Explanatory Notes Relating to the Income Tax Act, the Excise Act, 2001 and Other Related Texts

Published by
The Honourable William Francis Morneau, P.C., M.P.
Minister of Finance

April 2018

Department of Finance Canada | Ministère des Finances Canada

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Excise Act, 2001* and other related texts. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable William Francis Morneau, P.C., M.P.
Minister of Finance

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

Table of Contents

Clause in Legislation	Section Amended	Topic	Page
		Part 1 – Amendments to the Income Tax Act and to Related Legislation	
Income Tax Act			
2	6	Canadian Forces members and veterans income replacement benefits	7
3	56	Pension benefits, unemployment insurance benefits, etc.	7
4	60.03	Definitions – “eligible pension income”	8
5	81	Canadian Forces members and veterans amounts	8
6	82	Taxable dividend	9
7	87	Amalgamations – Refundable dividend tax on hand	10
8	104	Beneficiaries’ taxable capital gain	10
9	110	Deductions for payments	11
10	117.1	Annual adjustment	11
11	118	Age credit	12
12	118.2	Medical expense tax credit	13
13	120.4	Definitions concerning tax on split income	14
14	121	Deduction for Taxable Dividends – Dividend Tax Credit	25
15	122.5	GST/HST credit – definitions	25
16	122.6	Canada Child Benefit – definitions	26
17	122.61	Annual adjustment	26
18		Canada Workers Benefit	26
19	122.7	Canada Workers Benefit – definitions	26
20	125	Small business deduction	28
21	127	Investment Tax Credit	31
22	129	Dividend refund to private corporation	32
23	131	Dividend refund to mutual fund corporation	35
24	146.4	Definitions – “disability savings plan”	36
25	149.1	Qualified Donees - Definitions	36
26	160	Joint and several, or solidary, liability – tax on split income	36
27	162	Failure to provide identification number	37
28	180.2	Tax on Old Age Security Benefits – definitions	37
29	186	Deemed private corporation	38
30	188	Eligible Donee	38
31	189	Reduction of liability for penalties	38
32	221	Regulations respecting information returns	39
33	237	Production of Number	39
34	237.1	Information return	40
35	239	Offence with respect to an identification number	41
36	241	Where taxpayer information may be disclosed	41
37	248	Definitions	42
Deemed Coming into Force			
38	122.6	Canada Child Benefit – definitions	42
An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act			
39	67	Consequential amendment to An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act	42
40	69	Consequential amendment to An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act	43
Budget Implementation Act, 2017, No.1			
41	6	Consequential Amendment to the Budget Implementation Act, 2017, No. 1	43

Clause in Legislation	Section Amended	Topic	Page
Income Tax Regulations			
42	201	Investment income	43
43	229	Partnership return	43
44	3503	Universities outside Canada	44
45	Sch. II	Capital cost allowance – prescribed classes	44
46	Sch. VIII	Universities outside Canada	45
Part 2 – Amendments to the Excise Act, 2001 (Tobacco Taxation) and to Related Legislation			
Excise Act, 2001			
47	43.1	Inflationary adjustments	46
48	58.1	Definitions	46
49	58.2	Imposition of tax	47
50	58.5	Returns	48
51	58.6	Payment	48
52	216	Punishment – section 32	48
53	240	Contravention of subsection 50(5)	49
54	Sch. 1	Rate of duty on cigarettes	49
55	Sch. 1	Rate of duty on tobacco sticks	50
56	Sch. 1	Rate of duty on manufactured tobacco other than cigarettes and tobacco sticks	50
57	Sch. 1	Rate of duty on cigars	50
58	Sch. 2	Additional duty on cigars	50
Economic Action Plan 2014 Act, No. 1			
59	76	Punishment – section 32	51
60	78	Contravention of subsection 50(5)	51
61	79	References	52
62	80	References	52
63	81	References	52
Economic Action Plan 2014 Act, No. 2			
64	100	Refund of duty – destroyed tobacco products	52
65	101	Destroyed imported manufactured tobacco	53
Budget Implementation Act 2017, No. 1			
66	45	Definitions	53
Application			
67		Application	54
Part 3 – Amendments to the Excise Act, 2001 (Cannabis Taxation), the Excise Tax Act and Other Related Texts			
Coordination with the Cannabis Act			
68		Coordination with the Cannabis Act	55
Excise Act, 2001			
69	2	Definitions	55
70	5	Constructive possession and meaning of possession	61
71	14	Cannabis licence	61
72	23	Cancellation and conditions of cannabis licence	62
73	Part 4.1	Cannabis	62
74	159	Determination of fiscal months	72
75	180	No refund on exported tobacco products or alcohol	72
76	187.1	Refund of duty – destroyed cannabis	72
77	206	Keeping records – general	72
78	211	Confidentiality	73
79	214	Unlawful production, sale, etc. of tobacco, alcohol or cannabis	73

Clause in Legislation	Section Amended	Topic	Page
80	218.1	Punishment – sections 158.11 and 158.12	74
81	230	Property obtained from offences	75
82	231	Laundering proceed of certain offences	76
83	232	Part XII.2 of Criminal Code applicable	76
84	233.1	Contravention of section 158.13	77
85	234	Contravention of section 38, 40, 49, 61, 62.1, 99, 149, 151 or 158.15	77
86	234.1	Contravention of section 158.02, 158.1, 158.11 or 158.12	78
87	238.1	Penalty in respect of unaccounted excise stamps	79
88	239	Other diversions	79
89	264	Certain things not to be returned	80
90	266	Dealing with things seized	80
91	304	Regulations – Governor in Council	80
92	304.1 and 304.2	Regulations – Governor in Council	81
93	Schedule 7	Duty on Cannabis	82
94	Various	Terminology Changes	82
Excise Tax Act			
95	123(1)	Definition	82
96	V/VI/4	Certain fund-raising activities by volunteers	83
97	VI/III/1	Basic groceries	83
98	VI/IV/2	Grains or seeds and fodder crops	83
99	VI/IV/3.1	Sale of industrial hemp seeds and straw	84
100	VII/12	Non-taxable Importations	84
101	X/I/6	Non-taxable property for purposes of Subdivision A	85
Postal Imports Remission Order			
102	2	Definitions	85
Postal Imports Remission Order			
103	2	Definitions	86
Public Service Body Rebate (GST/HST) Regulations			
104	4	Prescribed property and services	86
Regulations Respecting Excise Licences and Registration			
105	5	Security	86
Regulations Respecting the Possession of Tobacco Products That Are Not Stamped			
106	Title	Title of regulations	87
107	1.1	Authorized Possession	87
Stamping and Marking of Tobacco Products Regulations			
108	Title	Title of regulations	88
109	2	Prescribed Package	88
110	4	Prescribed Person	88
111	4.1	Security	89
112	4.2	Excise Stamps	89
Tobacco Products Labelling Regulations (Cigarettes and Little Cigars)			
113	Various	Terminology Changes	89
Criminal Code			
114	183	Definition “offence”	90
Customs Act			
115	2	Definitions	90
116	109.2	Contravention relating to tobacco, cannabis and designated goods	90
Application			
117		Application	91

Clause in Legislation	Section Amended	Topic	Page
Transitional Provision			
118		Transitional provision	91
Federal-Provincial Fiscal Arrangement Act			
119	2	Definition “coordinated cannabis taxation agreement”	91

Part 1 – Amendments to the Income Tax Act and to Related Legislation

Clause 2

Canadian Forces members and veterans income replacement benefits

ITA

6(1)(f.1)

Section 6 of the *Income Tax Act* (the "Act") provides for the inclusion, in an employee's income from an office or employment, of most employment related benefits other than those specifically excluded. Paragraph 6(1)(f.1) provides for the inclusion in income of certain amounts provided under the *Veterans Well-being Act* (formerly the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*).

Paragraph 6(1)(f.1) is amended to provide that amounts received on account of the newly introduced income replacement benefit in Part 2 of the *Veterans Well-being Act* (other than an amount determined under subsection 19.1(1), paragraph 23(1)(b) or subsection 26.1(1), including any transitional amounts payable under Part 5 in respect of the amounts payable under these subsections, of that Act) are included in income from an office or employment. Paragraph 6(1)(f.1) is also amended to include in income from an office or employment certain transitional amounts payable under the *Veterans Well-being Act* related to the introduction of the income replacement benefit.

New paragraph 6(1)(f.1) comes into force on April 1, 2019.

Clause 3

Pension benefits, unemployment insurance benefits, etc.

ITA

56(1)(a)(viii)

Paragraph 56(1)(a) of the Act includes in the income of a taxpayer certain amounts received in a taxation year, including pension benefits and unemployment insurance benefits.

New subparagraph 56(1)(a)(viii) includes in the income of a taxpayer (a Canadian Forces veteran or survivor) an income replacement benefit determined under subsection 19.1(1), paragraph 23(1)(b) or subsection 26.1(1) of Part 2 of the *Veterans Well-being Act*, including any transitional amounts payable under Part 5 of that Act in respect of the amounts payable under these subsections. These amounts represent income replacement benefits paid in respect of a Canadian Forces veteran for the months following the month in which the veteran attained (or would have attained) age 65.

Income replacement benefits payable up to the month the veteran attained (or would have attained) age 65 are included in income under paragraph 6(1)(f.1) and are considered to be income from an office or employment. For more information, see the commentary on paragraph 6(1)(f.1). Also see the additional commentary on subsections 60.03(1) and 118(3) related to the eligibility of income replacement benefits for the purposes of pension income splitting and the pension credit.

This amendment comes into force on April 1, 2019.

Clause 4

Definitions – "eligible pension income"

ITA

60.03(1)

Subsection 60.03(1) of the Act provides definitions that apply for the purposes of the pension income splitting rules.

Subparagraph (c)(i) of the definition "eligible pension income" includes amounts received by a taxpayer on account of a retirement income security benefit (RISB) under Part 2 of the *Veterans Well-being Act* (formerly the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*).

Clause (A) preserves the existing RISB eligibility for pension income splitting and updates the name of the relevant statute.

Subparagraph (c)(i) of the definition is amended to extend eligibility for pension income splitting, via Clause (B), to amounts received by a taxpayer (a Canadian Forces veteran or survivor) on account of an income replacement benefit paid under subsection 19.1(1), paragraph 23(1)(b) or subsection 26.1(1) of Part 2 of the *Veterans Well-being Act*, including any transitional amounts payable under Part 5 in respect of the amounts payable under these subsections. These amounts represent income replacement benefits paid in respect of a Canadian Forces veteran for the months following the month in which the veteran attained (or would have attained) age 65.

The effect of new Clause (B) will be to allow spouses or common-law partners to split income replacement benefit amounts, but only to the extent that the total of the eligible amounts that they elect to split under subsection 60.03(1) does not exceed the defined benefit limit (as defined under subsection 8500(1) of the *Income Tax Regulations*) multiplied by 35 ($103,055 for 2018).

For more information, see the additional commentary on subsection 118(3) related to the eligibility of income replacement benefits for purposes of the pension credit.

This amendment comes into force on April 1, 2019.

Clause 5

Canadian Forces members and veterans amounts

ITA

81(1)(d.1)

Section 81 of the Act lists various amounts that are not included in computing a taxpayer's income. Paragraph 81(1)(d.1) specifically excludes from the computation of a taxpayer's income certain payments under the *Veterans Well-being Act* (formerly the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*).

Paragraph 81(1)(d.1) is amended to provide that payments received on account of pain and suffering compensation and additional pain and suffering compensation under Part 3 of the *Veterans Well-being Act* and certain transitional amounts related to pain and suffering compensation under Part 5 of the *Veterans Well-being Act* are exempt from income tax.

New paragraph 81(1)(d.1) comes into force on April 1, 2019.

Consistent with amendments brought forward in the *Budget Implementation Act, 2017 No. 1*, the reference to the family caregiver relief benefit is removed applicable to the 2020 and subsequent taxation years.

Memorial grant

ITA

81(1)(j)

Section 81 of the Act lists various amounts that are not included in computing a taxpayer's income. New paragraph 81(1)(j) specifically exempts from income amounts received under the Memorial Grant Program for First Responders under the authority of the *Department of Public Safety and Emergency Preparedness Act* which provides grants in respect of first responders (*i.e.*, police officers, firefighters and paramedics) who die in the course of, or as a result of, their duties or as a result of an occupational illness or psychological impairment (*e.g.*, through suicide).

New paragraph 81(1)(j) applies to amounts received after March 2018.

Clause 6

Taxable dividend

ITA

82(1)(b)

In general terms, subsection 82(1) of the Act requires an individual who receives a taxable dividend from a corporation resident in Canada to include in income an amount equal to the total of the dividend received and a gross-up amount. Under this approach:

- An individual is first required to include the grossed-up amount of taxable dividends (*i.e.*, a proxy for pre-tax profits) in income, and is subject to tax on the whole amount. The tax system in effect treats the individual as having directly earned the amount that the corporation is presumed to have earned in order to pay the dividend.
- The individual is then entitled to claim a dividend tax credit in respect of the amount under section 121 – the dividend tax credit compensates the individual for the amount of corporate-level tax presumed to have been paid on the grossed-up amount.

In the case of a taxable dividend that is a "non-eligible dividend" (*i.e.*, a dividend that is paid out of corporate income eligible for the small business deduction), paragraph 82(1)(b) requires an individual who receives the non-eligible dividend to add to the dividend a gross-up amount equal to 17% of the dividend.

Paragraph 82(1)(b) is amended to provide the gross-up percentage for the 2018 and subsequent taxation years. New clauses (b)(i)(A) and (B) reduce the gross-up percentage to 16% for the 2018 taxation year and to 15% for the 2019 and subsequent taxation years.

This amendment is made in conjunction with the amendment to paragraph 121(a) to adjust the corresponding dividend tax credit for non-eligible dividends and the amendment to subsection 125(1.1) that increases the small business deduction rate (and therefore reduces the small business tax rate) for the 2018 and subsequent taxation years.

Clause 7

Amalgamations – Refundable dividend tax on hand

ITA

87(2)(aa)

Subsection 87(2) of the Act applies where two or more taxable Canadian corporations (referred to as "predecessor corporations") amalgamate to form a "new corporation".

Paragraph 87(2)(aa) provides that in most cases any refundable dividend tax on hand ((RDTOH) of the predecessor corporations is added to the new corporation's RDTOH. This rule also applies to tax-deferred wind-ups under subsection 88(1), with consequential word substitutions, by virtue of paragraph 88(1)(e.2).

Paragraph 87(2)(aa) is amended to reflect the repeal of subsection 129(3) and the replacement of RDTOH with "eligible refundable dividend tax on hand" (ERDTOH) and "non-eligible refundable dividend tax on hand" (NERDTOH), as newly defined in subsection 129(4).

Amended paragraph 87(2)(aa) provides that where the new corporation was a private corporation immediately after the amalgamation, its ERDTOH and NERDTOH at the end of its first taxation year will include the ERDTOH and NERDTOH of all predecessor corporations at the end of their last taxation years, less any dividend refunds received by the predecessor corporations from those accounts for those years.

Consistent with the existing rule in paragraph 87(2)(aa), this transfer of ERDTOH and NERDTOH balances to the new corporation from a particular predecessor corporation is subject to (i) the requirement that the predecessor corporation be a private corporation at the end of its last taxation year and (ii) the potential application of the anti-avoidance rule in subsection 129(1.2) in respect the predecessor corporation.

Subsection 129(5.1) contains a transitional rule for the purposes of the application of paragraph 87(2)(aa) for situations in which one or more predecessor corporations have not yet transitioned from the RDTOH regime to the new ERDTOH and NERDTOH regime as at the end of its last taxation year and the new corporation is subject to the new regime. See the comments under that subsection for details.

This amendment applies to taxation years that begin after 2018, subject to the possible application of an anti-avoidance rule. For more information, see the comments under section 125.

Clause 8

Beneficiaries' taxable capital gain

ITA

104(21.2)

Subsection 104(21.2) of the Act sets out rules for establishing the net taxable capital gains of a trust that, for the purposes of section 110.6, can be attributed to the beneficiaries of the trust and to specific types of properties disposed of by the trust. This attribution permits the beneficiary to claim the lifetime capital gains exemption under section 110.6 in respect of a disposition by the trust of qualified farm or fishing property or a qualified small business corporation share.

Subsection 104(21.2) is amended as a consequence of changes to the tax on split income (TOSI) in section 120.4. In particular, paragraph 104(21.2)(b) is amended so that taxable capital gains of a trust

from the disposition of qualified farm or fishing property or qualified small business corporation shares can be attributed to beneficiaries of the trust for the purposes of section 120.4.

For more information, see the commentary on the definition “excluded amount” in subsection 120.4(1).

Clause 9

Deductions for payments

ITA

110(1)(f)(v)

Subparagraph 110(1)(f)(v) of the Act provides a deduction in the computation of taxable income for employment income earned by members of the Canadian Forces or a police force serving on a deployed operational mission based on a particular risk score as determined by the Department of National Defence. The maximum amount that an individual may deduct in a taxation year cannot exceed the highest level of pay earned by a non-commissioned member of the Canadian Forces.

Clause 110(1)(f)(v)(A) is amended to extend this tax deduction to all Canadian Forces members and police officers participating in deployed international operational missions (as determined by the Minister of National Defence or that Minister’s designate), without the requirement that a particular risk score be associated with the missions.

Clause 110(1)(f)(v)(B) is also amended to increase the maximum amount that an individual may deduct in a taxation year to the highest level of pay earned by a Lieutenant-Colonel (General Service Officers) of the Canadian Forces.

These amendments apply to the 2017 and subsequent taxation years.

Designated mission

ITA

110(1.3)

Subsection 110(1.3) of the Act provides the Minister of Finance the authority to, upon the recommendation of the Minister of National Defence (for Canadian Forces members) or the Minister of Public Safety (for police officers), designate a mission for the purposes of subclause 110(1)(f)(v)(A)(II).

Consequential on the amendment to clause 110(1)(f)(v)(A), subsection 110(1.3) is repealed. For more information, see the notes to subparagraph 110(1)(f)(v).

This amendment applies to the 2017 and subsequent taxation years.

Clause 10

Annual adjustment

ITA

117.1(1)

Subsection 117.1(1) of the Act provides for the indexing of various amounts in the ITA, based on annual increases to the Consumer Price Index. Subsection 117.1(1) is amended to ensure that the amended amounts referred to in subsections 122.7(2) and (3)—which respectively relate to the “basic” Canada Workers Benefit and the Canada Workers Benefit “disability supplement”—are indexed. For more information, see the commentary on subsections 122.7(2) and (3).

These amendments apply to the 2019 and subsequent taxation years.

Clause 11

Age Credit

ITA

118(2)

Subsection 118(2) of the Act provides an age tax credit for individuals who are over 65 years of age or who reach age 65 years in the year. The credit is calculated as a percentage of an indexed base amount. The base amount upon which an individual's age tax credit is calculated is reduced by 15 per cent of the amount by which the individual's income for the year exceeds an indexed income base amount.

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

Subsection 118(2) is amended to exclude amounts deductible under paragraph 20(1)(ww) from the income base upon which the reduction in the age tax credit is calculated. This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.,* income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Pension credit

ITA

118(3)

Subsection 118(3) of the Act provides for a non-refundable credit to an individual determined by the formula A x B:

- Variable A is the appropriate percentage for the year (15% for 2018).
- Variable B is the lessor of $2,000 and the total of the eligible pension income of the individual for the year and amounts received by the individual on account of a retirement income security benefit payable to the individual under Part 2 of the *Veterans Well-being Act* (formerly the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*).

Variable B of the pension credit is amended by adding subparagraph (iii) to extend pension credit eligibility to amounts received by the individual on account of an income replacement benefit paid under subsection 19.1(1), paragraph 23(1)(b) or subsection 26.1(1) of Part 2 of the *Veterans Well-being Act*, including any transitional amounts payable under Part 5 in respect of the amounts payable under these subsections. These amounts represent income replacement benefits paid in respect of a Canadian Forces veteran for the months following the month in which the veteran attained (or would have attained) age 65.

As a result, the non-refundable credit will be the total (not exceeding $2,000) of the individual's eligible pension income, retirement income security benefit and, as specified above, eligible income replacement benefits for the year, multiplied by the appropriate percentage for the year.

For more information, see the additional commentary on paragraph 6(1)(f.1) and subparagraph 56(1)(a)(viii) related to the income inclusion of income replacement benefits and the commentary on subsection 60.03(1) related to the eligibility of income replacement benefits for purposes of pension income splitting.

This amendment comes into force on April 1, 2019.

Limitations re subsec. (1)

ITA

118(4)

Subsection 118(4) of the Act provides rules governing the tax credits available under subsection 118(1).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

New paragraph 118(4)(a.2) provides that, for the purpose of calculating the age tax credit in subsection 118(2), references to income for the year are to be read as references to income determined as if no amount were deductible under paragraph 20(1)(ww). This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 12

Medical expense tax credit

ITA

118.2(2)(l)

Subsection 118.2(2) of the Act sets out the expenses that may be included in computing an individual's medical expense tax credit.

Paragraph 118.2(2)(l) allows certain expenses associated with an animal to qualify for the medical expense tax credit if the animal is acquired to assist a person who is blind or profoundly deaf, has severe autism or epilepsy, suffers from severe diabetes, or has a severe and prolonged impairment that markedly restricts the use of the person's arms or legs. Qualifying expenses include the cost of acquiring the animal and expenses incurred for its care and maintenance.

The scope of this provision is expanded so that it also applies in respect of expenses associated with animals that are specially trained to perform specific tasks to assist individuals in coping with severe mental impairment. These specific tasks could include guiding a disoriented individual, searching the home of an individual with severe anxiety before they enter and applying compression to an individual experiencing night terrors. For example, costs associated with a psychiatric service dog specially trained to assist an individual in coping with post-traumatic stress disorder would qualify for the medical expense tax credit.

Expenses associated with an animal (*e.g.*, an emotional support animal) that has not been specially trained to perform specific tasks to assist an individual in coping with severe mental impairment would not qualify. The fact that an animal provides emotional support in addition to the performance of specific tasks would not preclude expenses from qualifying.

This amendment applies in respect of expenses incurred after 2017.

Clause 13

Definitions concerning tax on split income

ITA

120.4(1)

The following definitions apply for the purpose of the TOSI rules in section 120.4 of the Act.

"excluded amount"

The definition "excluded amount" in subsection 120.4(1) describes income that is excluded from split income of an individual. The definition "excluded amount" currently includes two types of income. The first is income from property inherited by the individual from a parent of the individual. The second is income from property inherited by the individual from anyone, if the individual is, in the year in which the income is required to be reported, either a full-time student enrolled at a post-secondary institution as defined in subsection 146.1(1) or eligible for the disability tax credit.

The definition "excluded amount" is amended in a number of respects.

First, the definition is amended so that it applies in respect of income that is from gains from the disposition of property. This change reflects a separate amendment that would include certain gains in split income. For more information, see the commentary on new paragraph (e) of the definition "split income".

Second, the definition is amended so that the existing exclusions in respect of inherited property apply to individuals who have not attained the age of 24 years before the year. If an individual has attained the age of 24 years before the year, the exclusions in respect of inherited property will not apply, even if the individual inherited the property prior to the year in which they attain the age of 25 years.

Third, paragraphs (b) to (g) of the definition are added to provide additional types of excluded amounts. The addition of these amounts is consequential on the extension of the TOSI to include individuals who attained the age of 17 years before the year.

New paragraph (b) excludes from split income amounts derived from property that is acquired by an individual under a transfer described in subsection 160(4). As a result, where a taxpayer transfers property to the taxpayer's spouse or common-law partner pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement and, at that time, the taxpayer and spouse or common law partner were separated and living apart as a result of the breakdown of their marriage or common-law partnership, the income derived by the spouse or common-law partner from the property will be an excluded amount in respect of the spouse or common-law partner.

