

Editorial Comment on Income Tax Budget Resolutions

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

Resolution 1: Disability Tax Credit

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

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To be eligible for the Disability Tax Credit (“DTC”), an individual must have a certificate confirming they have a severe and prolonged impairment in physical or mental functions. The effects of the impairment must be such that, even with appropriate devices, medication, and therapy, the individual is blind or is:

- markedly restricted in their ability to perform a basic activity of daily living or would be so restricted were it not for certain therapy (“extensive life-sustaining therapy”); or
- significantly restricted in their ability to perform more than one basic activity of daily living where the cumulative effect of those restrictions is comparable to being markedly restricted in a basic activity of daily living.

The *Income Tax Act* recognizes mental functions necessary for everyday life as one of the basic activities of daily living. Under current rules, these include:

- memory;
- problem-solving, goal-setting, and judgement; and
- adaptive functioning.

Budget 2021 proposes that “mental functions necessary for everyday life” be expanded to include:

- attention;
- concentration;
- memory;
- judgement;
- perception of reality;
- problem-solving;
- goal-setting;
- regulation of behaviour and emotions;
- verbal and non-verbal comprehension; and
- adaptive functioning.

Under the current rules, “extensive life-sustaining therapy” is therapy that:

- is essential to sustain a vital function;
- is required to be administered at least three times each week for a total duration averaging not less than 14 hours a week; and
- cannot reasonably be expected to be of significant benefit to an individual who does not have a severe and prolonged impairment in physical or mental functions.

Budget 2021 proposes to:

- allow reasonable time spent determining dietary intake and/or physical exertion to be considered part of the therapy where this information is essential to and is undertaken for the purpose of determining the dosage of medication that must be adjusted daily;
- clarify that the exclusion of time for medical appointments does not apply to appointments to receive therapy or determine the daily dosage of medication;
- provide that the exclusion of time for recuperation after therapy does not apply to medically required recuperation; and
- in the case of therapy that requires the daily consumption of a medical food or formula to limit intake of a particular compound to levels required for the proper development or functioning of the body, allow reasonable time spent on activities directly related to the determination of the amount of the compound that can be safely consumed to be considered part of the therapy.

Budget 2021 also proposes to count the time reasonably required by another person to assist an individual in performing and supervising the therapy, where the individual is incapable of performing their therapy on their own due to the impacts of their disability.

Budget 2021 further proposes to reduce the required number of therapy sessions per week from three to two (however, the 14 hour per week requirement would remain unchanged).

Resolutions 2 to 3: Canada Workers Benefit

2 (1) The portion of subsection 117.1(1) of the Act before paragraph (b) is replaced by the following:

Annual adjustment

117.1 (1) Each specified amount in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used for the year under the provision for which the amount is relevant is the total of

- (a) the amount that would, but for subsection (3), be the amount to be used under the relevant provision for the preceding taxation year, and

(2) Section 117.1 of the Act is amended by adding the following after subsection (1):

Annual adjustment — amounts

(2) For the purposes of subsection (1), each of the following amounts is a specified amount in relation to tax payable under this Part or Part I.2 for a taxation year:

- (a) the amount of \$300 referred to in subparagraph 6(1)(b)(v.1);
- (b) the amount of \$1,000 referred to in the formula in paragraph 8(1)(s);
- (c) the amount of \$400,000 referred to in the formula in paragraph 110.6(2)(a);
- (d) each of the amounts expressed in dollars in subsection 117(2);
- (e) each of the amounts expressed in dollars in the description of B in subsection 118(1);
- (f) the amount of \$12,298 in the description of A in subsection 118(1.1);
- (g) the amount of \$15,000 in paragraph (d) of the description of F in subsection 118(1.1);
- (h) each of the amounts expressed in dollars in subsection 118(2);
- (i) the amount of \$1,000 referred to in subsection 118(10);
- (j) the amount of \$15,000 referred to in subsection 118.01(2);
- (k) each of the amounts expressed in dollars in subsection 118.2(1);
- (l) each of the amounts expressed in dollars in subsection 118.3(1);
- (m) each of the amounts expressed in dollars in subsection 122.5(3);
- (n) the amount of \$2,500 referred to in subsection 122.51(1);
- (o) each of the amounts expressed in dollars in subsection 122.51(2);
- (p) the amounts of \$14,000 referred to in subsection 122.7(1.3);
- (q) the amounts of \$1,395 and \$2,403 in the description of A, and each of the amounts expressed in dollars in the description of B, in subsection 122.7(2);
- (r) the amount of \$720 in the description of C, and each of the amounts expressed in dollars in the description of D, in subsection 122.7(3);
- (s) the amount of \$10,000 in the description of B in subsection 122.91(2); and
- (t) each of the amounts expressed in dollars in Part I.2.

(3) Subsections (1) and (2) apply to the 2021 and subsequent taxation years. However, the adjustment provided for in subsection 117.1(1) of the Act, as enacted by subsection (1), does not apply

(a) for the 2021 to 2023 taxation years, in respect of paragraph 117.1(2)(g) of the Act, as enacted by subsection (2); and

(b) for the 2021 taxation year, in respect of paragraphs 117.1(2)(p), (q) and (r) of the Act, as enacted by subsection (2).

3 (1) Section 122.7 of the Act is amended by adding the following after subsection (1.2):

Secondary earner exemption

(1.3) For the purposes of subsections (2) and (3),

(a) if an eligible individual had an eligible spouse for a taxation year and the working income for the year of the eligible individual was less than the working income for the year of the eligible spouse, the eligible individual's adjusted net income for the year is deemed to be the amount, if any, by which the eligible individual's adjusted net income for the year (determined without reference to this subsection) exceeds the lesser of

(i) the eligible individual's working income for the year, and

(ii) \$14,000; and

(b) if an eligible individual had an eligible spouse for a taxation year and the working income for the year of the eligible individual was greater than or equal to the working income for the year of the eligible spouse, the eligible spouse's adjusted net income for the year is deemed to be the amount, if any, by which the eligible spouse's adjusted net income for the year (determined without reference to this subsection) exceeds the lesser of

(i) the eligible spouse's working income for the year, and

(ii) \$14,000.

(2) The descriptions of A and B in subsection 122.7(2) of the Act are replaced by the following:

A is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, the lesser of \$1,395 and 27% of the amount, if any, by which the individual's working income for the taxation year exceeds \$3,000, and

(b) if the individual had an eligible spouse or an eligible dependant, for the taxation year, the lesser of \$2,403 and 27% of the amount, if any, by which the total of the working incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds \$3,000; and

B is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 15% of the amount, if any, by which the adjusted net income of the individual for the taxation year exceeds \$22,944, and

(b) if the individual had an eligible spouse or an eligible dependant, for the taxation year, 15% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds \$26,177.

(3) The descriptions of C and D in subsection 122.7(3) of the Act are replaced by the following:

C is the lesser of \$720 and 27% of the amount, if any, by which the individual's working income for the taxation year exceeds \$1,150; and

D is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 15% of the amount, if any, by which the individual's adjusted net income for the taxation year exceeds \$32,244,

(b) if the individual had an eligible spouse for the taxation year who was not entitled to deduct an amount under subsection 118.3(1) for the taxation year, or had an eligible dependant for the taxation year, 15% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds \$42,197, and

(c) if the individual had an eligible spouse for the taxation year who was entitled to deduct an amount under subsection 118.3(1) for the taxation year, 7.5% of the amount, if any, by which the total of the adjusted net incomes of the individual and of the eligible spouse, for the taxation year, exceeds \$42,197.

(4) Subsections (1) to (3) are deemed to have come into force on January 1, 2021.

DENTONS CANADA LLP COMMENTARY

Budget 2021 proposes to enhance the Canada Workers Benefit (CWB) as follows:

The regular CWB is improved by increasing:

- the phase-in rate from 26% to 27% for single individuals with no dependants and for families;
- the phase-out threshold from \$13,194 to \$22,944 for single individuals with no dependants and from \$17,522 to \$26,177 for families; and
- the phase-out rate from 12% to 15%.

CWB Disability Supplement

The CWB Disability supplement is also improved by making changes to the phase-in and reduction rates, and reduction threshold. More specifically, the supplement is phased out at a rate of 7.5% for each individual in a couple where both of them receive the disability supplement, and a rate of 15% in other cases. The reduction threshold is increased to align with the point where the base benefit is fully phased out (i.e., from \$24,815 under the existing rules to \$32,244 for singles individuals with no children and from \$37,548 to \$42,197 for families).

Budget 2021 also proposes a special rule called “secondary earner exemption” for individuals with an eligible spouse. The rule allows the spouse or common-law partner with the lower working income to exclude up to \$14,000 of such income to compute their adjusted net income for the purpose of phasing out the CWB.

These measures will apply to the 2021 and subsequent taxation years. The indexation of CWB amounts will continue after 2021.

Resolution 4: Northern Residents Deductions

4 The Act is modified to give effect to the proposals relating to Northern Residents Deductions as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

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Budget 2021 proposes to expand access to the travel component of the Northern Residents Deduction to those without employer-provided travel benefits. Currently, tax relief from the Northern Residents Deduction is limited to those who receive travel benefits through work.

Subject to the restrictions currently in place, Budget 2021 provides that a taxpayer would have the option to claim, in respect of the taxpayer and each “eligible family member”, up to:

- the amount, if any, of employer-provided travel benefits the taxpayer received in respect of travel by that individual; or
- a \$1,200 standard amount (or \$600 in respect of residents of the Intermediate Zone) that may be allocated across eligible trips taken by that individual.

For these purposes, an “eligible family member” would be an individual living in the taxpayer’s household who is:

- the spouse or common-law partner of the taxpayer;
- a child of the taxpayer (including a child of the taxpayer’s spouse or common-law partner) under the age of 18; or
- another individual who is related to the taxpayer and who is wholly dependent on the taxpayer (and/or on the taxpayer’s spouse or common-law partner) for support, and who is, except in the case of a parent or grandparent of the taxpayer, so dependent by reason of mental or physical infirmity.

If any taxpayer claims a deduction in respect of an employer-provided benefit for travel by the taxpayer or an eligible family member of the taxpayer in a year, no other taxpayer would be allowed to also claim all or part of the \$1,200 standard amount in respect of travel by that first mentioned taxpayer or that eligible family member in that year. If any taxpayer claims all or part of the \$1,200 standard amount in respect of travel by an individual, the maximum total amount that could be claimed in respect of that individual by all taxpayers would be \$1,200.

Budget 2021 proposes that across all taxpayers in a given individual’s household, a maximum of two trips taken by that individual would be allowed to be claimed in total for non-medical personal travel in a year. A taxpayer would continue to be able to claim any number of trips for medical purposes.

In light of the proposed changes described above, claims for a given trip would be limited to the least of:

- the amount, if any, of the employer-provided travel benefit received in respect of the trip or the amount allocated to that particular trip by the taxpayer out of the \$1,200 standard amount;

- the total travel expenses paid for that trip; and
- the cost of the lowest return airfare to the nearest designated city.

Resolution 5: Postdoctoral Fellowship Income

5 (1) The definition *earned income* in subsection 146(1) of the Act is amended by adding the following after paragraph (b):

(b.01) an amount included under paragraph 56(1)(n) in computing the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada in connection with a program that consists primarily of research and does not lead to a diploma from a college or a Collège d'enseignement général et professionnel, or a bachelor, masters, doctoral or equivalent degree,

(2) Subsection (1) applies in respect of the definition “earned income” under subsection 146(1) of the Act for taxation years after 2020. However, it also applies in respect of the definition “earned income” under subsection 146(1) of the Act for the 2011 to 2020 taxation years, for the purpose of determining the taxpayer’s “RRSP deduction limit” under subsection 146(1) of the Act in respect of a taxation year after 2020 during which the taxpayer makes a request in writing with the Minister of National Revenue for an adjustment to their “earned income” for any of those prior years.

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Budget 2021 proposes to include postdoctoral fellowship income in “earned income” for RRSP purposes. This would provide postdoctoral fellows with additional RRSP room in order to make deductible RRSP contributions.

This measure would apply in respect of postdoctoral fellowship income received in the 2021 and subsequent taxation years. This measure would also apply in respect of postdoctoral fellowship income received in the 2011 to 2020 taxation years, where the taxpayer submits a request in writing to the Canada Revenue Agency for an adjustment to their RRSP room for the relevant years.

Resolutions 6 to 8: Tax Treatment of COVID-19 Benefit Amounts

6 (1) Subparagraph 56(1)(r)(iv) of the Act is replaced by the following:

(iv) financial assistance provided under a program established by a government, or government agency, in Canada that provides income replacement benefits similar to income replacement benefits provided under a program established under the *Employment Insurance Act*, other than amounts referred to in subparagraph (iv.1),

(iv.1) financial assistance provided under

(A) the *Canada Emergency Response Benefit Act*,

(B) Part VIII.4 of the *Employment Insurance Act*,

(C) the *Canada Emergency Student Benefit Act*,

(D) the *Canada Recovery Benefits Act*, or

(E) a program established by a government, or government agency, of a province, that provides income replacement benefits similar to income replacement benefits provided under a program established under an Act referred to in any of clauses (A) to (D), or

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

7 (1) Section 60 of the Act is amended by adding the following after paragraph (v.2):

COVID-19 – other benefit repayments

(v.3) any benefit repaid by the taxpayer before 2023 to the extent that the amount of the benefit was included in computing the taxpayer's income for the year under any of clauses 56(1)(r)(iv.1)(A) to (D), except to the extent that the amount is

(i) deducted in computing the taxpayer's income for any year under paragraph (n), or

(ii) deductible in computing the taxpayer's income for any year under paragraph (v.2);

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

8 (1) Paragraph 115(1)(a) of the Act is amended by adding the following after subparagraph (iii.21):

(iii.22) the total of all amounts, each of which is an amount included under subparagraph 56(1)(r)(iv.1) in computing the non-resident person's income for the year,

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

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Generally, if a qualified individual repays a taxable benefit received as a result of COVID-19, the amount is deductible for income tax purposes in the year of repayment. Consequently, the individual may be subject to tax on the benefit in the year of receipt, but only be entitled to a tax deduction in the year of repayment, which could be a future year.

Budget 2021 proposes to provide such individuals with the option to claim a deduction for the repayment of a COVID-19 benefit amount in the year the individual received the benefit amount rather than the year of repayment. This option is available for benefit amounts repaid at any time before 2023.

Under this proposal, applicable COVID-19 benefits are:

- Canada Emergency Response Benefits/Employment Insurance Emergency Response Benefits;
- Canada Emergency Student Benefits;
- Canada Recovery Benefits;

- Canada Recovery Sickness Benefits; and
- Canada Recovery Caregiving Benefits.

Qualified Individuals may only deduct benefit amounts once they are repaid. Where an individual receives the benefit and files their income tax return for the year but subsequently makes a repayment, that individual can request for an adjustment to the return for that year.

Budget 2021 also proposes to ensure that the COVID-19 and similar provincial or territorial benefit amounts noted above, are included in the taxable income of non-resident (for income tax purposes) individuals, but who otherwise reside in Canada. Generally, these COVID-19 benefits are taxable in Canada in a manner similar to employment and business income earned in Canada by non-residents.

Resolution 9: Fixing Contribution Errors in Defined Contribution Pension Plans

9 The Act is modified to give effect to the proposals relating to Fixing Contribution Errors in Defined Contribution Pension Plans as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2021 proposes to add flexibility for administrators to correct over- and under-contributions to an employee account under a defined contribution pension plan. Currently, administrators of such a plan cannot accept retroactive contributions that would correct under-contribution errors. Though over-contribution errors may be corrected by refunding the excess to the contributor, the budget documents acknowledge that these rules can be cumbersome.

Accordingly, the budget proposes new rules that would allow corrections in these situations and will simplify the resulting administrative burden. First, certain errors that resulted in an under-contribution in any of the five prior years can be corrected via an additional contribution to an employee's account under the plan. Second, an over-contribution error in respect of an employee that occurred in any of the five prior years can be corrected by refunding the excess to whomever made the excess contribution (i.e., either the employer or the employee, as the case may be).

The proposed rules would require the plan administrator to file a prescribed form for each affected employee. This will simplify reporting requirements since the administrator will not be required to amend any T4 slips for prior years.

Consequently, additional contributions will reduce an employee's registered retirement savings plan ("RRSP") contribution room in the taxation year following the year in which the retroactive contribution occurs. Resulting negative RRSP contribution room (if any) would only impact the employee's contributions in future years. Refunds of over-contributions will restore the employee's RRSP contribution room for the taxation year in which the refund occurs.

This measure applies to additional contributions made and over-contributions refunded in 2021 and subsequent years. The Notice of Ways and Means Motion did not include any proposed legislation for this measure, so no further details are available.

Resolution 10: Fixing Taxes Applicable to Registered Investments

10 (1) Subsection 204.6(1) of the Act is replaced by the following:

Tax payable

204.6 (1) If at the end of any month a taxpayer that is a registered investment described in paragraph 204.4(2)(b), (d) or (f) holds property that is not a prescribed investment for that taxpayer, it shall, in respect of that month, pay a tax under this Part equal to the total of all amounts each of which is an amount determined in respect of such a property by the formula

$$0.01(A \times B/C)$$

where

- A** is the fair market value of the property at the time of its acquisition by the taxpayer;
- B** is the total number of issued units or issued and outstanding shares of the capital stock of the registered investment held at the end of the month by
 - (a)** registered retirement savings plans,
 - (b)** deferred profit sharing plans,
 - (c)** registered retirement income funds, or
 - (d)** registered investments described in paragraphs 204.4(2)(b), (d) or (f); and
- C** is the total number of issued units or issued and outstanding shares of the capital stock of the registered investment at the end of the month.

(2) Subsection (1) applies in respect of months after 2020. It also applies to a taxpayer in respect of a month before 2021 if, on or before Budget Day,

- (a) no notice of assessment in respect of an amount payable under subsection 204.6(1) of the Act for the month has been sent to the taxpayer in respect of the month, or**
- (b) if such a notice of assessment has been sent to the taxpayer in respect of the month, it is not the case that the taxpayer has no further right of objection and appeal in respect of the assessment.**

DENTONS CANADA LLP COMMENTARY

A trust or corporation that satisfies certain requirements can apply to the Canada Revenue Agency to be a registered investment (and therefore a qualified investment) for registered retirement savings plans (RRSPs), registered retirement income funds or deferred profit sharing plans.

Certain types of registered investments (such as mutual fund trusts or corporations) must have a minimum number of investors. A trust or corporation that is a registered investment but is not sufficiently widely-held, such as a trust that does not have the 150 unit holders required to qualify as a mutual fund trust, is limited to holding investments that would be qualified investments for the types of registered plans for which it is registered. For example, if a trust or corporation is a registered investment for RRSPs, it can hold only investments that are qualified investments for an RRSP.

If a registered investment that is subject to this investment restriction holds property that is not a qualified investment, the registered investment is liable to pay a tax under Part X.2 of the *Income Tax Act*. This tax is equal to one per cent of the non-qualified property's fair market value, at the time it was acquired, for each month that the registered investment holds the property. However, in some cases the effect of the tax can be disproportionate because the tax applies without regard to the proportion of the shares or units of the registered investment that are held by investors that are themselves subject to the qualified investment rules.

Budget 2021 proposes that the tax imposed under Part X.2 of the *Income Tax Act* be pro-rated based on the proportion of shares or units of the registered investment

that are held by investors that are themselves subject to the qualified investment rules. For example, if a trust or corporation is a registered investment for RRSPs and 20 per cent of its units or shares, as the case may be, are held by RRSPs, while 80 per cent of its units or shares, as the case may be, are held by individuals directly, the monthly tax imposed under Part X.2 under this provision will now be 20 per cent of 1 per cent of the fair market value of the non-qualified property held by the registered investment at the time they were acquired.

