons are not dealing with each other at arm's length at the time the agreement referred to in paragraph (a) is entered into or at the later time,

(d) tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply referred to in paragraph (a) would have been, in the absence of the variation, alteration or termination of the agreement, calculated at the tax rate for the participating province on all or part of the value of the consideration for the supply attributable to the property or service,

(e) tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply made under the varied or altered agreement or made under any of the new agreements, in the absence of this section, would not apply to, or would be calculated at a rate that is less than the tax rate for the participating province on, any part of the value of the consideration for the supply, attributable to any part of the property or service, on which tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply referred to in paragraph (a) would have been, in the absence of the variation, alteration or termination of the agreement, calculated at the tax rate for the participating province, and

(f) the variation or alteration of the agreement or the entering into of the new agreements may not reasonably be considered for both the supplier and the recipient to have been undertaken or arranged primarily for *bona fide* purposes other than to, directly or indirectly, reduce, avoid or defer tax or any other amount payable under Part IX of the Act or benefit in any manner from the participating province becoming a participating province,

tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply made under the varied or altered agreement or made under any of the new agreements shall be calculated at the rate at which tax would have been calculated under paragraph (d) on any part of the value of the consideration, referred to in paragraph (e), attributable to any part of the property or service.

Variation of agreement — change in tax rate

36. If

(a) at any time before the particular date on which a change in the tax rate for a participating province applies in respect of a taxable supply of property or a service, a supplier and a recipient enter into an agreement for a taxable supply of the property or service,

(b) the supplier and the recipient at a later time either directly or indirectly

(i) vary or alter the agreement for the supply, or

(ii) terminate the agreement and enter into one or more new agreements with each other or with other persons and under one or more of those agreements the supplier supplies, and the recipient receives, one or more supplies that includes all or substantially all the property or service referred to in paragraph (a),

(c) the supplier, the recipient and, if applicable, the other persons are not dealing with each other at arm's length at the time the agreement referred to in paragraph (a) is entered into or at the later time,

(d) tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply referred to in paragraph (a) would have been, in the absence of the variation, alteration or termination of the agreement, calculated on all or part of the value of the consideration for the supply attributable to the property or service at the tax rate (in this section referred to as the "higher rate") for the participating province that is the greater of

(i) the tax rate for the participating province that applies immediately before the particular date in respect of a taxable supply of the property or service, and

(ii) the tax rate for the participating province that applies on the particular date in respect of a taxable supply of the property or service,

(e) tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply made under the varied or altered agreement or made under any of the new agreements, in the absence of this section, would not apply to, or would be calculated at a rate that is less than the higher rate on, any part of the value of the consideration for the supply, attributable to any part of the property or service, on which tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply referred to in paragraph (a) would have been, in the absence of the variation, alteration or termination of the agreement, calculated at the higher rate, and

(f) the variation or alteration of the agreement or the entering into of the new agreements may not reasonably be considered for both the supplier and the recipient to have been undertaken or arranged primarily for *bona fide* purposes other than to, directly or indirectly, reduce, avoid or defer tax or any other amount payable under Part IX of the Act or benefit in any manner from the rate change,

tax under subsection 165(2) or section 218.1 of the Act or Division IV.1 of Part IX of the Act in respect of the supply made under the varied or altered agreement or made under any of the new agreements shall be calculated at the rate at which tax would have been calculated under paragraph (d) on any part of the value of the consideration, referred to in paragraph (e), attributable to any part of the property or service.

Definitions

37. (1) The following definitions apply in this section.

“harmonization event”

« *opération d'harmonisation* »

“harmonization event” means the transition by a province to the new harmonized value-added tax system or any change referred to in paragraph 277.1(3)(a) of the Act as “provincial tax policy flexibility”.

“person”

« *personne* »

“person” does not include a consumer.

“tax benefit”

« *avantage fiscal* »

“tax benefit” means a reduction, an avoidance or a deferral of tax or other amount payable under Part IX of the Act or an increase in a refund or rebate of tax or other amount under that Part.

“transaction”

« *opération* »

“transaction” has the same meaning as in subsection 274(1) of the Act.

Harmonization event — transactions

(2) If

(a) a transaction, or a series of transactions, involving property is made between two or more persons, all of whom are not dealing with each other at arm's length at the time any of those transactions are made,

(b) the transaction, any of the transactions in the series of transactions or the series of transactions would in the absence of this section result directly or indirectly in a tax benefit to one or more of the persons involved in the transaction or series of transactions, and

(c) it may not reasonably be considered that the transaction, or the series of transactions, has been undertaken or arranged primarily for *bona fide* purposes other than to obtain a tax benefit, arising from a harmonization event, for one or more of the persons involved in the transaction or series of transactions,

the amount of tax, net tax, input tax credit, rebate or other amount payable by, or refundable to, any of those persons under Part IX of the Act, or any other amount that is relevant for the purposes of computing that amount, shall be determined as is reasonable in the circumstances in order to deny the tax benefit to any of those persons.

Denying tax benefit on transactions

(3) A tax benefit shall only be denied under subsection (2) through an assessment, reassessment or additional assessment under Part IX of the Act.

Request for adjustments

(4) If, with respect to a transaction, a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, any person (other than a person to whom such a notice has been sent) is entitled, within 180 days after the day on which the notice was mailed, to request in writing that the Minister make an assessment, a reassessment or an additional assessment, applying subsection (2) with respect to that transaction.

Duties of Minister

(5) On receipt of a request by a person under subsection (4), the Minister shall, with all due dispatch, consider the request and, despite subsections 298(1) and (2) of the Act, assess, reassess or make an additional assessment under Part IX of the Act with respect to the person, except that the assessment, reassessment or additional assessment may be made only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (4).

PART 3

ONTARIO AND BRITISH COLUMBIA GENERAL HST TRANSITIONAL RULES

DIVISION 1

INTERPRETATION

Definitions

38. (1) The following definitions apply in this Part.

“harmonized provinces”
« *provinces harmonisées* »

“harmonized provinces” means the participating provinces and includes Ontario and British Columbia.

“reciprocal taxation agreement”
« *accord de réciprocité fiscale* »

“reciprocal taxation agreement” means an agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements Act*.

“retail sales tax”
« *taxe de vente au détail* »

“retail sales tax” means a general retail sales tax imposed under an Act of the legislature of a specified province at a percentage rate on property other than that which is specifically enumerated in that Act.

“specified province”
« *province déterminée* »

“specified province” means Ontario or British Columbia.

Conflict

(2) This Part applies despite any provision of the Act.

DIVISION 2

APPLICATION

Personal property and services

39. (1) Subject to Division 3, subsection 165(2) of the Act and the other provisions of Part IX of the Act (other than Divisions IX and X of that Part) relating to tax under that subsection apply to any supply of tangible personal property, intangible personal property or a service made in a specified province if all or part of the consideration for the supply becomes due or is paid, or is deemed to have become due or to have been paid, on or after July 1, 2010 and is not deemed to have become due or to have been paid before that day, except that tax is not payable under that subsection (otherwise than because of Division 3) in respect of any part of the consideration for the supply that becomes due or is paid before that day and is not deemed to have become due or to have been paid on or after that day.