New paragraph (c) excludes from split income a taxable capital gain that arises because of subsection 70(5). Generally, subsection 70(5) provides for a deemed disposition of capital property owned by a taxpayer immediately before their death.

New paragraph (d) excludes from split income taxable capital gains that arise from the disposition of "qualified farm or fishing property" or "qualified small business corporation shares". This exclusion would also apply to taxable capital gains realized by a trust that are allocated to beneficiaries of the trust in the year of the disposition. However, this exclusion does not apply to a taxable capital gain that is deemed to be dividend under subsection 120.4(4) or (5).

New paragraph (e) provides two exclusions from split income that are available to individuals who have attained the age of 17 years before the year.

Subparagraph (i) provides that an amount that is not derived directly or indirectly from a "related business" in respect of the individual for the year is an excluded amount. "Related business" is defined in subsection 120.4(1) and generally refers to a business in respect of which a Canadian-resident person related to the individual is sufficiently connected (either by being actively involved in the business or by having a significant capital interest in the entity carrying on the business). For more information, see the commentary on the definition "related business".

Subparagraph (ii) provides that an amount that is derived directly or indirectly from an "excluded business" of the individual for the year is an excluded amount. "Excluded business" is defined in subsection 120.4(1) and generally refers to a business in respect of which the individual has made a sufficient labour contribution. For more information, see the commentary on the definition "excluded business".

New paragraph (f) provides two exclusions from split income that are available to individuals who attained the age of 17 years, but not 24 years, before the year.

Subparagraph (i) provides that an amount that is a "safe harbour capital return" of an individual for the year is an excluded amount. "Safe harbour capital return" is defined in subsection 120.4(1) and generally allows for a return on contributed capital up to a prescribed rate. For more information, see the commentary on the definition "safe harbour capital return".

Subparagraph (ii) provides that an amount that is a "reasonable return" in respect of the individual having regard only to the contributions of "arm's length capital" by the individual in support of the business from which the amount is derived is an excluded amount. Contributions of labour would therefore not be taken into consideration in determining the reasonable return for this purpose. The definition "reasonable return" generally refers to a reasonable return from a business, taking into consideration the relative contributions made to the business by the individual and persons related to the individual. "Arm's length capital" generally refers to property inherited or earned by the individual, such as salary. As a result of this exclusion, an amount will be an excluded amount to the extent that it does not exceed a reasonable return on arm's length capital contributed by the individual. For more information, see the commentary on the definitions "reasonable return" and "arm's length capital".

New paragraph (g) provides two exclusions from split income that are available to individuals who have attained the age of 24 years before the year.

Subparagraph (i) provides that income from, or a taxable capital gain from the disposition of, "excluded shares" of an individual for the year is an excluded amount. "Excluded share" is defined in subsection 120.4(1) and generally refers to an individual's shares of a corporation carrying on a non-services business if the individual owns 10% or more of the shares of that corporation's capital stock. As a result of this exclusion, dividends on an excluded share of the individual will be an excluded amount. If an individual disposes of an excluded share held on capital account, then the resulting taxable capital gain will also be an excluded amount. For more information, see the commentary on the definition "excluded shares".

Subparagraph (ii) provides that an amount that is a "reasonable return" in respect of an individual for the year is an excluded amount. "Reasonable return" is defined in subsection 120.4(1) and generally refers to the portion of a return from a business that is reasonable, taking into consideration the relative contributions made to the business by the individual and persons related to the individual. For more information, see the commentary on the definition "reasonable return".

"specified individual"

A "specified individual" is generally a taxpayer who is subject to tax on their "split income".

The definition "specified individual" in subsection 120.4(1) is replaced with a new definition. Under the new definition, an individual (other than a trust) is a specified individual for a taxation year if two conditions are met:

1. the individual is a resident of Canada at the end of the taxation year or, if the individual died during the taxation year, the individual was a resident of Canada immediately before their death; and

2. if the individual has not attained the age of 17 years before the year, the individual has a parent who is resident in Canada at any time in the year.

"split income"

"Split income" describes the types of income that are subject to the TOSI under subsection 120.4(2).

The definition "split income" is amended and expanded in several respects.

Subparagraphs (b)(ii) and (c)(ii) are amended by replacing part of their contents with a reference to amounts that can reasonably be considered to be income derived, directly or indirectly, from one or more "related businesses" in respect of the individual. Much of the previous substantive content of those subparagraphs is preserved in the new definition "related business," with modifications relating to businesses carried on by corporations. New paragraph 120.4(1.1)(d) contains an interpretative rule relating to when income is derived, directly or indirectly, from a business. For more information, see the commentary on the definition "related business" and paragraph 120.4(1.1)(d).

New paragraph (d) extends the split income definition to apply in respect of income from indebtedness (*e.g.*, interest). In general terms, this type of income received by a specified individual from a debtor corporation, partnership or trust will be split income if other amounts (*e.g.*, dividends) received by the specified individual from the debtor would be split income.

Specifically, split income will include amounts in respect of a debt obligation of a corporation (other than a publicly listed corporation or a mutual fund corporation), partnership or trust (other than a mutual fund trust). A number of exclusions are provided in subparagraph (ii):

- certain debts of, or debts guaranteed by, governments, that are described in paragraph (a) of the definition "fully exempt interest" in subsection 212(3);
- publicly-listed or traded debt; and
- a deposit standing to the individual's credit at a bank or credit union.

New paragraph (e) extends the split income definition to include taxable capital gains and income from the disposition of property, that are not otherwise included in the definition of split income, in situations where income from the property would be split income in the hands of the specified individual.

Specifically, an amount will be split income pursuant to paragraph (e) of the definition when two conditions are met.

1. The amount must either be a gain realized by the individual from the disposition of property or income derived by the individual through a trust that is attributable to the disposition of a property.
2. The property referred to in the first condition must generally be property the income from which would be split income if received by the specified individual. This would be the case for shares of a corporation (other than a publicly-traded share or a share of a mutual fund corporation). It could also be the case where the property is a debt obligation or an interest in a partnership or trust (other than a mutual fund trust or a trust that is deemed to arise under subsection 143(1), which

relates to certain communal organizations). For property other than shares of a corporation, the property must also be a property in respect of which

- an amount was included in the individual's split income for the year or a previous year, or
- all or part of its fair market value immediately before the disposition was attributable to a share of a corporation (other than a share of a publicly-traded corporation or a share of a mutual fund corporation).

This type of income will be split income for dispositions of property that occur after 2017.

"arm's length capital"

The effect of subparagraph (f)(ii) of the definition "excluded amount" is that an individual who has attained the age of 17 years, but has not attained 24 years, before the year is subject to the TOSI on an amount only to the extent that it exceeds a "reasonable return" on "arm's length capital" contributed by the individual. "Reasonable return" generally refers to a reasonable return from a business, taking into consideration the relative contributions made to the business by the individual and persons related to the individual. For more information, see the commentary on the definition "reasonable return".

In general terms, "arm's length capital" of an individual is inherited property or property earned or otherwise acquired by the individual that is not acquired from a relative or from a related business (other than as salary). To qualify, the property cannot have been:

1. Acquired by the individual as income (*e.g.*, as a dividend) from another property or as a gain from the disposition of another property where the income or gain was derived directly or indirectly from a related business in respect of the individual;
2. Borrowed (including from arm's length sources); or
3. Transferred to the individual by a person who was related to the individual. For this purpose, transfers as a consequence of death of a person are excluded.

"excluded business"

An individual who has attained the age of 17 years before the taxation year will not be subject to the TOSI on income derived directly or indirectly from an excluded business of the individual for that year. This exclusion from split income is provided in subparagraph (e)(ii) of the definition "excluded amount".

An excluded business of an individual for a year means a business in which the individual is actively engaged on a regular, continuous and substantial basis in the year (paragraph (a)) or in any five previous years (paragraph (b)). Gains from the disposition of property (described in paragraph (e) of the "split income" definition) will be an excluded amount because of the excluded business exception (subparagraph (e)(ii) of the "excluded amount" definition) only if the individual satisfies the five-year test in paragraph (b) of the excluded business definition.

The five-year test is intended to ensure that individuals who have made significant labour contribution to a business over a number of years will continue to be exempt from the TOSI in respect of income derived from the business after the individual has retired from, or reduced their involvement in, the business. In order to qualify, it is not necessary that the five preceding years be continuous. These years can be before the effective date of these amendments.

A business could qualify as an excluded business of a specified individual even if that business derives income from another related business in respect of the specified individual that is not itself an excluded business. For example, if an individual receives dividends from a corporation that is an excluded business of the individual and a portion of that corporation's income is from the provision of goods or services to another corporation owned by the specified individual's parent (which would be a related business in

respect of the specified individual), the dividends would still qualify as an excluded amount in respect of the specified individual.

Whether an individual has been actively engaged in the activities of a business on a "regular, continuous and substantial basis" in a year will depend on the circumstances, including the nature of the individual's involvement in the business and the nature of the business itself. Whether an individual is actively engaged in a business will generally turn on the time, work and energy that the individual devotes to the business. The more an individual is involved in the management and/or current activities of the business, the more likely it is that the individual will be considered to participate in the business on a regular, continuous and substantial basis. Likewise, the more an individual's contributions are integral to the success of the business, the more substantial they would be.

It is intended that the determination of whether a business is an excluded business of the individual will generally not be affected by reorganizations and other changes to the person or partnership carrying on the business. For example, if a business operated as a sole proprietorship is transferred to a corporation, an individual's involvement in the business before the transfer is to be taken into consideration in determining whether the business carried on by the corporation is an excluded business of the individual.

Without limiting the generality of the "regular, continuous and substantial" test described above, new paragraph 120.4(1.1)(a) contains a deeming rule that provides additional certainty in determining whether an individual is actively engaged on a regular, continuous and substantial basis in the activities of a business. This bright-line deeming rule is generally based upon an average of 20 hours per week of work throughout the portion of the year when the business operates. An average work commitment of less than 20 hours per week could qualify as regular continuous and substantial where, for example, an individual works 30 hours per week in a year-round business up to the start of July, after which they are unable to continue working throughout the remainder of the year (*e.g.*, because of injury, illness or the birth or adoption of a child). For more information, see the commentary on the definition "excluded amount" and paragraph 120.4(1.1)(a).

"excluded shares"

An individual's income from, or a taxable capital gain from the disposition of, "excluded shares" is excluded from the TOSI pursuant to subparagraph (g)(i) of the "excluded amount" definition. This exclusion applies to individuals who have attained the age of 24 years before the year.

"Excluded shares" of an individual are shares of the capital stock of a corporation that are owned by the individual if all of the following conditions are met:

1. less than 90% of the business income of the corporation is from the provision of services;
2. the corporation is not a professional corporation, as defined in subsection 248(1);
3. the individual owns ten per cent or more of shares of the capital stock of the corporation, determined by reference to their value and the votes that could be cast at an annual meeting of the shareholders of the corporation; and
4. the income of the corporation is not derived directly or indirectly from another related business. This limitation is intended to prevent the circumvention of the TOSI rules by splitting a services business into services and non-services parts. For example, this would apply to the use of holding companies and so-called "side car" structures (*e.g.*, where property used in a service business is leased to a corporation carrying on the services business by another corporation in which the specified individual has an interest).

Whether less than 90% of the business income of the corporation is from the provision of services is tested by reference to the last taxation year of the corporation that ends at or before the end of the

specified individual's taxation year. This aligns the relevant taxation years where both the corporation and the specified individual have calendar taxation years. If a corporation's first taxation year ends after end of the taxation year of the specified individual, no information relating to a previous year would be available and so, that first taxation year is to be used.

For the 2018 taxation year, the ten per cent or more ownership and value of the shares threshold may be met at the end of 2018.

"reasonable return"

The effect of subparagraph (g)(ii) of the definition "excluded amount" is that an individual who has attained the age of 24 years before the year is subject to the TOSI on an amount only to the extent that it exceeds a "reasonable return".

Generally, the "reasonable return" definition is intended to ensure that an individual is not subject to the TOSI on income derived from a related business if the amount is reasonable having regard to the relative contributions of the individual and their relatives who contribute to the related business.

There are two aspects to the "reasonable return" definition, both of which must be satisfied in order for an amount to be considered a "reasonable return".

First, in order to prevent circularity in the definition (*i.e.*, whether an amount is included in split income depends upon whether it is an excluded amount, which depends upon whether it is a reasonable return, which refers to whether the amount is included in split income), the definition refers to amounts that would be split income of the individual if the definition "excluded amount" were read without reference to subparagraphs (f)(ii) and (g)(ii).

Second, the amount must be reasonable having regard to a number of factors. For the purpose of testing whether a return in respect of a business is a reasonable return, what is relevant is the relative contributions in support of the business of the specified individual and each source individual in respect of the specified individual. In particular, the factors are the following:

- the work they performed in support of the related business;
- the property they contributed, directly or indirectly, in support of the related business;
- the risks they assumed in respect of the related business;
- the total of all amounts that were paid or that became payable, directly or indirectly, by any person or partnership to them, or for their benefit, in respect of the related business; and
- such other factors as may be relevant.

These factors look to the relative contributions of labour and capital to a business, along with amounts received from the business. If, for example, an unexpectedly high return is realized in respect of a business and a portion of that return is paid to a specified individual, the income will satisfy the test if the amount paid to them is reasonable taking into consideration the relative contributions to the business of the specified individual and each source individual in respect of the business. The test does not require a precise determination of the amount of income that would be reasonable for a specified individual in the abstract, given only their contributions to a business and without consideration of the relevant context.

While the reasonableness test and the exclusions in subparagraphs (e)(ii) and (g)(i) of the "excluded amount" definition (*i.e.*, the excluded business and excluded share exceptions) are separate exclusions from the TOSI, there are significant areas in which they may overlap. In particular, the excluded business and excluded share exceptions are intended to generally describe situations in which amounts received by a specified individual are likely to be "reasonable" within the meaning of the definition "reasonable return".

"related business"

The new "related business" definition serves a number of functions throughout the TOSI rules and can generally be described as the business from which split income is derived.

The "related business" definition is perhaps most significantly relevant for determining the application of the TOSI to individuals who have attained the age of 17 years before the year. Pursuant to subparagraph (e)(i) of the "excluded amount" definition, the TOSI does not apply to such an individual in respect of an amount unless the amount is derived directly or indirectly from a "related business" in respect of the individual during the year.

A "related business" is defined in respect of a specified individual for a taxation year and refers throughout to a "source individual". In very general terms, income sprinkling arrangements seek to reduce tax by decreasing the amount of income that is derived from a business (the related business) by a higher income individual (the source individual) with a corresponding increase in the income derived from that business by a lower-income individual (the specified individual). For more information, see the commentary for the definitions "specified individual" and "source individual".

In order for a business to be a related business in respect of a specified individual, a source individual in respect of the specified individual must be sufficiently connected to the business. Paragraph (a) of the definition applies where the source individual is actively involved in the business. Paragraphs (b) and (c) apply where the source individual has a sufficient interest in the partnership or corporation, respectively, carrying on the business.

Under paragraph (a) of the definition, a "related business" includes a business carried on by a "source individual" in respect of the specified individual. It also includes a business carried on by a partnership, corporation or trust if a "source individual" in respect of the specified individual is actively engaged in the business.

Under paragraph (b) of the definition, a "related business" includes a business of a partnership, if a "source individual" in respect of the specified individual has an interest (including directly or indirectly through one or more partnerships) in the partnership.

Under paragraph (c) of the definition, a "related business" includes a business carried on by a corporation in which the following conditions are met:

- a source individual in respect of the specified individual owns shares of the capital stock of the corporation or property that derives, directly or indirectly, all or part of its fair market value from shares of that capital stock, and
- the total fair market value of the shares and property described above that is owned by the source individual equals at least ten per cent of the total fair market value of the capital stock of the corporation.

"safe harbour capital return"

Subparagraph (f)(i) of the "excluded amount" definition exempts from the TOSI a return on a capital investment in support of a related business made by an individual aged 18 to 24 years that is a "safe harbour capital return".

A "safe harbour capital return" of a specified individual for a taxation year means a return up to a prescribed rate based upon the fair market value of property contributed by the specified individual in support of a related business (pro rated according to the number of days in the year that the property substituted therefor is used in support of the related business). The prescribed rate used for this purpose is

set out in paragraph 4301(c) of the *Income Tax Regulations*. The highest prescribed rate in effect for a quarter in the year is to be used.

"source individual"

A "source individual" in respect of a specified individual means an individual (other than a trust) who, at any time in a year, is both resident in Canada and related to the specified individual.

For more information, see the commentary on the definitions "related business" and "specified individual".

Additional rules – specified individual

ITA

120.4(1.1)

New subsection 120.4(1.1) of the Act contains interpretative rules for the purpose of applying the TOSI rules in respect of a specified individual.

ITA

120.4(1.1)(a)

New subparagraph (e)(ii) of the definition "excluded amount" excludes from a specified individual's split income for the year amounts received by the specified individual directly or indirectly from an excluded business of the individual in the year.

In order to determine whether a business is an "excluded business" of a specified individual for a year, it is necessary to determine whether the individual was actively engaged on a regular, continuous and substantial basis in the activities of the business in the year or in any five prior years.

Paragraph 120.4(1.1)(a) deems an individual to be actively engaged on a regular, continuous and substantial basis in the activities of a business in a taxation year of the individual if the individual works, on average, 20 hours per week or more in the business during the portion of the taxation year of the individual that the business operates. An individual does not need to work every week that the business operates in a year in order to satisfy the condition for the year. For example, the test would be satisfied in respect of an individual who works 30 hours per week for 20 weeks in a year in respect of a business that operates for 25 weeks out of the year ($30 \times 20 / 25 \geq 20$).

This deeming rule is intended to provide certainty for qualifying taxpayers and is not intended to limit the generality of the test in the "excluded business" definition. For example, a taxpayer may be considered to meet the "regular, continuous and substantial" test even if they work less than 20 hours per week on average if the business, by its nature, does not demand a higher number of hours worked and the individual's labour contributions are integral to the success of the business.

ITA

120.4(1.1)(b)

Paragraph 120.4(1.1)(b) provides a continuity rule for inherited property. It applies to amounts that would, absent the application of this rule, be split income of a specified individual who has attained the age of 17 years before the year in respect of property that was acquired by or for the benefit of the specified individual as a consequence of the death of another person.

In these circumstances, subparagraph (i) allows the specified individual to avoid the application of the TOSI to the extent that an amount, had it been received by the deceased person, would have been a "reasonable return" for the purposes of subparagraph (g)(ii) of the excluded amount definition.

Subparagraph (ii) provides that an individual's income on inherited property will qualify as an "excluded amount" to the extent that the amount, had it been received by the deceased person, would have been from an "excluded business" for the purposes of subparagraph (e)(ii) of the "excluded amount" definition because the deceased person was, or was deemed to be because of this paragraph, actively engaged on a regular, continuous and substantial basis in the activities of the related business in any five previous taxation years.

Subparagraph (iii) provides that, for the purposes of the "excluded shares" and "reasonable return" tests in paragraph (g) of the definition "excluded amount" (which generally apply only to specified individuals aged 25 years and older), if the deceased had attained the age of 24 years before the taxation year in which they died, the specified individual will be deemed to have attained the age of 24 years before the taxation year. This deeming rule applies only for the purpose of determining whether the TOSI applies to amounts derived from the inherited property that was acquired by or for the benefit of the specified individual. This allows a specified individual who has attained the age of 17 years before the year, but not the age of 24 years, to potentially qualify for these exclusions from the TOSI if the deceased qualified before their death.

ITA

120.4(1.1)(c)

Paragraph 120.4(1.1)(c) applies to amounts received by a specified individual in a taxation year of the individual, if the spouse or common law partner of the specified individual attained the age of 64 years before the year, or died before the end of the year. In the latter case, it is not necessary that the spouse or common law partner have attained the age of 64 years before their death.

If paragraph (c) applies, an amount will be an excluded amount in the hands of a specified individual if the amount would have been an excluded amount in the hands of the specified individual's spouse or common law partner, if it had been received by the spouse or common law partner as income in the year (or in their last taxation year, if applicable). For the purpose of determining whether an amount would have been an excluded amount in the last taxation year of an individual for a taxation year prior to the coming into force of these amendments, the definition "excluded amount" (and related provisions) in these amendments are to be used.

ITA

120.4(1.1)(d)

Paragraph 120.4(1.1)(d) clarifies that certain amounts are included, for the purposes of the TOSI rules, in what is an amount derived, directly or indirectly, from a business.

First, under clause (i)(A), an amount will be considered to be derived from a business where it is derived from the provision of property or services to, or in support of, the business. This is based upon the previous subparagraphs (b)(ii) and (c)(ii) of the definition "split income" in subsection (1). Second, under clause (i)(B), an equity return on an interest in a partnership, corporation or trust carrying on a business will also be considered to be an amount derived from that business. Lastly, subparagraph (ii) contains an iterative rule so that income derived from an amount described in subparagraph (i) or (ii) is income derived, directly or indirectly, from the business.

Example 1

May and Kyle are spouses. May is the sole shareholder of ACo, a company that manufacturers and sells electronics. Kyle is the sole shareholder of BCo, a company that provides industrial cleaning services.

In year 1, BCo provides industrial cleaning services to ACo under a contract for service, and charges ACo $30,000 for the services according to its usual pricing schedule. After paying its expenses, BCo then pays $20,000 from the contract for service with ACo to Kyle as a dividend. Throughout year 1, Kyle is engaged in the business of BCo on a regular, continuous and substantial basis.

Because May is the sole shareholder of ACo and Kyle is the sole shareholder of BCo, the business carried on by ACo is a related business in respect of Kyle, and the business carried on by BCo is a related business in respect of May.

Pursuant to clause 120.4(1.1)(d)(i)(A), the amount received by BCo from providing the services to ACo would be an amount derived directly or indirectly from the business of ACo because the amount is derived from the provision of services to, or in support of, the business of ACo. Pursuant to subparagraph 120.4(1.1)(d)(ii), the amount of the dividend paid by BCo to Kyle would also be an amount derived directly or indirectly from the business of ACo because the amount is derived from an amount described in clause 120.4(1.1)(d)(i)(A) in respect of ACo's business.

The dividend received by Kyle from BCo would not be subject to TOSI, even though it is considered to be derived directly or indirectly from the business of ACo. The dividend received by Kyle in year 1 is also an amount derived directly or indirectly from the business of BCo because, pursuant to clause 120.4(1.1)(d)(i)(B), the dividend arose in connection with the ownership of an interest in BCo. The business of BCo is an "excluded business" as defined in subsection 120.4(1) in respect of Kyle for year 1 because Kyle was engaged in the activities of BCo's business on a regular, continuous and substantial basis throughout the year. As a result, the dividend would not be subject to TOSI because of paragraph (e)(ii) of the "excluded amount" definition.

Example 2

Assume the same facts as Example 1, except that all of the shares of BCo are owned by Holdco, which in turn is wholly-owned by Kyle. BCo pays the $20,000 dividend to Holdco, which in turn pays the amount it receives from BCo as a dividend to Kyle.

As in Example 1, the payment to BCo for services is derived from the business of ACo. The dividend paid by BCo to Holdco would also be derived directly or indirectly from the business, as it is derived from the service payment which is derived from the business. Finally, the dividend received by Kyle from Holdco would be an amount derived directly or indirectly from the business of ACo because it is derived from the dividend paid to Holdco, which is considered to be derived from the business.