Resolutions 11 to 14: Registration and Revocation Rules Applicable to Charities

11 (1) The definition *ineligible individual* in subsection 149.1(1) of the Act is amended by striking out “or” at the end of paragraph (d), by adding “or” at the end of paragraph (e) and by adding the following after paragraph (e):

- (f) a listed terrorist entity or a member of a listed terrorist entity,
- (g) a director, trustee, officer or like official of a listed terrorist entity during a period in which that entity supported or engaged in terrorist activities, including a period prior to the date on which the entity became a listed terrorist entity, or
- (h) an individual who controlled or managed, directly or indirectly, in any manner whatever, a listed terrorist entity during a period in which that entity supported or engaged in terrorist activities, including a period prior to the date on which the entity became a listed terrorist entity; (*particulier non admissible*)

(2) Subsection 149.1(1) of the Act is amended by adding the following in alphabetical order:

listed terrorist entity, at any time, means a person, partnership, group, fund, unincorporated association or organization that is at that time a *listed entity*, as defined in subsection 83.01(1) of the *Criminal Code*; (*entité terroriste inscrite*)

(3) Section 149.1 of the Act is amended by adding the following after subsection (1.01):

Deeming rule — listed terrorist entity

(1.02) If, but for this subsection, a person, partnership, group, fund, unincorporated association or organization becomes a listed terrorist entity at a particular time and ceases to be a listed terrorist entity at a later time further to an application made under subsection 83.05(2), or as a result of paragraph 83.05(6)(d), of the *Criminal Code*, then the entity is deemed not to have become a listed terrorist entity and not to have been a listed terrorist entity throughout that period.

(4) Paragraph 149.1(4.1)(c) of the Act is replaced by the following:

- (c) of a registered charity, if a *false statement* (as defined in subsection 163.2(1)) was made in circumstances amounting to *culpable conduct* (as defined in subsection 163.2(1)) in the furnishing of information for the purpose of obtaining or maintaining its registration;

12 Section 168 of the Act is amended by adding the following after subsection (3):

Listed terrorist entities

(3.1) Notwithstanding subsections (1), (2) and (4), if a qualified donee is a *listed terrorist entity* for the purposes of section 149.1, the registration of the qualified donee is revoked as of the date on which it became a listed terrorist entity.

13 The portion of subsection 188(1) of the Act before paragraph (a) is replaced by the following:

Deemed year-end on notice of revocation

188 (1) If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1), it becomes a listed terrorist entity or it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

14 Subsection 188.2(2) of the Act is amended by striking out “or” at the end of paragraph (d), by adding “or” at the end of paragraph (e) and by adding the following after paragraph (e):

- (f) in the case of a person that is a registered charity, if a *false statement* (as defined in subsection 163.2(1)) was made in circumstances amounting to *culpable conduct* (as defined in subsection 163.2(1)) in the furnishing of information for the purpose of maintaining its registration.

DENTONS CANADA LLP COMMENTARY

Budget 2021 seeks to limit opportunities for the abuse of charitable registration status for terrorist financing purposes and proposes new rules for registered charities with respect to making false statements.

Budget 2021 proposes to allow the Minister of National Revenue to immediately revoke the registration of a charity or other qualified done upon its listing as a terrorist entity under the *Criminal Code* (Canada). Currently, the Minister of Public

Safety and Emergency could list a registered charity as a terrorist organization subject to following the correct administrative process and judicial appeal rights of the charity.

Paragraph 149.1(4.1)(e) of the Act provides that the registration of a registered charity or registered Canadian amateur athletic association may be revoked if an “ineligible individual” is a director, trustee, officer, or like official of the charity or controls or manages the charity directly or indirectly in any manner whatever. In general terms, this provision is meant to ensure that these charities or associations are not managed or controlled in any way by persons with a history of certain types of misconduct. An “ineligible individual” includes an individual convicted of a criminal offense, and a director, trustee, officer or like official of the registered charity or association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under the Act and for which the registration of the charity or association was revoked in the five-year period preceding that time.

Budget 2021 adds to the list of “ineligible individuals” a “listed terrorist entity” or a member of such entity; a director, trustee, officer or similar official of the listed entity during a period in which the entity engaged in or supported terrorist activities; and an individual who controlled, as a matter of law or fact, the entity in such activities including a period before the entity became a listed terrorist entity.

A “listed terrorist entity” means an entity that is a “listed entity” under subsection 83.01(1) of the Criminal Code, which are prescribed by the Governor General under the Regulations to that Act.

Additionally, Budget 2021 amends the rule that allows revocation of a charity’s registration if a false statement was made in obtaining its registration in circumstances amounting to culpable conduct, to also include false statements made to maintain registration status.

Resolution 15: Electronic Filing and Certification of Tax and Information Returns

15 The Act is modified to give effect to the proposals relating to Electronic Filing and Certification of Tax and Information Returns as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

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Resolution 15 proposes to implement various electronic filing and payment procedures set out in the Budget papers. The major proposals are outlined below.

The CRA will be given authority to send certain notices of assessment electronically without the taxpayer having to authorize the CRA (currently, authorization is generally required). However, this proposal will only apply to individuals who file their income tax return electronically or use a tax preparer that files their income tax return electronically. Taxpayers who file their income tax returns on paper will receive a paper notice of assessment from the CRA. This proposal is scheduled to apply on Royal Assent.

Resolution 15 also includes the Budget proposal to the “default method” of CRA correspondence for businesses that use the CRA’s “My Business Account” portal, to electronic correspondence only. However, businesses will be able to choose to also receive paper correspondence. This proposal is scheduled to apply on Royal Assent.

Entities that are required to issue T4A slips (for example, for pension, annuity, and other income) or T5 (dividends or interest from a corporation) will be allowed to provide the slips electronically without having to also issue a paper copy and without the taxpayer having to authorize the issuer. This part of Resolution 15 will apply in respect of information slips issued after 2021. Currently, subject to certain exceptions, professional preparers of income tax returns must file them electronically if they prepare more than 10 income tax returns of corporations or individuals. Resolution 15 proposes to change this rule where they file more than 5 of either type of return for a calendar year. The proposal will also apply to trust tax returns. This proposal will apply in respect of calendar years after 2021.

Currently, taxpayers issuing certain tax information forms must file them electronically if they are filing 50 or more of the particular information form. The Budget proposes to lower the threshold so that taxpayers issuing five or more of a particular form will be required to file them electronically. This proposal is scheduled to apply in respect of calendar years after 2021. Currently, corporations (and certain other businesses) must file their tax returns electronically – for example, under the Act, corporations must file electronically if their gross revenues for the year exceed \$1 million. The Budget proposes to eliminate this revenue threshold such that “returns of most corporations and GST/HST registrants... would be required to be filed electronically.” This measure is proposed to apply to taxation years that begin after 2021 for the *Income Tax Act* and in respect of reporting periods that begin after 2021 for the *Excise Tax Act*.

Resolutions 16 to 21: Emergency Business Supports and Canada Recovery Hiring Program

16 Paragraph 87(2)(g.6) of the Act is replaced by the following:

COVID-19 – wage subsidy

(g.6) for the purposes of section 125.7, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation unless it is reasonable to consider that one of the main purposes of the amalgamation is to cause the new corporation to qualify for the deemed overpayment under any of subsections 125.7(2) to (2.2) or to increase the amount of that deemed overpayment;

17 (1) The portion of paragraph (a) of the definition *base percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(a) for the fifth qualifying period,

(2) The portion of paragraph (b) of the definition *base percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(b) for the sixth qualifying period,

(3) The portion of paragraph (c) of the definition *base percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(c) for the seventh qualifying period,

(4) The portion of paragraph (d) of the definition *base percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(d) for the eighth qualifying period,

(5) The portion of paragraph (e) of the definition *base percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(e) for the ninth qualifying period,

(6) The portion of paragraph (f) of the definition *base percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(f) for the tenth qualifying period,

(7) Paragraph (g) of the definition *base percentage* in subsection 125.7(1) of the Act is replaced by the following:

(g) for the eleventh qualifying period to the seventeenth qualifying period,

(i) if the entity's revenue reduction percentage is greater than or equal to 50%, 40%, and

(ii) in any other case, the amount determined by the formula

$$0.8 \times A$$

where

A is the revenue reduction percentage;

(h) for the eighteenth qualifying period,

(i) if the entity's revenue reduction percentage is greater than or equal to 50%, 35%, and

(ii) in any other case, the amount determined by the formula

$$0.875 \times (A - 10\%)$$

where

A is the revenue reduction percentage;

(i) for the nineteenth qualifying period,

(i) if the entity's revenue reduction percentage is greater than or equal to 50%, 25%, and

(ii) in any other case, the amount determined by the formula

$$0.625 \times (A - 10\%)$$

where

A is the revenue reduction percentage;

- (j) for the twentieth qualifying period,
- (i) if the entity's revenue reduction percentage is greater than or equal to 50%, 10%, and
- (ii) in any other case, the amount determined by the formula

$$0.25 \times (A - 10\%)$$

where

A is the revenue reduction percentage; and

(k) for a qualifying period after the twentieth qualifying period, a percentage determined by regulation in respect of the eligible entity or, if there is no percentage determined by regulation for the qualifying period, nil. (*pourcentage de base*)

(8) Subparagraphs (b)(i) to (iv) of the definition *baseline remuneration* in subsection 125.7(1) of the Act are replaced by the following:

- (i) begins on March 1, 2019 and ends on May 31, 2019, in respect of any of the first qualifying period to the third qualifying period,
- (ii) begins on March 1, 2019 and ends on June 30, 2019, in respect of the fourth qualifying period, unless the eligible entity elects to use the period that begins on March 1, 2019 and ends on May 31, 2019 for that qualifying period,
- (iii) begins on July 1, 2019 and ends on December 31, 2019, in respect of any of the fifth qualifying period to the thirteenth qualifying period,
- (iii.1) begins on March 1, 2019 and ends on June 30, 2019, in respect of any of the fourteenth qualifying period to the seventeenth qualifying period, unless the eligible entity elects to use the period that begins on July 1, 2019 and ends on December 31, 2019 for that qualifying period,
- (iii.2) begins on July 1, 2019 and ends on December 31, 2019, in respect of the eighteenth qualifying period and any subsequent qualifying period, or
- (iv) if the eligible employee was on leave for any reason mentioned in subsection 12(3) of the *Employment Insurance Act* or section 2 of the *Act respecting parental insurance*, CQLR, c. A-29.011 throughout the period that begins on July 1, 2019 and ends on March 15, 2020, begins 90 days prior to the date on which the employee commenced that leave and ends on the day prior to the date on which they commenced their leave, in respect of the fifth qualifying period and any subsequent qualifying period. (*rémunération de base*)

(9) Paragraphs (a) to (c.7) of the definition *current reference period* in subsection 125.7(1) of the Act are replaced by the following:

- (a) for the first qualifying period, March 2020;
- (b) for the second qualifying period, April 2020;
- (c) for the third qualifying period, May 2020;
- (c.1) for the fourth qualifying period, June 2020;
- (c.2) for the fifth qualifying period, July 2020;
- (c.3) for the sixth qualifying period, August 2020;
- (c.4) for the seventh qualifying period, September 2020;
- (c.5) for the eighth qualifying period, October 2020;
- (c.6) for the ninth qualifying period, November 2020;
- (c.7) for the tenth qualifying period, December 2020;
- (c.8) for the eleventh qualifying period, December 2020;
- (c.9) for the twelfth qualifying period, January 2021;
- (c.91) for the thirteenth qualifying period, February 2021;
- (c.92) for the fourteenth qualifying period, March 2021;
- (c.93) for the fifteenth qualifying period, April 2021;
- (c.94) for the sixteenth qualifying period, May 2021;

- (c.95) for the seventeenth qualifying period, June 2021;
- (c.96) for the eighteenth qualifying period, July 2021;
- (c.97) for the nineteenth qualifying period, August 2021;
- (c.98) for the twentieth qualifying period, September 2021;
- (c.99) for the twenty-first qualifying period, October 2021;
- (c.991) for the twenty-second qualifying period, November 2021; and

(10) The definition *eligible employee* in subsection 125.7(1) of the Act is replaced by the following:

eligible employee, of an eligible entity in respect of a week in a qualifying period, means an individual employed by the eligible entity primarily in Canada throughout the qualifying period (or the portion of the qualifying period throughout which the individual was employed by the eligible entity), other than, if the qualifying period is any of the first qualifying period to the fourth qualifying period, an individual who is without remuneration by the eligible entity in respect of 14 or more consecutive days in the qualifying period. (*employé admissible*)

(11) Subparagraphs (a)(i) to (x) of the definition *prior reference period* in subsection 125.7(1) of the Act are replaced by the following:

- (i) for the first qualifying period, March 2019,
- (ii) for the second qualifying period, April 2019,
- (iii) for the third qualifying period, May 2019,
- (iv) for the fourth qualifying period, June 2019,
- (v) for the fifth qualifying period, July 2019,
- (vi) for the sixth qualifying period, August 2019,
- (vii) for the seventh qualifying period, September 2019,
- (viii) for the eighth qualifying period, October 2019,
- (ix) for the ninth qualifying period, November 2019,
- (x) for the tenth qualifying period, December 2019,
- (xi) for the eleventh qualifying period, December 2019,
- (xii) for the twelfth qualifying period, January 2020,
- (xiii) for the thirteenth qualifying period, February 2020,
- (xiv) for the fourteenth qualifying period, March 2019,
- (xv) for the fifteenth qualifying period, April 2019,
- (xvi) for the sixteenth qualifying period, May 2019,
- (xvii) for the seventeenth qualifying period, June 2019,
- (xviii) for the eighteenth qualifying period, July 2019,
- (xix) for the nineteenth qualifying period, August 2019,
- (xx) for the twentieth qualifying period, September 2019,
- (xxi) for the twenty-first qualifying period, October 2019, and
- (xxii) for the twenty-second qualifying period, November 2019;

(12) Paragraphs (e) to (g) of the definition *public health restriction* in subsection 125.7(1) of the Act are replaced by the following:

- (e) it does not result from a violation by the eligible entity – or a party with which the eligible entity does not deal at arm's length that rents, directly or indirectly, the qualifying property from the eligible entity (referred to in this definition as the "specified tenant") – of an order or decision that meets the conditions in paragraphs (a) to (d);

(f) as a result of the order or decision, some or all of the activities of the eligible entity – or the specified tenant – at, or in connection with, the qualifying property (that it is reasonable to expect the eligible entity – or the specified tenant – would, absent the order or decision, otherwise have engaged in) are required to cease (referred to in this definition as the “restricted activities”) based, for greater certainty, on the type of activity rather than the extent to which an activity may be performed or limits placed on the time during which an activity may be performed;

(g) it is reasonable to conclude that at least approximately 25% of the qualifying revenues of the eligible entity – or the specified tenant – for the prior reference period that were earned from, or in connection with, the qualifying property were derived from the restricted activities; and

(13) The portion of paragraph (c) of the definition *qualifying entity* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(c) if the qualifying period is any of the first qualifying period to the fourth qualifying period, its qualifying revenues for the current reference period are equal to or less than the specified percentage, for the qualifying period, of

(14) Paragraphs (a) to (d) of the definition *qualifying period* in subsection 125.7(1) of the Act are replaced by the following:

(a) the period that begins on March 15, 2020 and ends on April 11, 2020 (referred to in this section as the “first qualifying period”);

(b) the period that begins on April 12, 2020 and ends on May 9, 2020 (referred to in this section as the “second qualifying period”);

(c) the period that begins on May 10, 2020 and ends on June 6, 2020 (referred to in this section as the “third qualifying period”);

(c.1) the period that begins on June 7, 2020 and ends on July 4, 2020 (referred to in this section as the “fourth qualifying period”);

(c.2) the period that begins on July 5, 2020 and ends on August 1, 2020 (referred to in this section as the “fifth qualifying period”);

(c.3) the period that begins on August 2, 2020 and ends on August 29, 2020 (referred to in this section as the “sixth qualifying period”);

(c.4) the period that begins on August 30, 2020 and ends on September 26, 2020 (referred to in this section as the “seventh qualifying period”);

(c.5) the period that begins on September 27, 2020 and ends on October 24, 2020 (referred to in this section as the “eighth qualifying period”);

(c.6) the period that begins on October 25, 2020 and ends on November 21, 2020 (referred to in this section as the “ninth qualifying period”);

(c.7) the period that begins on November 22, 2020 and ends on December 19, 2020 (referred to in this section as the “tenth qualifying period”);

(c.8) the period that begins on December 20, 2020 and ends on January 16, 2021 (referred to in this section as the “eleventh qualifying period”);

(c.9) the period that begins on January 17, 2021 and ends on February 13, 2021 (referred to in this section as the “twelfth qualifying period”);

(c.91) the period that begins on February 14, 2021 and ends on March 13, 2021 (referred to in this section as the “thirteenth qualifying period”);

(c.92) the period that begins on March 14, 2021 and ends on April 10, 2021 (referred to in this section as the “fourteenth qualifying period”);

(c.93) the period that begins on April 11, 2021 and ends on May 8, 2021 (referred to in this section as the “fifteenth qualifying period”);

(c.94) the period that begins on May 9, 2021 and ends on June 5, 2021 (referred to in this section as the “sixteenth qualifying period”);

(c.95) the period that begins on June 6, 2021 and ends on July 3, 2021 (referred to in this section as the “seventeenth qualifying period”);

(c.96) the period that begins on July 4, 2021 and ends on July 31, 2021 (referred to in this section as the “eighteenth qualifying period”);

(c.97) the period that begins on August 1, 2021 and ends on August 28, 2021 (referred to in this section as the “nineteenth qualifying period”);

(c.98) the period that begins on August 29, 2021 and ends on September 25, 2021 (referred to in this section as the “twentieth qualifying period”);

(c.99) the period that begins on September 26, 2021 and ends on October 23, 2021 (referred to in this section as the “twenty-first qualifying period”);

(c.991) the period that begins on October 24, 2021 and ends on November 20, 2021 (referred to in this section as the “twenty-second qualifying period”); and

(d) a prescribed period that ends no later than November 30, 2021. (*période d’admissibilité*)

(15) The portion of paragraph (a) of the definition *rent subsidy percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(a) if the qualifying period is any of the eighth qualifying period to the seventeenth qualifying period,

(16) The definition *rent subsidy percentage* in subsection 125.7(1) of the Act is amended by striking out “and” at the end of paragraph (a) and by replacing paragraph (b) with the following:

(a.1) if the qualifying period is any of the eighteenth qualifying period to the twentieth qualifying period, the percentage determined by the formula

$$A + B$$

where

A is the eligible entity’s base percentage for the qualifying period, and

B is the eligible entity’s top-up percentage for the qualifying period; and

(b) for a qualifying period after the twentieth qualifying period, a percentage determined by regulation in respect of the eligible entity or, if there is no percentage determined by regulation for the qualifying period, nil. (*pourcentage de subvention pour le loyer*)

(17) The description of A in the definition *rent top-up percentage* in subsection 125.7(1) of the Act is replaced by the following:

A is 25%, or a prescribed percentage, for any of the eighth qualifying period to the twentieth qualifying period and nil, or a prescribed percentage, for any subsequent qualifying period,

(18) Paragraphs (a) to (c) of the definition *specified percentage* in subsection 125.7(1) of the Act are replaced by the following:

(a) for the first qualifying period, 85%; and

(b) for any of the second qualifying period to the fourth qualifying period, 70%. (*pourcentage déterminé*)

(19) The definition *top-up percentage* in subsection 125.7(1) of the Act is replaced by the following:

top-up percentage, of an eligible entity for a qualifying period, means the percentage determined by regulation for the qualifying period or, if there is no percentage determined by regulation for the qualifying period,

(a) for any of the fifth qualifying period to the tenth qualifying period, the lesser of 25% and the percentage determined by the formula

$$1.25 \times (A - 50\%)$$

where

A is the entity’s top-up revenue reduction percentage for the qualifying period;

(b) for any of the eleventh qualifying period to the seventeenth qualifying period, the lesser of 35% and the percentage determined by the formula

$$1.75 \times (A - 50\%)$$

where

A is the entity’s top-up revenue reduction percentage for the qualifying period;

(c) for the eighteenth qualifying period, the lesser of 25% and the percentage determined by the formula

$$1.25 \times (A - 50\%)$$

where

A is the entity’s top-up revenue reduction percentage for the qualifying period;

(d) for the nineteenth qualifying period, the lesser of 15% and the percentage determined by the formula

$$0.75 \times (A - 50\%)$$

where

A is the entity's top-up revenue reduction percentage for the qualifying period;