Imported goods — section 212.1

(2) Subject to Division 3, section 212.1 of the Act and the other provisions of Part IX of the Act (other than Divisions IX and X of that Part) relating to tax under that section apply to tangible

personal property, a mobile home that is not affixed to land and a floating home, any of which is imported by a person resident in a specified province on or after July 1, 2010, and to such property that is imported by a person resident in a specified province before that day and that is, on or after that day, accounted for under subsection 32(1), paragraph 32(2)(a) or subsection 32(5) of the *Customs Act* or released in the circumstances set out in paragraph 32(2)(b) of that Act.

Imported goods — subsection 220.07(1)

(3) Subject to Division 3, subsection 220.07(1) of the Act and the other provisions of Part IX of the Act (other than Divisions IX and X of that Part) relating to tax under that subsection apply to tangible personal property, a mobile home that is not affixed to land and a floating home, any of which is brought into a specified province from a place outside Canada on or after July 1, 2010, and to such property that is brought into a specified province from a place outside Canada before that day and that is, on or after that day, accounted for under subsection 32(1), paragraph 32(2)(a) or subsection 32(5) of the *Customs Act* or released in the circumstances set out in paragraph 32(2)(b) of that Act.

Tangible personal property brought into a specified province

(4) Subject to Division 3, subsections 220.05(1) and 220.06(1) of the Act and the other provisions of Part IX of the Act (other than Divisions IX and X of that Part) relating to tax under those subsections apply to tangible personal property, a mobile home that is not affixed to land and a floating home, any of which is brought into a specified province on or after July 1, 2010, and to such property that is brought into a specified province before that day by a carrier if the property is delivered in the specified province to a consignee on or after that day.

Tangible personal property supplied outside Canada

(5) Subject to Division 3, subsection 218.1(1) of the Act and the other provisions of Part IX of the Act (other than Divisions IX and X of that Part) relating to tax under that subsection apply to any supply of tangible personal property made outside Canada to a person to which the property is delivered or made available, or physical possession of the property is transferred, in a specified province, if all or part of the consideration for the supply becomes due or is paid, or is deemed to have become due or to have been paid, on or after July 1, 2010 and is not deemed to have become due or to have been paid before that day, except that tax is not payable under that subsection (otherwise than because of Division 3) in respect of any part of the consideration for the supply that becomes due or is paid before that day and is not deemed to have become due or to have been paid on or after that day.

Consumption, use or supply in a specified province

(6) Subject to Division 3, subsections 218.1(1) and 220.08(1) of the Act and the other provisions of Part IX of the Act (other than Divisions IX and X of that Part) relating to tax under those subsections apply to any supply of intangible personal property or a service acquired for consumption, use or supply in a specified province if all or part of the consideration for the supply becomes due or is paid, or is deemed to have become due or to have been paid, on or after July 1, 2010 and is not deemed to have become due or to have been paid before that day, except that, if the supply is made to a person resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador, tax is not payable under those subsections (otherwise than because of Division 3) in respect of any part of the consideration for the supply that becomes due or is paid before that day and is not deemed to have become due or to have been paid on or after that day.

DIVISION 3

TRANSITION

Net tax

40. (1) If a person collects, before July 1, 2010, a particular amount as or on account of tax (other than tax under subsection 165(1) of the Act) in respect of a supply, calculated on an amount of consideration for the supply that is deemed, under this Part, to have become due on July 1, 2010 and not to have been paid before that day, for the purpose of determining the net tax of the person under subsection 225(1) of the Act, the particular amount is deemed to have been collected by the person on July 1, 2010 and not to have been collected before that day.

Input tax credits and rebates

(2) If a person pays, before July 1, 2010, a particular amount as or on account of tax (other than tax under subsection 165(1) or section 218 of the Act) in respect of a supply, calculated on an amount of consideration for the supply that is deemed, under this Part, to have become due on July 1, 2010 and not to have been paid before that day, for the purpose of determining an input tax credit or rebate of the person under Part IX of the Act, the particular amount is deemed to have been paid by the person on July 1, 2010 and not to have been paid before that day.

Continuous supply

(3) For the purposes of this Part, if property or a service is delivered, performed or made available on a continuous basis by means of a wire, pipeline, satellite, other conduit or other telecommunications facility during a period that includes July 1, 2010 and for which the supplier issues an invoice and, because of the method of recording the delivery of the property or the provision of the service, the time at which the property is delivered, or the service is provided, cannot reasonably be determined, an equal part of the whole of the property delivered, or of the whole of the service provided, during the period is deemed to have been delivered or provided, as the case may be, on each day of the period.

Transfer of tangible personal property before July 2010

41. (1) No tax is payable under subsection 165(2) of the Act in respect of any consideration for a taxable supply by way of sale of tangible personal property made in a specified province to a person to the extent that

(a) the property is delivered to the person before July 1, 2010; or

(b) ownership of the property is transferred to the person before July 1, 2010.

Imported taxable supply

(2) No tax is payable under subsection 218.1(1) of the Act in respect of any consideration for an imported taxable supply (as defined in section 217 of the Act) of tangible personal property made to a person if

(a) the property is delivered or made available to the person in a specified province before July 1, 2010; or

(b) physical possession of the property is transferred to the person in a specified province before July 1, 2010.

Consideration due or paid after April 2010

(3) For the purpose of applying subsection 165(2) of the Act to a taxable supply by way of sale of tangible personal property made in a specified province, any consideration for the supply that becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, in respect of property that is not delivered to the recipient, and the ownership of which is not transferred to the recipient, before July 1, 2010, is deemed to have become due on July 1, 2010 and not to have been paid before that day.

Consideration due or paid after April 2010

(4) For the purpose of applying subsection 218.1(1) of the Act to a taxable supply by way of sale of tangible personal property made outside Canada to a person to which the property is delivered or made available, or physical possession of the property is transferred, in a specified province, any consideration for the supply that becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, in respect of property that is not delivered or made available to the person, or the physical possession of which is not transferred to the person, as the case may be, before July 1, 2010, is deemed to have become due on July 1, 2010 and not to have been paid before that day.

Consideration due or paid before May 2010

(5) Subject to subsection (7), if an amount of consideration for a taxable supply by way of sale of tangible personal property made in a specified province by a registrant to a person that is not a consumer of the tangible personal property becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and neither ownership nor possession of the tangible personal property is transferred to the person before July 1, 2010, for the purposes of applying subsection 165(2) of the Act to the supply, that amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required to pay, in accordance with subsection (8), the tax under subsection 165(2) of the Act payable in respect of the supply on that amount of consideration.

Consideration due or paid before May 2010

(6) Subject to subsection (7), if an amount of consideration for a taxable supply by way of sale of tangible personal property made outside Canada to a person that is not a consumer of the tangible personal property becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and the tangible personal property is delivered or made available, or physical possession of the property is transferred, in a specified province to the person on or after July 1, 2010, for the purposes of applying subsection 218.1(1) of the Act to the supply, that amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required, despite subsection 218.1(2) of the Act, to pay, in accordance with subsection (8), the tax under subsection 218.1(1) of the Act payable in respect of the supply on that amount of consideration.