Example 3

After receiving the $20,000 dividend from Holdco in year 1, Kyle invests the after-tax amount in a guaranteed investment certificate (GIC). In year 2, Kyle earns $1,000 of interest income from the GIC for tax purposes.

The interest income earned by Kyle on the GIC in year 2 would not be an amount derived directly or indirectly from the business of ACo. Rather, it is income from the GIC. Once Kyle has received the $20,000 of income derived from the business, the return on the amount received that was invested is not connected with ACo's business.

Example 4

Assume the same facts as Example 1, except that BCo pays a $30,000 dividend to Kyle. As in Example 1, $20,000 of the amount paid as a dividend by BCo to Kyle comes from the contract for service with ACo. The other $10,000 of the amount paid as a dividend by BCo to Kyle comes from contracts for service with arm's length third parties.

The entire amount of the dividend received by Kyle – $30,000 – is considered to be derived directly or indirectly from the business of BCo because, pursuant to clause 120.4(1.1)(d)(i)(B), the dividend arose in connection with the ownership of an interest in BCo. Pursuant to subparagraph 120.4(1.1)(d)(ii), only $20,000 of the amount of the dividend paid by BCo to Kyle would be an amount derived directly or indirectly from the business of ACo because only $20,000 of the dividend is derived from an amount described in clause 120.4(1.1)(d)(i)(A) in respect of ACo's business.

ITA

120.4(1.1)(e)

Paragraph 120.4(1.1)(e) ensures that an amount received by an individual in a year will not be subject to the TOSI by reason of the individual being related to their spouse or common-law partner in the year in circumstances where the marriage or common-law relationship has broken down and they are living separate and apart at the end of the year.

Tax payable by a specified individual

ITA

120.4(3)

Subsection 120.4(3) of the Act ensures that the Part I tax payable by a specified individual is not less than the individual's split income for the year multiplied by the highest individual tax rate for the year reduced only by the dividend tax credit and the foreign tax credit.

This subsection is amended to provide that the TOSI does not reduce or eliminate a specified individual's ability to deduct an amount under section 118.3 (the disability tax credit).

Taxable capital gain

ITA

120.4(4)

Subsection 120.4(4) of the Act generally provides that a capital gain of a specified individual from a disposition of certain shares, that are transferred to a person that does not deal at arm's length with the individual, is subject to the TOSI. Twice the amount that would otherwise have been the individual's taxable capital gain in respect of the disposition is deemed to be a taxable dividend received by the taxpayer in the year and included in the individual's split income.

Subsection 120.4(4) is amended consequential on other changes to the TOSI rules. The amendments ensure that subsection (4) will not apply to specified individuals who have attained the age of 17 years before the taxation year.

Taxable capital gain of trust

ITA

120.4(5)

Subsection 120.4(5) of the Act generally applies in a manner similar to subsection 120.4(4) in respect of certain amounts if a specified individual would otherwise be required under paragraph 104(13)(a) or subsection 105(2) to include the amount in computing their income for a taxation year.

Subsection 120.4(5) is amended consequential on other changes to the TOSI rules. The amendments ensure that subsection (5) will not apply to specified individuals who have attained the age of 17 years

before the taxation year. In addition, the references to "paragraph 104(13)(a)" are changed to "subsection 104(13)".

Clause 14

Deduction for Taxable Dividends – Dividend Tax Credit

ITA

121

In general terms, section 121 of the Act allows an individual who receives a taxable dividend from a corporation resident in Canada to deduct a dividend tax credit from the tax otherwise payable for the year by the individual in respect of the amount of the dividend that is included in the individual's income (this amount is determined under subsection 82(1)). The dividend tax credit (DTC), provided within the personal income tax system, is intended to compensate a taxable individual receiving dividends for corporate income taxes that are presumed to have been paid on the corporate income that funded those dividends. The DTC is generally meant to ensure that income earned by a corporation and paid out to an individual as a dividend will be subject to the same amount of tax as income earned directly by the individual.

Paragraph 121(a) provides the dividend tax credit that applies to a taxable dividend that is a "non-eligible dividend" (*i.e.*, a dividend that is paid out of corporate income eligible for the small business deduction) received by an individual. In respect of a non-eligible dividend, the dividend tax credit is 21/29 of the gross-up amount of the dividend that is included in the individual's income under paragraph 82(1)(b).

Paragraph 121(a) is amended to provide the dividend tax credit for the 2018 and subsequent taxation years. New subparagraphs (a)(i) and (ii) provide that the fraction of the dividend tax credit is 8/11 for the 2018 taxation year and 9/13 for the 2019 and subsequent taxation years. Expressed as a percentage of the grossed-up amount of a non-eligible dividend, the effective rate of the DTC in respect of such a dividend will be 10 per cent in 2018 and 9 per cent in 2019, in line with the reductions in the small business tax rate.

This amendment is made in conjunction with the amendment to paragraph 82(1)(b) to adjust the gross-up amount of a non-eligible dividend that must be included in the income of an individual and the amendment to subsection 125(1.1) that increases the small business deduction rate (and therefore reduces the small business tax rate) for the 2018 and subsequent taxation years.

Clause 15

GST/HST credit – definitions

ITA

122.5(1)

Subsection 122.5(1) of the Act defines a number of terms for the purpose of the goods and services tax credit (GSTC).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted income" in subsection 122.5(1) is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the GSTC is calculated. This provision is consequential on the expansion of the tax on split income rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing

income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 16

Canada Child Benefit – definitions

ITA

122.6

Section 122.6 of the Act defines a number of terms for the purpose of the Canada Child Benefit.

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted income" in section 122.6 is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the Canada Child Benefit is calculated. This provision is consequential on the expansion of the tax on split income rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 17

Annual adjustment

ITA

122.61(5)

Subsection 122.61(5) of the Act provides for the indexing of the various amounts used in the calculation of the Canada Child Benefit. Indexation of the Canada Child Benefit is currently legislated to begin July 1, 2020.

Subsection 122.61(5) is amended so that indexation of the Canada Child Benefit applies as of July 1, 2018.

Clause 18

The heading "Working Income Tax Benefit" for subdivision A.2 of Part I, Division E of the Act is replaced by "Canada Workers Benefit" consequential on the replacement of the Working Income Tax Benefit with the Canada Workers Benefit.

This amendment applies as of January 1, 2019.

Clause 19

Canada Workers Benefit – definitions

ITA

122.7(1)

Subsection 122.7(1) of the Act defines a number of terms for the purpose of the Canada Workers Benefit (CWB).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted net income" in subsection 122.7(1) is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the CWB is calculated. This provision is consequential on the expansion of the tax on split income rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Deemed payment on account of tax

ITA

122.7(2)

Section 122.7 of the Act provides for the Canada Workers Benefit (CWB), a refundable credit for low-income individuals and families, who have earnings from employment or self-employment. Subsection 122.7(2) provides for the "basic" CWB, which generally is a refund of 25% of all working income over $3,000 up to a maximum benefit level. Subsection 122.7(3) provides for the CWB "disability supplement", which generally is a refund of 25% of all working income over $1,150, up to a maximum supplement level. To ensure that the CWB remains targeted to low-income individuals and families, the basic CWB and the CWB disability supplement are reduced by 15% of each dollar of income (combined with income of a spouse or common-law partner) exceeding certain thresholds.

Certain amounts in the descriptions of A and B in subsection 122.7(2) are amended to increase (relative to the Working Income Tax Benefit) the basic CWB refundable tax credit rate to 26% (from 25%) of each dollar earned in excess of $3,000 up to a maximum amount. The maximum credit amount is increased to $1,355 for single individuals and $2,335 for families for 2019. The amendments provide that the basic CWB is reduced by 12% (down from 15%) of net income in excess of certain thresholds. These thresholds are increased to $12,820 for single individuals and $17,025 for families for 2019.

These amendments apply as of January 1, 2019.

Deemed payment on account of tax – disability supplement

ITA

122.7(3)

Certain amounts in the descriptions of C and D in subsection 122.7(3) are amended to increase (relative to the Working Income Tax Benefit) the CWB disability supplement refundable tax credit rate to 26% (from 25%) of each dollar earned in excess of $1,150 up to a maximum amount. The maximum credit amount is increased to $700 for 2019. The amendments provide that the CWB disability supplement is reduced by 12% (down from 15%), or, if the individual had a spouse or common-law partner who was eligible to claim a disability tax credit, by 6% (down from 7.5%) of net income in excess of certain thresholds. These thresholds are increased to $24,111 for single individuals and $36,483 for families for 2019.

These amendments apply as of January 1, 2019.

Clause 20

Small business deduction

ITA

125

Section 125 provides for a corporate tax reduction (called the "small business deduction") in respect of income of a Canadian-controlled private corporation from an active business carried on by it in Canada.

Small business deduction rate

ITA

125(1.1)

For the purpose of computing the small business deduction under section 125 of the Act, a corporation's small business deduction rate for a taxation year is determined under subsection 125(1.1). The small business deduction rate is 17.5% as of January 1, 2016.

Subsection 125(1.1) is amended to provide that the 17.5% deduction rate will be increased to 18% for the 2018 taxation year and to 19% for the 2019 and subsequent taxation years.

This amendment is made in conjunction with the amendment to paragraph 82(1)(b) to adjust the gross-up amount of taxable dividends that are not eligible dividends that must be included in the income of an individual and the amendment to paragraph 121(a) to adjust the corresponding dividend tax credit for such dividends.

This amendment applies to the 2018 and subsequent taxation years. The small business deduction rate is prorated for a taxation year of a corporation that overlaps 2017 and 2018.

Business limit reduction – passive investment income

ITA

125(5.1)

In broad terms, under subsection 125(5.1) of the Act, the business limit of a corporation for a particular taxation year is reduced on a straight-line basis if the total of the taxable capital of the corporation and, if applicable, of other corporations with which the corporation is associated (referred to as its "associated corporations") exceeds $10 million. A corporation's entitlement to the small business deduction for a particular taxation year is determined by reference, among other things, to the business limit of the corporation for the particular taxation year that is otherwise determined under subsections 125(2) to (5).

Subsection 125(5.1) is amended to provide an additional restriction to a corporation's business limit based on the passive investment income of the corporation and its associated corporations. The corporation's business limit will now be reduced by the greater of the reduction provided under the existing rule (the "taxable capital reduction"), now contained in paragraph 125(5.1)(a), and the new "passive income reduction", contained in paragraph 125(5.1)(b).

The passive income reduction reduces a corporation's business limit for a taxation year (as otherwise determined) by five dollars for every dollar by which the corporation's "adjusted aggregate investment income" (as newly defined in subsection 125(7)), and that of its associated corporations, for taxation years ending in the preceding calendar year exceeds $50,000.

Example 1

ACo has a July 1 to June 30 taxation year. It is not associated with any other corporation in its taxation year ending June 30, 2021 nor in its previous taxation year. For the taxation year ending June 30, 2020, it has taxable capital employed in Canada of $14 million and adjusted aggregate investment income of $100,000. Its business limit, determined without reference to subsection 125(5.1) is $500,000 for its taxation year ending June 30, 2021.

For its taxation year ending June 30, 2021:

- ACo's taxable capital reduction under paragraph 125(5.1)(a) is $500,000 x (0.225% x ($14,000,000 – $10,000,000)) / $11,250 = $400,000; and
- ACo's passive income reduction under paragraph 125(5.1)(b) is $500,000/$500,000 x 5 × ($100,000 - $50,000) = $250,000.

Therefore, the reduction to ACo's business limit is $400,000, which is the greater of the taxable capital and passive income reductions, leaving it with a business limit of $100,000 for its taxation year ending June 30, 2021.

Example 2

ACo has a July 1 to June 30 taxation year and BCo has a January 1 to December 31 taxation year. ACo and BCo are associated throughout the period from January 1, 2021 to December 31, 2021. At all relevant times, the taxable capital employed in Canada of ACo and BCo totals less than $10 million. For its taxation year ending June 30, 2020, ACo has adjusted aggregate investment income of $80,000. For its taxation year ending December 31, 2020, BCo has adjusted aggregate investment income of $60,000. ACo and BCo are each assigned $250,000 of the $500,000 business limit for all relevant taxation years.

ACo's business limit for its taxation year ending June 30, 2021 will be reduced under subsection 125(5.1) by $250,000/$500,000 × 5 × ($140,000 – $50,000) = $225,000, leaving it with an adjusted business limit of $25,000.

BCo's business limit for its taxation year ending December 31, 2021 will also be reduced by $225,000, leaving it with an adjusted business limit of $25,000.

Anti-avoidance

ITA

125(5.2)

New subsection 125(5.2) is an anti-avoidance rule intended to prevent the avoidance of the application of the "passive income reduction" rule in paragraph 125(5.1)(b) through the transfer of property to a related company. The rule operates to deem two corporations to be associated with each other where they are not otherwise associated. It applies where the corporations are related to each other, one corporation (directly or indirectly) transfers assets to the other corporation and one of the reasons for the transfer can reasonably be considered to be to reduce the amount of the "adjusted aggregate investment income" of the associated group for the purposes of the "passive income reduction" rule in paragraph 125(5.1)(b).

Definitions

ITA

125(7)

Subsection 125(7) contains definitions for the purposes of the small business deduction rules in section 125. Subsection 125(7) is amended by adding the new definitions "active asset" and "adjusted aggregate

investment income", which are relevant for the new passive income business limit reduction rule in paragraph 125(5.1)(b).

Active asset

The definition "active asset" is relevant exclusively for the new definition "adjusted aggregate investment income". Any taxable capital gains or allowable capital losses in a taxation year from the disposition of an "active asset" will not be included in the computation of a corporation's "adjusted aggregate investment income" and will, as such, have no impact on a corporation's passive income business limit reduction under paragraph 125(5.1)(b).

An active asset of a particular corporation, at any time, is any of the following three types of property:

1. Property used at that time principally in an active business carried on primarily in Canada by the particular corporation (which could include a business carried on by it as a member of a partnership) or by a Canadian-controlled private corporation that is related to the particular corporation;
2. A share of the capital stock of another corporation if, at that time,
   - the other corporation is connected with the particular corporation (within the meaning assigned by subsection 186(4) on the assumption that the other corporation is at that time a "payer corporation" within the meaning of that subsection), and
   - the share would be a "qualified small business corporation share" (as defined in subsection 110.6(1)) if
     - the references in that definition to an "individual" were references to the particular corporation, and
     - that definition were read without reference to "the individual's spouse or common law partner"; or
3. An interest in a partnership, if
   - at that time, the fair market value of the particular corporation's interest in the partnership is equal to or greater than 10% of the total fair market value of all interests in the partnership,
   - throughout the 24–month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to any of these three types of property, and
   - at that time, all or substantially all of the fair market value of the property of the partnership was attributable to any of these three types of property.

Adjusted aggregate investment income

The "adjusted aggregate investment income" of a corporation for a taxation year is used in determining the "passive income reduction" of the corporation (and, if applicable, its associated corporations) under new paragraph 125(5.1)(b).

Adjusted aggregate investment income is a modified version of the existing "aggregate investment income" definition in subsection 129(4) and is generally relevant for the determination of a Canadian-controlled private corporation's refundable taxes on investment income.

More particularly, a corporation's "adjusted aggregate investment income" for a taxation year is the amount of the corporation's "aggregate investment income", with the following adjustments:

- Capital gains and losses from the disposition of active assets are not taken into account.
- The corporation cannot deduct any net capital losses from other taxation years.
- Dividends from other corporations can only be excluded to the extent they are received from connected corporations.
- All income from a "specified investment business" is included.

- Amounts in respect of a life insurance policy that are included in computing the corporation's income for the year are added (to the extent that the amounts would not otherwise be included in the computation of the corporation's "aggregate investment income").
- No amount can be deducted under subsection 91(4) in computing the corporation's income. Subsection 91(4) otherwise provides for a deduction from income for the taxes paid in respect of the "foreign accrual property income" of a foreign affiliate of the corporation.

The new definition "adjusted aggregate investment income" does not apply to a cooperative corporation to which subsection 136(1) applies, a credit union to which subsection 137(7) applies or to an insurance corporation to which section 141.1 applies. As such, the "passive income reduction" rule in paragraph 125(5.1)(b) does not apply to such corporations.

Coming-into-force

The amendments to subsections 125(5.1) and (7) and the addition of new subsection 125(5.2) apply to taxation years that begin after 2018. However, these amendments – along with the amendments to paragraph 87(2)(aa), sections 129 and 131 and subsection 186(5) – also apply to a taxation year of a corporation that begins before 2019 and ends after 2018 in circumstances where the corporation uses a short taxation year in order to defer the application of the amendments to section 125 or 129.

Clause 21

Investment Tax Credit

ITA

127

Section 127 of the Act permits deductions in computing tax payable in respect of, amongst other items, the investment tax credit (ITC).

Definitions

ITA

127(9)

Subsection 127(9) provides various definitions relevant for the purposes of calculating the investment tax credits of a taxpayer.

"flow-through mining expenditure"

The definition "flow-through mining expenditure" in subsection 127(9) defines the expenses (eligible expenses) that qualify for the 15% ITC in respect of specified surface "grass-roots" mineral exploration. Under the existing definition, the credit is available only in respect of eligible expenses renounced under a flow-through share agreement made after March 2017 and before April 2018.

The definition is amended to include eligible expenses incurred by a corporation after March 2018 and before 2020, where the expenses are incurred under a flow-through share agreement entered into after March 2018 and before April 2019.

Clause 22

Dividend refund to private corporation

ITA

129

Section 129 of the Act provides the mechanism under which a portion of the taxes paid by a private corporation in respect of its investment income (tracked in its "refundable dividend tax on hand" or "RDTOH" account) is refundable to the corporation when taxable dividends are paid to its shareholders. The RDTOH account contains two primary components: amounts in respect of Part I taxes paid on investment income by a Canadian-controlled private corporation and amounts in respect of Part IV taxes paid on dividends received by a private corporation.

The current system allows RDTOH to be refunded upon the payment of any type of taxable dividend, whether it be an "eligible dividend" (as defined in subsection 89(1)) or otherwise (in these notes, a taxable dividend that is not an eligible dividend is referred to as a "non-eligible dividend"). The distinction between eligible and non-eligible dividends is primarily relevant for determining the quantum of the "dividend tax credit" under section 121 that may be obtained by an individual upon the receipt of dividends from a corporation resident in Canada.

In general terms, section 129 is amended to split the existing RDTOH account into two separate accounts, referred to as "eligible refundable dividend tax on hand" (ERDTOH) and "non-eligible refundable dividend tax on hand" (NERDTOH), and to provide that dividend refunds under subsection 129(1) may only be obtained from NERDTOH to the extent the taxable dividends paid by the corporation are non-eligible dividends.

Dividend refund

ITA

129(1)

Subsection 129(1) defines the term "dividend refund" for the purposes of the Act and provides the specific computational and administrative rules for the issuance by the Minister of National Revenue of such dividend refunds.

Subsection 129(1) is amended to provide for the new limitation in respect of dividend refunds relating to eligible dividends and to take into account the replacement of the RDTOH account with the new ERDTOH and NERDTOH accounts, both as defined in subsection 129(4). Mechanically, a corporation's dividend refund for a taxation year is now the total of the amount determined under subparagraph 129(1)(a)(i) and clause 129(1)(a)(ii)(B) (in respect of ERDTOH) and the amount determined under clause 129(1)(a)(ii)(A) (in respect of NERDTOH), for the year.

Pursuant to amended subparagraph 129(1)(a)(i), an eligible dividend paid by a corporation in a taxation year can only give rise to a dividend refund for that year in respect of its ERDTOH – no dividend refund can be obtained in respect of its NERDTOH. Such dividend refund is equal to the lesser of 38 1/3% of all eligible dividends paid by the corporation in the year and the corporation's ERDTOH at the end of the year.

Pursuant to amended subparagraph 129(1)(a)(ii), when a corporation pays a non-eligible dividend in a taxation year it can receive a dividend refund for that year in respect of its NERDTOH or its ERDTOH. However, no dividend refund in respect of a non-eligible dividend can be paid from the corporation's ERDTOH while any amount remains in the corporation's NERDTOH. In other words, inherent in

paragraph 129(1)(a) is an ordering rule whereby non-eligible dividends must first reduce NERDTOH before being allowed to reduce ERDTOH.

More specifically, clause 129(1)(a)(ii)(A) includes in a corporation's dividend refund for a taxation year an amount equal to the lesser of 38 1/3% of all non-eligible dividends paid by it in the year and the corporation's NERDTOH at the end of the year. If the total amount of the corporation's non-eligible dividends paid in a taxation year exceeds the amount required to fully refund its NERDTOH, clause 129(1)(a)(ii)(B) provides an additional amount of dividend refund, in respect of ERDTOH.

Example 1

At the end of its 2021 taxation year, ACo has $100 in its ERDTOH and $300 in its NERDTOH. During that year, ACo paid a $1,000 eligible dividend and no non-eligible dividends.

ACo's total dividend refund for the year will be $100, all from its ERDTOH, based on the lesser of $1,000 x 38 1/3% = $383.33 and $100 (the year-end balance of its ERDTOH). The dividend being an eligible dividend, ACo cannot receive a dividend refund in respect of its NERDTOH.

Example 2

At the end of its 2024 taxation year, BCo has $200 in its ERDTOH and $300 in its NERDTOH. During that year, BCo pays a $1,000 non-eligible dividend and no eligible dividends.

BCo's total dividend refund for the year will be $383.33 and it will have $116.67 of ERDTOH to carry forward to its 2025 taxation year but no amount of NERDTOH to carry forward. These amounts are determined as follows:

1. Under clause 129(1)(a)(ii)(A), BCo will be entitled to receive a $300 dividend refund from its NERDTOH, based on the lesser of $1,000 x 38 1/3% = $383.33 and $300 (the year-end balance of its NERDTOH).
2. The dividend being a non-eligible dividend, BCo can also receive a dividend refund from its ERDTOH, as there is an excess amount. More specifically, subclause 129(1)(a)(ii)(B)(I) will add an amount to BCo's dividend refund based on the lesser of the "excess amount" of $383.33 – $300 = $83.33 and $200 (the year-end balance of its ERDTOH).

Dividends paid to bankrupt controlling corporation

ITA

129(1.1)

Subsection 129(1.1) denies a dividend refund to a corporation in respect of taxable dividends paid to a bankrupt controlling corporation.

Subsection 129(1.1) is amended to make consequential changes to take into account the amendments to paragraph 129(1)(a).

Refundable dividend tax on hand

ITA

129(3)

Currently, a corporation's dividend refund for a taxation year under subsection 129(1) is determined by reference to the corporation's "refundable dividend tax on hand" (RDTOH), as set out in subsection 129(3). Subsection 129(3) is being repealed and is effectively replaced with the new definitions "eligible

refundable dividend tax on hand" and "non-eligible refundable dividend tax on hand", which are both defined in subsection 129(4).

Definitions

ITA

129(4)

Two new definitions are being added to subsection 129(4), "eligible refundable dividend tax on hand" (ERDTOH) and "non-eligible refundable dividend tax on hand" (NERDTOH). These definitions are relevant for the determination of a corporation's dividend refund under subsection 129(1) and replace the term "refundable dividend tax on hand" (RDTOH) in subsection 129(3), which is being repealed.

ERDTOH

ERDTOH tracks a corporation's tax paid under Part IV in respect of:

- eligible dividends received from non-connected corporations; and
- taxable dividends received from connected corporations to the extent that that such dividends cause the payer corporation to receive a dividend refund from its ERDTOH.

For these purposes, the "connected" status of corporations is determined using the rules in section 186.

A corporation's ERDTOH will be reduced by dividend refunds for a preceding taxation year in respect of its ERDTOH, as provided for in subparagraph 129(1)(a)(i) (in respect of eligible dividends) and clause 129(1)(a)(ii)(B) (in respect of non-eligible dividends). For additional information on the new dividend refund mechanism, see the comments under subsection 129(1).