(e) for the twentieth qualifying period, the lesser of 10% and the percentage determined by the formula

$$0.5 \times (A - 50\%)$$

where

A is the entity's top-up revenue reduction percentage for the qualifying period; and

(f) for a qualifying period after the twentieth qualifying period, a percentage determined by regulation in respect of the eligible entity or, if there is no percentage determined by regulation for the qualifying period, nil. (*pourcentage compensatoire*)

(20) The portion of paragraph (a) of the definition *top-up revenue reduction percentage* in subsection 125.7(1) of the Act before the formula is replaced by the following:

(a) for any of the fifth qualifying period to the seventh qualifying period, the result (expressed as a percentage) of the formula

(21) The portion of paragraph (b) of the definition *top-up revenue reduction percentage* in subsection 125.7(1) of the Act before subparagraph (i) is replaced by the following:

(b) for any of the eighth qualifying period to the tenth qualifying period, the greater of

(22) Paragraph (c) of the definition *top-up revenue reduction percentage* in subsection 125.7(1) of the Act is replaced by the following:

(c) for the eleventh qualifying period and each subsequent qualifying period, the eligible entity's revenue reduction percentage for the qualifying period. (*pourcentage compensatoire de baisse de revenue*)

(23) Subsection 125.7(1) of the Act is amended by adding the following in alphabetical order:

executive compensation repayment amount, of an eligible entity, means

(a) nil, unless

(i) shares of the capital stock of the eligible entity are listed or traded on a stock exchange or other public market, or

(ii) the eligible entity is controlled by a corporation described in subparagraph (i); and

(b) if the conditions in subparagraph (a)(i) or (ii) are met, the amount determined by the formula

$$A \times B$$

where

A is

(a) a percentage assigned to the eligible entity under an agreement if

(i) the agreement is entered into by

(A) the eligible entity,

(B) an eligible entity, shares of the capital stock of which are listed or traded on a stock exchange or other public market, that controls the eligible entity (referred to in this definition as the "public parent corporation"), if the public parent corporation received a deemed overpayment under subsection (2) in respect of the seventeenth qualifying period or any subsequent qualifying period, and

(C) each other eligible entity that received a deemed overpayment under subsection (2) in respect of the seventeenth qualifying period or any subsequent qualifying period and was controlled in that period by the eligible entity or the public parent corporation, if any,

(ii) the agreement is filed in prescribed form and manner with the Minister,

(iii) the agreement assigns, for the purposes of this definition, a percentage in respect of each eligible entity referred to in subparagraph (i) of this description,

(iv) the total of all the percentages assigned under the agreement equals 100%, and

(v) the percentage allocated to any eligible entity under the agreement would not result in an amount allocated to the eligible entity in excess of the total of all amounts of deemed overpayments of the eligible entity under subsection (2) for the seventeenth qualifying period and any subsequent qualifying period, and

(b) in any other case, 100%, and

B is the lesser of

- (a) the total of all amounts each of which is an amount of a deemed overpayment under subsection (2) for each of the entities described in subparagraph (a)(i) of the description of A for the seventeenth qualifying period and each subsequent qualifying period, other than amounts in respect of employees on leave with pay, and
- (b) the amount determined by the formula

C – D

where

- C** is the executive remuneration of the eligible entity, or of the public parent corporation that controls the eligible entity, if any, for the 2021 calendar year (prorated based upon the number of days of the eligible entity's, or public parent corporation's, fiscal periods in the calendar year, if those fiscal periods are not the calendar year), and
- D** is the executive remuneration of the eligible entity, or of the public parent corporation that controls the eligible entity, if any, for the 2019 calendar year (prorated based upon the number of days of the eligible entity's, or public parent corporation's, fiscal periods in the calendar year, if those fiscal periods are not the calendar year). (*montant du remboursement de la rémunération de la haute direction*)

executive remuneration, of an eligible entity, means

- (a) the total amount of compensation that is reported in the eligible entity's Statement of Executive Compensation for Named Executive Officers pursuant to National Instrument 51-102 Continuous Disclosure Obligations, as amended from time to time, of the Canadian Securities Administrators in respect of Named Executive Officers of the eligible entity;
- (b) if paragraph (a) does not apply and the eligible entity is required to make a similar disclosure to shareholders under the laws of another jurisdiction, the amount of total compensation reported in that disclosure (if the compensation of more than five individuals is required to be reported under that disclosure, using the five most highly compensated of those individuals); and
- (c) if paragraphs (a) and (b) do not apply, the amount that would be required to be reported by the eligible entity using the methodology for preparing the Statement of Executive Compensation referred to in paragraph (a). (*rémunération de la haute direction*)

qualifying recovery entity, for a qualifying period, means an eligible entity that meets the following conditions:

- (a) it files an application with the Minister in respect of the qualifying period in prescribed form and manner no later than 180 days after the end of the qualifying period;
- (b) it is a qualifying entity for the qualifying period;
- (c) if it is a corporation (other than a corporation that is exempt from tax under this Part), it
 - (i) is a Canadian-controlled private corporation, or
 - (ii) would be a Canadian-controlled private corporation absent the application of subsection 136(1);
- (d) if it is a partnership, throughout the qualifying period it is the case that

A ≤ 0.5B

where

- A** is the total of all amounts, each of which is the fair market value of an interest in the partnership held — directly or indirectly, through one or more partnerships — by
 - (i) a person or partnership other than an eligible entity, or
 - (ii) a corporation, other than a corporation that
 - (A) is exempt from tax under this Part, or
 - (B) is described in subparagraph (c)(i) or (ii), and
- B** is the total fair market value of all interests in the partnership; and
- (e) it has a revenue reduction percentage
 - (i) greater than 0%, if it is the seventeenth qualifying period, or
 - (ii) greater than 10%, if it is any of the eighteenth qualifying period to the twenty-second qualifying period. (*entité de relance admissible*)

recovery wage subsidy rate, for a qualifying period, means

- (a) for any of the seventeenth qualifying period to the nineteenth qualifying period, 50%;

- (b) for the twentieth qualifying period, 40%;
- (c) for the twenty-first qualifying period, 30%; and
- (d) for the twenty-second qualifying period, 20%. (*taux de subvention salariale de relance*)

total base period remuneration, of an eligible entity, means the total of all amounts, each of which is for an eligible employee in respect of a week in the fourteenth qualifying period, equal to the least of

- (a) \$1,129,
- (b) the eligible remuneration paid to the eligible employee in respect of the week,
- (c) if the eligible employee does not deal at arm's length with the eligible entity in the qualifying period, the baseline remuneration in respect of the eligible employee determined for that week, and
- (d) if the eligible employee is on leave with pay in the week, nil. (*rémunération totale de la période de base*)

total current period remuneration, of an eligible entity for a qualifying period, means the total of all amounts, each of which is for an eligible employee in respect of a week in the qualifying period, equal to the least of

- (a) \$1,129,
- (b) the eligible remuneration paid to the eligible employee in respect of the week,
- (c) if the eligible employee does not deal at arm's length with the eligible entity in the qualifying period, the baseline remuneration in respect of the eligible employee determined for that week, and
- (d) if the eligible employee is on leave with pay in the week, nil. (*rémunération totale de la période actuelle*)

(24) Section 125.7 of the Act is amended by adding the following after subsection (2.1):

Canada Recovery Hiring Program

(2.2) For a qualifying recovery entity for a qualifying period, an overpayment on account of the qualifying entity's liability under this Part for the taxation year in which the qualifying period ends is deemed to have arisen during the qualifying period in an amount determined by the formula

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

where

- A** is the recovery wage subsidy rate for the qualifying period;
- B** is the qualifying recovery entity's total current period remuneration for the qualifying period; and
- C** is the qualifying recovery entity's total base period remuneration.

(25) Subsection 125.7(3) of the Act is replaced by the following:

When assistance received

(3) For the purposes of this Act other than this section, and for greater certainty, an amount that an eligible entity is deemed under any of subsections (2) to (2.2) to have overpaid is assistance received by it from a government immediately before the end of the qualifying period to which it relates.

(26) Paragraph 125.7(4.2)(d) of the Act is replaced by the following:

- (d) if the seller meets any of the following conditions, the eligible entity is deemed to meet that condition:
 - (i) either of the conditions in paragraph (d) of the definition *qualifying entity* in subsection (1), and
 - (ii) both of the conditions in subparagraph (c)(ii), or the condition in subparagraph (c)(iii), of the definition *qualifying renter* in subsection (1); and

(27) Paragraphs 125.7(5)(a) and (b) of the Act are replaced by the following:

- (a) the amount of any deemed overpayment by an eligible entity under any of subsections (2) to (2.2) in respect of a qualifying period cannot exceed the amount claimed by the eligible entity — in the application referred to in paragraph (a) of the definition *qualifying entity* in subsection (1), paragraph (a) of the definition *qualifying renter* in subsection (1) or paragraph (a) of the definition *qualifying recovery entity* in subsection (1) — in respect of that qualifying period; and
- (b) if an eligible employee is employed in a week by two or more qualifying entities that do not deal with each other at arm's length, the total amount of the deemed overpayment under subsection (2) or (2.2) in respect of the eligible employee for that week shall not exceed the amount that would arise if the eligible employee's eligible remuneration for that week were paid by one qualifying entity.

(28) Subparagraph 125.7(6)(b)(ii) of the Act is replaced by the following:

(ii) in respect of the fifth qualifying period and subsequent qualifying periods, increase the amount of a deemed overpayment under subsection (2), or

(29) Section 125.7 of the Act is amended by adding the following after subsection (6):**Anti-avoidance — recovery wage subsidy**

(6.1) Notwithstanding any other provision in this section, the total current period remuneration of an eligible entity for a qualifying period is deemed to be equal to the total base period remuneration of the eligible entity, if

(a) the eligible entity, or a person or partnership not dealing at arm's length with the eligible entity, enters into a transaction or participates in an event (or a series of transactions or events) or takes an action (or fails to take an action) that has the effect of increasing the difference between the total current period remuneration and the total base period remuneration of the eligible entity for the qualifying period; and

(b) it is reasonable to conclude that one of the main purposes of the transaction, event, series or action in paragraph (a) is to increase the amount of a deemed overpayment under subsection (2.2).

(30) Paragraphs 125.7(7)(a) and (b) of the Act are replaced by the following:

(a) for the purposes of subsections (2) to (2.2) and subsections 152(3.4) and 160.1(1), to be a taxpayer, and

(b) for the purposes of subsections (2) to (2.2), to have a liability under this Part for a taxation year in which a qualifying period ends.

(31) Subparagraphs 125.7(8)(a)(i) and (ii) of the Act are replaced by the following:

(i) the percentages in subparagraphs (a)(i), (b)(i), (c)(i), (d)(i), (e)(i), (f)(i), (g)(i), (h)(i), (i)(i) and (j)(i), and

(ii) the factors in subparagraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii), (e)(ii), (f)(ii), (g)(ii), (h)(ii), (i)(ii) and (j)(ii); and

(32) Paragraph 125.7(8)(b) of the Act is replaced by the following:

(b) the definition *rent subsidy percentage* in subsection (1), the factors and percentages in paragraphs (a) and (a.1) of that definition;

(b.1) the definition *recovery wage subsidy rate*, the percentages in that definition; and

(33) Section 125.7 of the Act is amended by adding the following after subsection (9):**Special case**

(9.1) For the purposes of paragraph (9)(b), if the particular qualifying period is the eleventh qualifying period, then the immediately preceding qualifying period is deemed to be the ninth qualifying period.

Greater of wage and recovery subsidies

(9.2) For a qualifying period,

(a) if the amount of any deemed overpayment under subsection (2) is equal to or greater than the amount of any deemed overpayment under subsection (2.2), the amount of any deemed overpayment under subsection (2.2) is deemed to be nil; and

(b) if the amount of any deemed overpayment under subsection (2.2) is greater than the amount of any deemed overpayment under subsection (2), the amount of any deemed overpayment under subsection (2) is deemed to be nil.

(34) Section 125.7 of the Act is amended by adding the following after section (13)**Executive compensation**

(14) The amount of a refund made by the Minister to an eligible entity in respect of a deemed overpayment under subsection (2) on a particular date under subsection 164(1.6), in respect of any of the seventeenth qualifying period to the twenty-second qualifying period, is deemed to be an amount that has been refunded to the eligible entity on that particular date (for the taxation year in which the refund was made) in excess of the amount to which the eligible entity was entitled as a refund under this Act to the extent of the lesser of the amount of the refund and the amount determined by the formula

$$A - B$$

where

A is the executive compensation repayment amount of the eligible entity; and

B is the total of all amounts deemed to be an excess refund to the eligible entity under this subsection in respect of refunds made after the particular date.

Foreign currency — executive remuneration

(15) For the purposes of paragraphs 261(2)(b) and (5)(c), amounts referred to in the definition *executive remuneration* in subsection (1) are deemed to arise on the last day of the eligible entity's fiscal period to which the amount relates and not at any other time.

(35) Subsections (12) and (26) are deemed to have come into force on September 27, 2020.

18 Subsection 152(3.4) of the Act is replaced by the following:**COVID-19 — notice of determination**

(3.4) The Minister may at any time determine the amount deemed by any of subsections 125.7(2) to (2.2) to be an overpayment on account of a taxpayer's liability under this Part that arose during a *qualifying period* (as defined in subsection 125.7(1)), or determine that there is no such amount, and send a notice of the determination to the taxpayer.

19 (1) Subparagraph 163(2)(i)(i) of the Act is replaced by the following:

(i) the amount that would be deemed by any of subsections 125.7(2) to (2.2) to have been an overpayment by the person or partnership if that amount were calculated by reference to the information provided in the application filed pursuant to paragraph (a) of the definition *qualifying entity* in subsection 125.7(1), paragraph (a) of the definition *qualifying renter* in subsection 125.7(1) or paragraph (a) of the definition *qualifying recovery entity* in subsection 125.7(1), as the case may be

(2) Section 163 of the Act is amended by adding the following after subsection (2.901):**Penalty — COVID-19**

(2.902) Every eligible entity that is deemed by subsection 125.7(6.1) to have an amount of total current period remuneration for a qualifying period is liable to a penalty equal to 25% of the amount that would be deemed by subsection 125.7(2.2) to have been an overpayment by the eligible entity during that qualifying period if that amount were calculated by reference to the information provided in the application filed pursuant to paragraph (a) of the definition *qualifying recovery entity* in subsection 125.7(1).

20 Subsection 164(1.6) of the Act is replaced by the following:**COVID-19 refunds**

(1.6) Notwithstanding subsection (2.01), at any time after the beginning of a taxation year of a taxpayer in which an overpayment is deemed to have arisen under any of subsections 125.7(2) to (2.2), the Minister may refund to the taxpayer all or any part of the overpayment.

21 Section 8901.2 of the *Income Tax Regulations* is replaced by the following:

8901.2 The amount determined by regulation in respect of a qualifying entity for the purposes of clause (b)(iv)(B) of the description of A in subsection 125.7(2) of the Act for a week in a qualifying period is

- (a)** for the seventh qualifying period and eighth qualifying period, the greater of
 - (i)** the amount determined for the week under subparagraph (a)(i) of the description of A in subsection 125.7(2) of the Act, and
 - (ii)** the amount determined for the week under subparagraph (a)(ii) of the description of A in subsection 125.7(2) of the Act;
- (b)** for the ninth qualifying period and the tenth qualifying period, the greater of
 - (i)** \$500, and
 - (ii)** the lesser of
 - (A)** 55% of *baseline remuneration* (as defined in subsection 125.7(1) of the Act) in respect of the eligible employee determined for that week, and
 - (B)** \$573;
- (c)** for any of the eleventh qualifying period to the nineteenth qualifying period, the greater of
 - (i)** \$500, and
 - (ii)** the lesser of
 - (A)** 55% of *baseline remuneration* (as defined in subsection 125.7(1) of the Act) in respect of the eligible employee determined for that week, and
 - (B)** \$595; and

(d) for the twentieth qualifying period and any subsequent qualifying period, nil.

DENTONS CANADA LLP COMMENTARY

Extending the Canada Emergency Wage Subsidy (“CEWS”)

Budget 2021 proposes to extend the CEWS from the previous end-date of June 5, 2021 until September 25, 2021. It also proposes to gradually decrease the subsidy rate, starting on July 4, 2021. This proposed gradual decrease is intended to ensure a systematic phase-out of the CEWS as vaccinations are administered and the economy reopens. Budget 2021 also proposes to provide the government with the legislative authority to extend the CEWS beyond September 25, 2021 to November 20, 2021 if required.

With the introduction of the new Canada Recovery Hiring Program, another subsidy for employers suffering revenue decline due to the pandemic, eligible employers can claim the higher of the CEWS and the newly proposed subsidy under the Canada Recovery Hiring Program (see section on the Canada Recovery Hiring Program for more information).

Repayment of CEWS where Executives Are Paid More in 2021 than in 2019

Budget 2021 introduces measures to ensure that the CEWS has not been used to increase executive compensation. Where a publicly listed company, or a company controlled by a publicly listed company, has received the CEWS and is found to be paying specified executives more in 2021 than in 2019, Budget 2021 proposes to require the company to repay wage subsidy amounts received for any qualifying period starting after June 5, 2021 until the end of the wage subsidy program. A publicly listed corporation’s specified executives includes the corporation’s named executive officers whose compensation is required to be disclosed under Canadian securities laws in its annual information circular provided to shareholders, or similar executives where the corporation is listed in another jurisdiction.

The amount of the wage subsidy required to be repaid would be equal to the lesser of:

- the total of all wage subsidy amounts received in respect of active employees for qualifying periods that being after June 5, 2021; and
- the amount by which the corporation’s aggregate specified executives’ compensation for 2021 exceeds its aggregate specified executives’ compensation for 2019.

The proposed definition of “executive compensation repayment amount” in subsection 125.7(1) provides a formula for calculating the repayment amount and provides that the amount of “executive remuneration” used in such calculation shall be prorated based on the number of days of the entity’s fiscal periods in the calendar year if the fiscal periods are not the calendar year.

Support for Furloughed Employees

Budget 2021 proposes that the weekly wage subsidy for furloughed employees from June 6, 2021 to August 28, 2021 be the lesser of:

- the amount of eligible remuneration paid in respect of the week; and
- the great of:
 - \$500; and
 - 55 % of pre-crisis remuneration for the employee, up to a maximum of \$595.

This proposal aims to ensure that the wage subsidy for furloughed employees remains in step with benefits available under employment insurance.

Under Budget 2021, the wage subsidy for furloughed employees would continue to be available until August 28, 2021.

Reference Periods

Budget 2021 proposes an alternate approach to determining an employer's revenue decline compared to pre-pandemic revenues. Under the general approach, an employer compares its revenues in a given calendar month with revenues in the same month pre-pandemic. Under the alternative approach, an employer compares its monthly revenues in each month relative to the average of its January 2020 and February 2020 revenues as opposed to the corresponding month pre-pandemic.

A deeming rule provides that an employer's decline in revenues for any particular qualifying period is the greater of its decline in revenues for the particular period and the immediately preceding qualifying period.

If employers had previously used the general approach, they must continue to do so. Similarly, if they chose to use the alternative approach, they must continue to use it for future period.

Baseline Remuneration

Under the general rules an eligible employer's entitlement to the wage subsidy for a furloughed employee and certain active employees is based on a calculation that takes into consideration the employee's current and pre-crisis remuneration. The employer is able to elect an alternate baseline period for calculating the average weekly eligible remuneration.

To ensure the alternate baseline remuneration periods for a particular qualifying period continue to generally reflect the corresponding calendar months in the qualifying period, Budget 2021 proposes to allow eligible employers to elect to use the following alternative baseline remuneration periods to ensure that alternative baseline remuneration periods for a particular qualifying period generally reflect the corresponding calendar months covered by the qualifying period:

- March 1 to June 30, 2019 or July 1 to December 31, 2019, for the qualifying period between June 6, 2021 and July 3, 2021; and
- July 1 to December 31, 2019, for qualifying periods beginning after July 3, 2021.

The Canada Emergency Rent Subsidy (the "CERS") is a subsidy available to certain eligible taxpayers ("qualifying renters") who have incurred rent expenses

in respect of real property in Canada and who have experienced a decrease in qualifying revenues during the COVID-19 pandemic. A qualifying renter may apply for the CERS in any of nine qualifying periods, each of which is four weeks in length, ending on June 5, 2021.