Exception — subsections (5) and (6)

(7) Subsections (5) and (6) do not apply in respect of a supply by way of sale of tangible personal property made to a person if

(a) the property is acquired by the person for consumption, use or supply exclusively in commercial activities of the person;

(b) the person

(i) would be entitled to include, for the purpose of determining an input tax credit of the person in respect of the property, the total amount of tax under subsection 165(2) or 218.1(1) of the Act that would otherwise be payable by the person in respect of the supply, and

(ii) would not have been required to add, in determining its net tax for any reporting period of the person, an amount in respect of an input tax credit referred to in subparagraph (i); and

(c) the person is neither

(i) a registrant that is a selected listed financial institution, nor

(ii) a registrant whose net tax is determined under section 225.1 of the Act or under Part IV or V of the *Streamlined Accounting (GST/HST) Regulations*.

Payment of tax — subsections (5) and (6)

(8) If a person is required to pay tax in accordance with this subsection as a consequence of the application of subsection (5) or (6),

(a) in the case of a person that is a registrant whose return under section 238 of the Act for the reporting period that includes July 1, 2010 is required to be filed on or before a particular day that is before November 1, 2010, the person shall pay the tax to the Receiver General on or before the particular day and report the tax in that return; and

(b) in any other case, section 219 of the Act does not apply in respect of the tax and the person shall, before November 1, 2010, pay the tax to the Receiver General and file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information.

Exception — subscriptions

(9) Despite subsections (3) and (5), no tax is payable under subsection 165(2) of the Act in respect of any consideration paid before July 1, 2010 for a taxable supply made in a specified province of a subscription for newspapers, magazines or other publications published periodically.

Exercise of option to purchase

(10) No tax under subsection 165(2) of the Act is payable in respect of a taxable supply by way of sale of tangible personal property made in a specified province to a person if

(a) the person was the recipient of another supply of the tangible personal property by way of lease, licence or similar arrangement;

(b) the taxable supply is made as a consequence of the person exercising, after July 1, 2010, an option to purchase the tangible personal property provided for under the arrangement referred to in paragraph (a); and

(c) retail sales tax of the specified province in respect of the sale of the tangible personal property became payable before July 1, 2010 or would have become payable before that day if the tangible personal property or the person, as the case may be, were not exempt from that tax.

Application

(11) This section does not apply to a supply to which section 46 or 54 applies.

Lease or licence periods before July 2010

42. (1) No tax is payable under subsection 165(2) of the Act in respect of any consideration for a taxable supply of property by way of lease, licence or similar arrangement made in a specified province to the extent that the consideration is a rent, royalty or similar payment attributable to a period before July 1, 2010.

Lease or licence periods before July 2010

(2) No tax is payable under subsection 218.1(1) or 220.08(1) of the Act in respect of any consideration for a supply of property by way of lease, licence or similar arrangement made outside the harmonized provinces to the extent that the consideration is a rent, royalty or similar payment attributable to a period before July 1, 2010, if the supply is made to

(a) a person resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador; or

(b) a person to which the property is delivered or made available, or physical possession of the property is transferred, in a specified province.

Rent and royalties due or paid after April 2010

(3) If a taxable supply of property by way of lease, licence or similar arrangement is made in a specified province and an amount of consideration for the supply becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, to the extent that the amount of consideration is a rent, royalty or similar payment attributable to a period on or after July 1, 2010, that amount of consideration is deemed, for the purpose of applying subsection 165(2) of the Act to the supply, to have become due on July 1, 2010 and not to have been paid before that day.

Rent and royalties due or paid after April 2010

(4) If a taxable supply of property by way of lease, licence or similar arrangement is made outside the harmonized provinces to a person resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador, or to a person to which the property is delivered or made available, or physical possession of the property is transferred, in a specified province, and an amount of consideration for the supply becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, to the extent that the amount of consideration is a rent, royalty or similar payment attributable to a period on or after July 1, 2010, that amount of consideration is deemed, for the purpose of applying subsection 218.1(1) or 220.08(1) of the Act, to have become due on July 1, 2010 and not to have been paid before that day.

Rent and royalties due or paid before May 2010

(5) Subject to subsection (7), if an amount of consideration for a taxable supply of property by way of lease, licence or similar arrangement made in a specified province by a registrant to a person that is not a consumer of the property becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and any part of the amount of consideration is a rent, royalty or similar payment attributable to a period on or after July 1, 2010, for the purposes of applying subsection 165(2) of the Act to the supply, that part of the amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required to pay, in accordance with subsection (8), the tax under subsection 165(2) of the Act payable in respect of the supply on that part of the amount of consideration.

Rent and royalties due or paid before May 2010

(6) Subject to subsection (7), if an amount of consideration for a taxable supply of property by way of lease, licence or similar arrangement made outside the harmonized provinces to a person that is not a consumer of the property and that is resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador, or to a person that is not a consumer of the property and to which the property is delivered or made available in a specified province or to which physical possession of the property is transferred in a specified province, becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and any part of the amount of consideration is a rent, royalty or similar payment attributable to a period on or after July 1, 2010, for the purposes of applying subsection 218.1(1) or 220.08(1) of the Act to the supply, that part of the amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required, despite subsection 218.1(2) and section 220.04 of the Act, to pay, in accordance with subsection (8), the tax under subsection 218.1(1) or 220.08(1) of the Act, as the case may be, payable in respect of the supply, in the absence of section 1 of Part II of Schedule X to the Act, on that part of the amount of consideration.

Exception — subsections (5) and (6)

(7) Subsections (5) and (6) do not apply in respect of a supply of property by way of lease, licence or similar arrangement made to a person if

(a) the property is acquired by the person for consumption, use or supply exclusively in commercial activities of the person;

(b) the person

(i) would be entitled to include, for the purpose of determining an input tax credit of the person in respect of the property, the total amount of tax under subsection 165(2), 218.1(1) or 220.08(1) of the Act, as the case may be, that would otherwise be payable by the person in respect of the supply, and

(ii) would not have been required to add, in determining its net tax for any reporting period of the person, an amount in respect of an input tax credit referred to in subparagraph (i); and

(c) the person is neither

(i) a registrant that is a selected listed financial institution, nor

(ii) a registrant whose net tax is determined under section 225.1 of the Act or under Part IV or V of the *Streamlined Accounting (GST/HST) Regulations*.

Payment of tax — subsections (5) and (6)

(8) If a person is required to pay tax in accordance with this subsection as a consequence of the application of subsection (5) or (6),

(a) in the case of a person that is a registrant whose return under section 238 of the Act for the reporting period that includes July 1, 2010 is required to be filed on or before a particular day that is before November 1, 2010, the person shall pay the tax to the Receiver General on or before the particular day and report the tax in that return; and

(b) in any other case, section 219 and subsection 220.09(1) of the Act do not apply in respect of the tax and the person shall, before November 1, 2010, pay the tax to the Receiver General and file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information.