NERDTOH

NERDTOH tracks:

- the refundable Part I tax in respect of the investment income of a Canadian-controlled private corporation; and
- the Part IV tax paid by a corporation in respect of dividends other than those described under ERDTOH.

Subparagraphs (a)(i) to (iii) of the NERDTOH definition correspond directly to subparagraphs 129(3)(a)(i) to (iii) of the definition RDTOH in subsection 129(3), which is being repealed.

A corporation's NERDTOH will be reduced by dividend refunds for a preceding taxation year in respect of its NERDTOH. Such dividend refunds can only arise upon the payment by the corporation of non-eligible dividends. For additional information on the new dividend refund mechanism, see the comments under subsection 129(1).

2019 transitional RDTOH

ITA

129(5)

New subsection 129(5) provides rules to transition a corporation's existing RDTOH into the new ERDTOH and NERDTOH regime. If a corporation is a Canadian-controlled private corporation in its first taxation year under the new regime and its preceding taxation year, and it does not have an election under subsection 89(11) in effect for either of those years, the net RDTOH balance of such a corporation for its preceding taxation year (*i.e.*, RDTOH net of its dividend refund for that year) is allocated to its first year's

ERDTOH to the extent of 38 1/3% of its net "general rate income pool" (GRIP) balance for the preceding year (*i.e.*, GRIP net of eligible dividends paid in that year) and the remainder is allocated to its first year's NERDTOH. The net RDTOH balance of any other corporation is allocated entirely to its first year's ERDTOH.

2019 transitional RDTOH – amalgamations

ITA

129(5.1)

New subsection 129(5.1) is intended to integrate subsection 129(5) and paragraph 87(2)(aa) in respect of amalgamations in which one or more predecessor corporations has an RDTOH balance and the new corporation is subject to the new ERDTOH and NERDTOH regime. This rule is meant to ensure that the transitional rule in subsection 129(5) applies to each such predecessor corporation before the balances of ERDTOH and NERDTOH are combined under paragraph 87(2)(aa) in respect of the new corporation.

Coming-into-force

All of the amendments to section 129 apply to taxation years that begin after 2018, subject to the possible application of an anti-avoidance rule. See the comments under section 125 for more information.

Clause 23

Dividend refund to mutual fund corporation

ITA

131(5)

Subsection 131(5) of the Act treats certain mutual fund corporations as private corporations for the purposes of the dividend refund rules in section 129. For this purpose, the corporation's "refundable dividend tax on hand" (RDTOH), defined in subsection 129(3), is determined without reference to its paragraph (a).

Paragraph 131(5)(a) is amended consequential on the replacement of the RDTOH definition with the new definitions "eligible refundable dividend tax on hand" and "non-eligible refundable dividend tax on hand" (NERDTOH) in subsection 129(4). More specifically, the reference to paragraph 129(3)(a) of the RDTOH definition is replaced with a reference to its successor provision in paragraph (a) of the NERDTOH definition.

Rules respecting prescribed labour-sponsored venture capital corporations

ITA

131(11)

Subsection 131(11) provides a number of special rules for prescribed labour-sponsored venture capital corporations.

Paragraph 131(11)(a) is amended consequential on the replacement of the "refundable dividend tax on hand" definition in subsection 129(3) with the new definitions "eligible refundable dividend tax on hand" and "non-eligible refundable dividend tax on hand" in subsection 129(4). More specifically, the references to subparagraphs 129(3)(a)(i) and (ii) of the "refundable dividend tax on hand" definition are being replaced with references to their successor provisions in subparagraphs (a)(i) and (ii) of the "non-eligible refundable dividend tax on hand" definition.

These amendments to section 131 apply to taxation years that begin after 2018, subject to the possible application of an anti-avoidance rule. For more information, see the comments under section 125.

Clause 24

Definitions – "disability savings plan"

ITA

146.4(1)

Clause (a)(ii)(B.1) of the definition "disability savings plan" in subsection 146.4(1) of the Act allows, before 2019, a qualifying family member (generally a parent, spouse or common-law-partner) of a beneficiary whose contractual competency is in doubt to become the holder of a disability savings plan of the beneficiary.

Clause (a)(ii)(B.1) is amended to extend the availability of the provision to the end of 2023.

Clause 25

Qualified Donees - Definitions

ITA

149.1(1)

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

"qualified donee"

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

Subparagraph 149.1(1)(a)(iv) is amended to remove the requirement that universities outside Canada, the student body of which ordinarily includes students from Canada, must be prescribed. Such universities must apply for registration to be qualified donees. Universities that were prescribed at the end of February 26, 2018 are deemed to have applied for registration for this purpose.

This amendment comes into force on February 27, 2018, except that if a university has applied for registration prior to February 27, 2018, and is registered by the Minister on or after that day, this amendment applies in respect of the university as of the day it applied for registration.

Clause 26

Joint and several, or solidary, liability – tax on split income

ITA

160(1.2)

Subsection 160(1.2) of the Act, which applies in respect of tax owing on split income, is amended consequential on changes to the TOSI rules in section 120.4.

The application of joint and several, or solidary, liability in respect of a specified individual differs depending on whether the specified individual has attained the age of 17 years before the year. If they have not, they will be jointly and severally, or solidarily, liable with their parents.

If a specified individual has attained the age of 17 years before the year, they will be jointly and severally, or solidarily, liable in respect of income derived directly or indirectly from a related business (as defined in subsection 120.4(1)) with each source individual (as defined in subsection 120.4(1)) in respect of the specified individual who is sufficiently connected with the related business. The requisite level of connection between the source individual and the related business is determined by reference to the conditions in paragraphs (a) to (c) of the "related business" definition in subsection 120.4(1).

Paragraph 160(1.2)(b) limits a particular individual's liability under this subsection to amounts included in a specified individual's split income in respect of the particular individual.

Paragraph 160(1.2)(c) clarifies that this subsection does not limit a specified individual's liability under other sections of the Act, and does not limit the particular individual's liability for interest on amounts payable by the particular person as a result of this subsection.

Clause 27

Failure to provide identification number

ITA

162(6)

Subsection 162(6) of the Act provides a penalty for failure by any person or partnership to provide their Social Insurance Number, their business number or their U.S. federal taxpayer identification number as required under the Act or a regulation.

Subsection 162(6) is amended to add a reference to trust account numbers to the information subject to a penalty if not provided in accordance with the Act or a regulation. This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1).

Clause 28

Tax on Old Age Security Benefits – definitions

ITA

180.2(1)

Subsection 180.2(1) of the Act defines a number of terms for the purpose of the special recovery tax on old age security (OAS) benefits.

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted income" in subsection 180.2(1) is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the tax on OAS benefits is calculated. This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 29

Deemed private corporation

ITA

186(5)

Subsection 186(5) of the Act deems a "subject corporation" (as defined in subsection 186(3)) to be a private corporation for the purposes of the dividend refund rules in section 129. For this purpose, the corporation's "refundable dividend tax on hand", defined in subsection 129(3), is determined without reference to its paragraph (a).

Subsection 186(5) is amended consequential on the replacement of the "refundable dividend tax on hand" definition with the new definitions "eligible refundable dividend tax on hand" and "non-eligible refundable dividend tax on hand" in subsection 129(4). Specifically, the reference to paragraph 129(3)(a) of the "refundable dividend tax on hand" definition is being replaced with a reference to its successor provision in paragraph (a) of the "non-eligible refundable dividend tax on hand" definition.

This amendment applies to taxation years that begin after 2018, subject to the possible application of an anti-avoidance rule. For more information, see the comments under section 125.

Clause 30

Eligible Donee

ITA

188(1.3)

Subsection 188(1.3) of the Act applies for the purpose of calculating the revocation tax under subsection 188(1.1), in respect of certificates issued under the *Charities Registration (Security Information) Act* and notices of intention to revoke the registration of a charity that are issued by the Minister of National Revenue. A revoked charity has one year from the date of that notice or certification to file a return that discloses the extent to which the charity has divested itself of its assets to eligible donees. Subsection 188(1.3) of the Act provides the criteria that must be met to qualify as an eligible donee for the purposes of the revocation tax of a particular charity.

Subsection 188(1.3) is amended to provide that municipalities in Canada may qualify as eligible donees. A municipality must be approved by the Minister of National Revenue in respect of a specific transfer of property from the particular charity.

This amendment applies in respect of transfers of property made on or after February 27, 2018.

Clause 31

Reduction of liability for penalties

ITA

189(6.3)

Subsection 189(6.3) of the Act applies to a registered charity on which the Minister of National Revenue has assessed penalties under section 188.1 of the Act if those penalties for a taxation year of the charity are in excess of $1,000. In such a case, subsection 189(6.3) allows the charity to reduce the liability by the amount by which the value of property transferred to an "eligible donee", within one year following the assessment date, exceeds any consideration given to the charity for the property transferred.

Consequential on the amendment to subsection 188(1.3) to provide that municipalities in Canada may qualify as eligible donees for the purposes of the calculation of the revocation tax of a particular charity, subsection 189(6.3) of the Act is amended to provide that charities may reduce their liability for penalties by transfers to eligible donees that are registered charities described in new paragraph 188(1.3)(a) of the Act but not to an eligible donee that is a municipality.

This amendment applies in respect of transfers of property made on or after February 27, 2018.

Clause 32

Regulations respecting information returns

ITA

221(1)(d.1)

Paragraph 221(1)(d.1) of the Act enables the Governor in Council to make regulations requiring any person or partnership to provide certain information to any class of persons who are required to make an information return containing that information.

Paragraph 221(1)(d.1) is amended to extend this regulatory power to require a trust to provide its trust account number to any class of persons required to make an information return containing that information. This amendment is consequential on the introduction of the "trust account number" definition.

Clause 33

Production of number

ITA

237(1.1)

Subsection 237(1.1) of the Act provides that an individual's Social Insurance Number or a person's or partnership's business number (as applicable) must be provided in any return filed under the Act or at the request of any person required to make an information return in which either number is required.

Subsection 237(1.1) is amended so that the obligation to provide information applies to any "designated number", as defined in new subsection 237(1.2). Subsection (1.1) is also amended so that the obligation to provide a designated number extends to requests by partnerships that are required to make a return in which a designated number is required. This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1).

Designated number

ITA

237(1.2)

New subsection 237(1.2) of the Act defines "designated number" for the purpose of subsection 237(1.1) as:

- in the case of an individual, their Social Insurance Number;
- in the case of a trust, its trust account number; and
- in any other case, the person's or partnership's business number.

This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1).

Number required in information returns

ITA

237(2)

Subsection 237(2) of the Act provides that any person making an information return must make a reasonable effort to obtain the Social Insurance Number or business number of the person or partnership to which the return relates, and cannot release this information, except as set out in the subsection.

Subsection 237(2) is amended in two respects. First, subsection 237(2) is amended to add a reference to partnerships required to make an information return. Second, subsection 237(2) is amended to apply to situations where a person or partnership is required to make an information return requiring a trust account number. This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1).

Authority to communicate number

ITA

237(3)

Subsection 237(3) of the Act permits a person to release information set out in subsection 237(2) to a related person, where the related person is required to make an information return that requires this information. This subsection is of significance in the context of demutualization, as it permits an insurance corporation to release this information to its holding corporation in connection with the holding corporation's responsibility to report dividends and other amounts payable to persons who were policyholders in respect of the insurance corporation.

Subsection 237(3) is amended to add a trust account number to the types of information that can be released to a related person. This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1).

Authority to communicate number

ITA

237(4)

Subsection 237(4) of the Act provides further circumstances in which information set out in subsection 237(2) may be released to another person in the context of a demutualization of an insurance corporation.

Subsection 237(4) is amended to add a trust account number to the types of information that can be released under this provision. This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1).

Clause 34

Information return

ITA

237.1(7)

Subsection 237.1(7) of the Act imposes an obligation on promoters to make an information return in respect of tax shelters.

Paragraph 237.1(7)(a) is amended to add a reference to trust account numbers of investors to the information that must be included in the tax shelter information return. This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1).

Clause 35

Offence with respect to an identification number

ITA

239(2.3)

Subsection 239(2.3) of the Act provides that it is a criminal offence for a person who has been provided with an individual's Social Insurance Number or a taxpayer or partnership's business number pursuant to the Act or regulations to use or communicate the number for other purposes.

Subsection 239(2.3) is amended to add the trust account number to the type of information the improper use of which will constitute a criminal offence. It is also amended so that a person is permitted to use the trust account number of a trust for a purpose for which the person has been authorized in writing by the particular trust. These amendments are consequential on the introduction of the "trust account number" definition in subsection 248(1).

Clause 36

Where taxpayer information may be disclosed

ITA

241(4)(j.1)

Section 241 of the Act prohibits officials and other persons from using or communicating taxpayer information obtained under the Act unless they are specifically authorized to do so by one of the exceptions found in that section.

Paragraph 241(4)(j.1) authorizes the communication of information to an official or a designated person solely for the purpose of making adjustments to a social assistance payment made on the basis of a means, needs or income test if the purpose of the adjustment is to take into account the amount determined for C (related to the former National Child Benefit supplement) in subsection 122.61(1) in respect of a person for a taxation year.

Paragraph 241(4)(j.1) is amended consequential on the repeal of the amount determined for C in subsection 122.61(1) as of July 1, 2018.

New subparagraph 241(4)(j.1)(i) authorizes the continued communication of information related to amounts determined for C in subsection 122.61(1) (as it read before July 2018) for prior periods where such information remains relevant.

New subparagraph 241(4)(j.1)(ii) authorizes the communication of information to an official or a designated person related to the calculation of an amount determined under subsections 122.61(1) or (1.1) (which relate to the Canada Child Benefit) solely for the purpose of making adjustments to a social assistance payment made on the basis of a means, needs or income test if the purpose of the adjustment is to take into account such an amount.

These amendments apply as of July 1, 2018.

Clause 37

Definitions

ITA

248

Subsection 248(1) of the Act contains definitions that apply for the purposes of the Act.

"business number"

The definition "business number" is amended to explicitly exclude a trust account number.

"trust account number"

A "trust account number" means the number (other than a business number) used by the Minister to identify a trust, and of which the Minister has notified the trust.

Clause 38

Canada Child Benefit – definitions

ITA

122.6

Section 122.6 of the Act defines a number of terms which apply for purposes of the Canada Child Benefit.

"eligible individual"

Paragraph (e) of the definition "eligible individual" in section 122.6 describes certain residency requirements that must be met in order for an individual to be eligible for the Canada child benefit. Prior to the introduction of the Canada Child Benefit (which applies as of July 1, 2016), the definition related to eligibility for the Canada child tax benefit, the national child benefit supplement and the universal child care benefit.

Subparagraph (e)(v) of the definition of "eligible individual" in section 122.6 of the Act provides that individuals who are Indians within the meaning of the *Indian Act* and residents of Canada for tax purposes are eligible to receive the Canada child benefit where all other eligibility requirements are met. This subparagraph was added in *Budget Implementation Act, 2016, No. 1*, and applies as of July 1, 2016.

The coming-into-force date of subparagraph (e)(v) of the definition of "eligible individual" is amended so that it applies as of January 1, 2005.

Clause 39

Consequential amendment to An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act

Changes introduced in 2016 to the indexing of certain amounts under the Working Income Tax Benefit to apply as of 2019 will no longer take effect following the replacement of the Working Income Tax Benefit with the Canada Workers Benefit. Consequential on the amendments to subsection 117.1(1) of the Act, section 67 of *An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act* is repealed. For more information, see the commentary on subsection 117.1(1).

Clause 40

Consequential amendment to An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act

Changes introduced in 2016 to amend certain amounts under the Working Income Tax Benefit to apply as of 2019 will no longer take effect following the replacement of the Working Income Tax Benefit with the Canada Workers Benefit. Consequential on the amendments to subsections 122.7(2) and (3) of the Act, section 69 of *An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act* is repealed. For more information, see the commentary on subsections 122.7(2) and (3).

Clause 41

Consequential Amendment to the Budget Implementation Act, 2017, No. 1

Subsections 6(2) and 6(5) of the *Budget Implementation Act, 2017 No. 1* are outstanding amendments to paragraph 81(1)(d.1) of the *Income Tax Act* to remove the reference to the family caregiver relief benefit effective for the 2020 and subsequent taxation years as that benefit is being replaced by the caregiver recognition benefit.

Consequential on the amendments to paragraph 81(1)(d.1) of the *Income Tax Act* in subsections 5(1) and 5(2) of this Act, subsections 6(2) and 6(5) of the *Budget Implementation Act, 2017 No. 1* are repealed.

For more information, see the commentary on paragraph 81(1)(d.1).

Clause 42

Investment income

ITR

201(1)

Subsection 201(1) of the *Income Tax Regulations* (the "Regulations") imposes a requirement on certain persons to provide annual information returns to the Minister of National Revenue and taxpayers in respect of interest and dividend payments. Subparagraph 201(1)(b)(ii) requires a person who makes a payment on account of interest in respect of money on loan to, money on deposit with, or property of any kind deposited or placed with a corporation, association, organization or institution to make an information return.

Subparagraph 201(1)(b)(ii) is amended so that information returns must also be made in respect of interest payments on account of money on loan to, money on deposit with, or property of any kind deposited or placed with a trust. This amendment also clarifies that a partnership is subject to the rule.

Clause 43

Partnership return

ITR

229(1)

Subsection 229(1) of the Regulations requires that every member of a partnership that carries on business in Canada, or that is a Canadian partnership or SIFT partnership, file a partnership return. This return must contain certain prescribed information including, for certain individuals who are members of the partnership, their Social Insurance Numbers.

This subsection is amended so that the partnership return must also include the business number or trust account number of a partner, as the case may be. This amendment is consequential on the introduction of the "trust account number" definition in subsection 248(1) of the Act.

Clause 44

ITR

3503

Section 3503 of the Regulations provides that, for the purposes of the charitable donations deduction under subsection 110.1, and the charitable donations tax credit under subsection 118.1, the universities outside Canada named in Schedule VIII of the Regulations are prescribed to be universities the student bodies of which ordinarily include students from Canada.

Consequential on the amendment to subparagraph 149.1(1)(a)(iv) of the Act to remove the requirement that universities outside Canada that have applied for registration must be prescribed, section 3503 of the Regulations is repealed.

This amendment comes into force on February 27, 2018.

Clause 45

Capital cost allowance – prescribed classes

ITR

Schedule II

Schedule II to the Regulations lists the properties that can be included in each capital cost allowance (CCA) class. A portion of the capital cost of depreciable property is deductible as CCA each year. CCA rates for each type of property, identified by their CCA classes, are set out in section 1100 of the Regulations.

Class 43.1 (30% CCA rate)

Class 43.1 in Schedule II to the Regulations currently provides an accelerated CCA rate of 30% per year (on a declining-balance basis) for clean energy generation and energy conservation equipment.

ITR

Class 43.2 (50% CCA rate)

Class 43.2 in Schedule II to the Regulations generally includes property that would otherwise be included in Class 43.1, except that in certain circumstances the clean energy generation and energy conservation equipment has to meet stricter eligibility criteria.

Class 43.2 was introduced in 2005 and currently provides for a temporary accelerated CCA rate of 50% in respect of property acquired before 2020.

Class 43.2 is amended to extend the eligibility for Class 43.2 to property acquired before 2025, by replacing a reference to "2020" in its preamble with "2025."

Clause 46

ITR

Sch. VIII

Schedule VIII to the Regulations lists universities outside Canada, the student body of which ordinarily includes students from Canada, to which a taxpayer can donate and receive tax relief in respect of that donation.

Consequential on the amendment to subparagraph 149.1(1)(a)(iv) of the Act to remove the requirement that universities outside Canada that have applied for registration must be prescribed, Schedule VIII to the Regulations is repealed.

This amendment comes into force on February 27, 2018.

Part 2 - Amendments to the Excise Act, 2001 (Tobacco Taxation) and to Related Legislation

Excise Act, 2001

Clause 47

Inflationary adjustments

EA, 2001
43.1(1) and (2)

Section 43.1 of the *Excise Act, 2001* (the "Act") sets out the manner in which the rates of duty on tobacco products are adjusted according to the Consumer Price Index for Canada.

Existing subsection 43.1(1) defines an "inflationary adjusted year" to be 2019 and every fifth year after that year.

Subsection 43.1(1) is amended to define an "inflationary adjusted year" to be 2019 and every year after that year.

Existing subsection 43.1(2) provides that each of the rates of duty on tobacco products set out in sections 1 to 4 of Schedule 1 to the Act and paragraph (a) of Schedule 2 to the Act will be adjusted on December 1 of each inflationary adjusted year. The rates of duty will be adjusted according to the Consumer Price Index for Canada. The adjusted rate of duty applicable on a tobacco product will be equal to the greater of the result obtained by the formula accounting for inflation and the rate of duty applicable to the product on November 30 of the particular inflationary adjusted year.

Subsection 43.1(2) is amended to provide that each of the rates of duty on tobacco products set out in sections 1 to 4 of Schedule 1 and paragraph (a) of Schedule 2 will instead be adjusted on April 1 of each inflationary adjusted year. The rates of duty will be adjusted according to the Consumer Price Index for Canada. The adjusted rate of duty applicable on a tobacco product will be equal to the greater of the result obtained by the formula accounting for inflation and the rate of duty applicable to the product on March 31 of the particular inflationary adjusted year.

This amendment is deemed to have come into force on February 28, 2018.

Clause 48

Definitions

EA, 2001
58.1

Section 58.1 of the Act defines terms used in Part 3.1 of the Act regarding the cigarette inventory tax.

Subclause 48(1)

Definition "adjustment day"

EA, 2001
58.1

The existing definition "adjustment day" in section 58.1 of the Act defines an adjustment day as March 23, 2017 or December 1 of an inflationary adjusted year.

The definition "adjustment day" is amended by adding February 28, 2018 as an adjustment day and by replacing December 1 of an inflationary adjusted year with April 1 of that year. The amendment imposes a tax on taxed cigarettes held in inventory on February 28, 2018 and on April 1 of each inflationary adjusted year.

This amendment is deemed to have come into force on February 28, 2018.

Subclause 48(2)

Definition "taxed cigarettes"

EA, 2001
58.1

The definition "taxed cigarettes" in section 58.1 of the Act defines cigarettes that are subject to the cigarette inventory tax.

The existing definition "taxed cigarettes" includes all cigarettes that were held at the beginning of March 23, 2017 (in respect of which excise duty was imposed before March 23, 2017 at the rate set out in paragraph 1(a) of Schedule 1 to the Act as it read at the end of March 22, 2017).

The definition "taxed cigarettes" is amended to include a reference to section 53 of the Act, which imposes a special duty on imported manufactured tobacco that is delivered to a duty free shop and that is not stamped. As amended, the definition includes all cigarettes that were held at the beginning of an adjustment day, and in respect of which duty under section 42 or 53 had been imposed at the rate applicable on the day before the adjustment day. Cigarettes that are held in vending machines or relieved from the duty on cigarettes are excluded from the definition. This amendment is consequential to the repeal of subsections 45(3) and (5) of the *Budget Implementation Act, 2017, No. 1* (see commentary for subsections 45(3) and (5) of that Act.

This amendment is deemed to have come into force on February 28, 2018.

Clause 49

Imposition of tax

EA, 2001
58.2(2)

Section 58.2 of the Act imposes a tax on taxed cigarettes held in inventory at a particular time when tobacco duty rates are increased.

Existing subsection 58.2(2) imposes a tax on inventories of taxed cigarettes held at the beginning of December 1 of an inflationary adjusted year at a rate equal to the increase of that year in the duty on cigarettes imposed under section 42 or 53, as the case may be, and as determined by formulas.