Under the current program, a qualifying renter who experienced any decrease in its qualifying revenues in a month as compared to the same month in 2019 (or, in the case of a decrease in qualifying revenues in January 2021 or February 2021, as compared to January 2020 or February 2020, as the case may be) is eligible to receive a base amount equal to the qualifying renter's "rent subsidy percentage" multiplied by its qualifying rent expenses. The qualifying renter's rent subsidy percentage depends on the extent of the decrease in its qualifying revenues. A qualifying renter may alternatively elect to compare its qualifying revenues in a month to the average revenue of January and February 2020 for all periods. Furthermore, where a qualifying renter is forced to cease certain activities at the property to which the qualifying rent pertains for at least a week pursuant to a "public health restriction" made in response to the COVID-19 pandemic, the qualifying renter may also be eligible to receive up to 25% of its rent expenses in lockdown support, depending on the number of days in the application period the public health restriction is in place.

Budget 2021 proposes to extend the CERS for four additional four-week periods, ending on September 25, 2021 and gives the government the legislative authority to extend the CERS until November 20, 2021. The rent subsidy percentage will be gradually phased out, starting on July 4, 2021, and qualifying renters who have experienced a decrease in qualifying revenues of no more than 10% will no longer be eligible for the base amount of the CERS. The lockdown support will continue to be available for qualifying renters who qualify for the base rent subsidy.

Budget 2021 also introduces a rule that deems an eligible entity who purchases the assets from another entity to be a qualifying renter where certain conditions are met.

Budget 2021 proposes to introduce the Canada Recovery Hiring Program (the "hiring subsidy") to provide eligible employers that continue to experience qualifying declines in revenues relative to before the pandemic with a subsidy of up to 50% on the incremental remuneration paid to eligible employees in each qualifying period (that is four weeks in duration) between June 6, 2021 and November 20, 2021.

Eligible Employers

Employers eligible for the CEWS are also generally eligible for the hiring subsidy. However, an eligible employer is only permitted to claim either the hiring subsidy or the CEWS in any particular qualifying period, not both.

Eligible employers include individuals, non-profit organizations, registered charities, certain partnerships and Canadian-controlled private corporations (including cooperative corporations that are eligible for the small business deduction), that had a payroll account open with the CRA on March 15, 2020, which precludes new businesses from participating in this program.

Employers that are not eligible for the hiring subsidy include corporations that are not Canadian-controlled private corporations, and corporations and trusts that are public institutions (i.e., Crown corporations, public universities, hospitals, etc.).

Eligible Employees

An eligible employee must be employed primarily in Canada by an eligible employer throughout a qualifying period (or the portion of the qualifying period throughout which the individual was employed by the eligible employer).

Employees that are on leave with pay (“furloughed employees”) are not eligible for the hiring subsidy, with the exception of employees on a period of paid absence, such as a vacation leave, sick leave or a sabbatical.

Eligible Remuneration and Incremental Remuneration

Eligible remuneration generally includes salary, wages, and other remuneration paid in respect of a qualifying period for which employers are required to withhold or deduct amounts on account of the employee’s income tax obligations, but not severance pay, or items such as stock option benefits or personal use benefits.

Incremental remuneration for a qualifying period means the difference between an employer’s total eligible remuneration paid to eligible employees for the qualifying period and its total eligible remuneration paid to eligible employees for the baseline period (March 14, 2021 to April 10, 2021). Total eligible remuneration paid in both periods is subject to a cap of \$1,129 per week per employee, and in the case of non-arm’s length employees, their eligible remuneration for a week cannot exceed their baseline remuneration determined for that week.

Subsidy Amount

If an eligible employer’s decline in revenues exceeds the revenue-decline threshold for a qualifying period, its subsidy in that qualifying period is equal to its incremental remuneration multiplied by the applicable hiring subsidy rate for that qualifying period (the hiring subsidy rate for each qualifying period ranges between 20 to 50% in descending order).

This subsidy is received as an overpayment on account of the eligible employer’s liability under Part I of the Income Tax Act for the taxation year in which the which the qualifying period ends.

Revenue-Decline Threshold

To qualify for the hiring subsidy in a qualifying period, an eligible employer must have experienced a decline in revenues sufficient to qualify for the CEWS in that qualifying period, and for all other qualifying periods (between July 4, 2021 and November 20, 2021) a decline of more than 10% relative to the same calendar period pre-pandemic (i.e. in 2019). An employer can instead elect to use an alternative

approach, which compares the employer's monthly revenues relative to the average of its January 2020 and February 2020 revenues, but once an employer use one of the approaches it must continue to use that approach for the balance of its qualifying periods. Finally, a deeming rule provides that an employer's revenue-decline for the purpose of determining its hiring subsidy in any of its qualifying periods is the greater of its decline in revenues in that qualifying period and the qualifying period immediately preceding it.

An application for the hiring subsidy for a qualifying period is required to be made no later than 180 days after the end of the qualifying period.

Resolution 22: Immediate Expensing

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

DENTONS CANADA LLP COMMENTARY

Budget 2021 introduces a temporary immediate expensing measure to encourage capital investments across various sectors of the economy. Currently, the capital cost allowance (CCA) system determines what deductions a business may claim each year for income tax purposes in respect of the capital cost of its depreciable property.

The new measure allows for temporary immediate expensing in respect of certain property acquired by Canadian-Controlled Private Corporations (CCPCs). The immediate expensing applies only to “eligible property” that is:

1. acquired by a CCPC on or after April 19, 2021 (Budget Day), and
2. available for use before January 1, 2024.

The maximum amount of immediate expensing is limited to \$1.5 million per taxation year and is only available in the year the property first becomes available for use. This new immediate expensing rule does not alter the total amount of CCA that can be deducted over the life of the property, but rather allows for a larger deduction taken in the first year, resulting in smaller deductions, if any, in future years.

Eligible property under the new immediate expensing regime includes capital property that is subject to the CCA rules, with the exception of CCA property included in classes 1 through 6, 14.1, 17, 47, 49, and 51.

The integrity rules currently applying under the CCA regime apply to the new immediate expensing measure. Property subject to restrictions under the existing CCA rules (e.g. rental properties) continues to be subject to the same restrictions notwithstanding the new immediate expensing proposals. Additional restrictions have also been proposed such that property that has been used, or acquired for use, for any purpose before it was acquired by the taxpayer is only eligible for immediate expensing if the property meets both of the following conditions:

1. neither the taxpayer nor a non-arm's length person previously owned the property; and
2. the property has not been transferred to the taxpayer on a tax-deferred rollover basis.

For CCPCs that acquire eligible capital property in a taxation year exceeding \$1.5 million, the CCPC can decide which CCA class the immediate expensing is to be attributed and any excess capital costs will be subject to the normal CCA rules. A CCPC can immediately expense up to \$1.5 million, in addition to all other CCA claims, provided that the total CCA deduction does not exceed the capital cost of the property. Additionally, the \$1.5 million limit is shared among associated members of a group of CCPCs.

For CCPCs with less than \$1.5 million of eligible capital costs, no carry-forward of excess capital is permitted.

Resolution 23: Rate Reduction for Zero-Emission Technology Manufacturers

23 The Act is modified to give effect to the proposals relating to a Rate Reduction for Zero-Emission Technology Manufacturers as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Federal budget 2021 proposes to temporarily cut the federal General Corporate Rate and the Small Business Rate in half to 7.5% and 4.5% respectively for eligible income from eligible activities. The measure is proposed to be temporary, applying to taxation years beginning after 2021, and being gradually phased out between 2029 and 2031.

The reduced tax rates are proposed to apply to a corporation's eligible income if that eligible income is at least 10% of its gross revenue. Eligible income is proposed to be determined by multiplying the corporation's "adjusted business income" by the proportion of its costs of labour and capital used in its eligible activities. "Adjusted business income" is proposed to be calculated using methods similar to the calculation of manufacturing and processing profits under current tax rules.

Eligible activities are proposed to include the following zero-emission technology manufacturing or processing activities:

- manufacturing of solar energy conversion equipment, such as solar thermal collectors, photovoltaic solar arrays and bespoke supporting structures or frames, but excluding passive solar heating equipment (e.g., a masonry wall installed to absorb solar energy);
- manufacturing of wind energy conversion equipment, such as wind turbine towers, nacelles and rotor blades;
- manufacturing of water energy conversion equipment, such as hydroelectric, water current, tidal and wave energy conversion equipment;
- manufacturing of geothermal energy equipment;
- manufacturing of equipment for a ground source heat pump system;
- manufacturing of electrical energy storage equipment used for storage of renewable energy or for providing grid-scale storage or other ancillary services (e.g., voltage regulation), including battery, compressed air and flywheel storage systems;
- manufacturing of zero-emission vehicles (i.e., plug-in hybrid vehicles with a battery capacity of at least seven kilowatt-hours, electric vehicles and hydrogen-powered vehicles) and the conversion of vehicles into zero-emission vehicles;
- manufacturing of batteries and fuel cells for zero-emission vehicles;
- manufacturing of electric vehicle charging systems and hydrogen refuelling stations for vehicles;
- manufacturing of equipment used for the production of hydrogen by electrolysis of water;
- production of hydrogen by electrolysis of water; and

- production of solid, liquid or gaseous fuel (e.g., wood pellets, renewable diesel and biogas) from either carbon dioxide or specified waste material (i.e., wood waste, municipal waste, sludge from an eligible sewage treatment facility, plant residue, spent pulping liquor, food and animal waste, manure, pulp and paper by-product and separated organics), but excluding the production of by-products which is a standard part of another industrial or manufacturing process (e.g., the production of wood chips, black liquor or hog fuel as part of another wood transformation process).

The above eligible activities are proposed to include the manufacturing of components or sub-assemblies only if such equipment is purpose-built or designed exclusively to form an integral part of the relevant system. Eligible activities are proposed to exclude all activities that do not qualify as manufacturing or processing for the purposes of the capital cost allowance rules.

As the program is temporary, no resulting modifications are proposed to be made to the dividend tax credit rates or the allocation of corporate income for the purpose of dividend distributions. Furthermore, the reduction to the small business rate will continue to be limited to a Canadian controlled private corporation's first \$500,000 of active business income per year.

Resolution 24: Capital Cost Allowance for Clean Energy Equipment

24 The Act is modified to give effect to the proposals relating to Capital Cost Allowance for Clean Energy Equipment as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Expansion of CCA Classes 43.1 and 43.2 for certain green technology

Classes 43.1 and 43.2 are proposed to be amended to be expanded as follows.

Pumped hydroelectric storage equipment:

- Proposed to be amended to remove exclusions for pumped hydroelectric storage:
- Eligible property is proposed to include reversing turbines, transmission equipment, dams, reservoirs and related structures.
- Eligible property is proposed to exclude buildings or property used solely for backup electrical energy.

Electricity generation equipment harnessing the kinetic energy of flowing water or wave or tidal energy:

- Proposed to be amended to remove exclusions for equipment that generates electricity by diverting or impeding the natural flow of water, or by using physical barriers or dam-like structures.

Swimming pool heating equipment:

- Proposed to be amended to remove exclusions for active solar heating systems, ground source heat pump systems, and geothermal energy systems that are used to heat water for a swimming pool.

Equipment used to produce solid and liquid fuels from specified waste material or carbon dioxide:

- Proposed to be expanded to include equipment used to convert specified waste material into bio-coal or pellets (including torrefied pellets), but excluding standard equipment used to make wood chips, hog fuel and black liquor.
- Eligible property is proposed to include equipment where all or substantially all of the use of the equipment is in a system that produces bio-coal or pellets (including torrefied pellets) from specified waste material, including storage equipment, materials handling equipment and ashhandling equipment.
- Eligible property is proposed to exclude equipment used for shredding, drying or cutting organic material (other than equipment all or substantially all of the use of which is to produce fuel for sale), vehicles, and buildings or other structures.
- Proposed to be expanded to include a broader range of equipment used to produce liquid biofuels (e.g., ethanol, biodiesel and renewable diesel) from specified waste material or carbon dioxide.

- Eligible property is proposed to include equipment where all or substantially all of the use of the equipment is to produce liquid fuels from specified waste material, including related piping, storage equipment, materials handling equipment, ashhandling equipment and equipment used to remove non-combustibles and contaminants from the fuels produced.
- Eligible property is proposed to exclude equipment used to produce spent pulping liquor, vehicles, and buildings or other structures.
- “Specified waste material” is proposed to be defined to include wood waste, municipal waste, sludge from an eligible sewage treatment facility, plant residue, spent pulping liquor, food and animal waste, manure, pulp and paper byproduct, and separated organics.

Equipment used for the production of hydrogen by electrolysis of water:

- Proposed to be expanded to include a broader range of equipment used to produce hydrogen by electrolysis of water.
- Eligible property is proposed to include equipment where all or substantially all of the use of the equipment is to produce hydrogen by electrolysis of water, including electrolyzers, rectifiers and other ancillary electrical equipment; water treatment and conditioning equipment; and equipment used for hydrogen compression and storage. Eligible property would not be required to be powered by renewable energy sources eligible for inclusion.
- Eligible property is proposed to exclude hydrogen transmission or distribution equipment; electrical transmission or distribution equipment; vehicles or auxiliary electrical generating equipment; and buildings or other structures.

Equipment used to dispense hydrogen for use in hydrogen-powered automotive equipment and vehicles:

- Proposed to be expanded to include hydrogen refuelling equipment.
- Eligible property is proposed to include equipment used to dispense hydrogen for use in hydrogen-powered automotive equipment and vehicles, including vaporization, compression, storage and cooling equipment.
- Eligible property is proposed to exclude hydrogen production equipment; hydrogen transmission equipment; electrical transmission and distribution equipment; vehicles or auxiliary electrical generating equipment; and buildings or other structures.

Accelerated CCA is proposed to be available in respect of property within the above expanded inclusions only if, at the time the property becomes available for use, the requirements of all Canadian environmental laws, by-laws and regulations applicable in respect of the property have been met.

Restriction of CCA Classes 43.1 and 43.2 for certain equipment that utilizes fossil fuels

Classes 43.1 and 43.2 are proposed to be amended to exclude the following types of equipment that utilizes fossil fuels:

- Fossil-fuelled cogeneration systems: Fossil-fuelled cogeneration systems generate both electricity and useful heat using fossil fuels as the energy source.
- Fossil-fuelled enhanced combined cycle systems: Combined cycle systems that use two different heat engines simultaneously to produce electricity, and “enhanced combined cycle system” in which thermal waste from one or more natural gas compressor systems is recovered and used to contribute at least 20 per cent of the energy input of a combined cycle process in order to enhance the generation of electricity.
- Specified waste-fuelled electrical generation systems: Systems for which more than one quarter of the total fuel energy input is from fossil fuels determined on an annualized basis.
- Specified waste-fuelled heat production equipment: Systems for which more than one quarter of the total fuel energy input is from fossil fuels determined on an annualized basis.
- Producer gas generating equipment: Equipment for which more than one quarter of the total fuel energy input is from fossil fuels.

Specified waste-fuelled heat production equipment: Classes 43.1 and 43.2 are proposed to be amended to provide for a specified method to determine the heat-rate threshold for specified waste-fuelled heat production equipment with a electrical output capacity of 3 megawatts or less:

$$\text{Heart Rate} = \frac{(2 \times F_{\text{fossil}}) + F_{\text{waste}}}{E + (H \div 3412)}$$

where:

- F_{fossil} is the energy content of the fossil fuel consumed by the system in a year in BTU (excluding solution gas), calculated based on the fuel’s higher heating value;
- F_{waste} is the energy content of the specified waste fuel consumed by the system in a year in BTU, calculated based on the fuel’s higher heating value;
- E is the gross electrical energy produced by the system in a year in kilowatt-hours; and
- H is the net useful energy in the form of heat exported from the system to a thermal host in a year in BTU.

Producer gas generating equipment: Classes 43.1 and 43.2 are proposed to be amended to remove from the eligible fuels producer gas generated from more than one-quarter fossil fuel energy input.

Effective Dates

The expansion of Classes 43.1 and 43.2 are proposed to for property acquired and that becomes available for use on or after Budget Day, provided it has not been used or acquired for use for any purpose before Budget Day.

The removal of certain property from eligibility for Classes 43.1 and 43.2, as well as the application of the new heat rate threshold for specified waste-fuelled electrical generation systems, is proposed to apply in respect of property that becomes available for use after 2024.

Resolution 25: Film or Video Production Tax Credits

25 The Act is modified to give effect to the proposals relating to Film or Video Production Tax Credits as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Sections 125.4 and 125.5 of the *Income Tax Act* provide for the Canadian Film or Video Production Tax Credit (CPTC) and the Film or Video Production Tax Credit (PSTC), respectively.

The CPTC applies to productions that meet certain Canadian-content requirements and provides for a 25% refundable tax credit on qualified labour expenditures. The PSTC (also known as the production services tax credit) provides a 16% refundable tax credit on qualified Canadian labour expenditures incurred by producers of films or television programs that do not meet the Canadian-content requirements for the CPTC.

With respect to the CPTC, both section 125.4 of the Act and Reg. 1106 of the *Income Tax Regulations* contain a number of time-based eligibility requirements. Budget 2021 proposes to extend, by an additional 12 months, the time-period to meet these requirements. Specifically, the following changes are proposed:

- The 24-month period to incur qualifying expenditures before the date that principal photography begins (the “production commencement time”) is extended to 36 months.
- The 24-month period to file an application for certificate of completion following the end of the tax year in which principal photography began is extended to 36 months. In addition, the new 12-month extension would apply in addition to the existing 18-month extension that is currently available.

With respect to the PSTC, the current requirements in Reg. 9300 for qualification as an “accredited production” to meet aggregate expenditure thresholds are extended by 12 months.

For both the CPTC and the PSTC, taxpayers would be required to file a waiver with the CRA and the Canadian AudioVisual Certification Office (CAVCO) to extend the assessment limitation period in order to take into account the 12-month extension.

Resolution 26: Mandatory Disclosure Rules

26 The Act is modified to give effect to the proposals relating to Mandatory Disclosure Rules as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2021 proposes to expand significantly the reportable transaction rules that are currently in section 237.3 of the *Income Tax Act* in accordance with OECD's BEPS Action 12 on Mandatory Disclosure.

The Government is consulting on proposals to enhance Canada's mandatory disclosure rules. The consultation will address:

- changes to the existing reportable transaction rules;

Currently, two of the three generic hallmarks are required to be met to make a transaction reportable. These hallmarks are (a) contingency fees, (b) confidential protection" required by the promoter or tax advisor and (c) "contractual protection" (such as insurance or an undertaking by the promoter or advisor) is afforded to the taxpayer. Budget 2021 proposes that only one such hallmark will be required. Budget 2021 also proposes to expand the definition of "avoidance transaction" and accelerate the reporting deadlines for reportable transactions to 45 days after the earlier of the date the taxpayer becomes contractually obligated to enter into the transaction or actually enters into the transaction.

- a new requirement to report "notifiable transactions"

Notifiable transactions would be those identified by the Minister of National Revenue and Minister of Finance and would be described by setting out a fact pattern or outcome in sufficient detail to enable taxpayers to comply with the disclosure rule. These notifiable transactions would need to be reported to the CRA within 45 days of the earlier of the day the taxpayer is contractually obligated to enter into the transactions or actually enters into the transactions.

- a new requirement for "specified corporations" to report uncertain tax treatments

A specified corporate taxpayer will include corporations with at least \$50 million in assets at the end of the financial year, has audited financial statements and those financial statements reflect uncertainty with at least one tax position.

- related rules providing for the extension reassessment period where a taxpayer has not complied with the reporting requirements and the introduction of penalties.

Budget 2021 proposes that the expanded mandatory disclosure rules will apply to taxation years that begin after 2021 (where the measure applies to a taxpayer's taxation year) or to transactions entered into on or after January 1, 2022 (where the measure applies to transactions). No penalties will apply in respect of transactions that occur before the date on which the enacting legislation receives Royal Assent.