Lease or licence period ending before July 31, 2010

(9) Despite subsections (3) and (5), no tax is payable under subsection 165(2) of the Act in respect of a taxable supply of property by way of lease, licence or similar arrangement made in a specified province if the consideration for the supply is a rent, royalty or similar payment attributable to a period that begins before July 1, 2010 and ends before July 31, 2010.

Lease or licence period ending before July 31, 2010

(10) Despite subsections (4) and (6), no tax is payable under subsection 218.1(1) or 220.08(1) of the Act in respect of a taxable supply of property by way of lease, licence or similar arrangement made to a person to which the property is delivered or made available, or physical possession of the property is transferred, in a specified province, if the consideration for the supply is a rent, royalty or similar payment attributable to a period that begins before July 1, 2010 and ends before July 31, 2010.

Exception — subsections (9) and (10)

(11) Subsections (9) and (10) do not apply in respect of consideration for a supply of property that is a rent, royalty or similar payment attributable to a period if the supplier supplies services in respect of that property for the same period and the consideration for the supply of the property and the consideration for the supply of the services is included in a single invoice.

Application

(12) Subsections (1) to (6), (9) and (10) do not apply in respect of an amount of consideration for a supply of intangible personal property if the amount of the consideration is not dependent on the amount of the use of or production from, or the profit from the use of or production from, the property.

Definitions

43. (1) In this section, “continuous freight movement”, “freight transportation service” and “shipper” have the same meanings as in subsection 1(1) of Part VII of Schedule VI to the Act.

Services partly performed before July 2010

(2) No tax is payable under subsection 165(2) of the Act in respect of any consideration for a taxable supply of a service made in a specified province to the extent that the consideration relates to any part of the service that is performed before July 1, 2010.

Services partly performed before July 2010

(3) No tax is payable under subsection 218.1(1) or 220.08(1) of the Act in respect of any consideration for a supply of a service made outside the harmonized provinces to a person resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador to the extent that the consideration relates to any part of the service that is performed before July 1, 2010.

Consideration due or paid after April 2010

(4) If a taxable supply of a service is made in a specified province and any consideration for the supply becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, to the extent that the consideration relates to any part of the service that is not performed before July 1, 2010, that consideration is deemed, for the purpose of applying subsection 165(2) of the Act to the supply, to have become due on July 1, 2010 and not to have been paid before that day.

Consideration due or paid after April 2010

(5) If a taxable supply of a service is made outside the harmonized provinces to a person resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador, and any consideration for the supply becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, to the extent that the consideration relates to any part of the service that is not performed before July 1, 2010, that consideration is deemed, for the purpose of applying subsection 218.1(1) or 220.08(1) of the Act to the supply, to have become due on July 1, 2010 and not to have been paid before that day.

Consideration due or paid before May 2010

(6) Subject to subsection (8), if an amount of consideration for a taxable supply of a service made in a specified province by a registrant to a person that is not a consumer of the service becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and any part of the amount of consideration is for a part of the service that is not performed before July 1, 2010, for the purposes of applying 165(2) of the Act to the supply, that part of the amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required to pay, in accordance with subsection (9), the tax under subsection 165(2) of the Act payable in respect of the supply on that part of the amount of consideration.

Consideration due or paid before May 2010

(7) Subject to subsection (8), if an amount of consideration for a taxable supply of a service made outside the harmonized provinces to a person that is not a consumer of the service and that is resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and any part of the amount of consideration is for a part of the service that is not performed before July 1, 2010, for the purposes of applying subsection 218.1(1) or 220.08(1) of the Act to the supply, that part of the amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required, despite subsection 218.1(2) and section 220.04 of the Act, to pay, in accordance with subsection (9), the

tax under subsection 218.1(1) or 220.08(1) of the Act, as the case may be, payable in respect of the supply, in the absence of section 1 of Part II of Schedule X to the Act, on that part of the amount of consideration.

Exception — subsections (6) and (7)

(8) Subsections (6) and (7) do not apply in respect of a supply of a service made to a person if

(a) the service is acquired by the person for consumption, use or supply exclusively in commercial activities of the person;

(b) the person

(i) would be entitled to include, for the purpose of determining an input tax credit of the person in respect of the service, the total amount of tax under subsection 165(2), 218.1(1) or 220.08(1) of the Act, as the case may be, that would otherwise be payable by the person in respect of the supply, and

(ii) would not have been required to add, in determining its net tax for any reporting period of the person, an amount in respect of an input tax credit referred to in subparagraph (i); and

(c) the person is neither

(i) a registrant that is a selected listed financial institution, nor

(ii) a registrant whose net tax is determined under section 225.1 of the Act or under Part IV or V of the *Streamlined Accounting (GST/HST) Regulations*.

Payment of tax — subsections (6) and (7)

(9) If a person is required to pay tax in accordance with this subsection as a consequence of the application of subsection (6) or (7),

(a) in the case of a person that is a registrant whose return under section 238 of the Act for the reporting period that includes July 1, 2010 is required to be filed on or before a particular day that is before November 1, 2010, the person shall pay the tax to the Receiver General on or before the particular day and report the tax in that return; and

(b) in any other case, section 219 and subsection 220.09(1) of the Act do not apply in respect of the tax and the person shall, before November 1, 2010, pay the tax to the Receiver General and file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information.

Services substantially all performed before July 2010

(10) Despite subsections (4) and (6), no tax is payable under subsection 165(2) of the Act in respect of any consideration for a taxable supply of a service (other than a freight transportation service, a passenger transportation service or a service to which section 45 applies) made in a specified province if all or substantially all of the service is performed before July 1, 2010.

Services substantially all performed before July 2010

(11) Despite subsections (5) and (7), no tax is payable under subsection 218.1(1) or 220.08(1) of the Act in respect of any consideration for a supply of a service (other than a freight transportation service, a passenger transportation service or a service to which section 45 applies) to a person resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador if all or substantially all of the service is performed before July 1, 2010.

Passenger transportation services commencing before July 2010

(12) Despite subsections (4) and (6), no tax is payable under subsection 165(2) of the Act in respect of any consideration for a taxable supply made in a specified province of a passenger transportation service, or of a service of transporting an individual's baggage in connection with a passenger transportation service, if the passenger transportation service is part of a continuous journey that begins before July 1, 2010.

Freight transportation services commencing before July 2010

(13) Despite subsections (4) and (6), if one or more carriers make a taxable supply in a specified province of freight transportation services in respect of a continuous freight movement of tangible personal property and, before July 1, 2010, the shipper of the property transfers possession of the property to the first carrier engaged in the continuous freight movement, no tax is payable under subsection 165(2) of the Act in respect of any consideration for the supply.

Application

(14) This section does not apply to a supply to which section 46 applies.