Subsection 58.2(2) is amended to add new subsection 58.2(1.1), which imposes a tax on inventories of taxed cigarettes held at the beginning of February 28, 2018 at a rate of $0.011468 per cigarette.

Subsection 58.2(2) is further amended to impose a tax on inventories of taxed cigarettes held at the beginning of April 1 of an inflationary adjusted year at a rate equal to the increase of that year on the duty on cigarettes imposed under section 42 or 53, as the case may be, and as determined by formulas.

This amendment is deemed to have come into force on February 28, 2018.

Clause 50

Returns

EA, 2001
58.5(1)

Existing subsection 58.5(1) of the Act requires every person liable to pay an inventory tax under Part 3.1 of the Act to file a return with the Minister. The deadline for filing a return with the Minister, under

paragraphs (a) and (b), respectively, is May 31, 2017 in the case of the March 23, 2017 adjustment day and January 31 following the adjustment day in any other case.

Subsection 58.5(1) is amended to provide for a deadline of April 30, 2018 for filing a return in the case of a tax imposed on February 28, 2018 under new subsection 58.2(1.1) (see new paragraph 58.5(1)(a.1)) or a deadline of May 31 of an inflationary adjusted year in the case of a tax imposed on April 1 of that year under subsection 58.2(2) (see amended paragraph 58.5(1)(b)).

This amendment is deemed to have come into force on February 28, 2018.

Clause 51

Payment

EA, 2001
58.6(1)

Existing subsection 58.6(1) of the Act requires every person liable to pay an inventory tax under Part 3.1 of the Act to pay the total amount owing to the Receiver General. The deadline for paying the amount owing to the Receiver General, under paragraphs (a) and (b), respectively, is May 31, 2017 in the case of the March 23, 2017 adjustment day and January 31 following the adjustment day in any other case.

Subsection 58.6(1) is amended to provide for a deadline of April 30, 2018 for paying an amount owing in the case of a tax imposed on February 28, 2018 under new subsection 58.2(1.1) (see new paragraph 58.6(1)(a.1)) or a deadline of May 31 of an inflationary adjusted year in the case of a tax imposed on April 1 of that year under subsection 58.2(2) (see amended paragraph 58.6(1)(b)).

This amendment is deemed to have come into force on February 28, 2018.

Clause 52

Punishment – section 32

EA, 2001
216

Section 216 of the Act makes it an offence for a person to possess, offer to sell or sell, other than in accordance with section 32 of the Act, tobacco products that are not stamped. A person convicted of selling, offering to sell or possessing contraband tobacco products is liable to a fine determined under subsections 216(2) and (3), or to imprisonment, or to both. The minimum and maximum amounts of the fine are typically a function of the rate of duty applicable on a tobacco product.

Subclause 52(1)

Minimum amount

EA, 2001
216(2)(a)(i) to (iv)

The amounts in subparagraphs 216(2)(a)(i) to (iv) of the Act that are used to determine the minimum amount of the fine for cigarettes, tobacco sticks, manufactured tobacco other than cigarettes and tobacco sticks, and cigars are increased, consequential to the increases in the rates of duty on these tobacco products set out in Schedules 1 and 2 to the Act.

See commentary for subsection 76(5) of the *Economic Action Plan 2014 Act, No. 1* for a description of how the minimum amount will be calculated for subsequent inflationary adjusted years.

This amendment comes into force on Royal Assent.

Subclause 52(2)

Maximum amount

EA, 2001
216(3)(a)(i) to (iv)

The amounts in subparagraph 216(3)(a)(i) to (iv) of the Act that are used to determine the maximum amount of the fine for cigarettes, tobacco sticks, manufactured tobacco other than cigarettes and tobacco sticks, and cigars are increased, consequential to the increases in the rates of duty on these tobacco products set out in Schedules 1 and 2 to the Act.

See commentary for subsection 76(5) of the *Economic Action Plan 2014 Act, No. 1* for a description of how the maximum amount will be calculated for subsequent inflationary adjusted years.

This amendment comes into force on Royal Assent.

Clause 53

Contravention of subsection 50(5)

EA, 2001
240(a) to (c)

Section 240 of the Act imposes a penalty on a tobacco licensee who removes from the licensee's excise warehouse for export in a calendar year unstamped manufactured tobacco in excess of the 1.5% limit on exports established in subsection 50(5) of the Act. The penalty is based on the rates of duty on tobacco products.

The amounts in paragraphs 240(a) to (c) are amended, consequential to increases in the rates of duty on tobacco products set out in Schedules 1 and 3 to the Act.

See commentary for subsection 78(3) of the *Economic Action Plan 2014 Act, No.1* for a description of how the penalty will be calculated for subsequent inflationary adjusted years.

This amendment comes into force on Royal Assent.

Clause 54

Rate of duty on cigarettes

EA, 2001
Sch. 1, paragraph 1(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 1 of Schedule 1 sets out the rate for cigarettes. Paragraph 1(a) is amended to increase the rate to $0.59634 (from $0.53900) for each five cigarettes or fraction of five cigarettes contained in any package (the new duty rate will be approximately $23.85 per carton of 200 cigarettes).

This amendment is deemed to have come into force on February 28, 2018.

Clause 55

Rate of duty on tobacco sticks

EA, 2001
Sch. 1, paragraph 2(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 2 of Schedule 1 sets out the rate for tobacco sticks. Paragraph 2(a) is amended to increase the rate to $0.11927 (from $0.10780) per stick.

This amendment is deemed to have come into force on February 28, 2018.

Clause 56

Rate of duty on manufactured tobacco other than cigarettes and tobacco sticks

EA, 2001
Sch. 1, paragraph 3(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 3 of Schedule 1 sets out the rate for manufactured tobacco other than cigarettes and tobacco sticks. Paragraph 3(a) is amended to increase the rate to $7.45425 (from $6.73750) per 50 grams or fraction of 50 grams contained in any package.

This amendment is deemed to have come into force on February 28, 2018.

Clause 57

Rate of duty on cigars

EA, 2001
Sch. 1, paragraph 4(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 4 of Schedule 1 sets out the rate for cigars. Paragraph 4(a) is amended to increase the rate to $25.95832 (from $23.46235) per 1,000 cigars.

This amendment is deemed to have come into force on February 28, 2018.

Clause 58

Additional duty on cigars

EA, 2001
Sch. 2

Schedule 2 to the Act sets out the rates of additional duty on cigars imposed under section 43 of the Act.

The additional duty on cigars is the greater of the specific rate set out in paragraph (a) of Schedule 2 and the amount obtained by multiplying the percentage set out in paragraph (b) of Schedule 2 by the sale price or duty-paid value, as the case may be.

Subclause 58(1)

Additional duty on cigars

EA, 2001
Sch. 2, subparagraph (a)(i)

Subparagraph (a)(i) of Schedule 2 to the Act is amended to increase the specific rate for the additional duty on cigars to $0.09331 from $0.08434 per cigar.

This amendment is deemed to have come into force on February 28, 2018.

Subclause 58(2)

Additional duty on cigars

EA, 2001
Sch. 2, paragraph (b)

Paragraph (b) of Schedule 2 to the Act is amended to increase the *ad valorem* rate for the additional duty on cigars to 88% (from 84%) of the sale price (in the case of cigars manufactured in Canada) or the duty-paid value (in the case of imported cigars).

This amendment is deemed to have come into force on February 28, 2018.

Economic Action Plan 2014 Act, No. 1

Clause 59

Punishment – section 32

EAP 2014, No.1
76(5)

Subsection 76(5) of the *Economic Action Plan 2014 Act, No. 1* was to provide, effective December 1, 2019, that the amounts in subparagraphs 216(2)(a)(i) to (iv) of the *Excise Act, 2001* (the "Act") and subparagraphs 216(3)(a)(i) to (iv) of the Act that are used to determine the minimum and maximum amount, respectively, of the fine for cigarettes, tobacco sticks, manufactured tobacco other than cigarettes and tobacco sticks, and cigars are to be expressed as a function of the rates set out in Schedules 1 and 2 to the Act, to reflect the future inflationary adjustments in these rates.

This amendment advances the coming into force of the application of the function from December 1, 2019 to April 1, 2019, the day of the next inflationary adjustment.

This amendment comes into force on Royal Assent.

Clause 60

Contravention of subsection 50(5)

EAP 2014, No.1
78(3)

Subsection 78(3) of the *Economic Action Plan 2014 Act, No. 1* was to provide, effective December 1, 2019, that a penalty imposed under section 240 of the *Excise Act, 2001* (the "Act") is to be expressed as a function of the rates set out in Schedule 1 to the Act and in section 4 of Schedule 3 to the Act, consequential to the increases in the rates of duty on tobacco products set out in Schedule 1 to the Act.

This amendment advances the coming into force of the application of the function from December 1, 2019 to April 1, 2019, the day of the next inflationary adjustment.

This amendment comes into force on Royal Assent.

Clause 61

References

EAP 2014, No.1
79(4)

Subsection 79(4) of the *Economic Action Plan 2014 Act, No. 1* was to provide, effective December 1, 2019, that the references after the heading "SCHEDULE 1" of Schedule 1 of the *Excise Act, 2001* (the "Act") are to include references to subsections 216(2) and (3) of the Act and section 240 of the Act.

This amendment advances the coming into force of the inclusion of the reference to subsections 216(2) and (3) and section 240 from December 1, 2019 to April 1, 2019, the day of the next inflationary adjustment.

This amendment comes into force on Royal Assent.

Clause 62

References

EAP 2014, No. 1
80(4)

Subsection 80(4) of the *Economic Action Plan 2014 Act, No. 1* was to provide, effective December 1, 2019, that the references after the heading "SCHEDULE 2" of Schedule 2 of the Act are to include references to subsections 216(2) and (3) of the Act.

This amendment advances the coming into force of the inclusion of the reference to subsections 216(2) and (3) from December 1, 2019 to April 1, 2019, the day of the next inflationary adjustment.

This amendment comes into force on Royal Assent.

Clause 63

References

EAP 2014, No. 1
81(4)

Subsection 81(4) of the *Economic Action Plan 2014 Act, No. 1* was to provide, effective December 1, 2019, that the references after the heading "SCHEDULE 3" of Schedule 3 of the *Excise Act, 2001* (the "Act") are to include reference to section 240 of the Act.

This amendment advances the coming into force of the inclusion of the reference to section 240 from December 1, 2019 to April 1, 2019, the day of the next inflationary adjustment.

This amendment comes into force on Royal Assent.

Economic Action Plan 2014 Act, No. 2

Clause 64

Refund of duty – destroyed tobacco products

EAP 2014, No. 2
100(4)

Section 181 of the *Excise Act, 2001* (the "Act") allows a tobacco licensee to apply for a refund of the duty and inventory tax paid on tobacco products re-worked or destroyed by the tobacco licensee in accordance

with section 41 of the Act, provided the licensee applies for the refund within two years of the day the tobacco was re-worked or destroyed.

As amended by the *Economic Action Plan 2014 Act, No. 2*, existing section 181 of the Act was renumbered as subsection 181(1) and subsections 181(2) and (3), which were introduced to provide a refund of the cigarette inventory tax to tobacco licensees and importers on taxed cigarettes, as defined in section 58.1 of the Act, that are destroyed.

Further amended by the *Economic Action Plan 2014 Act, No. 2*, the portion of existing subsection 181(3) of the Act (as enacted by the *Economic Action Plan 2014 Act, No. 2*) before paragraph (a) was to be amended, effective December 1, 2019, to exclude refunds of inventory tax for cigarettes in respect of which duty has been paid under section 53 of the Act. For cigarettes in respect of which duty has been imposed under section 53, a refund of inventory tax may be provided under new subsection 181.1(2) if the conditions under that subsection are met.

This amendment advances the coming into force of the further amendment to subsection 181(3) from December 1, 2019 to February 28, 2018.

This amendment comes into force on Royal Assent.

Clause 65

Destroyed imported manufactured tobacco

EAP 2014, No. 2
101(2)

Section 181.1 of the *Excise Act, 2001* (the "Act") was to be renumbered, effective December 1, 2019, by subsection 101(2) of the *Economic Action Plan 2014 Act, No. 2* as subsection 181.1(1) and subsection 181.1(2) was to be introduced on that day to provide a refund of the cigarette inventory tax to duty free shop licensee on taxed cigarettes, as defined in section 58.1 of the Act, that are destroyed.

This amendment advances the coming into force of the replacement of section 181.1 with subsections 181.1(1) and (2) from December 1, 2019 to February 28, 2018.

This amendment comes into force on Royal Assent.

Budget Implementation Act 2017, No. 1

Clause 66

Definitions

BIA 2017, No. 1
45(3) and (5)

Subsections 45(3) and (5) of the *Budget Implementation Act 2017, No. 1* were to provide, effective November 30, 2019, that the definition "taxed cigarettes" in section 58.1 of the *Excise Act, 2001* (the "Act") is amended to include reference to section 53 of the Act, which imposes a special duty on imported manufactured tobacco that is delivered to a duty free shop and that is not stamped.

This amendment repeals those subsections of the *Budget Implementation Act 2017, No. 1* that were to amend in 2019 the definition "taxed cigarettes" in section 58.1. This amendment is now proposed to be made effective February 28, 2018 (see commentary for section 58.1 of the Act).

This amendment comes into force on Royal Assent.

Application

Clause 67

This clause provides that, for the purposes of applying the provisions of the *Customs Act* that provide for the payment of, or liability to pay interest in respect of any amount, the amount is to be determined, and interest is to be computed on it, as though paragraphs 1(a), 2(a), 3(a) and 4(a) of Schedule 1 to the Act, as amended by clauses 54 to 57, and subparagraph (a)(i) and paragraph (b) of Schedule 2 to the Act, as amended by clause 58, had come into force on February 28, 2018.

Part 3 - Amendments to the Excise Act, 2001 (Cannabis Taxation), the Excise Tax Act and Other Related Texts

Coordination with the Cannabis Act

Clause 68

This clause states that the amendments relating to the taxation of cannabis to the *Excise Act, 2001*, the *Excise Tax Act* and other related texts only come into force if Bill C-45, introduced in the 1st session of the 42nd Parliament and entitled the *Cannabis Act*, receives royal assent.

This clause also sets out the coming-into-force rules for those amendments. For more details on these coming-into-force rules, see the notes to the clauses that implement those amendments.

Finally, this clause defines the term "commencement day" for the purposes of those coming-into-force rules and for the purposes of certain transitional rules relating to those amendments. Commencement day means the day on which subsection 204(1) of the *Cannabis Act* comes into force, and it represents the day on which adults will start to be able to legally purchase and possess cannabis subject to conditions under the *Cannabis Act*.

Excise Act, 2001

Clause 69

Definitions

EA, 2001
2

Section 2 of the *Excise Act, 2001* (the "Act") defines terms used in the Act. Certain existing definitions are amended and new definitions are added consequential to the addition of new Part 4.1 of the Act, which relates to cannabis.

These amendments to section 2 come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Subclause 69(1)

Replaced definitions

EA, 2001
2

"container"

The existing definition "container" of tobacco products in section 2 of the Act means any type of container containing tobacco products.

The definition "container" is amended to include any type of container containing cannabis products. The new definition also specifically identifies bottles and vials as types of containers.

"excise stamp"

The existing definition "excise stamp" in section 2 of the Act means a stamp that is issued by the Minister of National Revenue under subsection 25.1(1) of the Act and that has not been cancelled under section 25.5 of the Act. The definition is relevant for the purposes of the enhanced stamping regime for tobacco products under sections 25.1 to 25.5 of the Act.

The definition “excise stamp” is amended to identify the two new definitions of “tobacco excise stamp” and “cannabis excise stamp” (see commentary for these two new definitions).

“non-duty-paid”

The existing definition “non-duty-paid” in section 2 of the Act means, in respect of packaged alcohol, that duty, other than special duty, has not been paid on the alcohol.

The definition “non-duty-paid” is amended to also apply in respect of cannabis products such that non-duty-paid, in respect of a cannabis product, means that duty has not been paid on the cannabis product.

“stamped”

The existing definition “stamped” in section 2 of the Act, when referring to a tobacco product, means that an excise stamp, and all prescribed information in a prescribed format, have been affixed to, impressed on or otherwise applied to the tobacco product or its container to indicate that duty, other than special duty, has been paid.

The definition “stamped” is amended to differentiate between stamped tobacco products and stamped cannabis products. “Stamped” in respect of a tobacco product means that a tobacco excise stamp and all prescribed information is stamped, impressed, printed, marked on, indented into or affixed to the tobacco product or its container in the prescribed manner to indicate that the duty (other than special duty) has been paid. Similarly, “stamped” in respect of a cannabis product means that a cannabis excise stamp and all prescribed information is stamped, impressed, printed, marked on, indented into or affixed to the cannabis product or its container in the prescribed manner to indicate that the duty has been paid.

“take for use”

The existing definition “take for use” in section 2 of the Act in regard to alcohol, means alcohol taken for consumption, analysis, destruction or for any purpose that results in a product other than alcohol. Generally speaking, duty is payable when alcohol is taken for use. Duty is not payable, however, on alcohol used in an approved formulation (section 144 of the Act), for analysis or destruction in an approved manner (section 145 of the Act) or for the production of vinegar, if a minimum standard is achieved (subsection 146 of the Act).

The definition “take for use” is amended in regard to cannabis to include a cannabis product taken for consumption, analysis or destruction. Generally speaking, duty is payable on an unpackaged cannabis product when taken for use (see commentary for new section 158.25 of the Act). Duty is not payable, however, on an unpackaged cannabis product that is taken for analysis or destroyed in certain circumstances such as when taken for analysis or destroyed by the Minister of Health, or when taken for analysis or destroyed by a cannabis licensee in a manner approved by the Minister of National Revenue (see commentary for new section 158.29 of the Act).

Subclause 69(2)

“packaged”

EA, 2001
2

The existing definition “packaged” in section 2 of the Act means, in the case of a tobacco product, packaged in a prescribed package. In the case of spirits and wine, “packaged” means packaged in either a container ordinarily sold to consumers that is less than a certain size or a marked special container.

The definition “packaged” is amended to specify that a cannabis product, as is the case with a tobacco product, is “packaged” when it is packaged in a package prescribed by regulations.

Subclause 69(3)

"produce"

EA, 2001
2

The existing definition "produce" in section 2 of the Act in respect of spirits means to make spirits by any means or to recover them. In respect of wine, "produce" means to make wine by fermentation.

The definition "produce" is amended to specify that a cannabis product is produced when it is produced within the meaning of subsection 2(1) of the *Cannabis Act* and also when it is packaged. The *Cannabis Act* defines "produce" to generally mean obtaining cannabis by any method or process, including by manufacturing, synthesis, altering its chemical or physical properties by any means, or cultivating, propagating or harvesting it or any living thing from which it may be extracted or otherwise obtained.

Subclause 69(4)

New Definitions

EA, 2001
2

New definitions are added to section 2 of the Act relating to the new taxation regime for cannabis under the Act.

"additional cannabis duty"

The new definition "additional cannabis duty" in section 2 of the Act means the additional cannabis duties imposed by new sections 158.2 and 158.22 of the Act. This new definition is relevant to the new cannabis stamping regime under the Act.

In addition to the duty on cannabis products produced in Canada under new section 158.19 of the Act, section 158.2 imposes a duty in respect of a specified province on cannabis products produced in Canada in circumstances prescribed by regulations (see commentary for new section 158.2).

In addition to the duty on imported cannabis products determined under new section 158.21 of the Act, new section 158.22 imposes a duty in respect of a specified province on cannabis products imported into Canada in circumstances prescribed by regulations (see commentary for new section 158.22).

"cannabis"

The new definition "cannabis" in section 2 of the Act has the same meaning as in subsection 2(1) of the *Cannabis Act*. Subsection 2(1) of the *Cannabis Act* generally defines cannabis as including: any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not; any substance or mixture of substances that contains or has on it any part of such a plant; and, any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained. The definition "cannabis" in the *Cannabis Act* excludes the following: non-viable seeds of a cannabis plant; a mature stalk without any leaf, flower, seed or branch; fibre derived from a stalk; and the root of a cannabis plant.

"cannabis duty"

The new definition "cannabis duty" in section 2 of the Act means the duty imposed under either of new sections 158.19 and 158.21 of the Act.

New section 158.19 requires a cannabis licensee to pay a duty on cannabis products produced in Canada. New section 158.21 imposes a duty on cannabis products imported into Canada. For further details, see the commentary for those sections.

"cannabis excise stamp"

The new definition "cannabis excise stamp" in section 2 of the Act means a stamp issued by the Minister of National Revenue pursuant to new subsection 158.03(1) of the Act that has not been cancelled under new section 158.07 of the Act. New subsection 158.03(1) specifies that the Minister may issue cannabis excise stamps to a cannabis licensee and that such stamps are to be used to indicate that cannabis duty and additional cannabis duty, if applicable, have been paid on a packaged cannabis product (see commentary for new section 158.03 of the Act). Under new section 158.07, the Minister may cancel issued cannabis excise stamps or the Minister may direct that such stamps be returned or destroyed (see commentary for new section 158.07).

"cannabis licensee"

The new definition "cannabis licensee" in section 2 of the Act means a person that has applied for and has been issued a cannabis licence by the Minister of National Revenue under new subsection 14(1.1) of the Act (see commentary for section 14 of the Act).

"cannabis plant"

The new definition "cannabis plant" in section 2 of the Act has the same meaning as in subsection 2(1) of the *Cannabis Act*, being a plant that belongs to the genus *Cannabis*.

"cannabis product"

The new definition "cannabis product" in section 2 of the Act means any of four things. First, it means a product that is cannabis as defined in subsection 2(1) the *Cannabis Act*, but that is not industrial hemp produced or imported in accordance with the *Cannabis Act* or the *Industrial Hemp Regulations*. Subsection 2(1) of the *Cannabis Act* generally defines cannabis as including: any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not; any substance or mixture of substances that contains or has on it any part of such a plant; and any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained. The definition "cannabis" in the *Cannabis Act* excludes the following: non-viable seeds of a cannabis plant; a mature stalk without any leaf, flower, seed or branch; fibre derived from a stalk; and the root of a cannabis plant.

Second, it means a product that is an industrial hemp by-product (see commentary for new definition "industrial hemp by-product").

Third, it means anything that is made with or contains a product that is cannabis as defined in subsection 2(1) the *Cannabis Act* (but that is not industrial hemp for the purposes of the *Cannabis Act* or the *Industrial Hemp Regulations*) or that is made with or contains an industrial hemp by-product.

Fourth, it means a substance, material or thing that is prescribed by regulations.

Finally, any substance, material or thing that would otherwise be included in the definition "cannabis product" can be excluded from that definition if it is prescribed by regulations.

"dutiable amount"

The new definition "dutiable amount" in section 2 of the Act is used to determined the amount of an *ad valorem* duty on a cannabis product. It means the amount on which a rate of duty is applied to determine

an *ad valorem* cannabis duty on the cannabis product. The dutiable amount generally represents the portion of the producer's sales price that does not include any cannabis duties.

The dutiable amount, as specified by the formula in the definition, is normally determined by multiplying a particular amount by a percentage. In circumstances prescribed by regulations, however, the dutiable amount is an amount that is determined in a manner prescribed by regulations.

The particular amount is generally the amount of consideration for a sale of the cannabis product on which the goods and services tax or the harmonized sales tax (GST/HST) is applied in respect that sale. It may also include additional amounts in certain circumstances such as when an additional consideration, as determined for the purposes of the GST/HST, for a container in which the cannabis product is contained is charged to the purchaser.

