Explanatory Notes Relating to the Excise Tax Act

Published by
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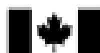
Minister of Finance

January 2014



Department of Finance Canada
Ministère des Finances Canada

Preface

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

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

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Excise Tax Act

Clause 1

Import Arrangements – Effects of Agreement

ETA
178.8(7)(*c*)(ii)

Section 178.8 of the *Excise Tax Act* (the Act) addresses circumstances in which a person (referred to as the "constructive importer") is the recipient of a supply made outside Canada of goods that are imported into Canada for that person's consumption, use or re-supply and that are not supplied by that person outside Canada before their release, but is not the person by or on whose behalf the goods are accounted for under the *Customs Act* at the time of their importation.

By virtue of subsection 178.8(7), if the person (referred to as the "specified importer") who is identified as the importer of the goods for the purposes of the *Customs Act* when the goods were accounted for under that Act and the constructive importer so agree under subsection 178.8(5), the specified importer may claim any rebate, abatement or refund of tax that may be available as a result of the application of subsection 215.1(2) or (3) or 216(6) or (7) of the Act, but only if the specified importer issues to the constructive importer a "tax adjustment note" indicating the amount of the rebate, abatement or refund. The consequences for the constructive importer who receives a tax adjustment note are similar to those that result from a person receiving a credit note issued under section 232 of the Act by a supplier in respect of a domestic supply.

For instance, subparagraph 178.8(7)(*c*)(ii) provides that if the constructive importer receives a tax adjustment note indicating the amount of a rebate, abatement or refund, the amount of the rebate, abatement or refund shall be added in determining the net tax of the constructive importer for the reporting period in which the tax adjustment note is received, to the extent that the amount has been included in determining an input tax credit claimed by the constructive importer in a return filed for that or a preceding reporting period of the constructive importer.

A person is not entitled to claim an input tax credit in a reporting period in respect of an amount of tax for which the person receives a tax adjustment note before the end of that reporting period. Consequently, subparagraph 178.8(7)(*c*)(ii) is amended to remove the superfluous reference to input tax credits claimed in a return filed for the reporting period in which a tax adjustment note is issued.

This amendment applies to goods imported on or after October 3, 2003 and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

Clause 2

Restriction on recovery

ETA
180.01

New section 180.01 of the Act applies in situations where a particular person is deemed under paragraph 180(*d*) of the Act to have paid an amount of tax equal to the amount of tax referred to in paragraph 180(*b*) that has been paid by a non-resident person. In this case, new section 180.01 prevents subsection 232(3) of the Act from applying in respect of the tax paid by the non-resident person. New section 180.01 also prevents any portion of the tax paid by the non-resident person from

being rebated, refunded or remitted to the non-resident person, or otherwise being recovered by the non-resident person, under this or any other Act of Parliament.

This amendment is deemed to have come into force on Announcement Date.

Clause 3

Restriction – Net Tax

ETA
225(3.1)

Subsection 225(3.1) of the Act provides that an amount otherwise qualifying in a particular period as an input tax credit may not be claimed by a person in its net tax calculation if, before the end of the period, the amount was refunded or remitted to the registrant under this or any other Act of Parliament.

For greater certainty, subsection 225(3.1) is amended to clarify that a person cannot reduce its net tax by any amount included in an adjustment, refund or credit for which a credit note referred to in subsection 232(3) has been received by the person, or a debit note referred to in that subsection has been issued by the person or by any amount that has otherwise been rebated, refunded or remitted to the person, or has otherwise been recovered by the person, under this or any other Act of Parliament.

This amendment is deemed to have come into force on April 23, 1996.

Clause 4

Restriction – Net Tax

ETA
225.1(4.1)

Existing subsection 225.1(4.1) of the Act provides that an amount otherwise qualifying in a particular period as input tax credit may not be claimed by a charity in its net tax calculation if, before the end of the period, the amount was refunded or remitted to the charity under this or any other Act of Parliament.

For greater certainty, subsection 225.1(4.1) is amended to clarify that a charity cannot reduce its net tax by any amount included in an adjustment, refund or credit for which a credit note referred to in subsection 232(3) has been received by the charity, or a debit note referred to in that subsection has been issued by the charity or by any amount that has otherwise been rebated, refunded or remitted to the charity, or has otherwise been recovered by the charity, under this or any other Act of Parliament.

This amendment applies for the purpose of determining the net tax of a charity for reporting periods beginning after 1996.

Clause 5

Credit or Debit Notes

ETA
232(3)(*c*)

Section 232 of the Act sets out the rules relating to refunds or adjustments of tax. For instance, existing paragraph 232(3)(*a*) of the Act requires a supplier to issue a credit note to the recipient of a supply, unless the recipient issues a debit note, where the supplier makes an adjustment, refund or

credit of tax in respect of the supply to the recipient. If the tax adjusted, refunded or credited has already been remitted by the supplier as part of the supplier's net tax for the reporting period or a preceding reporting period, the supplier is allowed under paragraph 232(3)(*b*), if all other conditions under Part IX are met, to deduct the tax amount so adjusted, refunded or credited in determining the net tax of the supplier for the reporting period in which the credit note is issued or the debit note is received. Conversely, under paragraph 232(3)(*c*), the recipient is to add the tax amount so adjusted, refunded or credited in determining the net tax of the recipient for the reporting period in which the credit note is received, or the debit note is issued, by the recipient to the extent the tax amount in question had been included in determining an input tax credit claimed by the recipient in a return filed for the reporting period or a preceding reporting period.

A person is not entitled to claim an input tax credit in a reporting period in respect of an amount of tax for which the person receives a credit note, or issues a debit note, before the end of that reporting period. Consequently, subparagraph 232(3)(*c*) is amended to remove the superfluous reference to input tax credits claimed in the reporting period in which a credit or debit note is issued.

This amendment is deemed to have come into force on April 23, 1996.