Reduction in consideration — subsection 220.08(1)

44. If a particular amount of consideration for a taxable supply made in a specified province to a person resident in Nova Scotia, New Brunswick or Newfoundland and Labrador becomes due, or is paid without having become due, at a particular time that is on or after May 1, 2010 and, as a consequence of this Part, tax under subsection 165(2) of the Act is only payable in respect of a portion of the particular amount, for the purpose of determining an amount of tax payable by the person under subsection 220.08(1) of the Act, the value of the consideration for the supply that becomes due, or is paid, at the particular time is deemed to be equal to the particular amount less that portion.

Continuous supplies

45. (1) If a supply of property or a service that is delivered, performed or made available on a continuous basis by means of a wire, pipeline, satellite, other conduit or other telecommunications facility is made in a specified province to a person, no tax is payable under subsection 165(2) of the Act in respect of any consideration for the supply to the extent that the consideration is attributable to

(a) property that is delivered or made available to the person before July 1, 2010; or

(b) any part of the service that is performed or made available before July 1, 2010.

Application

(2) This section does not apply to a supply to which section 46 applies.

Budget arrangements

46. (1) If a registrant makes a supply of property or a service in a specified province under a budget payment arrangement relating to a particular period that begins before July 1, 2010 and ends on or after that day, the budget payment arrangement provides for a reconciliation of the payments of consideration for the supply that are made during the particular period and the reconciliation is to take place at or after the end of the period and before July 1, 2011, the registrant shall, at the time the registrant issues an invoice for the reconciliation, calculate the positive or negative amount determined by the formula

$A - B$

where

A is the tax that would be payable under subsection 165(2) of the Act by the recipient in respect of the property, service or part thereof delivered, performed or made available on or after July 1, 2010 if the consideration for the supply of that property, service or part had become due and had been paid on or after July 1, 2010; and

B is the total tax that was payable under subsection 165(2) of the Act by the recipient in respect of the supply of the property or service delivered, performed or made available during the particular period.

Collection of tax

(2) If the amount calculated by a registrant under subsection (1) is a positive amount,

(a) the amount is deemed to be tax payable under subsection 165(2) of the Act by the recipient in respect of the supply; and

(b) the registrant is deemed to have collected the amount on the day on which the invoice for the reconciliation is issued.

Refund of excess

(3) If the amount calculated by a registrant under subsection (1) is a negative amount,

(a) the registrant shall refund or credit the amount to the recipient;

(b) the registrant shall issue a credit note for the amount of the refund or credit; and

(c) section 232 of the Act applies as if the credit note were issued under that section.

Definition of “funeral services”

47. (1) In this section, “funeral services” has the same meaning as in subsection 344(1) of the Act.

Funeral arrangements — trustee

(2) No tax is payable by a trustee under subsection 165(2) of the Act in respect of a supply made in a specified province of funeral services under an arrangement to supply funeral services in

respect of an individual, or under section 212.1 or subsection 218.1(1), 220.05(1), 220.06(1), 220.07(1) or 220.08(1) of the Act in respect of funeral services supplied under the arrangement for consumption or use in the specified province, if

(a) the arrangement is entered into in writing before July 1, 2010;

(b) under the terms of the arrangement, the funds required to pay for the funeral services are held by the trustee and the trustee is responsible for acquiring funeral services in respect of the individual; and

(c) at the time the arrangement is entered into, it is reasonable to expect that all or a part of those funds will be advanced to the trustee before the individual's death.

Funeral arrangements — other

(3) No tax is payable under subsection 165(2) of the Act in respect of a supply made in a specified province of funeral services under an arrangement to supply funeral services in respect of an individual, or under section 212.1 or subsection 218.1(1), 220.05(1), 220.06(1), 220.07(1) or 220.08(1) of the Act in respect of funeral services supplied under the arrangement for consumption or use in the specified province, if

(a) the arrangement is entered into in writing at any time before July 1, 2010; and

(b) at that time, it is reasonable to expect that all or a part of the consideration for the supply of the funeral services will be paid before the individual's death.

Memberships and admissions — application

48. (1) This section does not apply to a supply of a right to acquire a membership in a club, an organization or an association.

Period of membership or admission before July 2010

(2) No tax is payable under subsection 165(2) of the Act in respect of any consideration for a taxable supply made in a specified province of a membership (other than a membership for the lifetime of an individual) in a club, an organization or an association or a taxable supply made in a specified province of an admission in respect of a place of amusement, a seminar, an activity or an event to the extent that the consideration relates to any part of the period of membership or admission that is before July 1, 2010.

Consideration due or paid after April 2010

(3) If a taxable supply of a membership (other than a membership for the lifetime of an individual) in a club, an organization or an association or an admission in respect of a place of amusement, a seminar, an activity or an event is made in a specified province and any consideration for the supply becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, to the extent that the consideration relates to any part of the period of membership or admission that is on or after July 1, 2010, that consideration is deemed, for the purpose of applying subsection 165(2) of the Act to the supply, to have become due on July 1, 2010 and not to have been paid before that day.

Consideration due or paid before May 2010

(4) Subject to subsection (5), if an amount of consideration for a taxable supply of a membership (other than a membership for the lifetime of an individual) in a club, an organization or an association or an admission in respect of a place of amusement, a seminar, an activity or an event made in a specified province by a registrant to a person that is not a consumer of the membership or admission becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and any part of the amount of consideration is for a part of the period of membership or admission that was not before July 1, 2010, for the purposes of applying 165(2) of the Act to the supply, that part of the amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required to pay, in accordance with subsection (6), the tax under subsection 165(2) of the Act payable in respect of the supply on that part of the amount of consideration.

Exception — subsection (4)

(5) Subsection (4) does not apply in respect of a supply of a membership or an admission made to a person if

(a) the membership or admission is acquired by the person for consumption, use or supply exclusively in commercial activities of the person;

(b) the person

(i) would be entitled to include, for the purpose of determining an input tax credit of the person in respect of the membership or admission, the total amount of tax under subsection 165(2) of the Act that would otherwise be payable by the person in respect of the supply, and

(ii) would not have been required to add, in determining its net tax for any reporting period of the person, an amount in respect of an input tax credit referred to in subparagraph (i); and

(c) the person is neither

(i) a registrant that is a selected listed financial institution, nor

(ii) a registrant whose net tax is determined under section 225.1 of the Act or under Part IV or V of the *Streamlined Accounting (GST/HST) Regulations*.

Payment of tax — subsection (4)

(6) If a person is required to pay tax in accordance with this subsection as a consequence of the application of subsection (4),

(a) in the case of a person that is a registrant whose return under section 238 of the Act for the reporting period that includes July 1, 2010 is required to be filed on or before a particular day that is before November 1, 2010, the person shall pay the tax to the Receiver General on or before the particular day and report the tax in that return; and

(b) in any other case, the person shall, before November 1, 2010, pay the tax to the Receiver General and file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information.

Period of membership or admission substantially all before July 2010

(7) Despite subsections (3) and (4), no tax is payable under subsection 165(2) of the Act in respect of any consideration for a taxable supply of a membership (other than a membership for the lifetime of an individual) in a club, an organization or an association or an admission in respect of a place of amusement, a seminar, an activity or an event made in a specified province if all or substantially all of the period of membership or admission was before July 1, 2010.