The percentage represents the percentage that is obtained by dividing 100 % by the total of (1) 100%; (2) the percentage set out in section 2 of Schedule 7; and (3) if additional cannabis duty in respect of a specified province is imposed on the cannabis product, a percentage prescribed by regulations in respect of the specified province.

The formula generally has the effect of applying the *ad valorem* rate of duty to an amount that is lower than the total consideration payable in respect of a sale of cannabis products. The lower amount is determined as a function of the rates of *ad valorem* duty that are applicable on the cannabis products.

"flowering material"

The new definition "flowing material" in section 2 of the Act means the whole or any part of the inflorescence of a cannabis plant (which includes any part of a flowering head of a cannabis plant such as the flowers, their associated bracts and young foliage and the branching system subtending these) at any stage of development. The new definition also includes the infructescence of the cannabis plant during that stage of development (generally the inflorescence of the cannabis plant at the stage of development when it is producing fruit). However, viable seeds are excluded from the definition.

"industrial hemp"

The new definition "industrial hemp" in section 2 of the Act means cannabis that is industrial hemp for the purposes of the *Cannabis Act* or the *Industrial Hemp Regulations*.

The *Industrial Hemp Regulations* defines "industrial hemp" to mean the plants and plant parts of the genera *Cannabis*, the leaves and flowering heads of which do not contain more than 0.3% THC w/w (weight to weight ratio), and includes the derivatives of such plants and plant parts. The definition also includes the derivatives of non-viable cannabis seeds. The definition does not include plant parts of the genera *Cannabis* that consist of non-viable cannabis seed, other than its derivatives, or of mature cannabis stalks that do not include leaves, flowers, seeds or branches, or of fibre derived from those stalks.

For the purposes of the *Cannabis Act*, "industrial hemp" is to be defined by regulations.

"industrial hemp by-product"

The new definition "industrial hemp by-product" in section 2 of the Act means flowering material (other than viable achenes) or non-flowering material (see commentary for new definitions "flowering material" and "non-flowering material") that has been removed or separated from industrial hemp plants (see commentary for new definition "industrial hemp plant") and that has not been disposed of by retting or by otherwise rendering them into a condition such that they cannot be used for any purpose not permitted under the *Controlled Drugs and Substances Act* or disposed of in a similar manner under the *Cannabis Act*.

"industrial hemp grower"

The new definition "industrial hemp grower" in section 2 of the Act means a person that holds a licence or permit under the *Controlled Drugs and Substances Act* or the *Cannabis Act* authorizing the person to produce industrial hemp plants.

"industrial hemp plant"

The new definition "industrial hemp plant" in section 2 of the Act means a cannabis plant, including a seedling, that is industrial hemp (see commentary for new definition "industrial hemp").

"low-THC cannabis product"

The new definition "low-THC cannabis product" in section 2 of the Act means a cannabis product that meets two criteria. The first is that it consists entirely of cannabis of a class referred to in any of items 1 to 3 of Schedule 4 to the *Cannabis Act*. These items are dried cannabis, cannabis oil and fresh cannabis. The second is that any part of the cannabis product does not have a maximum yield of more than 0.3% THC w/w (weight per weight), taking into account the potential to convert delta-9-tetrahydrocannabolic acid into THC, as determined for the purposes of the *Cannabis Act* (see commentary for new definition "THC").

"non-flowering material"

The new definition "non-flowering material" in section 2 of the Act is defined as any remainder parts of a cannabis plant that are not the flowering material (see commentary for the new definition "flowering material"), viable seeds and those parts of the cannabis plant referred to in Schedule 2 of the *Cannabis Act*. The parts of the cannabis plant referred to in that schedule are generally the following: non-viable seeds of a cannabis plant, a mature stalk without any leaf, flower, seed or branch; fibre derived from such a stalk; and the root or any part of the root of a cannabis plant. As a consequence, non-flowering material for the purpose of the Act will generally consist of leaves and twigs not included in the other parts of the plant that are referred to above.

"prescription cannabis drug"

The new definition "prescription cannabis drug" in section 2 of the Act means a cannabis product that is a drug that has been assigned a drug identification number under the *Food and Drug Regulations*. It does not include, however, a drug or mixture of drugs that may be sold to a consumer without a prescription under the *Food and Drugs Act* or the *Controlled Drugs and Substances Act*. It also does not include a cannabis product prescribed by regulations or a cannabis product of a class that is prescribed by regulations.

"specified province"

The new definition "specified province" in section 2 of the Act means a province prescribed by regulations. These provinces would be provinces that have entered into an agreement with Canada in respect of the coordination of cannabis taxation.

"THC"

The new definition "THC" in section 2 of the Act means Δ^9-tetrahydrocannabinol.

"tobacco excise stamp"

The new definition "tobacco excise stamp" in section 2 of the Act draws from the existing definition "excise stamp". The new definition "tobacco excise stamp" means a stamp that is issued by the Minister of National Revenue under subsection 25.1(1) of the Act and that has not been cancelled under section

25.5 of the Act. The definition is relevant for the purposes of the stamping regime for tobacco products under the Act.

"vegetative cannabis plant"

The new definition "vegetative cannabis plant" in section 2 of the Act means a cannabis plant, including a seedling, that has not yet produced reproductive structures, including flowers, fruits or seeds.

"viable seed"

The new definition "viable seed" means a viable seed of a cannabis plant that is not an industrial hemp plant (see commentary for definition "industrial hemp plant").

Clause 70

Constructive possession and meaning of *possession*

EA, 2001
5

Existing subsection 5(1) of the Act provides that possession of counterfeit tobacco excise stamps, unpackaged or unstamped raw leaf tobacco, unstamped tobacco products, tobacco manufacturing equipment, a still, bulk alcohol, non-duty-paid packaged alcohol or property obtained from offences by one person is deemed to be possession by other persons, where there is knowledge of and consent to the person's possession.

Existing subsection 5(2) of the Act provides that possession of counterfeit tobacco excise stamps, unpackaged or unstamped raw leaf tobacco, unstamped tobacco products, tobacco manufacturing equipment, a still, bulk alcohol, non-duty-paid packaged alcohol is given an extended meaning to include possession by another person or having in a place for one's own use or benefit or the use or benefit of another person.

Amended subsection 5(1) provides that, in addition to possession of those items identified in the existing subsection, the possession of counterfeit cannabis excise stamps or the unlawful possession of cannabis excise stamps or unstamped cannabis products by one person is deemed to be possession by other persons, where there is knowledge of and consent to the person's possession.

Amended subsection 5(2) provides that, in addition to possession of those items identified by the existing subsection, the possession of counterfeit cannabis excise stamps or the unlawful possession of cannabis excise stamps or unstamped cannabis products means not only having such items in one's own possession but also knowingly having such items in the possession or custody of another person or having such items in any place for one's own use or benefit or that of another person.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 71

Cannabis licence

EA, 2001
14(1.1) and (1.2)

New subsection 14(1.1) of the Act provides that, subject to regulations prescribing requirements to be met by an applicant, on application, the Minister of National Revenue may issue a cannabis licence to a person for the purposes of the Act.

New subsection 14(1.2) of the Act specifies that a licence issued under new subsection 14(1.1) will not have effect until a licence or permit issued to the person pursuant to subsection 62(1) of the *Cannabis Act* comes into effect. A licence under subsection 62(1) of the *Cannabis Act* may generally be issued to authorize the importation, exportation, production, testing, packaging, labelling, sending, delivery, transportation, sale, possession or disposal of cannabis.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent. As well, a transitional rule applies in respect of cannabis licences that are issued after these amendments come into force but before commencement day. In applying new subsection 14(1.2) of the Act in respect of such a cannabis licence, that subsection provides that the cannabis licence will not have effect until a licence or permit issued to the person pursuant to subsection 62(1) of the *Cannabis Act*, or a licence issued to the person pursuant to section 35 of the *Access to Cannabis for Medical Purposes Regulations*, comes into effect.

Clause 72

Cancellation and conditions of cannabis licence

EA, 2001
23

Existing section 23 of the Act specifies that the Minister of National Revenue may refuse to issue a licence or registration for any reason the Minister considers sufficient in the public interest. The Minister may also, subject to the regulations, amend, suspend, renew, cancel, or reinstate a licence or registration.

New paragraph 23(2.1)(a.1) specifies that the Minister of National Revenue may amend, suspend or cancel a cannabis licence if the person's licence or permit issued pursuant to subsection 62(1) of the *Cannabis Act* is amended, suspended or revoked.

Existing subsection 23(3) outlines the conditions that the Minister of National Revenue may or must impose on a licence granted under the Act. The conditions attached to granting a licence include: specifying where and what activities may be conducted under a licence; specifying the amount and form of security required for granting a licence; and, specifying any other conditions that the Minister considers appropriate. Amended paragraph 23(3)(b) specifies that security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations is required for a cannabis licence.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent. As well, a transitional rule applies in respect of cannabis licences that are issued after these amendments come into force but before commencement day. In applying new paragraph 23(2.1)(a.1) of the Act before commencement day in respect of such a cannabis licence, that paragraph provides that the Minister of National Revenue may amend, suspend or cancel the cannabis licence if the person's licence or permit issued pursuant to subsection 62(1) of the *Cannabis Act*, or the person's licence issued pursuant to section 35 of the *Access to Cannabis for Medical Purposes Regulations*, is amended, suspended or revoked.

Clause 73

Cannabis

EA, 2001
Part 4.1

The Act is amended by adding new Part 4.1 that provides rules related to cannabis production and stamping, responsibility for cannabis, and imposition and payment of duty on cannabis.

The amendments generally come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent. However, most taxing provisions of new Part 4.1 only apply when certain circumstances are met on or after commencement day, as indicated below in the description of those provisions. In addition, new sections 158.02, 158.09 to 158.12, 158.15 and 158.16 only come into force on commencement day.

Non-application

New section 158.01 of the Act specifies those cannabis products to which Part 4.1 of the Act does not apply. Paragraphs 158.01(a) to (c) specify that Part 4.1 does not apply to:

- cannabis products that are produced in Canada by an individual for their personal use and in accordance with the *Cannabis Act*, but only to the extent that those cannabis products are not used in a prohibited manner under that Act;
- cannabis products that are produced in Canada by an individual for their own medical purposes and in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act*, but only to the extent that those cannabis products are not used in a manner prohibited under whichever of those Acts is applicable; or
- cannabis products that are produced in Canada by a designated person (being an individual who is authorized under the *Controlled Drugs and Substances Act* or the *Cannabis Act* to produce cannabis for the medical purposes of another individual) for the medical purposes of another individual and in accordance with whichever of those Acts is applicable, but only to the extent that those cannabis products are not used in a manner prohibited under the applicable Act.

Production without licence prohibited

New subsection 158.02(1) of the Act prohibits a person other than a cannabis licensee from producing cannabis products. Under new subsection 158.02(2) of the Act, a person who provides equipment to another person to produce that other person's own cannabis products in the person's place of business is deemed to be the producer of the cannabis products and the other person is deemed not to be a producer.

New subsection 158.02(3) of the Act contains exceptions to the prohibitions found in new subsection 158.02(1). Subsection 158.02(3) provides that the prohibition under subsection 158.02(1) does not apply in respect of:

- the production of industrial hemp by-products (see commentary for new definition "industrial hemp by-products") by an industrial hemp grower (see commentary for new definition "industrial hemp grower"); and
- a person prescribed by regulations that produces cannabis products that are prescribed by regulations, or that are of a class prescribed by regulations, in circumstances prescribed by regulations or for a purpose prescribed by regulations.

Issuance of cannabis excise stamps

New section 158.03 of the Act sets out the rules related to the issuance of cannabis excise stamps.

New subsections 158.03(1) and (2) enable the Minister of National Revenue to issue cannabis excise stamps and to limit the quantity of stamps that may be issued to a cannabis licensee.

New subsection 158.03(3) requires that any security required by regulation be provided in a form satisfactory to the Minister before the issuance of cannabis excise stamps. New subsection 158.03(4) provides that the Minister may authorize a producer of cannabis excise stamps to supply cannabis excise stamps to a person to whom the Minister agreed to issue stamps under subsection 158.03(1).

New subsection 158.03(5) provides that the design and construction of cannabis excise stamps shall be subject to the Minister's approval.

Counterfeiting cannabis excise stamps

New section 158.04 of the Act generally prohibits a person from producing, possessing, selling or otherwise supplying, or offering to supply, anything that is intended to pass for a cannabis excise stamp without lawful justification or excuse.

Unlawful possession of cannabis excise stamps

New section 158.05 of the Act establishes prohibitions on who may possess cannabis excise stamps. New subsection 158.05(1) prohibits the possession of cannabis excise stamps that have not been affixed to a cannabis product or its container to indicate that duty has been paid on the product. A cannabis excise stamp must be affixed to a cannabis product in the manner prescribed by regulations for the purposes of the definition "stamped" in section 2 of the Act (see commentary for the definition "stamped"). New subsection 158.05(2) sets out the exceptions to this prohibition, which include the person who lawfully produced the stamps and persons to whom the stamps were issued by the Minister of National Revenue.

Unlawful supply of cannabis excise stamps

New section 158.06 of the Act prohibits a person from disposing of, selling or otherwise supplying, or offering to supply, cannabis excise stamps unless it is done in accordance with the Act.

Cancellation, return and destruction of cannabis excise stamps

New section 158.07 of the Act provides that the Minister of National Revenue may cancel cannabis excise stamps that have been issued. The Minister may also direct that the stamps be returned or destroyed in a manner specified by the Minister.

Unlawful packaging or stamping

New section 158.08 of the Act provides that a person is prohibited from packaging or stamping cannabis products unless the person is a cannabis licensee or a person prescribed by regulations.

Unlawful removal

New subsection 158.09(1) of the Act prohibits anyone from removing cannabis products from the premises of a cannabis licensee unless they are packaged. Furthermore, if cannabis products are intended for the duty-paid market, they must be stamped to indicate that cannabis duty has been paid and, if additional cannabis duty in respect of a specified province is imposed on the cannabis product, to indicate that the additional cannabis duty has been paid. If cannabis products are not intended for the duty-paid market, all information prescribed by regulations must be printed on or affixed to its container.

However, new subsection 158.09(2) of the Act provides exceptions from the prohibitions in subsection 158.09(1). Licenced cannabis producers may remove unpackaged or unstamped cannabis products from their premises for delivery to another licensee, for export as permitted under the *Cannabis Act*, for delivery to a person for sterilization in accordance with subparagraph 158.11(3)(a)(ii), for delivery to a person for analysis or destruction in accordance with subparagraph 158.3(a)(v) or in circumstances prescribed by regulations or for a purpose prescribed by regulations. Licenced cannabis producers may also remove unpackaged or unstamped cannabis products from their premises if the cannabis products are low-THC cannabis products, prescription cannabis drugs, or cannabis products that are prescribed by regulations or that are of a class prescribed by regulations.

New subsection 158.09(3) of the Act provides that the prohibitions in subsection 158.09(1) also do not apply where cannabis products are removed from the premises of a cannabis licensee for analysis or

destruction by the Minister of National Revenue or by the Minister, as defined in subsection 2(1) of the *Cannabis Act*.

Prohibition – cannabis for sale

New section 158.1 of the Act prohibits any person from purchasing or otherwise receiving for sale the following cannabis products:

- cannabis products from a producer that the person knows, or ought to know, is not a cannabis licensee or, in the case of an industrial hemp by-product, a producer that the person knows, or ought to know, is not an industrial hemp grower;
- cannabis products that are not packaged and stamped as required by the Act; or
- cannabis products that the person knows, or ought to know, are fraudulently stamped.

Selling, etc., unstamped cannabis

New subsection 158.11(1) of the Act provides that a person that is not a cannabis licensee may not dispose of, sell, offer for sale, purchase or possess cannabis products unless they are packaged and properly stamped. New subsection 158.11(2) provides that a person that is not a cannabis licensee may not dispose of, sell, offer for sale, purchase or possess a cannabis product in a specified province (see commentary for the new definition "specified province") unless it is stamped to indicate that additional cannabis duty in respect of the specified province has been paid.

New subsections 158.11(3) to (5) of the Act specify exceptions to the prohibitions in subsections 158.11(1) and (2). New subsection 158.11(3) provides that the prohibitions in subsections 158.11(1) and (2) do not apply to the possession of a cannabis product by

- a person prescribed by regulations that is transporting the cannabis product under circumstances and conditions prescribed by regulations;
- a person prescribed by regulations that is sterilizing the cannabis product under circumstances and conditions prescribed by regulations;
- an individual if the cannabis product was imported for their own medical purposes in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act*; or
- a person that possesses the cannabis product for analysis or destruction in accordance with subparagraph 158.3(a)(v) of the Act.

New subsection 158.11(3) also provides that the prohibitions in subsections 158.11(1) and (2) do not apply to the possession of a cannabis product

- that is a low-THC cannabis product, a prescription cannabis drug, or a cannabis product that is prescribed by regulations or that is of a class prescribed by regulations; or
- in circumstances that are prescribed or for a purpose that is prescribed.

New subsection 158.11(4) provides that the prohibitions in subsections 158.11(1) and (2) do not apply to disposing, selling, offering to sell or purchasing cannabis products if the cannabis products are low-THC cannabis products, prescription cannabis drugs, or cannabis products that are prescribed by regulations or that are of a class prescribed by regulations or in circumstances or for purposes prescribed by regulations.

New subsection 158.11(5) provides that the prohibitions in subsections 158.11(1) and (2) do not apply to the possession of an industrial hemp by-product by the industrial hemp grower (see commentary for those two new definitions) that produced it if the product is on the grower's property or being transported by the

grower for delivery to or return from a cannabis licensee. Further, subsection 158.11(5) provides that the prohibitions in subsections 158.11(1) and (2) do not apply to disposing, selling or offering to sell an industrial hemp by-product to a cannabis licensee by the industrial hemp grower that produced it.

New subsection 158.11(6) of the Act provides that the prohibitions in subsection 158.11(2) do not apply to the possession of a cannabis product, or to the disposal, sale, offering for sale or purchase of cannabis products, in circumstances or for purposes prescribed by regulations.

Sale or distribution by a licensee

New section 158.12 of the Act limits a cannabis licensee's ability to distribute, sell or offer to sell a cannabis product to a person. New subsection 158.12(1) provides that a cannabis licensee is prohibited from distributing a cannabis product or selling or offering to sell a cannabis product to a person unless the cannabis product is packaged and properly stamped (including being stamped to indicate that additional cannabis duty has been paid, if applicable).

New subsection 158.12(2) provides that the prohibitions in subsection 158.12(1) do not apply if the cannabis licensee is distributing, selling or offering for sale the cannabis products to another cannabis licensee, to a person if the cannabis product is exported by the cannabis licensee in accordance with the *Cannabis Act* or in circumstances or for purposes prescribed by regulations. New subsection 158.12(2) also provides that the prohibitions in subsection 158.12(1) do not apply if the cannabis products are low-THC cannabis products, prescription cannabis drugs, or cannabis products that are prescribed by regulations or that are of a class prescribed by regulations.

Packaging and stamping of cannabis

New section 158.13 of the Act prohibits a cannabis licensee from entering the cannabis products the licensee produces into the duty-paid market, unless the products have been packaged and properly stamped by the licensee (including being stamped to indicate that the additional cannabis duty has been paid, if applicable) and have information prescribed by regulations printed on the packages, if applicable.

New section 158.13 comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent, but this section only applies to cannabis products that are entered in the duty-paid market on or after commencement day, including those that are delivered at any time to a purchaser for sale or distribution on or after commencement day.

Notice – absence of stamping

New section 158.14 of the Act provides that the absence of stamping on a cannabis product, as required by the Act, is notice to all persons that the duty has not been paid on that product. It also provides that the absence on a cannabis product of stamping that indicates that additional cannabis duty in respect of a specified province has been paid is notice to all persons that additional cannabis duty in respect of the specified province has not been paid on the cannabis product.

Cannabis – waste removal

New section 158.15 of the Act provides that a cannabis product that is waste is permitted to be removed from the premises of a cannabis licensee only by the licensee or a person authorized by the Minister of National Revenue. The cannabis product so removed shall be dealt with in the manner authorized by the Minister of National Revenue.

Re-working or destruction of cannabis

New section 158.16 of the Act provides that the Minister of National Revenue may authorize the manner in which cannabis products may be re-worked or destroyed by a cannabis licensee.

Responsibility

New section 158.17 of the Act sets out the basic rules for determining the responsible person in respect of cannabis products. The responsible person at a particular time is:

- the cannabis licensee that is the owner of the cannabis products at that time;
- the cannabis licensee that last owned the cannabis products, where they are not owned by a cannabis licensee; or
- the person prescribed by regulations or that meets the conditions prescribed by regulations.

Person not responsible

New section 158.18 of the Act provides that a person who is responsible for cannabis products ceases to be responsible for them if they are:

- packaged and stamped and the duty on them is paid;
- consumed or used in the production of cannabis products that are low-THC cannabis products, prescription cannabis drugs, or cannabis products that are prescribed by regulations or that are of a class prescribed by regulations;
- taken for use and the duty on them is paid;
- taken for use in accordance with any of paragraphs 158.3(a)(i) to (v) of the Act;
- exported in accordance with the *Cannabis Act*; or
- lost under circumstances prescribed by regulations if the person fulfils any conditions prescribed by regulations.

New section 158.18 of the Act also provides that a person who is responsible for cannabis products ceases to be responsible for them in prescribed circumstances or if prescribed conditions are met.

Imposition – flat rate and ad valorem duties

New section 158.19 of the Act imposes duty on cannabis products produced in Canada. New subsection 158.19(1) imposes a flat-rate duty on cannabis products produced in Canada at the time they are packaged. The amount of the flat-rate duty is determined under section 1 of Schedule 7 to the Act. New subsection 158.19(2) imposes an *ad valorem* duty (i.e., a duty based on a percentage of the "dutiable amount" as newly defined in section 2 of the Act) on packaged cannabis products produced in Canada at the time they are delivered to a purchaser. The amount of the *ad valorem* duty is determined under section 2 of Schedule 7 to the Act.

New subsection 158.19(3) provides that only the greater of the flat-rate and *ad valorem* duties imposed under subsections 158.19(1) and (2) is payable by the cannabis licensee that packaged the cannabis product at the time of its delivery to a purchaser. The lesser of those two duties is relieved.

New subsection 158.19(4) provides that if the flat-rate and *ad valorem* duties imposed under subsections 158.19(1) and (2) are equal, then only the flat-rate duty is payable and the cannabis products are relieved of the *ad valorem* duty.

New section 158.19 comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent, but this section only applies to packaged cannabis products that are delivered to a purchaser on or after commencement day.

Imposition – additional cannabis duty

In addition to the duties imposed under new section 158.19 of the Act, new section 158.2 of the Act imposes a duty in respect of a specified province on cannabis products produced in Canada in circumstances prescribed by regulations in the amount determined in a prescribed manner. This additional cannabis duty under new section 158.2 is payable by the cannabis licensee that packaged the cannabis product at the time it is delivered to a purchaser. The additional cannabis duty would apply in respect of provinces that have entered into an agreement with Canada in respect of the coordination of cannabis taxation.

New section 158.2 comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent, but this section only applies to packaged cannabis products that are delivered to a purchaser on or after commencement day.

Duty on imported cannabis

New section 158.21 of the Act imposes duty on imported cannabis products. New subsection 158.21(1) imposes a duty on the imported cannabis products that is equal to the greater of the amounts determined under sections 1 and 3 of Schedule 7 to the Act. New subsection 158.21(2) specifies that the duty imposed under subsection 158.21(1) is payable by the importer, owner or another person that would be liable under the *Customs Act* to pay a duty levied under section 20 of the *Customs Tariff* on the cannabis product if it were subject to that duty.