Resolution 27: Avoidance of Tax Debts

27 The Act is modified to give effect to the proposals relating to Avoidance of Tax Debts as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Section 160 of the *Income Tax Act* is a collection provision and anti-avoidance rule, the purpose of which is to prevent taxpayers from depleting assets that could be used to satisfy their tax liabilities by transferring property to non-arm's length persons for insufficient consideration. Section 160 is broadly worded and applies to transfers made either directly or indirectly, by means of a trust or by any other means.

Where section 160 applies, the transferee is jointly and severally liable with the transferor for the tax liabilities of the transferor in the current or prior taxation year, to the extent that the value of the property transferred exceeds the amount of consideration given for the property.

Finance has observed that taxpayers have been successful in avoiding the application of section 160 by entering into transactions designed to avoid one or more of the conditions that must be satisfied for section 160 to apply, such as:

- arranging for a tax debt to crystallize after the end of the taxation year in which the property transfer occurs;
- arranging for the transferor to be dealing at arm's length with the transferee at the time of the property transfer; or
- stripping out net asset value of the transferor using a series of transactions that do not breach the point-in-time valuation test for the property transferred and consideration given therefor.

In addition, recent decisions from the Tax Court of Canada and the Federal Court of Appeal finding in favour of the taxpayers have handed the federal government additional setbacks on its ability to apply section 160 (as well as the GAAR) in complicated transactions. See for instance, *Damis Properties Inc. v The Queen*, 2021 TCC 24 and *Eyeball Networks Inc. v R*, 2021 FCA 17.

As such, Budget 2021 proposes a number of measures aimed at curtailing this type of planning, including penalties against parties who devise or promote such plans.

Deferral of Tax Debts

First, a measure is proposed that would provide that, for the purposes of section 160, a tax debt would be deemed to have arisen before the end of the taxation year in which a transfer of property occurred if it is reasonable to conclude that:

- the transferor (or a person that does not deal at arm's length with the transferor) had knowledge (or would have knowledge if they had made reasonable inquiries) that there would be a tax amount owing by the transferor (or there would be a tax amount owing if not for additional tax planning done as part of the series of transactions that includes the transfer) that would arise after the end of the taxation year; and

- one of the purposes for the transfer of property was to avoid the payment of the future tax debt.

Avoidance of Non-Arm's Length Status

In addition, Budget 2021 proposes a measure that would, for the purposes of section 160, deem a transferor and transferee to be dealing at non-arm's length if:

- at any time within a series of transactions or events that includes the transfer, the transferor and transferee do not deal at arm's length; and
- it is reasonable to conclude that one of the purposes of a transaction or event (or a series of transactions or events) within that series was to cause the transferor and transferee to deal at arm's length at the time of transfer.

Valuation

Budget 2021 also introduces a rule applicable to instances where transfers of property are made as part of a series of transactions or events. Under the current rules, the value of property transferred by a transferor or the value of consideration given by a transferee for such property, is determined at the time the transfer is made. The new rule provides that the overall result of the series would be considered in determining the values of the property transferred and the consideration given for the property, rather than using the values at the time of the transfer.

Penalty

Finally, Budget 2021 introduces a penalty for planner and promoters of these so called tax debt avoidance schemes. The new penalty mirrors the existing penalties under the "third party civil penalty" rules under section 163.2 of the *Income Tax Act*. In particular, the penalty would be equal to the lesser of:

- 50 per cent of the tax that is attempted to be avoided; and
- \$100,000 plus the promoter's or planner's compensation for the scheme.

The proposed rules will apply in respect of transfers of property that occur on or after Budget Day. Similar amendments would be made to the comparable provisions in other federal statutes (e.g., section 325 of the *Excise Tax Act*, section 297 of the *Excise Act, 2001* and section 161 of the *Greenhouse Gas Pollution Pricing Act*).

Resolution 28: Audit Authorities

28 (1) Subsection 231.1(1) of the Act is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (b) and by replacing the portion of that subsection after paragraph (b) with the following:

(c) require the owner or manager of a property or business of a taxpayer — and any particular person on the premises or place where the business is carried on, the property is kept, anything is done in connection with the business or any books or records of the taxpayer are or should be kept — to give the authorized person all reasonable assistance and to answer all proper questions and, for those purposes, the authorized person may require

(i) the owner or manager to attend at the premises or place with the authorized person, and

(ii) the owner, manager or the particular person to answer those questions orally or in writing, in any form specified by the authorized person.

(2) Subsection 231.1(2) of the Act is replaced by the following:

Entry to premises

(2) For the purposes of subsection (1), an authorized person may enter into the premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, except if the premises or place is a dwelling-house, the authorized person may enter the dwelling-house without the consent of the occupant only under the authority of a warrant under subsection (3).

DENTONS CANADA LLP COMMENTARY

Section 231.1 of the *Income Tax Act* provides the Canada Revenue Agency (“CRA”) with the authority to audit taxpayers and otherwise ensure compliance with the *Income Tax Act*.

However, in the recent decision *Canada v. Cameco Corporation*, 2019 FCA 67, the Federal Court of Appeal (“FCA”) limited the extent to which CRA officials could require persons to answer all proper questions and to provide all reasonable assistance relating to the administration or enforcement of the *Income Tax Act*. In particular, the FCA held that the CRA could not compel employees of a taxpayer to attend interviews to answer oral questions as part of an audit.

In response, Budget 2021 proposes amendments to section 231.1 of the *Income Tax Act*, and the comparable provisions of the *Excise Tax Act*, the *Excise Act*, 2001, the *Air Travellers Security Charge Act* and Part 1 of the *Greenhouse Gas Pollution Pricing Act*. The proposed measures will allow the CRA to require persons to answer all proper questions, and to provide all reasonable assistance, for any purpose related to the administration or enforcement of the relevant statute. The amendments also provide that CRA officials have the authority to require persons to respond to questions orally or in writing, including in any form specified by the relevant CRA official. These amendments would allow the CRA to undertake audit and other compliance activities in the same manner as it did prior to the decision.

The new measures would come into force on Royal Assent.

Resolutions 29 to 30: Base Erosion and Profit Shifting

Interest Deductibility Limits

29 The Act is modified to give effect to the proposals relating to Interest Deductibility Limits as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Hybrid Mismatch Arrangements

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

DENTONS CANADA LLP COMMENTARY

Resolution 29: Interest Deductibility Limits

The *Income Tax Act* currently contains certain thin capitalization rules that limit interest deductibility on loans owing to specified non-resident shareholders where the principal amount of the interest bearing loans exceeds a debt to equity ratio of 1.5-to-1.

Many countries have begun shifting from a fixed debt to equity ratio to a limit on interest deductibility that is based on a fixed percentage of earnings in accordance with the recommendations in the OECD's BEPS Action 4 Report.

Budget 2021 proposes to introduce an earnings-stripping rule that is consistent with the recommendations in the BEPS Action 4 Report. The new rule, which would apply alongside the existing thin capitalization rules, would limit the amount of net interest expense that a corporation may deduct in computing its taxable income to no more than a fixed ratio of "tax EBITDA". Tax EBITDA is the corporation's taxable income before taking into account interest expense, interest income and income tax as well as deductions for depreciation and amortization. Inter-corporate dividends that qualify for a deduction under subsection 112(1) of the *Income Tax Act* as well as certain dividends from foreign affiliates would not be included in tax EBITDA. For this calculation, interest expense and interest income may include payments that are economically equivalent to interest, and other financing-related expenses and income.

The initial limit will be set at 40% of tax EBITDA for taxation years beginning on or after January 1, 2023 but before January 1, 2024 and 30% of tax EBITDA for taxation years beginning on or after January 1, 2024.

The new earnings stripping rule would also apply to trusts, partnerships and Canadian branches of non-resident taxpayers.

CCPCs that, together with any associated corporations, have taxable capital employed in Canada of less than \$15 million would be exempt from the new rule as would groups of corporations and trusts whose aggregate net interest expense among their Canadian members is \$250,000 or less. As well, it is not expected that such rule would apply to standalone Canadian corporations or a Canadian corporation that is member of a group, none of whose members is a non-resident of Canada.

The Budget proposals also contemplate the ability to carry forward (up to 20 years) or back (up to 3 years) any interest denied under the new rules or to transfer unused interest capacity to other Canadian members of the same group.

Resolution 30: Hybrid Mismatch Arrangements

Budget 2021 proposes to introduce rules to eliminate the benefits afforded by hybrid mismatch arrangements, in accordance with recommendations in the OECD's BEPS Action 2 Report. Hybrid mismatch arrangements are structures that take advantage of differences in the income tax treatment of certain items under the laws of two or more countries to create mismatches in tax results.

The two main types of hybrid mismatch arrangements are (i) deduction/non-inclusion mismatches (one country allows a deduction while the other does not require an offsetting inclusion in income in respect of a cross-border payment) and (ii) double-deduction mismatches (where a deduction in respect of a single economic expenditure is allowed in two or more countries).

In general terms, Budget 2021 proposes to deny a deduction for Canadian income tax purposes for a payment by a Canadian resident to the extent that such payment gives rise to a further deduction in another country or is not included in the ordinary income of a non-resident recipient. Similarly, to the extent a payment made by a non-resident is deductible for foreign tax purposes, no deduction in respect of the payment would be permitted for the Canadian resident. In particular, where the payment constitutes a dividend received by a Canadian resident from a foreign affiliate, the deduction that would otherwise be available under the *Income Tax Act* would not be permitted if the payment were deductible for foreign tax purposes by the foreign affiliate.

The proposed rules would be mechanical in nature, and would apply in respect of payments between related parties. The rules will apply more broadly to payments between related parties and could also apply to payments between unrelated parties under circumstances that are designed to produce a mismatch. The new rules would also adopt the ordering rules recommended in the BEPS Action 2 Report.

Other recommendation in the BEPS Action 2 Report such as branch mismatch arrangements, imported mismatch arrangements and reverse hybrids may be introduced to the extent relevant and appropriate in the Canadian context.

It is proposed that the hybrid mismatch rules would be introduced in two separate legislative packages. The first package would deal with deduction/non-inclusion mismatches. This package would be released for stakeholder comment later this year with application as of July 1, 2022.

The second legislative package would be released for stakeholder comment after 2021 and would apply no earlier than 2023.

Editorial Comment on GST/HST and Excise Budget Resolutions

That it is expedient to amend the Excise Tax Act:

Resolutions 1 to 12: Application of the GST/HST to E-commerce

1 (1) The definition *reporting period* in subsection 123(1) of the *Excise Tax Act* is replaced by the following:

reporting period of a person means the reporting period of the person as determined under sections 211.18 and 245 to 251; (*période de déclaration*)

(2) Paragraph (c) of the definition *activité commerciale* in subsection 123(1) of the French version of the Act is replaced by the following:

c) la réalisation d'une fourniture, sauf une fourniture exonérée, d'un immeuble de la personne, y compris les actes qu'elle accomplit dans le cadre ou à l'occasion de la fourniture. (*commercial activity*)

(3) Subsections (1) and (2) come into force, or are deemed to have come into force, on July 1, 2021.

2 (1) Paragraph 141.01(1)(c) of the French version of the Act is replaced by the following:

c) la réalisation de fournitures d'immeubles de la personne, y compris les actes qu'elle accomplit dans le cadre ou à l'occasion des fournitures.

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2021.

3 (1) Subsection 143(1) of the Act is amended by striking out "or" at the end of paragraph (b) and by adding the following after that paragraph:

(b.1) the supply is a *qualifying tangible personal property supply* (as defined in subsection 211.1(1)) and the person is required under section 211.22 to be registered under Subdivision D of Division V at the time the supply is made; or

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2021.

(3) For the purposes of applying subsection 143(1) of the Act, as amended by subsection (1), in respect of a supply in respect of which subparagraph 7(2)(c)(ii) applies, the supply is deemed to have been made on July 1, 2021.

4 (1) Subsection 148(3) of the Act is replaced by the following:

Non-application

(3) This section does not apply to

(a) a person registered under Subdivision E of Division II; or

(b) a non-resident person that makes a supply in Canada of admissions in respect of a place of amusement, a seminar, an activity or an event and whose only business carried on in Canada is the making of such supplies.

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2021.

5 (1) Subsection 178.8(9) of the Act is replaced by the following:

Application

(9) Subsections (2) to (7) do not apply in respect of goods imported in circumstances in which subsection 169(2) applies or in which section 180 or subparagraph 211.23(1)(c)(i) deems a person to have paid tax in respect of a supply of property equal to the tax under Division III in respect of the importation of goods.

(2) Subsection (1) applies to goods imported on or after July 1, 2021 and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

6 (1) Section 179 of the Act is amended by adding the following after subsection (3):

Exception — distribution platform operator

(3.1) For the purposes of this Part, if

- (a)** paragraphs (1)(a) to (c) apply to a taxable supply in respect of particular tangible personal property that is made by a registrant and is referred to in any of subparagraphs (1)(a)(i) to (iii),
- (b)** the transfer referred to in paragraph (1)(b) of physical possession of the particular property is to a person (in this subsection referred to as the “consignee”) that is acquiring physical possession of the particular property as the recipient of a taxable supply made by way of sale of the particular property that
 - (i)** is deemed under subsection 211.23(1) to have been made by a *distribution platform operator* (as defined in subsection 211.1(1)), and
 - (ii)** would, in the absence of subsection 211.23(1), be made by a non-resident person that is not registered under Subdivision D of Division V,
- (c)** the distribution platform operator is registered under Subdivision D of Division V, and
- (d)** the non-resident person gives to the registrant, and the registrant retains, a certificate that
 - (i)** acknowledges that the consignee acquired physical possession of the particular property as the recipient of a taxable supply and that the distribution platform operator is required to collect tax in respect of that taxable supply, and
 - (ii)** states the distribution platform operator's name and registration number assigned under section 241,

the following rules apply:

- (e)** paragraphs (1)(d) to (g) do not apply to the taxable supply referred to in paragraph (a), and
- (f)** the taxable supply referred to in paragraph (a) is deemed to have been made outside Canada.

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2021.

7 (1) The Act is amended by adding the following after section 211:

SUBDIVISION E

Electronic Commerce

Interpretation

Definitions

211.1 (1) The following definitions apply in this Subdivision.

accommodation platform means a digital platform through which a person facilitates the making of supplies of short-term accommodation situated in Canada by another person that is not registered under Subdivision D of Division V. (*plateforme de logements*)

accommodation platform operator, in respect of a supply of short-term accommodation made through an accommodation platform, means a person (other than the supplier or an excluded operator in respect of the supply) that

- (a)** controls or sets the essential elements of the transaction between the supplier and the recipient;
- (b)** if paragraph (a) does not apply to any person, is involved, directly or through arrangements with third parties, in collecting, receiving or charging the consideration for the supply and transmitting all or part of the consideration to the supplier; or
- (c)** is a prescribed person. (*exploitant de plateforme de logements*)

Canadian accommodation related supply means a taxable supply of a service

- (a)** that is made to a person in connection with a supply of short-term accommodation situated in Canada made to the person; and
- (b)** the consideration for which represents a booking fee, administration fee or other similar charge. (*fourniture liée à un logement au Canada*)

digital platform includes a website, an electronic portal, gateway, store or distribution platform or any other similar electronic interface but does not include

- (a) an electronic interface that solely processes payments; or
- (b) a prescribed platform or interface. (*plateforme numérique*)

distribution platform operator, in respect of a supply of property or a service made through a specified distribution platform, means a person (other than the supplier or an excluded operator in respect of the supply) that

- (a) controls or sets the essential elements of the transaction between the supplier and the recipient;
- (b) if paragraph (a) does not apply to any person, is involved, directly or through arrangements with third parties, in collecting, receiving or charging the consideration for the supply and transmitting all or part of the consideration to the supplier; or
- (c) is a prescribed person. (*exploitant de plateforme de distribution*)

electronic filing means using electronic media in a manner specified by the Minister. (*transmission électronique*)

excluded operator means a person that, in respect of a supply of property or a service,

- (a) meets all of the following conditions:
 - (i) the person does not set, directly or indirectly, any of the terms and conditions under which the supply is made,
 - (ii) the person is not involved, directly or indirectly, in authorizing the charge to the recipient of the supply in respect of the payment of the consideration for the supply, and
 - (iii) the person is not involved, directly or indirectly, in the ordering or delivery of the property or in the ordering or rendering of the service;
- (b) solely provides for the listing or advertising of the property or service or for the redirecting or transferring to a digital platform on which the property or service is offered;
- (c) is solely a payment processor; or
- (d) is a prescribed person. (*exploitant exclu*)

false statement includes a statement that is misleading because of an omission from the statement. (*faux énoncé*)

qualifying tangible personal property supply means a supply made by way of sale of tangible personal property that is, under the agreement for the supply, to be delivered or made available to the recipient in Canada, other than

- (a) an exempt or zero-rated supply;
- (b) a supply of tangible personal property sent by mail or courier to the recipient at an address in Canada from an address outside Canada by the supplier or by another person acting on behalf of the supplier, if the supplier maintains evidence satisfactory to the Minister that the property was so sent;
- (c) a supply that is deemed under subsection 180.1(2) to have been made outside Canada; and
- (d) a prescribed supply. (*fourniture admissible d'un bien meuble corporel*)

specified Canadian recipient means a recipient of a supply in respect of which the following conditions are met:

- (a) the recipient has not provided to the supplier, or to a distribution platform operator in respect of the supply, evidence satisfactory to the Minister that the recipient is registered under Subdivision D of Division V; and
- (b) the usual place of residence of the recipient is situated in Canada. (*acquéreur canadien déterminé*)

specified distribution platform means a digital platform through which a person facilitates the making of specified supplies by another person that is a specified non-resident supplier or facilitates the making of qualifying tangible personal property supplies by another person that is not registered under Subdivision D of Division V. (*plateforme de distribution déterminée*)

specified non-resident supplier means a non-resident person that does not make supplies in the course of a business carried on in Canada and that is not registered under Subdivision D of Division V. (*fournisseur non-résident déterminé*)

specified supply means a taxable supply of intangible personal property or a service other than

- (a) a supply of intangible personal property that
 - (i) may not be used in Canada,
 - (ii) relates to real property situated outside Canada, or
 - (iii) relates to tangible personal property ordinarily situated outside Canada;

- (b) a supply of a service that
 - (i) may only be consumed or used outside Canada,
 - (ii) is in relation to real property situated outside Canada, or
 - (iii) is rendered in connection with criminal, civil or administrative litigation (other than a service rendered before the commencement of such litigation) that is under the jurisdiction of a court or other tribunal established under the laws of a country other than Canada or that is in the nature of an appeal from a decision of a court or other tribunal established under the laws of a country other than Canada;
- (c) a supply of a service that is deemed under subsection 180.1(2) to have been made outside Canada;
- (d) a supply of a service
 - (i) that is made to a person in connection with a supply of short-term accommodation made to the person, and
 - (ii) the consideration for which represents a booking fee, administration fee or other similar charge; and
- (e) a prescribed supply. (*fourniture déterminée*)

Registration

(2) For greater certainty, in this Part (other than this Subdivision) and in Schedules V to X, a reference to registration does not include registration under this Subdivision.

Accommodations, Intangible Personal Property and Services

Residence indicators

211.11 (1) For the purposes of this Subdivision, the following are indicators in respect of the usual place of residence of a recipient of a supply:

- (a) the home address of the recipient;
- (b) the business address of the recipient;
- (c) the billing address of the recipient;
- (d) the Internet Protocol address of the device used by the recipient or similar data obtained through a geolocation method;
- (e) payment-related information in respect of the recipient or other information used by the payment system;
- (f) the information from a subscriber identity module, or other similar module, used by the recipient;
- (g) the place at which a landline communication service is supplied to the recipient; and
- (h) any other relevant information that the Minister may specify.

Indicator — Canada and provinces

(2) For the purposes of this section,

- (a) a Canadian indicator in respect of the recipient of a supply is an indicator obtained in connection with the supply that reasonably supports the conclusion that the usual place of residence of the recipient is situated in Canada;
- (b) a foreign indicator in respect of the recipient of a supply is an indicator obtained in connection with the supply that reasonably supports the conclusion that the usual place of residence of the recipient is situated outside Canada;
- (c) a participating province indicator in respect of the recipient of a supply is an indicator obtained in connection with the supply that reasonably supports the conclusion that the usual place of residence of the recipient is situated in a participating province; and
- (d) a non-participating province indicator in respect of the recipient of a supply is an indicator obtained in connection with the supply that reasonably supports the conclusion that the usual place of residence of the recipient is situated in a non-participating province.