Lifetime memberships

(8) For the purpose of applying subsection 165(2) of the Act to a taxable supply of a membership for the lifetime of an individual made in a specified province, if the total of all amounts that were paid after October 14, 2009 and before July 1, 2010 as consideration for the supply exceeds 25% of the total consideration for the supply, the excess amount is deemed to have become due on July 1, 2010 and not to have been paid before July 1, 2010.

Lifetime memberships

(9) For the purpose of applying subsection 218.1(1) or 220.08(1) of the Act to a supply of a membership for the lifetime of an individual made outside the harmonized provinces to a person resident in a specified province and not resident in Nova Scotia, New Brunswick or Newfoundland and Labrador, if the total of all amounts that were paid after October 14, 2009 and before July 1, 2010 as consideration for the supply exceeds 25% of the total consideration for the supply, the excess amount is deemed to have become due on July 1, 2010 and not to have been paid before July 1, 2010.

Definition of "validity period"

49. (1) In this section, "validity period" of a passenger transportation pass means

(a) the period throughout which the passenger transportation pass entitles an individual to transportation services; or

(b) if the period described in paragraph (a) is not ascertainable at the time when the passenger transportation pass is supplied to a person, the period beginning on the day the passenger transportation pass is delivered or made available to the recipient of the supply and ending on the day on which the passenger transportation pass expires or, in the absence of an expiration date, ending on July 1, 2012.

Validity period before July 2010

(2) No tax is payable under subsection 165(2) of the Act in respect any consideration for a taxable supply of a passenger transportation pass made in a specified province to the extent that the consideration is attributable to any part of the validity period of the passenger transportation pass that is before July 1, 2010.

Consideration due or paid after April 2010

(3) If a taxable supply of a passenger transportation pass is made in a specified province and any consideration for the passenger transportation pass becomes due, or is paid without having become due, on or after May 1, 2010 and before July 1, 2010, to the extent that any consideration is attributable to any part of the validity period of the passenger transportation pass that is after June 30, 2010, that consideration is deemed, for the purpose of applying subsection 165(2) of the Act to the supply, to have become due on July 1, 2010 and not to have been paid before July 1, 2010.

Consideration due or paid before May 2010

(4) Subject to subsection (5), if an amount of consideration for a taxable supply of a passenger transportation pass made in a specified province by a registrant to a person that is not a consumer of the passenger transportation pass becomes due, or is paid without having become due, after October 14, 2009 and before May 1, 2010 and any part of the amount of consideration is attributable to a part of the validity period of the passenger transportation pass that is after June 30, 2010, for the purposes of applying subsection 165(2) of the Act to the supply, that part of the amount of consideration is deemed to have become due on July 1, 2010 and not to have been paid before that day and the person is required to pay, in accordance with subsection (6), the tax under subsection 165(2) of the Act payable in respect of the supply on that part of the amount of consideration.

Exception

(5) Subsection (4) does not apply in respect of a supply of a passenger transportation pass made to a person if

(a) the passenger transportation pass is acquired by the person for consumption, use or supply exclusively in commercial activities of the person;

(b) the person

(i) would be entitled to include, for the purpose of determining an input tax credit of the person in respect of the passenger transportation pass, the total amount of tax under subsection 165(2) of the Act that would be payable by the person in respect of the supply, and

(ii) would not have been required to add, in determining its net tax for any reporting period of the person, an amount in respect of an input tax credit referred to in subparagraph (i); and

(c) the person is neither

(i) a registrant that is a selected listed financial institution, nor

(ii) a registrant whose net tax is determined under section 225.1 of the Act or under Part IV or V of the *Streamlined Accounting (GST/HST) Regulations*.

Payment of tax — subsection (4)

(6) If a person is required to pay tax in accordance with this subsection as a consequence of the application of subsection (4),

(a) in the case of a person that is a registrant whose return under section 238 of the Act for the reporting period that includes July 1, 2010 is required to be filed on or before a particular day that is before November 1, 2010, the person shall pay the tax to the Receiver General on or before the particular day and report the tax in that return; and

(b) in any other case, the person shall, before November 1, 2010, pay the tax to the Receiver General and file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information.

Validity period ending before August 2010

(7) Despite subsections (3) and (4), no tax is payable under subsection 165(2) of the Act in respect of a taxable supply made in a specified province of a passenger transportation pass in respect of which the validity period begins before July 1, 2010 and ends before August 1, 2010.

Tangible personal property returned after June 2010

50. Where a person purchased tangible personal property in a specified province from a supplier before July 1, 2010 and paid retail sales tax in respect of the tangible personal property and, on or after July 1, 2010 and before November 1, 2010, the person returns the tangible personal property in exchange for other tangible personal property that the supplier supplies to the person in the specified province,

(a) if the consideration for the supply of the other property exceeds the consideration for the returned property, tax under subsection 165(2) of the Act in respect of the other property applies only on the excess amount; and

(b) if the consideration for the supply of the other property is less than or equal to the consideration for the returned property, no tax under subsection 165(2) of the Act is payable in respect of the supply of the other property.

Progress payments

51. Despite any other provision of this Part, if a taxable supply is made in a specified province under a contract to construct, renovate, alter or repair real property or a ship or other marine vessel,

(a) any consideration for the supply that becomes due, or is paid without having become due, after October 14, 2009 and before July 1, 2010 as a progress payment that is required under the contract, or as a holdback from such a progress payment, is deemed, for the purpose of applying subsection 165(2) of the Act, to have become due on July 1, 2010 and not to have been paid before that day;

(b) no tax is payable under subsection 165(2) of the Act in respect of any part of the consideration for the supply that may reasonably be attributed to property delivered and services performed under the contract before July 1, 2010; and

(c) where paragraph 168(3)(c) of the Act applies in respect of the supply, tax under subsection 165(2) of the Act is payable in respect of the supply and the construction, renovation, alteration or repair is substantially completed before June 2010, for the purpose of applying subsection 165(2) of the Act, the construction, renovation, alteration or repair is deemed to have been substantially completed on June 1, 2010 and not before that day.

Combined supply

52. Where a particular supply that includes a combination of personal property, real property or a service (each of which in this section is referred to as an "element") is made in a specified province, the consideration for each element is not separately identified and no tax would, if a particular element that is property the ownership or possession of which is transferred to the recipient before July 1, 2010 were supplied separately, be payable under subsection 165(2) of the Act in respect of that particular element, for the purpose of applying tax under that subsection in respect of the supply, the particular element is deemed to have been supplied separately from all of the other elements.

Adjustments

53. (1) If a person pays tax as a consequence of the application of subsection 41(5) or (6), 42(5) or (6), 43(6) or (7), 48(4) or 49(4) calculated on the whole or part of the consideration for a taxable supply and that whole or part is subsequently reduced, to the extent that the person did not claim, and would not be, in the absence of this section, entitled to claim, an input tax credit or a rebate in respect of the portion of the tax payable under subsection 165(2), 218.1(1) or 220.08(1) of the Act that was calculated on the amount by which the whole or part was reduced, that portion is deemed, for the purpose of determining a rebate under section 261 of the Act, to be an amount that was not payable or remittable by the person.