New section 158.21 comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent, but this section only applies to cannabis products that are imported into Canada or released (as defined in the *Customs Act*) on or after commencement day.

Additional cannabis duty on imported cannabis

In addition to the duty on imported cannabis products imposed under new section 158.21 of the Act, new section 158.22 of the Act imposes a duty in respect of a specified province on imported cannabis products in circumstances prescribed by regulations. The amount of the additional duty on imported cannabis products is determined in a manner prescribed by regulations and is payable by the importer or owner or another person that would be liable under the *Customs Act* to pay a duty levied under section 20 of the *Customs Tariff* on the cannabis product if it were subject to that duty. This duty would apply in respect of provinces that have entered into an agreement with Canada in respect of the coordination of cannabis taxation.

New section 158.22 comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent, but this section only applies to cannabis products that are imported into Canada or released (as defined in the *Customs Act*) on or after commencement day.

Application of Customs Act

New section 158.23 of the Act provides that the duties on imported cannabis products imposed under sections 158.21 and 158.22 of the Act must be paid and collected under the *Customs Act* as if they were duties levied under the *Customs Tariff*.

Value for duty

New section 158.24 of the Act specifies the value of an imported cannabis product for the purposes of determining a duty under new sections 158.21 and 158.22 of the Act. New paragraph 158.24(a) provides

that the value of the imported cannabis product for the purpose of section 3 of Schedule 7 to the Act and of any regulations made for the purposes of section 158.22 is its value as it would be determined under the *Customs Act* whether or not the cannabis product is subject to that Act. New paragraph 158.24(b) provides that in certain circumstances prescribed by regulations, the value of the imported cannabis product shall be determined in a manner prescribed by regulations.

Duty on cannabis taken for use

New subsection 158.25(1) provides that if cannabis products are taken for use (see commentary for the definition "take for use") then a duty is imposed that is equal to the greater of the amount determined under section 1 of Schedule 7 to the Act and the amount determined under section 4 of Schedule 7 to the Act. If the cannabis products are packaged, any cannabis duty that is imposed under subsection 158.19(1) in respect of the cannabis products is relieved.

In addition to the duty imposed by new subsection 158.25(1), new subsection 158.25(2) provides that if cannabis products are taken for use then a duty in respect of a specified province is imposed on the cannabis products in circumstances prescribed by regulations in the amount determined in a manner prescribed by regulations. This duty would apply in respect of provinces that have entered into an agreement with Canada in respect of the coordination of cannabis taxation.

New subsection 158.25(3) provides that the duty imposed by new subsection 158.25(1) or (2) is payable at the time the cannabis products are taken for use by the person responsible for the cannabis products at the time they are taken for use.

New section 158.25 applies to cannabis products that are taken for use on or after commencement day.

Duty on unaccounted cannabis

New section 158.26 of the Act provides that duty is payable on cannabis products that cannot be accounted for. New subsection 158.26(1) provides that a duty is imposed on a cannabis product if a person responsible for the cannabis product cannot account for that product as being in the possession of a cannabis licensee or in the possession of a person in accordance with subsections 158.11(3) and 158.11(5) of the Act (see commentary for these new subsections). The duty is equal to the greater of the amount determined in respect of the cannabis product under section 1 of Schedule 7 to the Act, and the amount determined in respect of the cannabis product under section 4 of Schedule 7 to the Act. If the cannabis product is packaged, any cannabis duty that is imposed under subsection 158.19(1) in respect of the cannabis product is relieved.

In addition to the duty imposed by new subsection 158.26(1), new subsection 158.26(2) provides that if a cannabis product cannot be accounted for as described above then a duty in respect of a specified province is imposed in circumstances prescribed by regulations in the amount determined in a manner prescribed by regulations. This duty would apply in respect of provinces that have entered into an agreement with Canada in respect of the coordination of cannabis taxation.

New subsection 158.26(3) provides that the duty imposed by new subsection 158.26(1) or (2) is payable by the person responsible for the cannabis product at the particular time that the cannabis product cannot be accounted for.

New section 158.26 applies to cannabis products that, on or after commencement day, cannot be accounted for as being in the possession of a cannabis licensee or a person that is described above.

Duty on cannabis – production before commencement day

New section 158.27 of the Act imposes a duty on cannabis products that are produced and delivered before commencement day. The new definition "commencement day" in new subsection 158.27(1) has

the same meaning as in section 152 of the *Cannabis Act*. It represents the day on which adults will start to be able to legally purchase and possess cannabis subject to conditions under the *Cannabis Act*.

New subsection 158.27(2) provides that duty is imposed on cannabis products that are produced in Canada and delivered to a purchaser before commencement day for sale or distribution after that day. The amount of the duty is equal to the greater of the amount determined under section 1 of Schedule 7 to the Act and the amount determined under section 2 of Schedule 7 to the Act.

In addition to the duty imposed by new subsection 158.27(2), new subsection 158.27(3) provides that a duty in respect of a specified province is imposed on cannabis products that are produced in Canada and delivered to a purchaser before commencement day for sale or distribution after that day in circumstances prescribed by regulations in the amount determined in a manner prescribed by regulations. This duty would apply in respect of provinces that have entered into an agreement with Canada before commencement day in respect of the coordination of cannabis taxation.

New subsection 158.27(4) provides that the duty under subsections 158.27(2) and (3) is payable on commencement day by the cannabis licensee that packaged the cannabis products.

New subsection 158.27(5) provides an exception to the duty imposed under subsection 158.27(2) for cannabis products that are prescribed by regulations, or that are of a class prescribed by regulations, and that are delivered to a person prescribed by regulations in circumstances prescribed by regulations or for a purpose prescribed by regulations.

Duty relieved – cannabis imported by licensee

New section 158.28 of the Act provides for relief from the duty imposed by new sections 158.21 and 158.22 of the Act on unpackaged cannabis products that are imported by a cannabis licensee or by a person prescribed by regulations in circumstances prescribed by regulations or for a purpose prescribed by regulations.

Duty relieved – prescribed circumstances

New section 158.29 of the Act provides for relief from the duty imposed by any of new sections 158.19 to 158.22 and 158.27 of the Act on cannabis products in circumstances prescribed by regulations or if conditions prescribed by regulations are met.

Duty not payable – cannabis taken for analysis, destruction, etc.

New section 158.3 of the Act provides that duty is not payable on cannabis products if:

- the cannabis product is taken for analysis or destroyed by the Minister of National Revenue or by the Minister as defined in subsection 2(1) of the *Cannabis Act*;
- the cannabis product is taken for analysis by a cannabis licensee in a manner approved by the Minister of National Revenue;
- the cannabis product is destroyed by a cannabis licensee in a manner approved by the Minister of National Revenue;
- the cannabis product is delivered to another person for analysis or destruction in a manner approved by the Minister of National Revenue; or
- the cannabis product is a low-THC cannabis product, a prescription cannabis drug, or a cannabis product that is prescribed by regulations or is of a class prescribed by regulations.

Section 158.3 also provides that duty is not payable on a non-duty-paid cannabis product that is removed from the premises of a cannabis licensee for export in accordance with the *Cannabis Act*. Furthermore,

duty is not payable on a cannabis product that is prescribed by regulations or is of a class prescribed by regulations and that is delivered by a cannabis licensee to a person prescribed by regulations in circumstances prescribed by regulations or for a purpose prescribed by regulations.

Quantity of cannabis

New section 158.31 of the Act provides rules for determining the quantity of cannabis to be included in the determination of an amount of duty under section 1 of Schedule 7 in respect of a cannabis product. New paragraph 158.31(a) specifies that the quantity of flowering material and non-flowering material (see commentary for the definitions of those terms in section 2 of the Act) included in a cannabis product or used in the production of the cannabis product is to be determined in a manner prescribed by regulations in circumstances prescribed by regulations. New paragraph 158.31(b) applies in circumstances where paragraph (a) does not apply. Subparagraph 158.31(b)(i) provides that the quantity of flowering material and non-flowering material included in a cannabis product or used in the production of the cannabis product is to be determined at the time the flowering material and non-flowering material are so included or used and in a manner satisfactory to the Minister of National Revenue. New subparagraph 158.31(b)(ii) further provides that, if the quantity of flowering material included in the cannabis product or used in the production of the cannabis product is determined in accordance with subparagraph 158.31(b)(i), the quantity of flowering material that is industrial hemp by-product (see commentary for new definition "industrial hemp by-product" in section 2 of the Act) is deemed to be non-flowering material if that quantity is determined in a manner satisfactory to the Minister of National Revenue.

Delivery to a purchaser

New section 158.32 of the Act clarifies, for greater certainty, the meaning of the concept of delivery to a purchaser of cannabis products for the purposes of determining the cannabis duty under section 158.19 of the Act, the additional cannabis duty under section 158.2 of the Act and the transitional duty imposed on commencement day under section 158.27 of the Act. Section 158.32 specifies that delivery to a purchaser includes delivering or making the cannabis product available to a person other than the purchaser on behalf of or under the direction of the purchaser and delivering or making the cannabis product available to a person that obtains them otherwise than by means of a purchase. Delivery to a purchaser also includes delivering or making the cannabis product available in circumstances prescribed by regulations.

Time of delivery

New section 158.33 of the Act specifies how the time of delivery is determined for the purpose of the duties imposed under new sections 158.19, 158.2 and 158.27 (see commentary for these new sections). The time of delivery is deemed to be the earliest of (a) the time that the cannabis licensee delivers or makes the cannabis product available to the purchaser, (b) the time that the cannabis licensee causes physically possession of the cannabis product to be transferred to the purchaser, and (c) the time that the cannabis licensee causes physical possession of the cannabis products to be transferred to a carrier for delivery to the purchaser. The term "carrier" means a person that provides a service of transporting goods, including a service of delivering mail.

Dutiable amount

New section 158.34 of the Act specifies that for the purpose of section 2 of Schedule 7 of the Act, the dutiable amount of a cannabis product is deemed to be equal to the fair market value of the cannabis product in the following circumstances:

- if the cannabis product is delivered or made available to a person that obtains it otherwise than by means of a purchase; or
- in circumstances prescribed by regulations.

Clause 74

Determination of fiscal months

EA, 2001
159(1) and (1.1)

Existing subsection 159(1) of the Act sets out the rules for determining the fiscal month of a person. This section is amended to provide that it does not apply in respect of a cannabis licensee. Instead, new subsection 159(1.01) provides that the fiscal months of a cannabis licensee are calendar months. Under existing subsection 159.1(1) of the Act, the reporting period of a cannabis licensee is a fiscal month.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 75

No refund on exported tobacco products or alcohol

EA, 2001
180

Existing section 180 of the Act provides that the duty paid on alcohol or tobacco products entered into the duty-paid market shall not be refunded if the alcohol or tobacco products are subsequently exported.

Section 180 is amended to specify that the duty paid on tobacco products, cannabis products or alcohol entered into the duty-paid market shall not be refunded if the tobacco products, cannabis products or alcohol are subsequently exported.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 76

Refund of duty – destroyed cannabis

EA, 2001
187.1

New section 187.1 of the Act provides that the Minister of National Revenue may refund the duty paid on a cannabis product to a cannabis licensee if that cannabis product is re-worked or destroyed in accordance with new section 158.16 of the Act (see commentary for new section 158.16). To be eligible for such a refund, the cannabis licensee must apply for the refund within two years after the cannabis product has been re-worked or destroyed.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 77

Keeping records – general

EA, 2001
206(1) and (2)

Existing subsection 206(1) of the Act provides that every licensee, registrant, person required to file a return, person applying for a refund and person who transports non-duty-paid packaged alcohol or unstamped tobacco products is required to keep records sufficient to enable a determination to be made of whether they have complied with the Act. Existing subsection 206(2) of the Act provides that tobacco

growers and provincial tobacco marketing boards are also required to keep records relating to the amount of raw leaf tobacco they have grown, received or disposed of.

Two amendments are made to section 206 consequential to the addition of new Part 4.1 of the Act. The amendment to paragraph 206(1)(d) provides that a person that transports unstamped tobacco products or cannabis products is required to keep records sufficient to enable a determination to be made of whether they have complied with the Act. The addition of new subsection 206(2.01) of the Act provides that every cannabis licensee must retain records relating to the amount of cannabis product produced, received, used, packaged, sold and disposed of by the licensee.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 78

Confidentiality

EA, 2001
211

Existing section 211 provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person. This information cannot be used or communicated unless specifically authorized by one or more of the exceptions contained in the section.

Paragraph 211(6)(e) is amended by adding new subparagraph 211(6)(e)(x) to specify that an official may share confidential information with an official solely for the purpose of administering and enforcing the *Cannabis Act*.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 79

Unlawful production, sale, etc. of tobacco, alcohol or cannabis

EA, 2001
214

Existing section 214 of the Act provides that the following activities constitute offences under the Act:

- manufacturing a tobacco product without a tobacco licence (section 25 of the Act);
- counterfeiting or unlawfully possessing or supplying tobacco excise stamps (sections 25.2 to 25.4 of the Act);
- packaging or stamping a tobacco product or raw leaf tobacco without a tobacco licence (section 27 of the Act);
- knowingly purchasing or receiving for sale tobacco products from unlicensed tobacco manufacturers, tobacco products that are not properly packaged and stamped, or fraudulently stamped tobacco products (section 29 of the Act);
- producing or packaging spirits without a spirits licence (section 60 of the Act); or
- producing or packaging wine without a wine licence (section 62 of the Act).

Existing section 214 is amended consequential to the addition of new Part 4.1 of the Act relating to cannabis.

First, section 214 is amended to provide that it is also an offence under the Act:

- to counterfeit or unlawfully possess or supply cannabis excise stamps (new sections 158.04 to 158.06 of the Act); or
- to package or stamp a cannabis product unless it is done by a cannabis licensee or a person prescribed by regulations (new section 158.08 of the Act).

This first amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Second, section 214 is amended to provide that it is also an offence under the Act:

- to produce cannabis products without a cannabis licence (new section 158.02 of the Act); or
- to purchase or receive for sale:
    - a cannabis product from a producer that the purchaser knows or ought to know is not a cannabis licensee, or, in the case of an industrial hemp by-product, an industrial hemp grower;
    - a cannabis product that is not packaged and stamped in accordance with the Act; or
    - a cannabis product that the person knows or ought to know is fraudulently stamped (new section 158.1 of the Act).

This second amendment comes into force on commencement day.

Clause 80

Punishment – sections 158.11 and 158.12

EA, 2001
218.1

New section 218.1 of the Act provides that any person that contravenes new section 158.11 or 158.12 of the Act (see commentary for new sections 158.11 and 158.12) is guilty of an offence and liable to a fine or imprisonment or to both.

New paragraph 218.1(1)(a) provides that a person that contravenes section 158.11 or 158.12 and is convicted by way of indictment is liable to pay a fine or to imprisonment for a term of not more than five years, or to both. The minimum amount of a fine under paragraph 218.1(1)(a) is the amount determined under new subsection 218.1(2) of the Act and the maximum amount of a fine under paragraph 218.1(1)(a) is the amount determined under new subsection 218.1(3) of the Act.

New paragraph 218.1(1)(b) provides that a person that contravenes section 158.11 or 158.12 and is convicted by way of summary conviction is liable to pay a fine or to imprisonment for a term of not more than 18 months, or to both. The minimum amount of a fine under paragraph 218.1(1)(b) is the amount determined under new subsection 218.1(2) of the Act and the maximum amount of a fine under paragraph 218.1(1)(b) is the amount determined under new subsection 218.1(3) of the Act.

New subsection 218.1(2) of the Act provides that the minimum fine for the purposes of paragraphs 218.1(1)(a) and (b) is the greater of two numbers. The first number is $1,000 in the case of an indictable offence and $500 in the case of an offence punishable on summary conviction. The amount of the second number depends on whether the offence occurred in a specified province. If the offence did not occur in a

specified province, the second number is equal to 200% of the amount determined under section 1 of Schedule 7 to the Act in respect of the cannabis products to which the offence relates. If the offence occurred in a specified province, the second number is equal to 200% of the sum of the following three amounts:

- the particular amount determined under section 1 of Schedule 7 to the Act in respect of the cannabis products to which the offence relates;
- 300% of that particular amount; and
- if the offence occurred in a specified province that is prescribed by regulations, 200% of that particular amount.

New subsection 218.1(3) of the Act provides that the maximum fine for the purposes of paragraphs 218.1(1)(a) and (b) is the greater of two numbers. The first number is $2,000 in the case of an indictable offence and $1,000 in the case of an offence punishable on summary conviction. The amount of the second number depends on whether the offence occurred in a specified province. If the offence did not occur in a specified province, the second number is equal to 300% of the amount determined under section 1 of Schedule 7 to the Act in respect of the cannabis products to which the offence relates. If the offence occurred in a specified province, the second number is equal to 300% of the sum of the following three amounts:

- the particular amount determined under section 1 of Schedule 7 to the Act in respect of the cannabis products to which the offence relates;
- 300% of that particular amount; and
- if the offence occurred in a specified province that is prescribed by regulations, 200% of that particular amount.

New section 218.1 of the Act comes into force on commencement day.

Clause 81

Property obtained from offences

EA, 2001
230

Existing section 230 of the Act makes it an offence to knowingly possess property or proceeds of property that were acquired by reason of the commission of or conspiracy to commit a tobacco or alcohol offence under:

- section 214 of the Act (unlawful manufacturing, packaging or stamping of tobacco products or unlawful production or packaging of spirits or wine);
- subsection 216(1) of the Act (unlawful possession or sale of unstamped tobacco products);
- subsection 218(1) of the Act (certain serious alcohol offences); or
- subsection 231(1) of the Act (concealing property or proceeds obtained by the commission of offences).

A person convicted by way of indictment is liable to a fine of up to $500,000, imprisonment for up to five years or both. On summary conviction the person is liable to a fine of up to $100,000, imprisonment for up to 18 months or both.

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, paragraph 230(1)(a) is amended by also making it an offence to knowingly possess property or proceeds of property that were acquired by reason of the commission of or conspiracy to commit cannabis offences under new subsection 218.1(1) of the Act (see commentary for new section 218.1).

This amendment comes into force on commencement day.

Clause 82

Laundering proceed of certain offences

EA, 2001
231

Existing section 231 of the Act makes it an offence to deal with property or proceeds of property with intent to conceal, knowing that the property or proceeds were obtained by reason of the commission of or conspiracy to commit a tobacco or alcohol offence under:

- section 214 of the Act (unlawful manufacturing, packaging or stamping of tobacco products or unlawful production or packaging of spirits or wine);
- subsection 216(1) of the Act (unlawful possession or sale of unstamped tobacco products); or
- subsection 218(1) of the Act (certain serious alcohol offences).

A person found guilty of the offence on indictment is liable to a fine of up to $500,000, imprisonment for up to five years or both. A person found guilty of the offence on summary conviction is liable to a fine of up to $100,000, imprisonment for up to 18 months or both.

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, subsection 231(1) is amended by also making it an offence to deal with the property or proceeds of property with intent to conceal, knowing that the property or proceeds were obtained by reason of the commission of or conspiracy to commit cannabis offences under new subsection 218.1(1) of the Act (see commentary for new section 218.1).

This amendment comes into force on the commencement day.

Clause 83

Part XII.2 of *Criminal Code* applicable

EA, 2001
232

Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* allow for the seizure and forfeiture of proceeds derived from the commission of enterprise crime offences. Existing section 232 of the Act makes those provisions of the *Criminal Code* relating to enterprise crime offences applicable to proceedings concerning an offence under:

- section 214 (unlawful manufacturing, packaging or stamping of tobacco products or unlawful production or packaging of spirits or wine);
- subsection 216(1) (unlawful possession or sale of unstamped tobacco products);
- subsection 218(1) (certain serious alcohol offences);
- section 230 (possession of property or proceeds obtained by the commission of offences); or
- section 231 (concealing property or proceeds obtained by the commission of offences).

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, subsection 232(1) is amended by also making those provisions of the *Criminal Code* relating to enterprise crime offences applicable to proceedings concerning an offence under new subsection 218.1(1) of the Act (see commentary for new section 218.1).

This amendment comes into force on commencement day.

Clause 84

Contravention of section 158.13

EA, 2001
233.1

New section 233.1 of the Act provides that a cannabis licensee that contravenes section 158.13 of the Act (packaging and stamping of cannabis) is liable to a penalty equal to 200% multiplied by the sum of:

- the particular amount that is the greater of
    - the amount determined under section 1 of Schedule 7 to the Act (at the time the contravention occurred) in respect of the cannabis products to which the contravention relates, and
    - the amount determined by multiplying the fair market value of the cannabis products to which the contravention relates (at the time the contravention occurred) by the percentage set out in section 4 of Schedule 7 to the Act;
- if the offence occurred in a specified province, 300% of that particular amount; and
- if the offence occurred in a specified province that is prescribed by regulations, 200% of that particular amount.

New section 233.1 comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent, but this section only applies to cannabis products that are entered into the duty-paid market on or after commencement day, including cannabis products that are delivered at any time to a purchaser for sale or distribution on or after commencement day.

Clause 85

Contravention of section 38, 40, 49, 61, 62.1, 99, 149, 151 or 158.15

EA, 2001
234

Existing section 234 of the Act specifies a penalty of up to $25,000 for contraventions of:

- section 38 of the Act (requirement to have tobacco markings on containers of tobacco products entered into an excise warehouse);
- section 40 of the Act (removal of raw leaf tobacco or waste tobacco);
- section 49 of the Act (improper entering of a tobacco product into an excise warehouse);
- section 61 of the Act (prohibition on possession of a still);
- section 62.1 of the Act (prohibition on fortification of wine);
- section 99 of the Act (prohibition on sale of specially denatured alcohol);

- section 149 of the Act (improper entering of non-duty-paid packaged alcohol into an excise warehouse); or
- section 151 of the Act (improper removal of non-duty-paid packaged alcohol from an excise warehouse).

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, new subsection 234(3) provides that every person that fails to return or destroy stamps as directed by the Minister of National Revenue under paragraph 158.07(b) is liable to a penalty of not more than $25,000.

New subsection 234(3) comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

As well, subsection 234(1) is amended to also specify a penalty of up to $25,000 for contraventions of new section 158.15 of the Act that relate to the removal of waste cannabis (see commentary for new section 158.15). New subsection 234(3) is also amended to provide that every person that fails to re-work or destroy a cannabis product in the manner authorized by the Minister of National Revenue under section 158.16 is liable to a penalty of not more than $25,000.

These amendments come into force on commencement day.

Clause 86

Contravention of section 158.02, 158.1, 158.11 or 158.12

EA, 2001
234.1

New section 234.1 of the Act provides that any person that contravenes new section 158.02 of the Act (production of cannabis products without a licence), that receives for sale cannabis products in contravention of new section 158.1 of the Act (prohibition regarding cannabis products for sale, etc.) or that sells or offers to sell cannabis products in contravention of new sections 158.11 (selling unstamped cannabis) or 158.12 (sale or distribution by a licensee) of the Act is liable to a penalty equal to 200% multiplied by the sum of:

- the particular amount that is the greater of
    - the amount determined under section 1 of Schedule 7 to the Act (at the time the contravention occurred) in respect of the cannabis products to which the contravention relates, and
    - the amount determined by multiplying the fair market value of the cannabis products to which the contravention relates (at the time the contravention occurred) by the percentage set out in section 4 of Schedule 7 to the Act;
- if the offence occurred in a specified province, 300% of that particular amount; and
- if the offence occurred in a specified province that is prescribed by regulations, 200% of that particular amount.

This amendment comes into force on commencement day.