Usual place of residence — Canada

(3) For the purposes of this Subdivision, the usual place of residence of the recipient of a supply is situated in Canada if a person that is the supplier or a distribution platform operator in respect of the supply,

- (a) in the ordinary course of the person's operations, has obtained two or more Canadian indicators in respect of the recipient and has not obtained more than one foreign indicator in respect of the recipient;
- (b) in the ordinary course of the person's operations, has obtained two or more Canadian indicators in respect of the recipient and two or more foreign indicators in respect of the recipient, but the Canadian indicators are, in the circumstances, reasonably considered to be more reliable in determining a place of residence; or

(c) if paragraphs (a) and (b) do not apply, has determined that the usual place of residence of the recipient is situated in Canada based on any method that the Minister may allow.

Usual place of residence — participating province address

(4) For the purposes of this Subdivision, if the usual place of residence of the recipient of a supply is situated in Canada and if a person that is the supplier or a distribution platform operator in respect of the supply has obtained in the ordinary course of the person's operations one or more addresses that are a home or business address of the recipient in a participating province and has not obtained in the ordinary course of the person's operations the same number or a greater number of addresses that are a home or business address of the recipient in a non-participating province, the usual place of residence of the recipient is situated in the following participating province:

- (a) if those addresses of the recipient that are in a participating province are all in the same participating province, that participating province; and
- (b) if those addresses of the recipient that are in a participating province are in two or more participating provinces and if the tax rates for those participating provinces are the same, the participating province among those participating provinces that has the largest population.

Usual place of residence — participating province indicators

(5) For the purposes of this Subdivision, if the usual place of residence of the recipient of a supply is situated in Canada but is not determined under subsection (4) to be in a participating province and if a person that is the supplier or a distribution platform operator in respect of the supply has obtained in the ordinary course of the person's operations one or more participating province indicators in respect of the recipient and has not obtained in the ordinary course of the person's operations the same number or a greater number of non-participating province indicators in respect of the recipient that could reasonably be considered to be as reliable in determining a place of residence as those participating province indicators, the usual place of residence of the recipient is situated in the following participating province:

- (a) if those participating province indicators are in respect of the same participating province, that participating province;
- (b) if those participating province indicators are in respect of two or more participating provinces and the participating province indicators in respect of one of those participating provinces are, in the circumstances, reasonably considered to be more reliable in determining a place of residence, that participating province;
- (c) if the usual place of residence of the recipient is not determined under paragraph (a) or (b) and if the person has determined that the usual place of residence of the recipient is situated in one of the participating provinces based on any method that the Minister may allow, that participating province; or
- (d) if the usual place of residence of the recipient is not determined under any of paragraphs (a) to (c) and if those participating province indicators are in respect of two or more participating provinces, the participating province among those participating provinces for which the tax rate is the lowest or, if the tax rates for those participating provinces are the same, the participating province among those participating provinces that has the largest population.

Usual place of residence — participating province

(6) For the purposes of this Subdivision, if, in respect of a supply, the usual place of residence of the recipient is situated in Canada but is not determined under subsection (4) or (5) to be in a participating province and if a person that is the supplier or a distribution platform operator in respect of the supply has determined that the usual place of residence of the recipient is situated in a participating province based on any method that the Minister may allow, then the usual place of residence of the recipient is situated in that participating province.

Threshold amount

211.12 (1) For the purposes of this section, the threshold amount of a particular person for a period is the total of all amounts each of which is an amount that is, or that could reasonably be expected to be, the value of the consideration for a supply that is, or that could reasonably be expected to be,

- (a) a specified supply made during that period by the particular person to a specified Canadian recipient (other than a zero-rated supply or a supply that is deemed to have been made by the particular person under paragraph 211.13(1)(a) or subparagraph 211.13(2)(a)(i));
- (b) a Canadian accommodation related supply made during that period by the particular person to another person that is not registered under Subdivision D of Division V;
- (c) if the particular person is a distribution platform operator in respect of a specified supply (other than a zero-rated supply) made during that period through a specified distribution platform by a specified non-resident supplier to a specified Canadian recipient, a specified supply (other than a zero-rated supply) that is made during that period through the specified distribution platform by a specified non-resident supplier to a specified Canadian recipient and in respect of which any person is a distribution platform operator; or
- (d) if the particular person is an accommodation platform operator in respect of an accommodation supply — being a taxable supply of short-term accommodation situated in Canada made by any person that is not registered under Subdivision D of Division V to a recipient that is not registered under that Subdivision — that is made during that period through an accommodation platform, an accommodation supply that is made during that period through the accommodation platform and in respect of which any person is an accommodation platform operator.

Registration required

(2) Every person (other than a registrant or a person that carries on a business in Canada) that is a specified non-resident supplier at any time, a distribution platform operator in respect of a supply made at any time or an accommodation platform operator in respect of a supply made at any time is required at that time to be registered under this Subdivision if the threshold amount of the person for any period of 12 months (other than a period that begins before July 2021) that includes that time exceeds \$30,000.

Application

(3) A person required under subsection (2) to be registered under this Subdivision shall apply to the Minister for registration. The application is to be made in prescribed form containing prescribed information and is to be filed with the Minister by way of electronic filing on or before the first day on which the person is required to be registered under this Subdivision.

Registration

(4) The Minister may register any person that applies for registration under subsection (3) and, upon doing so, the Minister shall assign a registration number to the person and notify the person of the registration number and the effective date of the registration.

Notice of intent

(5) If the Minister has reason to believe that a person that is not registered under this Subdivision is required to be registered under subsection (2) and has failed to apply for registration under subsection (3) as and when required, the Minister may send a notice in writing (in this section referred to as a “notice of intent”) to the person that the Minister proposes to register the person under subsection (7).

Representations to Minister

(6) Upon receipt of a notice of intent, a person shall apply for registration under subsection (3) or establish to the satisfaction of the Minister that the person is not required to be registered under subsection (2).

Registration by Minister

(7) If, after 60 days after the particular day on which a notice of intent was sent by the Minister to a person, the person has not applied for registration under subsection (3) and the Minister is not satisfied that the person is not required to be registered under subsection (2), the Minister may register the person under this Subdivision and, upon doing so, shall assign a registration number to the person and notify the person in writing of the registration number and the effective date of the registration, which effective date is not to be earlier than 60 days after the particular day.

Cessation of registration

(8) If a person is registered under this Subdivision and if the person becomes registered under Subdivision D of Division V on a particular day, the person ceases to be registered under this Subdivision effective on the particular day.

Cancellation on notice

(9) The Minister may, after giving a person that is registered under this Subdivision reasonable written notice, cancel the registration of the person if the Minister is satisfied that the registration is not required under this Subdivision.

Cancellation on request

(10) On request from a person, the Minister shall cancel the registration of the person under this Subdivision if the Minister is satisfied that the registration is not required under this Subdivision.

Cancellation — notification

(11) If the Minister cancels the registration of a person under subsection (9) or (10), the Minister shall notify the person of the cancellation and its effective date.

Public disclosure

(12) Despite section 295, the Minister may make available to the public, in any manner that the Minister considers appropriate, the names of persons registered under this Subdivision (including any trade name or other name used by those persons), the registration numbers assigned to those persons under this section, the effective date of the registration and, if a person ceases to be registered under this Subdivision, the date on which the person ceases to be registered.

Specified supply — operator

211.13 (1) If a specified supply is made through a specified distribution platform by a specified non-resident supplier to a specified Canadian recipient and if another person registered under this Subdivision is a distribution platform operator in respect of the specified supply, then, for the purposes of this Part (other than section 211.1, paragraph 211.12(1)(c) and section 240)

(a) the specified supply is deemed to have been made by the other person and not by the specified non-resident supplier; and

(b) the other person is deemed not to have made a supply to the specified non-resident supplier of services relating to the specified supply.

Specified supply — registered operator

(2) If a specified supply is made through a specified distribution platform by a specified non-resident supplier, if another person that is registered under Subdivision D of Division V, or that carries on a business in Canada, is a distribution platform operator in respect of the specified supply and if, in the absence of section 143, the specified supply would have been a supply made in Canada, the following rules apply:

- (a)** if the other person is registered under Subdivision D of Division V, for the purposes of this Part (other than section 211.1, paragraph 211.12(1)(c) and section 240)
 - (i)** the specified supply is deemed to have been made by the other person and not by the specified non-resident supplier, and
 - (ii)** the other person is deemed not to have made a supply to the specified non-resident supplier of services relating to the specified supply; and
- (b)** in any other case, for the purposes of sections 148 and 249, the specified supply is deemed to have been made by the other person and not by the specified non-resident supplier.

Accommodation — operator

(3) If a particular supply that is a taxable supply of short-term accommodation situated in Canada is made through an accommodation platform by a particular person that is not registered under Subdivision D of Division V, if another person that is registered under this Subdivision is an accommodation platform operator in respect of the particular supply and if the recipient has not provided to the other person evidence satisfactory to the Minister that the recipient is registered under Subdivision D of Division V, then, for the purposes of this Part (other than sections 148 and 211.1, paragraph 211.12(1)(d) and sections 240 and 249)

- (a)** the particular supply is deemed to have been made by the other person and not by the particular person; and
- (b)** the other person is deemed not to have made a supply to the particular person of services relating to the particular supply.

Accommodation — registered operator

(4) If a particular supply that is a taxable supply of short-term accommodation situated in Canada is made through an accommodation platform by a particular person that is not registered under Subdivision D of Division V and if another person that is registered under that Subdivision, or that carries on a business in Canada, is an accommodation platform operator in respect of the particular supply, then, for the purposes of this Part (other than for the purposes of applying sections 148 and 249 in respect of the particular person and other than for the purposes of section 211.1, paragraph 211.12(1)(d) and section 240)

- (a)** the particular supply is deemed to have been made by the other person and not by the particular person; and
- (b)** the other person is deemed not to have made a supply to the particular person of services relating to the particular supply.

Joint and several, or solidary, liability

(5) If a particular person that is deemed under paragraph (1)(a), subparagraph (2)(a)(i) or paragraph (3)(a) or (4)(a) not to have made a supply made a false statement to another person that is deemed under paragraph (1)(a), subparagraph (2)(a)(i) or paragraph (3)(a) or (4)(a), as the case may be, to have made the supply and if the false statement is relevant to the determination of whether the other person is required to collect tax in respect of the supply or the determination of the amount of tax that the other person is required to collect in respect of the supply, the following rules apply:

- (a)** the particular person and the other person are jointly and severally, or solidarily, liable for all obligations under this Part (in this subsection referred to as the “obligations in respect of the supply”) that arise upon or as a consequence of
 - (i)** the tax in respect of the supply becoming collectible by the other person, and
 - (ii)** a failure to account for or pay as and when required under this Part an amount of net tax of the other person, or an amount required under section 230.1 to be paid by the other person, that is reasonably attributable to the supply;
- (b)** the Minister may assess the particular person for any amount for which the particular person is liable under this subsection and sections 296 to 311 apply with any modifications that the circumstances require; and
- (c)** if the other person did not know and could not reasonably be expected to have known that the particular person made a false statement and if the other person relied in good faith on the false statement and, because of such reliance, did not charge, collect or remit all the tax in respect of the supply that the other person was required to charge, collect or remit, despite section 296, the Minister is not to assess the other person for any obligations in respect of the

supply in excess of the obligations in respect of the supply that arise upon or as a consequence of the other person having charged, collected or remitted an amount of tax in respect of the supply.

Supply — Canada

211.14 (1) For the purposes of this Part and despite paragraphs 136.1(1)(d) and (2)(d), subsection 142(2) and section 143, if a person registered under this Subdivision makes a specified supply to a specified Canadian recipient, or makes a Canadian accommodation related supply to a recipient that has not provided to the person evidence satisfactory to the Minister that the recipient is registered under Subdivision D of Division V, the supply is deemed to be made in Canada and, in the case of a Canadian accommodation related supply that is included in Schedule VI, the supply is deemed not to be included in that Schedule.

Supply — Canada

(2) For the purposes of this Part and despite paragraph 136.1(2)(d), subsection 142(2) and section 143, if a person registered under Subdivision D of Division V or carrying on a business in Canada makes a Canadian accommodation related supply, the supply is deemed to be made in Canada and, if the supply is included in Schedule VI, the supply is deemed not to be included in that Schedule.

Specified supply — participating province

(3) For the purposes of this Part and despite section 144.1, if a specified supply (other than a supply of intangible personal property, or a service, that relates to real property) is deemed to be made in Canada under subsection (1), the following rules apply:

- (a)** if the usual place of residence of the specified Canadian recipient is situated in a participating province, the supply is deemed to be made in the participating province; and
- (b)** in any other case, the supply is deemed to be made in a non-participating province.

Canadian accommodation related supply — participating province

(4) For the purposes of this Part and despite section 144.1, if a Canadian accommodation related supply is deemed to be made in Canada under subsection (1) or (2), the supply is deemed to be made in the province in which the accommodation is situated.

Billing agent

211.15 For the purposes of this Part, if a particular person that is registered under this Subdivision makes an election in respect of a supply under subsection 177(1.1) with a registrant described in subsection 177(1.11), the registrant is deemed not to have made a supply to the particular person of services of acting as an agent described in subsection 177(1.11) in respect of the supply.

Disclosure of tax

211.16 A person registered under this Subdivision that is required under section 221 to collect tax in respect of a supply shall indicate to the recipient, in a manner satisfactory to the Minister,

- (a)** the consideration paid or payable by the recipient for the supply and the tax payable in respect of the supply; or
- (b)** that the amount paid or payable by the recipient for the supply includes the tax payable in respect of the supply.

Restrictions

211.17 (1) No amount of an input tax credit, rebate, refund or remission under this or any other Act of Parliament shall be credited, paid, granted or allowed to the extent that it can reasonably be regarded that the amount is determined, directly or indirectly, in relation to an amount that is collected as or on account of tax, or in relation to an amount of tax that is required to be collected, by a person that is registered or required to be registered under this Subdivision.

Exception

(2) Subsection (1) does not apply

- (a)** to a rebate, refund or remission in relation to an amount that a person may
 - (i)** deduct under subsection 231(1), 232(3) or 234(3) in determining the net tax of the person for a reporting period of the person,
 - (ii)** claim as a rebate under section 259 or 259.1, or
 - (iii)** claim as a rebate under section 261 in respect of an amount that is collected as or on account of tax from the person at a time when the person is not registered under Subdivision D of Division V;
- (b)** for the purposes of subsections 232(1) and (2); and
- (c)** for prescribed purposes.

Return

211.18 (1) Despite subsection 238(2), every person registered under this Subdivision shall file a return with the Minister by way of electronic filing for each reporting period of the person within one month after the end of the reporting period.

Reporting period

(2) Despite sections 245 and 251 and subject to subsections (3) and (4), the reporting period of a person registered under this Subdivision is a calendar quarter.

Becoming registered

(3) If a person becomes registered under this Subdivision on a particular day, the following periods are deemed to be separate reporting periods of the person:

- (a) the period beginning on the first day of the reporting period of the person, otherwise determined under section 245, that includes the particular day and ending on the day immediately preceding the particular day; and
- (b) the period beginning on the particular day and ending on the last day of the calendar quarter that includes the particular day.

Cessation of registration

(4) If a person ceases to be registered under this Subdivision on a particular day, the following periods are deemed to be separate reporting periods of the person:

- (a) the period beginning on the first day of the calendar quarter that includes the particular day and ending on the day immediately preceding the particular day; and
- (b) the period beginning on the particular day and ending on the last day of the reporting period of the person, otherwise determined under section 245, that includes the particular day.

Definition of qualifying foreign currency

211.19 (1) In this section, *qualifying foreign currency* means the U.S. dollar, the euro or another foreign currency that the Minister may specify.

Manner of payment

(2) Every person that is registered or required to be registered under this Subdivision and that is required under subsection 278(2) to pay or remit an amount to the Receiver General shall pay or remit that amount in the manner determined by the Minister.

Non application — subsection 278(3)

(3) Subsection 278(3) does not apply in respect of an amount that a person that is registered or required to be registered under this Subdivision is required under this Part to pay or remit to the Receiver General.

Foreign currency — no designation

(4) Despite section 159 and subject to subsection (7), if tax is collected, or required to be collected, in respect of a supply made by a person that is registered or required to be registered under this Subdivision and if the value of the consideration for the supply is expressed in a foreign currency, the consideration is to be converted into Canadian currency using the exchange rate applicable on the last day of the reporting period in which the tax is collected or required to be collected, as the case may be, or using any other conversion method that the Minister may allow.

Foreign currency — application

(5) A person registered under this Subdivision may apply to the Minister, in prescribed form containing prescribed information and filed in prescribed manner with the Minister, to be designated as a person eligible to determine the net tax for a reporting period of the person in a qualifying foreign currency. The Minister may require that the application be filed by way of electronic filing.

Foreign currency — authorization

(6) If the Minister receives an application of a person under subsection (5), the Minister may, subject to such conditions as the Minister may at any time impose, designate the person as a person eligible to determine the net tax for a reporting period of the person in the qualifying foreign currency indicated by the Minister.

Foreign currency — designated persons

(7) Despite section 159, if a person is designated under subsection (6) in respect of a reporting period of the person, the following rules apply in respect of the reporting period:

- (a) the net tax for the reporting period is to be determined in the return for that reporting period in the qualifying foreign currency indicated by the Minister;
- (b) any amount to be remitted or paid by the person to the Receiver General in respect of the reporting period is to be remitted or paid in the qualifying foreign currency indicated by the Minister; and
- (c) any amount that is required to be converted into the qualifying foreign currency indicated by the Minister for the purposes of determining the net tax for the reporting period, or for the purposes of determining any other amount to be remitted or paid to the Receiver General in respect of the reporting period, is to be converted into that qualifying foreign currency using the exchange rate applicable on the last day of the reporting period or using any other conversion method that the Minister may allow.

Prohibition

211.2 No person shall, in respect of a supply of property or a service made to a particular person who is a consumer of the property or service, provide to another person that is registered or required to be registered under this Subdivision evidence that the particular person is registered under Subdivision D of Division V.

Information return — accommodation platform operator

211.21 A person (other than a prescribed person) that, at any time during a calendar year, is registered or required to be registered under this Subdivision or is a registrant and that is an accommodation platform operator in respect of a supply of short-term accommodation situated in Canada made in the calendar year shall file with the Minister an information return for the calendar year, in prescribed form containing prescribed information, before July of the following calendar year. The Minister may require that the information return be filed by way of electronic filing.

Tangible Personal Property

Definition of *specified recipient*

211.22 (1) In this section, ***specified recipient***, in respect of a supply of property, means a person (other than a non-resident person that is not a consumer of the property) that is the recipient of the supply and that is not registered under Subdivision D of Division V.

Registration required

(2) Every person that is a non-resident person that does not at any time make supplies in the course of a business carried on in Canada or a distribution platform operator in respect of a supply made at any time is required at that time to be registered under Subdivision D of Division V if, for any period of 12 months (other than a period that begins before July 2021) that includes that time, the amount determined by the following formula is greater than \$30,000:

$$A + B$$

where

A is the total of all amounts, each of which is an amount that is, or that could reasonably be expected to be, the value of the consideration for a taxable supply that is, or that could reasonably be expected to be, a qualifying tangible personal property supply made during that period by the person to a specified recipient (other than a supply deemed to have been made by the person under subparagraph 211.23(1)(a)(i)); and

B is

(a) if the person is a distribution platform operator in respect of a qualifying tangible personal property supply made during that period through a specified distribution platform, the total of all amounts, each of which is an amount that is, or that could reasonably be expected to be, the value of the consideration for a supply that is, or that could reasonably be expected to be, a qualifying tangible personal property supply made during that period through the specified distribution platform to a specified recipient and in respect of which any person is a distribution platform operator, and

(b) in any other case, zero.