Application

(2) Subsection (1) does not apply in circumstances in which section 161 of the Act applies.

Definitions

54. (1) In this section, “direct seller”, “distributor”, “exclusive product” and “independent sales contractor” have the same meanings as in section 178.1 of the Act.

Exclusive products held on July 1, 2010

(2) If before July 1, 2010, when an approval of the Minister for the application of section 178.3 of the Act to a direct seller is in effect, the direct seller has made a taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller to an independent sales contractor of the direct seller that is not a distributor in respect of which an approval granted under subsection 178.2(4) of the Act on application made jointly with the direct seller is in effect and the independent sales contractor holds, at the beginning of that day, the exclusive product for sale in a specified province, for the purpose of applying subsection 165(2) or 220.05(1) of the Act, the direct seller is deemed to have made, and the independent sales contractor is deemed to have received, on July 1, 2010 a supply by way of sale of the exclusive product in accordance with the rules provided in subsection 178.3(1) of the Act.

Prepayments for exclusive products not delivered by July 1, 2010

(3) If before July 1, 2010, when an approval of the Minister for the application of section 178.3 of the Act to a direct seller is in effect,

(a) the direct seller has made a taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller to an independent sales contractor of the direct seller that is not a distributor in respect of which an approval granted under subsection 178.2(4) of the Act on application made jointly with the direct seller is in effect,

(b) consideration for the supply becomes due, or is paid without having become due, after October 14, 2009 and before July 1, 2010,

(c) the exclusive product is not delivered to the independent sales contractor before July 1, 2010, and

(d) the exclusive product is to be held by the independent sales contractor for sale in a specified province,

for the purpose of applying subsection 165(2) or 220.05(1) of the Act, the direct seller is deemed to have made, and the independent sales contractor is deemed to have received, on July 1, 2010 a supply by way of sale of the exclusive product in accordance with the rules provided in subsection 178.3(1) of the Act.

Exclusive products held on July 1, 2010

(4) If before July 1, 2010, when an approval of the Minister for the application of section 178.4 of the Act to a distributor of a direct seller is in effect, the distributor has made a taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller to an independent sales contractor of the direct seller that is not a distributor in respect of which an approval granted under subsection 178.2(4) of the Act on application made jointly with the direct seller is in effect and the independent sales contractor holds, at the beginning of that day, the exclusive product for sale in a specified province, for the purpose of applying subsection 165(2) or 220.05(1) of the Act, the distributor is deemed to have made, and the independent sales contractor is deemed to have received, on July 1, 2010 a supply by way of sale of the exclusive product in accordance with the rules provided in subsection 178.4(1) of the Act.

Prepayments for exclusive products not delivered by July 1, 2010

(5) If before July 1, 2010, when an approval of the Minister for the application of section 178.4 of the Act to a distributor of a direct seller is in effect,

(a) the distributor has made a taxable supply by way of sale (other than a zero-rated supply) of an exclusive product of the direct seller to an independent sales contractor of the direct seller that is not a distributor in respect of which an approval granted under subsection 178.2(4) of the Act on application made jointly with the direct seller is in effect,

(b) consideration for the supply becomes due, or is paid without having become due, after October 14, 2009 and before July 1, 2010,

(c) the exclusive product is not delivered to the independent sales contractor before July 1, 2010, and

(d) the exclusive product is to be held by the independent sales contractor for sale in a specified province,

for the purpose of applying subsection 165(2) or 220.05(1) of the Act, the distributor is deemed to have made, and the independent sales contractor is deemed to have received, on July 1, 2010 a supply by way of sale of the exclusive product in accordance with the rules provided in subsection 178.4(1) of the Act.

Reciprocal taxation agreements

55. Subsections 41(3) to (6), 42(3) to (6), 43(4) to (7), 48(3), (4), (8) and (9) and 49(3) and (4) do not apply in respect of any consideration for a supply made to a person listed in

(a) Part II of Schedule A of the reciprocal taxation agreement entered into between the Government of Canada and the Government of Ontario that is in force between July 1, 2006 and June 30, 2010; or

(b) Schedule A of the reciprocal taxation agreement entered into between the Government of Canada and the Government of British Columbia that is in force between November 1, 2005 and June 30, 2010.

DIVISION 4

SPECIAL CASES

Employee and shareholder benefits — Ontario

56. (1) In respect of the 2010 taxation year, if

(a) a benefit amount is required to be included under paragraph 6(1)(a) or (e) of the *Income Tax Act* in computing an individual's income from an office or employment and the last establishment of the employer at which the individual ordinarily worked or to which the individual ordinarily reported in the year in relation to that office or employment is located in Ontario, or

(b) a benefit amount is required under subsection 15(1) of the *Income Tax Act* to be included in computing an individual's income and the individual is resident in Ontario at the end of the year

the portion of subclause (l) of the description of A in clause 173(1)(d)(vi)(B) of the Act after sub-subclause 2 is adapted as follows:

8%, and

Employee and shareholder benefits — British Columbia

(2) In respect of the 2010 taxation year, if

(a) a benefit amount is required to be included under paragraph 6(1)(a) or (e) of the *Income Tax Act* in computing an individual's income from an office or employment and the last establishment of the employer at which the individual ordinarily worked or to which the individual ordinarily reported in the year in relation to that office or employment is located in British Columbia, or

(b) a benefit amount is required under subsection 15(1) of the *Income Tax Act* to be included in computing an individual's income and the individual is resident in British Columbia at the end of the year

the portion of subclause (l) of the description of A in clause 173(1)(d)(vi)(B) of the Act after sub-subclause 2 is adapted as follows:

7.5%, and

Election for shorter reporting period

57. Any person that, immediately before July 1, 2010, is resident in a specified province and registered under Subdivision d of Division V of Part IX of the Act may, subject to section 250 of the Act,

(a) if the reporting period of the person immediately before July 1, 2010 is a fiscal quarter, make an election under section 246 of the Act to have reporting periods that are fiscal months of the

person to take effect, despite paragraph 246(1)(a) of the Act, on the first day of any fiscal quarter of the person that begins before July 1, 2011; and

(b) if the reporting period of the person immediately before July 1, 2010 is a fiscal year,

(i) make an election under section 246 of the Act to have reporting periods that are fiscal months of the person to take effect, despite paragraph 246(1)(a) of the Act, on the first day of any fiscal month of the person that begins before July 1, 2011, or

(ii) make an election under section 247 of the Act to have reporting periods that are fiscal quarters of the person to take effect, despite paragraph 247(1)(a) of the Act, on the first day of any fiscal quarter of the person that begins before July 1, 2011.

Revocation of election for streamlined accounting

58. (1) If a registrant that has made an election under subsection 227(1) of the Act that is in effect on July 1, 2010 is resident in a specified province immediately before July 1, 2010 or has made supplies in a specified province in the one-year period ending immediately before July 1, 2010, the registrant may, despite paragraph 227(4.1)(a) of the Act but subject to paragraph 227(4.1)(b) of the Act, revoke that election under subsection 227(4) of the Act with effect from

(a) if the reporting period of the registrant that includes July 1, 2010 is a fiscal year of the registrant, the first day of any fiscal month of the registrant that begins before July 1, 2011; and

(b) in any other case, the first day of any reporting period of the registrant that begins before July 1, 2011.