Clause 87

Penalty in respect of unaccounted excise stamps

EA, 2001
238.1

Existing section 238.1 of the Act establishes a penalty for unaccounted excise stamps.

Under existing subsection 238.1(1), a person who is issued excise stamps is liable to a penalty if the person cannot account for the stamps as being in their possession. The penalty would not apply if the person can demonstrate that the stamps were affixed to tobacco products or their containers in the manner prescribed by regulations for the purposes of the definition "stamped" and that duty, other than special duty, has been paid on the products. In the case of stamps that were cancelled, the penalty would not apply if the person can demonstrate that the stamps were returned or destroyed as directed by the Minister of National Revenue.

Existing subsection 238.1(2) establishes that the amount of the penalty for each excise stamp that cannot be accounted for is equal to the duty that would be imposed on a tobacco product for which the stamp was issued under subsection 25.1(1) of the Act.

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, paragraph 238.1(1)(a) is amended to provide that a penalty would not apply if the person can demonstrate that the stamps were affixed to the tobacco products or cannabis products or their containers in the manner prescribed by regulations for the purposes of the definition "stamped" and that duty, other than special duty, has been paid on the tobacco products or cannabis products.

Similarly, subsection 238.1(2) is amended to establish that the amount of penalty for each excise stamp that cannot be accounted for is equal to:

- for tobacco excise stamps, the duty that would be imposed on a tobacco product for which the stamp was issued under subsection 25.1(1) of the Act; or
- for cannabis excise stamps, five times the dollar amount set out in paragraph 1(a) of Schedule 7 to the Act.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 88

Other diversions

EA, 2001
239

Existing section 239 of the Act provides that unless a penalty under section 237 of the Act applies, a person is liable to a penalty if the person acquires packaged alcohol or a tobacco product on a duty-free basis because of the purpose for which it was acquired or its destination and the alcohol or tobacco product is diverted to a use or destination in respect of which duty would have been payable had it been acquired for that purpose or destination. The penalty is 200% of the duty that was imposed on the alcohol or tobacco product.

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, section 239 is amended to provide that unless a penalty under section 237 applies, a person is liable to a penalty if the person acquires packaged alcohol, tobacco products or cannabis products on a duty-free basis because of the purpose for which it was acquired or its destination and the alcohol or tobacco product or cannabis

product is diverted to a use or destination in respect of which duty would have been payable had it been acquired for that purpose or destination. The penalty is 200% of the duty that was imposed on the alcohol, tobacco products or cannabis products.

This amendment comes into force on commencement day.

Clause 89

Certain things not to be returned

EA, 2001
264

Existing section 264 of the Act provides that alcohol, specially denatured alcohol, restricted formulation, raw leaf tobacco, excise stamps or tobacco products seized under section 260 of the Act may not be returned to anyone. The exception to this rule is if the seizure was made in error. An item seized in error may be returned.

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, section 264 is amended to also prevent a seized cannabis product from being returned to any person, except if the seizure was made in error. This amendment is consistent with other controls being introduced on the possession, use and disposal of cannabis products under the Act.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 90

Dealing with things seized

EA, 2001
266

Existing subsection 266(1) of the Act specifies that the Minister of National Revenue may sell, destroy or otherwise deal with any item seized in the course of an inspection under section 260 of the Act. However, under existing subsection 266(2) of the Act, the Minister may only sell seized spirits or specially denatured alcohol to a spirits licensee, seized wine to a wine licensee and seized raw leaf tobacco or tobacco products to a tobacco licensee.

Consequential to the addition of new Part 4.1 of the Act relating to cannabis, new paragraph 266(2)(e) is added to restrict the sale by the Minister of a seized cannabis product to a cannabis licensee. This amendment is consistent with the new controls on the possession, use and disposal of cannabis products under the Act.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 91

Regulations – Governor in Council

EA, 2001
304

Existing section 304 of the Act provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act. Section 304 is amended consequential to the addition of new Part 4.1 of the Act relating to cannabis.

New paragraph 304(1)(c.1) provides authority to the Governor in Council to make regulations regarding to the types of security that are acceptable for the issuance of cannabis excise stamps and the manner of determining the amount of that security.

Paragraph 304(1)(f) is amended to provide authority to the Governor in Council to make regulations regarding the information to be provided on tobacco products, packaged alcohol and cannabis products and on containers of tobacco products, packaged alcohol and cannabis products.

Paragraph 304(1)(n) is amended to provide authority to the Governor in Council to make regulations regarding the sale of alcohol, tobacco products, raw leaf tobacco, specially denatured alcohol, restricted formulation and cannabis products seized under section 260 of the Act.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 92

Regulations – Governor in Council

EA, 2001
304.1 and 304.2

Coordinated cannabis duty system

New section 304.1 of the Act defines the "coordinated cannabis duty system" as the system for providing the payment, collection and remittance of duty imposed by sections 158.2 (additional cannabis duty in respect of a specified province on cannabis products produced in Canada) and 158.22 (additional cannabis duty in respect of a specified province on imported cannabis products) of the Act and by subsections 158.25(2) (duty in respect of a specified province on cannabis products taken for use) and 158.26(2) (duty in respect of a specified province on unaccounted cannabis products) of the Act and by any provisions relating to duty imposed under those provisions. This system is relevant to the application of those duties in relation to provinces that have entered into an agreement with Canada in respect of the coordination of cannabis taxation

New section 304.1 provides the Governor in Council with various regulation-making authorities in respect of the coordinated cannabis duty system.

Cannabis duty system

New section 304.2 of the Act defines the "cannabis duty system" as the system providing for the payment, collection and remittance of the duties in respect of cannabis imposed under Part 4.1 of the Act and any provisions relating to duty imposed under that Part.

New section 304.2 provides the Governor in Council with regulation-making authorities in respect of the cannabis duty system for the purpose of facilitating the system's implementation, application, administration or enforcement. In particular, the Governor in Council may, for that purpose, make regulations adapting any provision of the Act or of the regulations made under the Act to take into account the making of, or amendments to, regulations made under the *Cannabis Act*.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 93

Duty on Cannabis

EA, 2001
Schedule 7

Schedule 7 to the Act provides rules for determining the amount of duty imposed on cannabis products under various sections of the Act as well as amount of fines and penalties.

Section 1 of Schedule 7 specifies the duty imposed on cannabis products produced or imported into Canada. The amount of that duty is the total of the amounts imposed on the flowering material, non-flowering material, viable seeds and vegetative cannabis plant included in or used in the production of the cannabis product.

Section 2 of Schedule 7 specifies the duty imposed on cannabis products produced in Canada, the amount of which is determined by multiplying the dutiable amount for the cannabis product by a percentage.

Section 3 of Schedule 7 specifies the duty on imported cannabis products, the amount of which is determined by multiplying the value of the cannabis product by a percentage.

Section 4 of Schedule 7 specifies the duty on cannabis products taken for use or unaccounted for, the amount of which is determined by multiplying the fair market value of the cannabis product by a percentage.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 94

Terminology Changes

EA, 2001
Various

Every reference to “excise stamp” in subsections 25.1(2) to (5), sections 25.2 to 25.4, and paragraph 25.5(a) of the Act is replaced with a reference to “tobacco excise stamp”.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Excise Tax Act

Clause 95

Definition

ETA
123(1)

The existing definition “excisable good” in subsection 123(1) of the *Excise Tax Act* (the “ETA”) means beer or malt liquor (within the meaning of section 4 of the *Excise Act*) and spirits, wine and tobacco products (within the meaning of section 2 of the Act).

Consequential to the addition of new Part 4.1 of the Act relating to the taxation of cannabis, the definition “excisable good” in subsection 123(1) of the ETA is expanded to also include cannabis products (within the meaning of section 2 of the Act).

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 96

Certain fund-raising activities by volunteers

ETA
Sch. V, Part VI, s. 4

The general volunteer exemption under Part IX of the ETA exempts from the goods and services tax and the harmonized sales tax (GST/HST) sales by volunteers in the course of special fund-raising events carried out by charities. However, other public sector bodies such as non-profit sports clubs often undertake similar fund-raising activities. Existing section 4 of Part VI of Schedule V to the ETA exempts sales made by such organizations otherwise than in the course of a business where the salespersons are volunteers, the items sold do not exceed $5 in value and are not sold at an event where similar supplies are made by persons in the business of selling such property (e.g., sales of food on a fair ground). Sales of alcoholic beverages and tobacco products do not quality for this exemption.

Section 4 of Part VI of Schedule V is amended to more generally exclude the supply of excisable goods (as defined in subsection 123(1) of the ETA) from this exemption. Excisable goods include alcoholic beverages, tobacco products and cannabis products (within the meaning of section 2 of the Act). This amendment is consequential to the addition of new Part 4.1 of the Act relating to the taxation of cannabis.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 97

Basic groceries

ETA
Sch. VI, Part III, s. 1

Existing section 1 of Part III of Schedule VI to the ETA describes supplies of food and beverages for human consumption that are generally zero-rated, unless they are specifically excluded by paragraphs (a) to (r) of that section.

Consequential to the addition of new Part 4.1 of the Act relating to the taxation of cannabis, paragraph (b) of section 1 is added to specifically exclude food and beverages that are cannabis products (as defined in section 2 of the Act) from zero-rated groceries.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 98

Grains or seeds and fodder crops

ETA
Sch. VI, Part IV, s. 2

Existing section 2 of Part IV of Schedule VI to the ETA zero-rates supplies of grains or seeds in their natural state or treated for storage purposes or hay, silage or other fodder crops where these are ordinarily used to produce food for human consumption, or feed for livestock or poultry. To qualify for zero-rated treatment, they must be sold in quantities larger than those in which they are typically sold to consumers.

Specifically excluded from the application of this section are grains, seed or grain mixtures to be used as feed for wild birds or as pet food.

Consequential to the addition of new Part 4.1 of the Act relating to the taxation of cannabis, section 2 is amended to specifically exclude viable seeds that are cannabis (as defined in section 2(1) of the *Cannabis Act*) from zero-rated supplies of grains or seeds under this section. It should be noted that viable seeds that are cannabis as defined in section 2(1) of the *Cannabis Act* and that are included in the definition "industrial hemp" in section 1 of the *Industrial Hemp Regulations* or are industrial hemp for the purposes of the *Cannabis Act* will continue to be zero-rated under section 3.1 of Part IV of Schedule VI to the Act if they meet the requirements of that section.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 99

Sale of industrial hemp seeds and straw

ETA
Sch. VI, Part IV, s. 3.1

Existing section 3.1 of Part IV of Schedule VI to the ETA zero-rates supplies of agriculture products, supplies of grain or seeds, and the mature bare stalks (i.e., straw), of industrial hemp. The treatment applies where the supply is made is accordance with the *Controlled Drugs and Substances Act* or is excluded from the application of that Act. In the case of grain or seeds, they must not be further processed than sterilized or treated for seeding purposes and must not be for sale or use as feed for wild birds or pets.

Paragraph 3.1(b) is amended to clarify that the zero-rated treatment under section 3.1 will also apply to viable grains or seeds that are industrial hemp for the purposes of the *Cannabis Act*.

Paragraph 3.1(c) is amended to clarify that relief applies where the supply is made in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act* or is excluded from the application of those Acts.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 100

Non-taxable Importations

ETA
Sch. VII, s. 12

Schedule VII to the ETA enumerates goods that are not subject to GST/HST under Division III of the ETA on importation.

Existing section 12 of Schedule VII to the ETA sets out the circumstances in which industrial hemp grain or seeds, or the mature bare stalks (i.e., straw) can be imported on a non-taxable basis. In the case of grain or seeds, they must not be further processed than sterilized or treated for seeding purposes and must not be for sale or use as feed for wild birds or pets. The relief applies where the importation is made in accordance with the *Controlled Drugs and Substances Act* or is excluded from the application of that Act.

Consequential to the addition of new Part 4.1 of the Act relating to the taxation of cannabis, paragraph 12(b) is amended to clarify that the relief under section 12 will also apply to viable grains or seeds that are industrial hemp for the purposes of the *Cannabis Act*. Paragraph 12(c) is amended to clarify that relief

applies where the importation is made in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act* or is excluded from the application of those Acts.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 101

Non-taxable property for purposes of Subdivision A

ETA
Sch. X, Part I, s. 6

Schedule X to the ETA enumerates property and services that are not subject to taxation under Division IV.1 of the ETA, which imposes the provincial component of HST on a self-assessment basis on certain supplies in respect of which suppliers are not required to collect that provincial component and in respect of importations and property brought into a participating province.

Existing section 6 of Schedule X provides for relief in respect of certain donations or gifts of property where the fair market value of the property does not exceed $60. Alcohol, tobacco and advertising products are excluded from this relief.

Section 6 is amended to more generally exclude excisable goods (as defined in subsection 123(1) of the ETA) from this relief. Excisable goods include alcoholic beverages, tobacco products and cannabis products (within the meaning of section 2 of the Act). This amendment is consequential to the addition of new Part 4.1 of the Act relating to the taxation of cannabis.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Amendments to Various Regulations

Clause 102

Definitions

Postal Imports Remission Order
2

Subject to certain exceptions, the *Postal Imports Remission Order* remits the customs duties and excise taxes paid or payable on goods imported into Canada by mail where the value for duty does not exceed $20. The remission does not apply to the items that are excluded from the definition “goods” in section 2 of the Order and all goods imported under the circumstances described in section 3 of the Order.

The definition “goods” in section 2 is amended to exclude cannabis products from that definition.

Section 2 of the Order is also amended to add the new definition “cannabis product”, which has the same meaning as in section 2 of the Act.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 103

Definitions

Courier Imports Remission Order
2

Subject to certain exceptions, the *Courier Imports Remission Order* remits the customs duties and excise taxes paid or payable on goods imported into Canada by courier where the value for duty does not exceed $20. The remission does not apply to the items that are excluded from the definition "goods" in section 2 of the Order and all goods imported under the circumstances described in section 3 of the Order.

The definition "goods" in section 2 is amended to exclude cannabis products from that definition.

Section 2 of the Order is also amended to add the new definition "cannabis product", which has the same meaning as in section 2 of the Act.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 104

Prescribed property and services

Public Service Body Rebate (GST/HST) Regulations
4(1)(e)

Section 259 of the ETA provides for rebates of the GST/HST to charities, substantially government-funded non-profit organizations and certain other public services bodies (e.g., not-for-profit universities, public colleges, school authorities and municipalities).

Section 4 of the *Public Service Body Rebate (GST/HST) Regulations* enumerates property and services for which a rebate is not available under section 259. Existing paragraph 4(1)(e) of the regulations excludes alcoholic beverages or tobacco products that are acquired for the purpose of making a supply of the beverage or product for consideration that is not included as part of the consideration for a meal supplied together with the beverage or product. The exclusion does not apply where GST/HST will apply to the supply of the beverage or product.

Paragraph 4(1)(e) of the regulations is amended so that it applies to excisable goods (as defined in subsection 123(1) of the ETA). Excisable goods include alcoholic beverages, tobacco products and cannabis products (within the meaning of section 2 of the Act). This amendment is consequential to the addition of new Part 4.1 of the Act relating to the taxation of cannabis.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 105

Security

Regulations Respecting Excise Licences and Registration
5

The existing *Regulations Respecting Excise Licences and Registrations* provide the requirements for applicants wishing to produce and distribute spirits, wine and tobacco. These regulations require that certain conditions be met in order to obtain and maintain a licence or registration. With the addition of new Part 4.1 of the Act relating to cannabis (see commentary for new Part 4.1), these regulations also apply for applicants wishing to produce and distribute cannabis products.

Subsection 5(1) of the regulations is amended to specify that the requirements relating to the amount and sufficiency of security for a licence apply to cannabis licences in addition to spirits licences and tobacco licences.

Paragraph 5(1)(b) of the regulations is amended to specify that the amount of security required for a cannabis licence must be sufficient to ensure payments of the amount of duty referred in paragraph 160(b) of the Act up to a maximum of $5 million, as is the case for a tobacco licence.

These amendments come into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 106

Title of regulations

Regulations Respecting the Possession of Tobacco Products That Are Not Stamped
Title

The *Regulations Respecting the Possession of Tobacco Products That Are Not Stamped* identify the classes of persons who may transport unstamped tobacco products. The title of the regulations is amended to *Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped*. This amendment is consequential to the addition of new Part 4.1 of the Act relating to cannabis.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 107

Authorized Possession

Regulations Respecting the Possession of Tobacco Products That Are Not Stamped
1.1 and 1.2

The *Regulations Respecting the Possession of Tobacco Products That Are Not Stamped* identify the classes of persons who may transport unstamped tobacco products.

New section 1.1 of the regulations provides that, for the purpose of subparagraph 158.11(3)(a)(i) of the Act, a person may possess unstamped cannabis products if that person has documentation providing evidence that they are transporting the cannabis products on behalf of a cannabis licensee or, in the case of industrial hemp by-products, an industrial hemp grower.

New section 1.2 of the regulations provides that, for the purpose of subparagraph 158.11(3)(a)(ii) of the Act, a person may possess unstamped cannabis products if that person has documentation providing evidence that they are sterilizing the cannabis products on behalf of a cannabis licensee, that the cannabis licensee owns the cannabis products throughout the period during which the person is in possession of it, and that the cannabis products are to be returned to the premises of the cannabis licensee as soon as possible after the sterilization of the cannabis.

This amendment is consequential to the addition of new Part 4.1 of the Act relating to cannabis and comes into force on commencement day.

Clause 108

Title of regulations

Stamping and Marking of Tobacco Products Regulations
Title

The *Stamping and Marking of Tobacco Products Regulations* provide rules relating to the stamping, marking and labelling of tobacco products. Among other things, it includes rules to set out the stamping requirements of tobacco products and defines the term "packaged" as the term is used in the Act and the regulations.

The title of the *Stamping and Marking of Tobacco Products Regulations* is amended to *Stamping and Marking of Tobacco and Cannabis Products Regulations*. This amendment is consequential to the addition of new Part 4.1 of the Act relating to cannabis.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 109

Prescribed Package

Stamping and Marking of Tobacco Products Regulations
2(c)

New paragraph 2(c) of the *Stamping and Marking of Tobacco Products Regulations* provide rules relating to when cannabis products are packaged for the purposes of paragraph (a) of the definition "packaged" in section 2 of the Act. Paragraph 2(c) specifies that a cannabis product is packaged in a prescribed package when it is packaged in the smallest package (including any outer wrapper, package, box or other container) in which it is sold to the general public. This amendment is consequential to the addition of new Part 4.1 of the Act relating to cannabis.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 110

Prescribed Person

Stamping and Marking of Tobacco Products Regulations
4

Section 4 of the *Stamping and Marking of Tobacco Products Regulations* provides rules for determining who is a prescribed person for the purposes of subsection 25.1(1) of the Act (relating to the issuance of tobacco excise stamps to indicate that duty has been paid on a tobacco product imported by a person) and for the purposes of paragraph 25.3(2)(d) of the Act (providing an exception to the general prohibition for a person to possess a tobacco excise stamp that has not been affixed to a tobacco product or container).

Subsection 4(2) is amended to specify that, for the purpose of paragraph 25.3(2)(d) of the Act, a prescribed person is a person that transports a tobacco excise stamp on behalf of a person that lawfully produced the tobacco excise stamp or a person to which the tobacco excise stamp is issued (paragraphs 25.3(2)(a) and (b) of the Act).

Subsection 4(3) is added to specify that, for the purpose of paragraph 158.05(2)(c) of the Act, a prescribed person is a person that transports a cannabis excise stamp on behalf of a person that lawfully produced the

cannabis excise stamp or a person to which the cannabis excise stamp is issued (paragraphs 158.05(2)(a) and (b) of the Act).

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 111

Security

Stamping and Marking of Tobacco Products Regulations
4.1

Subsection 4.1(1) of the *Stamping and Marking of Tobacco Products Regulations* sets out the amount of security required for the issuance of an excise stamp related to tobacco products. Subparagraphs 4.1(a)(i) and (ii) of the regulations are amended to specify that the amount of security required for the issuance of excise stamps under section 25.1(3) of the Act only applies to tobacco excise stamps. It does not apply to cannabis excise stamps. This amendment is consequential to the amendment to the definition "excise stamp" in section 2 of the Act (see commentary for the definition "excise stamp").

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 112

Excise Stamps

Stamping and Marking of Tobacco Products Regulations
4.2

Section 4.2 of the *Stamping and Marking of Tobacco Products Regulations* provides rules relating to the manner of affixing an excise stamp to a package for the purposes of the definition "stamped" in section 2 of the Act. Section 4.2 is amended to specify that the prescribed manner of affixing a cannabis excise stamp to a package is similar to the manner of affixing a tobacco excise stamp to a tobacco product. The manner is described in paragraphs (a) to (e) of section 4.2.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Clause 113

Terminology Changes

Tobacco Products Labelling Regulations (Cigarettes and Little Cigars)
Various

Every reference to "excise stamp" in paragraph 7(a) and section 11 of the *Tobacco Products Labelling Regulations (Cigarettes and Little Cigars)* is replaced with a reference to "tobacco excise stamp".

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Consequential Amendments

Clause 114

Definition "offence"

Criminal Code
183

The offences listed in the definition "offence" in section 183 of the *Criminal Code* are the only offences for which the basis of an application for an authorization to intercept private communications, and a warrant for video surveillance, can be formed.

The definition of "offence" in existing section 183 of the *Criminal Code* is amended to include offences found in amended section 214 and new section 218.1 of the Act.

This amendment is consequential to the addition of new Part 4.1 of the Act relating to cannabis and comes into force on commencement day.

Clause 115

Definitions

Customs Act
2

Section 2 of the *Customs Act* defines terms used in that Act. This section is amended in consequence of the addition of new Part 4.1 of the Act relating to cannabis.

The definition "excise stamp" in section 2 of the *Customs Act* is amended to reflect the amendments to the definition "excise stamp" in section 2 of the Act.

This amendment comes into force on the later of the day on which the Act implementing these amendments receives royal assent and the day on which the *Cannabis Act* receives royal assent.

Section 2 of the *Customs Act* is also amended to add the new definition "cannabis product", which has the same meaning as in section 2 of the Act.

This amendment comes into force on commencement day.

Clause 116

Contravention relating to tobacco, cannabis and designated goods

Customs Act
109.2

Existing subsection 109.2(2) of the *Customs Act* imposes a penalty on persons who remove, or cause to be removed, tobacco products or designated goods from specified places in contravention of the *Customs Act*, the *Customs Tariff* or regulations made under either of those Acts. Subsection 109.2(2) is amended to add cannabis products to the list of goods for which, if removed from a specified place, this penalty could apply.

This amendment comes into force on commencement day.

Application

Clause 117

This clause sets out transitional rules relating to the application of amended sections 14 and 23 of the Act and new sections 158.13, 158.19 to 158.22, 158.25, 158.26 and 233.1 of the Act in respect of activities or events that occur between the date of their coming into force and commencement day. For more details on these transitional rules, see the notes to those sections.

Transitional Provision

Clause 118

This clause sets out a transitional rule relating to the period beginning on the earliest date that any of the amendments to the Act relating to cannabis come into force and ending on commencement day. The transitional rule states that if, at any time during that period, a provision of the Act relies on or incorporates provisions or concepts found in provisions of the *Cannabis Act* that are not in force at that time, then those provisions of the *Cannabis Act* are deemed to be in force at that time but only for the purposes of applying the Act.

Federal-Provincial Fiscal Arrangements Act

Clause 119

Definition "coordinated cannabis taxation agreement"

Federal-Provincial Fiscal Arrangements Act
2(1)

The French version of the definition "coordinated cannabis taxation agreement" in subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* is amended to correct a grammatical error.

This amendment is deemed to come into force on December 14, 2017, the day on which this definition originally came into force.