Qualifying supply — operator

211.23 (1) If a particular supply that is a qualifying tangible personal property supply is made through a specified distribution platform by a particular person that is not registered under Subdivision D of Division V and if another person that is registered under Subdivision D of Division V, or is carrying on a business in Canada, is a distribution platform operator in respect of the particular supply, the following rules apply:

(a) for the purposes of this Part (other than for the purposes of applying sections 148 and 249 in respect of the particular person and other than for the purposes of section 211.1, paragraph (a) of the description of B in subsection 211.22(2) and section 240)

(i) the particular supply is deemed to have been made by the other person and not by the particular person, and

(ii) the particular supply is deemed to be a taxable supply;

(b) for the purposes of this Part (other than sections 179 and 180), the other person is deemed not to have made a supply to the particular person of services relating to the particular supply; and

(c) if the other person is registered under Subdivision D of Division V, if the particular person has paid tax under Division III in respect of the importation of the tangible personal property, if no person is entitled to claim an input tax credit or a rebate under this Part in respect of the tax in respect of the importation, if no person is deemed under section 180 to have paid tax in respect of a supply of the tangible personal property that is equal to the tax in respect of the importation and if the particular person provides to the other person evidence satisfactory to the Minister that the tax in respect of the importation has been paid,

(i) for the purposes of determining an input tax credit of the other person, the other person is deemed

(A) to have paid, at the time the particular person paid the tax in respect of the importation, tax in respect of a supply made to the other person of the tangible personal property equal to the tax in respect of the importation, and

(B) to have acquired the tangible personal property for use exclusively in commercial activities of the other person, and

(ii) no portion of the tax in respect of the importation paid by the particular person shall be rebated, refunded or remitted to the particular person, or shall otherwise be recovered by the particular person, under this or any other Act of Parliament.

Joint and several, or solidary, liability

(2) If a particular person that is deemed under subparagraph (1)(a)(i) not to have made a supply made a false statement to another person that is deemed under that subparagraph to have made the supply and if the false statement is relevant to the determination of whether the other person is required to collect tax in respect of the supply or the determination of the amount of tax that the other person is required to collect in respect of the supply, the following rules apply:

(a) the particular person and the other person are jointly and severally, or solidarily, liable for all obligations under this Part (in this subsection referred to as the “obligations in respect of the supply”) that arise upon or as a consequence of

(i) the tax in respect of the supply becoming collectible by the other person, and

(ii) a failure to account for or pay as and when required under this Part an amount of net tax of the other person, or an amount required under section 230.1 to be paid by the other person, that is reasonably attributable to the supply;

(b) the Minister may assess the particular person for any amount for which the particular person is liable under this subsection and sections 296 to 311 apply with any modifications that the circumstances require; and

(c) if the other person did not know and could not reasonably be expected to have known that the particular person made a false statement and if the other person relied in good faith on the false statement and, because of such reliance, did not charge, collect or remit all the tax in respect of the supply that the other person was required to charge, collect or remit, despite section 296, the Minister is not to assess the other person for any obligations in respect of the supply in excess of the obligations in respect of the supply that arise upon or as a consequence of the other person having charged, collected or remitted an amount of tax in respect of the supply.

Joint and several, or solidary, liability

(3) If a particular person provides to another person evidence that tax in respect of an importation has been paid, if the particular person made a false statement to the other person, if the false statement is relevant to the determination of whether paragraph (1)(c) is applicable in respect of the importation and if the other person claimed an input tax credit (in this subsection referred to as the “non-allowable input tax credit”) to which the other person was not entitled but to which the other person would have been entitled if paragraph (1)(c) were applicable in respect of the importation, the following rules apply:

(a) the particular person and the other person are jointly and severally, or solidarily, liable for all obligations under this Part that arise upon or as a consequence of the other person having claimed the non-allowable input tax credit;

(b) the Minister may assess the particular person for any amount for which the particular person is liable under this subsection and sections 296 to 311 apply with any modifications that the circumstances require; and

(c) if the other person did not know and could not reasonably be expected to have known that the particular person made a false statement and if the other person relied in good faith on the false statement and, because of such reliance, claimed the non-allowable input tax credit, despite section 296, the Minister is not to assess the other person for any obligations under this Part that arose upon or as a consequence of the other person having claimed the non-allowable input tax credit.

Notification and records — warehouse

211.24 A particular person (other than a prescribed person) that in the course of a business makes one or more particular supplies of a service of storing in Canada tangible personal property (other than a service that is incidental to the supply by the particular person of a *freight transportation service*, as defined in section 1 of Part VII of Schedule VI) offered for sale by another person that is a non-resident person shall

(a) notify the Minister of this fact, in prescribed form containing prescribed information and filed with the Minister in prescribed manner, on or before

(i) the day that is

(A) if the particular person makes those particular supplies in the course of a business carried on as of July 1, 2021, January 1, 2022, and

(B) in any other case, six months after the day on which the particular person last began making those particular supplies in the course of a business, or

(ii) any later day that the Minister may allow; and

(b) in respect of those particular supplies, maintain records containing information specified by the Minister.

Information return — operator

211.25 A person (other than a prescribed person) that is a registrant at any time during a calendar year and that is a distribution platform operator in respect of a qualifying tangible personal property supply made in the calendar year shall file with the Minister an information return for the calendar year, in prescribed form containing prescribed information, before July of the following calendar year. The Minister may require that the information return be filed by way of electronic filing.

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2021, except that

(a) subsections 211.13(1) to (4) and section 211.14 of the Act, as enacted by subsection (1), apply

(i) in respect of supplies made after June 2021, and

(ii) in respect of supplies made before July 2021 if all or part of the consideration for the supply becomes due, or is paid without having become due, after June 2021;

(b) sections 211.21 and 211.25 of the Act, as enacted by subsection (1), apply to 2021 and subsequent calendar years except that, in applying those sections to the 2021 calendar year,

(i) the references to “a calendar year” in those sections are to be read as references to “the period that begins on July 1, 2021 and ends on December 31, 2021”, and

(ii) the references to “the calendar year” in those sections are to be read as references to “that period”; and

(c) subsection 211.23(1) of the Act, as enacted by subsection (1), applies

(i) in respect of supplies made after June 2021, and

(ii) in respect of supplies made before July 2021 if all of the consideration for the supply becomes due, or is paid without having become due, after June 2021.

(3) For the purposes of applying sections 211.12 to 211.14 of the Act, as enacted by subsection (1), in respect of a supply in respect of which subparagraph (2)(a)(ii) applies, the supply is deemed to have been made on July 1, 2021.

(4) If subparagraph (2)(a)(ii) and subsection 211.13(3) or (4) of the Act, as enacted by subsection (1), apply in respect of a supply of short-term accommodation and if part of the consideration for the supply becomes due, or is paid without having become due, before July 2021, for the purposes of Division II of Part IX of the Act, that part of the consideration shall not be included in calculating the tax payable in respect of the supply.

(5) If subparagraph (2)(a)(ii) and section 211.14 of the Act, as enacted by subsection (1), apply in respect of a supply that is a specified supply or a Canadian accommodation related supply, if paragraph 143(1)(c) of the Act does not apply in respect of the supply and if part of the consideration for the supply becomes due, or is paid without having become due, before July 2021, the following rules apply:

(a) for the purposes of Division II of Part IX of the Act, that part of the consideration is not to be included in calculating the tax payable in respect of the supply; and

(b) for the purposes of Division IV of Part IX of the Act,

(i) despite section 211.14 of the Act, as enacted by subsection (1), the supply is deemed to be made outside Canada, and

(ii) the part of the consideration for the supply that becomes due, or is paid without having become due, after June 2021 is not to be included in calculating the tax payable in respect of the supply.

(6) For the purposes of applying sections 211.22 and 211.23 of the Act, as enacted by subsection (1), in respect of a supply in respect of which subparagraph (2)(c)(ii) applies, the supply is deemed to have been made on July 1, 2021.

8 (1) Subsection 240(2) of the Act is replaced by the following:

Non-resident supplier — tangible personal property

(1.5) Despite subsection (1), every person that is required under section 211.22 to be registered under this Subdivision is required to be registered for the purposes of this Part.

Non-resident performers, etc.

(2) Every person (other than a person registered under Subdivision E of Division II) that enters Canada for the purpose of making taxable supplies of admissions in respect of a place of amusement, a seminar, an activity or an event is required to be registered for the purposes of this Part and shall, before making any such supply, apply to the Minister for registration.

(2) The portion of subsection 240(2.1) of the Act before paragraph (a) is replaced by the following:

Application

(2.1) A person required under any of subsections (1) to (1.2) and (1.5) to be registered must apply to the Minister for registration before the day that is 30 days after

(3) Subsection 240(2.1) of the Act is amended by striking out “and” at the end of paragraph (a.1) and by adding the following after that paragraph:

(a.2) in the case of a person required under subsection (1.5) to be registered, the first day on which the person is required under section 211.22 to be registered under this Subdivision; and

(4) The portion of subsection 240(3) of the Act before paragraph (a) is replaced by the following:

Registration permitted

(3) An application for registration for the purposes of this Part may be made to the Minister by any person that is not required under subsection (1), (1.1), (1.2), (1.5), (2) or (4) to be registered, that is not required to be included in, or added to, the registration of a group under subsection (1.3) or (1.4) and that

(5) Subsections (1) to (4) come into force, or are deemed to have come into force, on July 1, 2021.

9 The Act is amended by adding the following after section 285.01:

Penalty

285.02 In addition to any other penalty under this Part, the recipient of a supply of property or a service that evades or attempts to evade the payment or collection of tax payable by the recipient under Division II in respect of the supply by providing false information to a particular person that is registered or required to be registered under Subdivision E of Division II or, if the recipient is a consumer of the property or service, by providing to the particular person evidence that the recipient is registered under Subdivision D of Division V is liable to pay a penalty equal to the greater of \$250 and 50% of the amount of tax that has been evaded or attempted to be evaded.

10 (1) Subsection 286(1) of the Act is replaced by the following:

Keeping books and records

286 (1) Every person that carries on a business or is engaged in a commercial activity in Canada, every person that is required under this Part to file a return and every person that makes an application for a rebate or refund shall keep all records that are necessary to enable the determination of the person's liabilities and obligations under this Part or the amount of any rebate or refund to which the person is entitled.

Minister may specify information

(1.1) The Minister may specify the form a record is to take and any information that the record shall contain.

Language and location of record

(1.2) Unless otherwise authorized by the Minister, a record shall be kept in Canada in English or in French.

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2021.

11 (1) The definition *business number* in subsection 295(1) of the Act is amended by striking out “or” at the end of paragraph (a) and by adding the following after that paragraph:

(a.1) a person registered under Subdivision E of Division II; or

(2) Paragraph 295(6.1)(a) of the Act is replaced by the following:

(a) the identified person is registered under Subdivision E of Division II or Subdivision D of Division V; and

(3) Subsections (1) and (2) come into force, or are deemed to have come into force, on July 1, 2021.

12 Paragraph 298(1)(c) of the Act is replaced by the following:

(c) in the case of any penalty payable by the person, other than a penalty under section 280.1, 285, 285.01, 285.02 or 285.1, more than four years after the person became liable to pay the penalty;

DENTONS CANADA LLP COMMENTARY

Application of the GST/HST to E-Commerce

Budget 2021 confirmed the intention of the Federal Government to implement a number of changes to the GST/HST system to ensure that the GST/HST applies in a fair and effective manner to the growing digital economy. New measures were

initially presented in the 2020 Fall Economic Statement and the government also released draft legislative proposals, which should come into force on July 1, 2021.

Budget 2021 announces new proposed amendments to the measures initially presented in the 2020 Fall Economic Statement.

2020 Fall Economic Statement

Simplified new registration system for non-resident vendors supplying digital products or services to consumers in Canada.

Non-resident vendors supplying digital products or services (including traditional services) would be required to register for GST/HST purposes and to collect tax on their sales to Canadian consumers. Distribution platform operators would also be required to register for GST/HST purposes and to collect and remit the tax on the supplies to Canadian consumers that they facilitate. To support compliance with these requirements, a simplified GST/HST registration framework and remittance framework would be available to non-resident vendors and non-resident platform operators that are not carrying on business in Canada (e.g., have no permanent establishment in Canada).

Normal registration rules to apply to distribution platform operators from a Canadian fulfillment warehouse.

Distribution platform operators would be required to register under the normal GST/HST rules and to collect and remit tax in respect of sales of goods shipped from a fulfillment warehouse or another place in Canada, when those sales are made by non-registered vendors through their distribution platform.

Non-resident vendors that makes sales on their own (i.e., not made through a distribution platform) would also be required to register under the normal GST/HST rules and to collect and remit tax in respect of sales of goods shipped from a fulfillment warehouse or another place in Canada.

GST/HST to apply on all supplies of short-term accommodation in Canada facilitated through a digital accommodation platform.

GST/HST would be required to be collected and remitted on short-term accommodations supplied in Canada through an accommodation platform by either the property owner or the accommodation platform operator.

The simplified registration platform would be available to non-resident accommodation platform operators that are not carrying on business in Canada.

New proposed amendments

Safe Harbour rules

To avoid potential liabilities issues that could arise because a platform operator relied on information supplied by a third party, Budget 2021 proposes to impose joint and several, or solidary, liability on a platform operator and a third-party supplier for the collection and remittance of tax, if the third-party supplier provides false information to the platform operator;

Furthermore, the liability of a platform operator for failure to collect and remit tax, would be limited if the platform operator reasonably relied on the information provided by a third-party supplier.

Eligible deductions:

Budget 2021 proposes an amendment to clarify that suppliers registered for the GST/HST under the simplified framework are eligible to deduct amounts for bad debts and certain provincial HST point-of-sale rebates to purchasers (e.g., in respect of audio books) from the tax that they are required to remit, and that public libraries and similar institutions are eligible to claim a rebate for the GST paid on audio books acquired from those suppliers.

Threshold Amount Determination

Budget 2021 proposes to exclude supplies of zero-rated digital product or services in calculating the annual threshold amount of \$30,000 over which registration under the simplified framework becomes mandatory.

Platform Operator Information Return

Budget 2021 proposes an amendment to clarify that the requirement to file an annual information return applies only to platform operators that are registered or are required to be registered for the GST/HST. Initial proposals (2020 Fall Economic Statement) stated that, as a general rule, platform operators would be required to file an annual information return if they facilitate a supply of short-term accommodation situated in Canada or a sale by a non-registered vendor of goods that are located in a fulfillment warehouse in Canada.

Authority for the Minister of National Revenue to Register a Person

Budget 2021 proposes that to provide the Minister of National Revenue the authority to register a person that the Minister believes should be registered under the simplified framework. This authority already exists in respect of the existing GST/HST framework.

Administration and Compliance Approach

In line with the best practices of other jurisdictions that have adopted similar measures, the Canada Revenue Agency (CRA) will work closely with affected businesses and platform operators to assist them in meeting their obligations.

Where the affected businesses and platform operators show that they have taken reasonable measures but are unable to meet their new obligations for operational reasons, the CRA will take a practical approach to compliance and exercise discretion in administering these measures during a 12-month transition period, starting from July 1, 2021 coming into force date.

Resolution 13: GST New Housing Rebate Conditions

13 (1) Subsection 262(3) of the Act is replaced by the following:

Group of individuals

(3) If a supply of a residential complex or a share of the capital stock of a cooperative housing corporation is made to two or more individuals or if two or more individuals construct or substantially renovate, or engage another person to construct or substantially renovate, a residential complex, the following rules apply in respect of those individuals:

(a) subject to paragraphs (b) and (c), the references in sections 254 to 256 to a particular individual shall be read as references to all of those individuals as a group;

(b) the references in paragraphs 254(2)(b), 254.1(2)(b), 255(2)(c), 256(2)(a) and 2.2(b) to the primary place of residence of the particular individual or a relation of the particular individual are to be read as references to the primary place of residence of any of those individuals or a relation of any of those individuals;

(c) the references in clause 254(2)(g)(i)(A), subparagraphs 254.1(2)(g)(i), 255(2)(f)(i) and 256(2)(d)(i) and paragraph 256(2.2)(c) to the particular individual or a relation of the particular individual are to be read as references to any of those individuals or a relation of any of those individuals; and

(d) only one of those individuals may apply for the rebate under section 254, 254.1, 255 or 256, as the case may be, in respect of the complex or share.

(2) Subsection (1) applies in respect of

(a) any rebate under subsection 254(2), 254.1(2) or 255(2) of the Act in respect of which the agreement referred to in paragraph 254(2)(b), 254.1(2)(a) or 255(2)(c) of the Act, as the case may be, is entered into after Budget Day; and

(b) any rebate under subsection 256(2) of the Act

(i) in respect of a residential complex (other than a mobile home or floating home) if the construction or substantial renovation of the residential complex is substantially completed after Budget Day, or

(ii) in respect of a mobile home or floating home acquired or imported after Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2021 proposes to remove the condition that where two or more individuals buy a new home together, each of them must be acquiring the home for use as their primary place of residence or the primary place of residence of a relation. Instead, the GST New Housing Rebate would be available as long as the new home is acquired for use as the primary place of residence of any one of the purchasers or a relation of any one of the purchasers.

In addition to new homes purchased from a builder, the GST New Housing Rebate is available in respect of owner-built homes, co-op housing shares and homes constructed on leased land. The proposed change to the rebate conditions would also be applicable in these circumstances. The proposed change would also apply to new housing rebates in respect of the provincial component of the HST.

This measure would apply to a supply made under an agreement of purchase and sale entered into after April 19, 2021. However, in the case of a rebate for owner-built homes, the measure would apply where construction or substantial renovation of the residential complex is substantially completed after April 19, 2021.

Resolution 14: Rebate of Excise Tax for Goods Purchased by Provinces

14 (1) Section 68.19 of the *Excise Tax Act* is replaced by the following:

Payment — use by province

68.19 (1) If tax under Part III has been paid in respect of any goods that Her Majesty in right of a province has purchased or imported, an amount equal to the amount of that tax shall, subject to this Part, be paid to Her Majesty in right of the province if Her Majesty in right of the province has purchased or imported those goods for any purpose other than

- (a) resale;
- (b) use by any board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the lieutenant governor in council of the province; or
- (c) use by Her Majesty in right of the province, or by any agents or servants of Her Majesty in right of the province, in connection with the manufacture or production of goods or use for other commercial or mercantile purposes.

Application

(1.1) No amount shall be paid under subsection (1) in respect of goods purchased or imported by Her Majesty in right of a province unless an application for the payment is made within two years after Her Majesty in right of the province purchased or imported those goods.

Election

(1.2) Her Majesty in right of a province and the particular person that is, as the case may require, the importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer in respect of goods that Her Majesty in right of the province purchases or imports may jointly elect, in prescribed form containing prescribed information, to have the following rules apply in respect of the purchase or importation:

- (a) the particular person, and not Her Majesty in right of the province, is entitled to apply for a payment under subsection (1) in respect of the purchase or importation; and
- (b) the amount payable by the Minister under subsection (1) in respect of the purchase or importation shall be paid to the particular person, and not to Her Majesty in right of the province.

Limitation

(1.3) No more than one election under subsection (1.2) may be made by Her Majesty in right of a province in respect of a particular purchase or importation of goods.

Exception

(2) Subsection (1.2) does not apply in respect of goods purchased or imported by Her Majesty in right of a province at a time when a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements Act* is in force in respect of the province.

Non-application of subsection 68.2(1)

(3) For greater certainty, if an application for a payment in respect of goods can be made by any person under subsection (1), subsection 68.2(1) does not apply in respect of the goods.

(2) Subsection (1) applies in respect of any goods purchased or imported after 2021.

DENTONS CANADA LLP COMMENTARY

Under the *Excise Tax Act*, provinces are provided relief from the federal excise tax embedded in the price of motive fuels, air conditioners in automobiles, and fuel inefficient vehicles, which they purchase or import for the province's own use.

Where a province that does not have an agreement with the federal government under which the province and the federal government mutually agree to pay each other's taxes, purchases these goods from a vendor, a rebate equal to the amount of the embedded tax ("provincial-use rebate") can either be claimed by the province itself or by the vendor.

To clarify which party is eligible to claim the provincial-use rebate, Budget 2021 proposes to create a joint election mechanism to specify that the vendor alone would

be eligible to apply for the rebate only if it jointly elects with the province to be the eligible party. If no joint election is made, then only the province would be eligible to apply for the rebate.

This measure would apply in relation to goods purchased or imported by a province for its own use on or after January 1, 2022.