New reporting period if election

(2) If a registrant whose reporting period is a fiscal year revokes an election under subsection 227(4) of the Act in accordance with subsection (1) with effect from the first day of a particular fiscal month in a fiscal year of the registrant and that month is not the first fiscal month in that fiscal year,

(a) for the purposes of Part IX of the Act, the period beginning on the first day of that fiscal year and ending immediately before the first day of the particular fiscal month and the period beginning on the first day of the particular fiscal month and ending on the last day of that fiscal year are each deemed to be a separate reporting period of the registrant; and

(b) for the purposes of subsections 237(1) and (2) of the Act, each of those separate reporting periods is deemed to be a reporting period determined under subsection 248(3) of the Act.

PART 4

REPEAL

59. The *Place of Supply (GST/HST) Regulations* (see footnote 1) are repealed.

PART 5

APPLICATION

60. Sections 1 and 34 apply as of March 26, 2009, except that the definition “continuous journey” in section 1 applies as of February 26, 2010.

61. Parts 1 and 4 apply to any supply made

(a) on or after May 1, 2010; and

(b) after February 25, 2010 and before May 1, 2010 unless any part of the consideration for the supply becomes due or is paid before May 1, 2010.

62. Section 35 applies to any agreement varied, altered or terminated on or after March 26, 2009 and to any new agreement entered into on or after that day.

63. Section 36 applies to any agreement varied, altered or terminated on or after April 6, 2010 and to any new agreement entered into on or after that day.

64. Section 37 applies to any transaction made on or after March 26, 2009.

65. Part 3 is deemed to have come into force on October 15, 2009.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Issue and objectives

The Government of Ontario and the Government of British Columbia announced their intention to adopt the Harmonized Sales Tax (HST) on March 26, 2009 and July 23, 2009, respectively, with an effective date of July 1, 2010.

In order to facilitate the transition to the HST, Ontario and British Columbia released, on October 14, 2009, proposed transitional rules and, on February 25, 2010, the Government of Canada released proposed rules for the determination of the place of supply for the application of the HST in all participating provinces.

The *New Harmonized Value-added Tax System Regulations* (the Regulations) formalize and give legal force to the previously released transitional and place of supply rules as well as introduce general anti-avoidance rules related to harmonization.

Description and rationale

With the passage of the *Provincial Choice Tax Framework Act* on December 15, 2009, Parliament has approved the implementation on July 1, 2010 of the HST in Ontario with a provincial component of 8% and in British Columbia with a provincial component of 7% as well as the mechanisms to facilitate the application of certain HST rules by way of regulations. Further, the *Excise Tax Act* provides for other rules, such as the rules for the determination of the place of supply for the application of HST, to be made by way of regulations.

The Regulations contain rules with respect to the new harmonized value-added tax system under the *Excise Tax Act*. These regulations cover

- Ontario and British Columbia general HST transitional rules;
- HST place of supply rules; and
- Harmonization anti-avoidance rules.

Ontario and British Columbia general HST transitional rules

The Regulations set out the general transitional rules for the introduction of the HST in Ontario and British Columbia by specifying whether, and to what extent, the provincial component of the HST applies to supplies of property and services that straddle the July 1, 2010 implementation date. Transitional rules are necessary to facilitate the transition from Ontario and British Columbia's existing retail sales tax to the HST by specifying when the provincial component of the HST applies to these straddling transactions.

The transitional rules vary depending on the type of property or service supplied. For example, as of May 1, 2010, businesses are generally required to charge and collect the provincial component of the HST at a rate of 8% in Ontario and 7% in British Columbia in respect of consideration for a service, leased property or a membership that relates to the portion of the service that is to be performed, or the portion of the lease or membership period that is to occur, on or after July 1, 2010. For supplies of goods by way of sale, businesses are generally required to charge and collect the provincial component of the HST at a rate of 8% in Ontario or 7% in British Columbia on goods that are delivered on or after July 1, 2010. For goods that are delivered before July 1, 2010, the provincial component of the HST does not apply.

HST place of supply rules

The HST place of supply rules determine whether a supply that is made in Canada is made in a harmonized province. When a taxable supply (other than a zero-rated supply) is made in Canada and is treated as being made in a harmonized province under the HST place of supply rules, the supplier must collect HST at the rate of 5% plus the rate of the provincial component of the HST for that province. Otherwise, the supplier must collect only 5% GST.

Maintaining previous rules that often determined the province of supply based upon where the supplier was located would put businesses in harmonized provinces at a competitive disadvantage compared to competitors in non-harmonized provinces and would have resulted in many purchasers either paying HST when acquiring property and services to be consumed outside harmonized provinces or not being charged HST for property and services for consumption in a harmonized province.

The new rules rely less on supplier location as a criterion for determining where a supply of a service or intangible personal property (such as rights to use software) is made and provide greater emphasis on a purchaser's location (i.e. the purchaser's address). For example, under the new rules, suppliers of intangible personal property, such as downloaded software that can be used anywhere in Canada, determine the place of supply based upon the purchaser's address rather than the supplier's location.

The new place of supply rules provided for in the Regulations generally align the place of supply with the place of consumption for supplies of services and intangible personal property. In so doing, they remove competitive disadvantages for businesses selling from participating provinces.

Harmonization anti-avoidance rules

The Regulations also set out rules to prevent persons from improperly taking advantage of a change in the new harmonized value-added tax system under the *Excise Tax Act*. Such changes include the addition of a province to the system, a change to the tax rate of a participating province or a change to a rebate of the provincial component of the HST.

The anti-avoidance rules in these Regulations apply where persons not dealing at arm's length with each other enter into transactions to obtain a tax benefit as a result of a change in the new harmonized value-added tax system and not primarily for *bona fide* purposes other than to obtain the tax benefit. In these circumstances, the Regulations allow the Minister of National Revenue to assess the participants in the transactions in order to deny the tax benefit. Generally, the aim of the harmonization anti-avoidance rules is to prevent persons not dealing at arm's length from attempting to avoid the HST simply to obtain a tax benefit and for no *bona fide* purpose.

Consultation

The Regulations were developed in consultation with the governments of Ontario and British Columbia, and of the existing harmonized provinces of Nova Scotia, New Brunswick and Newfoundland and Labrador. The Canada Revenue Agency was also consulted on the Regulations. The Regulations are designed to reflect previous HST announcements of proposed rules by Ontario and British Columbia on October 14, 2009 and by the Government of Canada on February 25, 2010.

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Footnote a
S.C. 1993, c. 27, ss. 125(1)

Footnote b
S.C. 2009, c. 32, ss. 37(1)

Footnote c
R.S., c. E-15

Footnote 1
SOR/2001-170

NOTICE:

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with extensible hypertext markup language (XHTML 1.0 Strict).