Resolution 15: Electronic Filing and Certification of Tax and Information Returns

15 The Act is modified to give effect to the proposals relating to Electronic Filing and Certification of Tax and Information Returns described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

- Corporations under the Income Tax Act and GST/HST Registrants

Budget 2021 proposes to eliminate the mandatory electronic filing thresholds for returns of corporations under the *Income Tax Act*, and of Goods and Services Tax/Harmonized Sales Tax (GST/HST) registrants (other than for charities or Selected Listed Financial Institutions) under the *Excise Tax Act*. As such, returns of most corporations and GST/HST registrants under these acts would be required to be filed electronically.

This measure would apply in respect of taxation years beginning after 2021 for *Income Tax Act* purposes and in respect of reporting periods beginning after 2021 for *Excise Tax Act* purposes.

- Electronic Payments

Budget 2021 proposes to clarify that payments required to be made at a financial institution under the *Income Tax Act*, the GST/HST portion of the *Excise Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act* and Part 1 of the *Greenhouse Gas Pollution Pricing Act*, include online payments made through such an institution.

It is also proposed that electronic payments be required for remittances over \$10,000 under the *Income Tax Act* and that the threshold for mandatory remittances to be made at a financial institution under the GST/HST portion of the *Excise Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* be lowered from \$50,000 to \$10,000.

This measure would apply to payments made on or after January 1, 2022.

Resolution 16: Avoidance of Tax Debts

16 The Act is modified to give effect to the proposals relating to Avoidance of Tax Debts described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Section 325 of the *Excise Tax Act* is a collection provision and anti-avoidance rule, the purpose of which is to prevent taxpayers from depleting assets that could be used to satisfy their tax liabilities by transferring property to non-arm's length persons for insufficient consideration. Section 325 is broadly worded and applies to transfers made directly or indirectly, either by means of a trust or by any other means. Where section 325 applies, the transferee is jointly and severally liable with the transferor for the certain tax liabilities of the transferor under Part IX of the *Excise Tax Act*.

Finance has observed that taxpayers have been successful in avoiding the application of section 325 of the *Excise Tax Act* and the comparable section 160 of the *Income Tax Act* by entering into transactions designed to avoid one or more of the conditions that must be satisfied for those provisions to apply.

As such, Budget 2021 proposes a number of measures aimed at curtailing this type of planning, including penalties against parties who devise or promote such plans. The details of this proposal are described in the commentary for *Income Tax Act* Resolution 27.

The proposed rules will apply in respect of transfers of property that occur on or after April 19, 2021. Similar amendments would be made to section 297 of the *Excise Act*, 2001 and section 161 of the *Greenhouse Gas Pollution Pricing Act*.

Resolutions 17 to 18: Audit Authorities

17 Subsection 98(3) of the Act is replaced by the following:

Inspection

(3) Every person required by subsection (1) to keep records and books of account shall, at all reasonable times, make the records and books of account and every account and voucher necessary to verify the information therein available to officers of the Agency and other persons thereunto authorized by the Minister, give them all reasonable assistance to inspect the records, books, accounts and vouchers and answer all proper questions orally or in writing, in any manner specified by the officers or the other persons.

18 (1) Subsections 288(1) and (2) of the Act are replaced by the following:

Inspections

288 (1) Subject to subsection (2), an authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Part,

- (a) inspect, audit or examine the documents, property or processes of a person that may be relevant in determining the obligations of that or any other person under this Part or the amount of any rebate or refund to which that or any other person is entitled;
- (b) enter any premises or place where any business or commercial activity is carried on, where any property is kept, where anything is done in connection with any business or commercial activity or where any documents are or should be kept; and
- (c) require the owner or manager of the property, business or commercial activity — and any particular person on any premises, or in any place, where the business or commercial activity is carried on, where the property is kept, where anything is done in connection with the business or commercial activity or where any documents are or should be kept — to give to the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Part and, for that purpose, the authorized person may require
 - (i) the owner or manager to attend at the premises or place with the authorized person, and
 - (ii) the owner, the manager or the particular person to answer those questions orally or in writing, in any manner specified by the authorized person.

Prior authorization

(2) If any premises or place referred to in subsection (1) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (3).

(2) Paragraph 288(3)(a) of the Act is replaced by the following:

- (a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in subsection (1),

DENTONS CANADA LLP COMMENTARY

Audit Authorities

Sections 98 and 288 of the *Excise Tax Act* provides the Canada Revenue Agency (“CRA”) with the authority to audit taxpayers and otherwise ensure compliance with the *Excise Tax Act*. However, in the recent decision *Canada v. Cameco Corporation*, 2019 FCA 67, the Federal Court of Appeal (“FCA”) limited the extent to which CRA officials could require persons to answer all proper questions and to provide all reasonable assistance relating to the administration or enforcement of the *Income Tax Act*. In particular, the FCA held that the CRA could not compel employees of a taxpayer to attend interviews to answer oral questions as part of an audit.

In response, Budget 2021 proposes to amend sections 98 and 288 of the *Excise Tax Act*, and the comparable provisions of the *Income Tax Act*, the *Excise Act*, 2001, the *Air Travellers Security Charge Act* and Part 1 of the *Greenhouse Gas Pollution Pricing Act*. The proposed measures will allow the CRA to require persons to answer all proper questions, and to provide all reasonable assistance, for any purpose related to the administration or enforcement of the relevant statute. The amendments also provide that CRA officials have the authority to require persons

to respond to questions orally or in writing, including in any form specified by the relevant CRA official. These amendments would allow the CRA to undertake audit and other compliance activities in the same manner as it did prior to the decision.

The new measures would come into force on Royal Assent.

*That it is expedient to amend the Excise Act, 2001
as follows:*

Resolutions 1 to 9: Excise Duty on Tobacco

1 (1) The definition *adjustment day* in section 58.1 of the *Excise Act, 2001* is amended by striking out “or” at the end of paragraph (a.1) and by adding the following after that paragraph:

(a.2) the day after Budget Day; or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

2 (1) Section 58.2 of the Act is amended by adding the following after subsection (1.1):

Imposition of tax — 2021 increase

(1.2) Subject to section 58.3, every person shall pay to Her Majesty a tax on all taxed cigarettes of the person held at the beginning of the day after Budget Day at the rate of \$0.02 per cigarette.

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

3 (1) Subsection 58.5(1) of the Act is amended by striking out “or” at the end of paragraph (a.1) and by adding the following after that paragraph:

(a.2) in the case of the tax imposed under subsection 58.2(1.2), June 30, 2021; or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

4 (1) Subsection 58.6(1) of the Act is amended by striking out “or” at the end of paragraph (a.1) and by adding the following after that paragraph:

(a.2) in the case of the tax imposed under subsection 58.2(1.2), June 30, 2021; or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

5 (1) Paragraph 1(a) of Schedule 1 to the Act is replaced by the following:

(a) \$0.72725; or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

6 (1) Paragraph 2(a) of Schedule 1 to the Act is replaced by the following:

(a) \$0.14545; or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

7 (1) Paragraph 3(a) of Schedule 1 to the Act is replaced by the following:

(a) \$9.09062; or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

8 (1) Paragraph 4(a) of Schedule 1 to the Act is replaced by the following:

(a) \$31.65673; or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

9 (1) Subparagraph (a)(i) of Schedule 2 to the Act is replaced by the following:

(i) \$0.11379, or

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2021 proposes to increase the tobacco excise duty rate by \$4 per carton of 200 cigarettes, along with corresponding increases to the excise duty rates for other tobacco products (see chart below). Inventories of cigarettes held by certain manufacturers, importers, wholesalers, and retailers at the beginning of April 20, 2021, would be subject to an inventory tax of \$0.02 per cigarette (subject to certain exemptions). Taxpayers would have until June 30, 2021, to file a return and pay the cigarette inventory tax.

Products	Current Excise Duty Rates (Effective April 1, 2021)	Proposed Excise Duty Rates after Budget Day
Cigarettes (per five cigarettes or fraction thereof)	\$0.62725	\$0.72725
Tobacco Sticks (per stick)	\$0.12545	\$0.14545
Manufactured Tobacco (per 50 grams or fraction thereof)	\$7.84062	\$9.09062
Cigars	\$27.30379 per 1,000 cigars plus the greater of \$0.09814 per cigar and 88% of the sale price or duty-paid value	\$31.65673 per 1,000 cigars plus the greater of \$0.11379 per cigar and 88% of the sale price or duty-paid value

Resolutions 10 to 12: Electronic Filing and Certification of Tax and Information Returns

10 The *Excise Act, 2001* is modified to give effect to the proposals relating to Electronic Filing and Certification of Tax and Information Returns described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

11 The *Air Travellers Security Charge Act* is modified to give effect to the proposals relating to Electronic Filing and Certification of Tax and Information Returns described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

12 The *Greenhouse Gas Pollution Pricing Act* is modified to give effect to the proposals relating to Electronic Filing and Certification of Tax and Information Returns described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

See Commentary Under Resolution 15 of the *Excise Tax Act*.

Resolutions 13 to 14: Avoidance of Tax Debts

13 The *Excise Act, 2001* is modified to give effect to the proposals relating to Avoidance of Tax Debts described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

14 The *Greenhouse Gas Pollution Pricing Act* is modified to give effect to the proposals relating to Avoidance of Tax Debts described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

See Commentary Under Resolution 16 of the *Excise Tax Act*.

Resolutions 15 to 17: Audit Authorities

15 (1) The portion of subsection 260(2) of the *Excise Act, 2001* before paragraph (a) is replaced by the following:

Powers of officer

(2) The officer may, at all reasonable times, for any purpose related to the administration or enforcement of this Act

(2) Paragraphs 260(2)(b) and (c) of the Act are replaced by the following:

(b) stop a conveyance or direct that it be moved to a place where an inspection or examination may be performed;

(c) require any individual to be present during an inspection, audit or examination, require any individual to answer all proper questions orally or in writing, in any manner specified by the officer and require any individual to give to the officer all reasonable assistance;

16 (1) The portion of subsection 70(2) of the *Air Travellers Security Charge Act* before paragraph (a) is replaced by the following:

Powers of authorized person

(2) The authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act

(2) Paragraph 70(2)(b) of the Act is replaced by the following:

(b) require any individual to be present during an inspection, audit or examination, require any individual to give to the authorized person all reasonable assistance and require any individual to answer all proper questions orally or in writing, in any manner specified by the authorized person.

17 (1) The portion of subsection 141(2) of the *Greenhouse Gas Pollution Pricing Act* before paragraph (a) is replaced by the following:

Powers of authorized person

(2) The authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Part

(2) Paragraph 141(2)(b) of the Act is replaced by the following:

(b) require any individual to be present during an inspection, audit or examination, require any individual to answer all proper questions orally or in writing, in any manner specified by the authorized person and require any individual to give to the authorized person all reasonable assistance.

DENTONS CANADA LLP COMMENTARY

See Commentary Under Resolution 17 to 18 of the *Excise Tax Act*.

Resolution 18: Excise Duty on Vaping Products

18 The *Excise Act, 2001* is modified to give effect to the proposals relating to Excise Duty on Vaping Products described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Tax Base

Budget 2021 proposes to implement a tax on vaping products in 2022 as part of the existing Excise Act, 2001 (“the Act”). The new duty would apply solely to vaping liquids produced in Canada or imported and that are intended for use in a vaping device in Canada. The duty would apply to vaping liquids whether or not they contain nicotine. Cannabis-based vaping products would be explicitly exempt from this framework, as they are already subject to cannabis excise duties under the Act.

Duty Rate

The proposed framework would impose a single flat rate duty on every 10 milliliters (ml) of vaping liquid or fraction thereof, within an immediate container. This rate could be in the order of \$1.00 per 10 ml or fraction thereof, and the excise duty would be calculated and imposed based on the volume of the smallest immediate container holding the liquid. Generally, the flat rate would be imposed and payable at the time of packaging or importation. The last federal licensee in the supply chain who packaged the vaping product for final retail sale, including vape shops holding an excise licence, would be liable to pay the applicable excise duty.

Administration

The CRA would be responsible for administering and enforcing the new excise duty framework. The Canada Border Services Agency (“CBSA”) would be responsible for administering and enforcing the framework at the border. Penalty and offence provisions broadly similar to those applying to alcohol, tobacco, and cannabis duties would apply.

Licensing and Registration Requirements

Manufacturers and importers of dutiable vaping products would be required to obtain a licence for their activities from the CRA. They would be expected to meet criteria similar to those for other excisable products. Licences for vaping product manufacturers and importers would be issued for a maximum of three years and would not be automatically renewed.

Reporting Requirements

All licensees would be required to submit to the CRA a monthly duty and information return.

Excise Stamping Requirements

It's proposed that all dutiable vaping products removed from the premises of a federal licensee to enter the Canadian duty-paid market would be required to be packaged in a container intended for sale at the retail level, and would be required to bear an excise stamp showing that duties have been paid. The Act would prohibit the possession or sale of any unstamped dutiable vaping products by a person unless otherwise allowed under the Act.

Imports and Exports

Importations of vaping products subject to the proposed taxation framework would be subject to excise duties, unless duty is not payable (e.g., if the product is not yet in a state where it could be entered into the retail market for sale to a final consumer). Exportations of vaping products would not be subject to excise duties.

Personal Use

Registration and licensing would not be required for individuals who mix vaping liquids strictly for their own personal consumption.

Federal Provincial-Territorial Taxation Coordination

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

Draft Amendments to Various Regulations

Resolutions 1 to 3: Input Tax Credit Information Requirements

Input Tax Credit Information (GST/HST) Regulations

1 The definition *intermediary* in section 2 of the *Input Tax Credit Information (GST/HST) Regulations* is replaced by the following:

intermediary of a person, means, in respect of a supply made by the person, a registrant

(a) that, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply, or

(b) that is deemed under subsection 177(1.11) of the Act to have acted as agent of the person in making the supply; (*intermédiaire*)

2 (1) The portion of paragraph 3(a) of the Regulations before subparagraph (i) is replaced by the following:

(a) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than \$100,

(2) The portion of paragraph 3(b) of the Regulations before subparagraph (i) is replaced by the following:

(b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$100 or more and less than \$500,

(3) The portion of paragraph 3(c) of the Regulations before subparagraph (i) is replaced by the following:

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$500 or more,

3 Sections 1 and 2 are deemed to have come into force on the day after Budget Day.

DENTONS CANADA LLP COMMENTARY

Input Tax Credit Information Requirements

Under the input tax credits (ITCs) information rules, information requirements to support businesses' ITC claims (to be provided by either the supplier or an intermediary) are graduated, with progressively more information required when the amount paid or payable in respect of a supply equals or exceeds thresholds of \$30 or \$150. In addition, for the purposes of these rules, an intermediary currently does not include a billing agent (i.e., an agent that collects consideration and tax on behalf of an underlying supplier but does not otherwise cause or facilitate a supply).

Budget 2021 proposes to increase the current ITC information thresholds from \$30 to \$100 and from \$150 to \$500, and to allow billing agents to be treated as intermediaries for purposes of the ITC information rules.

These measures would come into force after April 19, 2021.

Resolutions 4 to 5: GST New Housing Rebate Conditions

New Harmonized Value-added Tax System Regulations, No. 2

4 Section 40 of the *New Harmonized Value-added Tax System Regulations, No. 2* is replaced by the following:

Group of individuals

40 If a supply of a residential complex or a share of the capital stock of a cooperative housing corporation is made to two or more individuals or if two or more individuals construct or substantially renovate, or engage another person to construct or substantially renovate, a residential complex, the following rules apply in respect of those individuals:

- (a) subject to paragraphs (b) and (c), the references in sections 41, 43, 45 and 46 and the references in section 256.21 of the Act to an individual are to be read as references to all of those individuals as a group;
- (b) the references in subsection 41(2) and paragraphs 45(2)(a), 46(2)(a) and 46(5)(c) to the primary place of residence of an individual or a relation of the individual are to be read as references to the primary place of residence of any of those individuals or a relation of any of those individuals;
- (c) the reference in paragraph 46(5)(d) to the particular individual or a relation of the particular individual is to be read as a reference to any of those individuals or a relation of any of those individuals; and
- (d) only one of those individuals may apply for a rebate under subsection 256.21(1) of the Act in respect of the complex or share, the amount of which is determined under section 41, 43, 45 or 46.

5 Section 4 applies in respect of

(a) any rebate under subsection 256.21(1) of the *Excise Tax Act*, the amount of which is determined under subsection 41(2), 43(1) or 45(2) of the Regulations, in respect of which the agreement referred to in paragraph 254(2)(b), 254.1(2)(a) or 255(2)(c) of that Act, as the case may be, is entered into after Budget Day; and

(b) any rebate under subsection 256.21(1) of the *Excise Tax Act*, the amount of which is determined under subsection 46(2) of the Regulations

(i) in respect of a residential complex (other than a mobile home or floating home) if the construction or substantial renovation of the residential complex is substantially completed after Budget Day, or

(ii) in respect of a mobile home or floating home acquired, imported or brought into a participating province after Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2021 proposes to remove the condition that where two or more individuals buy a new home together, each of them must be acquiring the home for use as their primary place of residence or the primary place of residence of a relation. Instead, the GST New Housing Rebate would be available as long as the new home is acquired for use as the primary place of residence of any one of the purchasers or a relation of any one of the purchasers.

In addition to new homes purchased from a builder, the GST New Housing Rebate is available in respect of owner-built homes, co-op housing shares and homes constructed on leased land. The proposed change to the rebate conditions would also be applicable in these circumstances. The proposed change would also apply to new housing rebates in respect of the provincial component of the HST.

This measure would apply to a supply made under an agreement of purchase and sale entered into after April 19, 2021. However, in the case of a rebate for owner-built homes, the measure would apply where construction or substantial renovation of the residential complex is substantially completed after April 19, 2021.

Other Measures

Digital Services Tax

Budget 2021 proposes to enact a Digital Services Tax (“DST”). This measure is in addition to the various GST/HST measures targeting the digital economy that were first announced in the *2020 Fall Economic Statement*. Although a multilateral agreement on cross-border digital tax is currently in-progress, the federal government plans to implement a tax until an agreement comes into force. The DST will be equal to 3% of revenue from digital services that rely on data and content contributions from Canadian users. The tax would only apply to large businesses with gross revenue of €750 million or more. The DST would apply from January 1, 2022 until an acceptable multilateral approach takes effect.

Tax on Unproductive Use of Canadian Housing by Foreign Non-Resident Owners

Budget 2021 announces the government’s intention to implement a national, annual 1% tax on the value of non-resident, non-Canadian owned residential real estate that is considered to be vacant or underused, effective January 1, 2022. The tax will require all owners, other than Canadian citizens or permanent residents of Canada, to file a declaration as to the current use of the property, with significant penalties for failure to file.

Supporting Self-Determination Through Tax Agreements

Currently, Indigenous governments can negotiate agreements with the federal government to implement a First Nations Goods and Service Tax or personal income tax within their lands. Budget 2021 announces the Government of Canada’s intention to engage with interested Indigenous governments and organizations on a framework for the negotiation of agreements that would enable interested Indigenous governments to implement a fuel, alcohol, tobacco, and cannabis sales tax within their reserves or settlement lands.

Protecting Taxpayer Information

Budget 2021 proposes to provide \$330.6 million over five years, starting in 2021-22, to the CRA to invest in new technologies and tools that match the growing sophistication of cyber threats, and to ensure the CRA’s workforce has the specialized skills to proactively monitor threats and better safeguard Canadian data.

Modernizing CRA Services

Budget 2021 proposes to provide \$41.7 million over three years, starting in 2021-22, to the CRA to reduce processing time for T1 adjustments by making online self-service more user-friendly and improving automated processing of T1 adjustments.

Also, the CRA has created a simplified credit and benefit return and Canada Child Benefit form for First Nations individuals, and will be expanding this project to make these forms more widely available to more Indigenous people. The improved forms recognize Indigenous experience—such as community care and nurturing of children—and remove information that is not applicable to Indigenous peoples.

Tackling Tax Avoidance and Evasion

Budget 2021 proposes to invest an additional \$304.1 million over five years, starting in 2021–22, to allow the CRA to fund new initiatives and extend existing programs, including:

- Increasing GST/HST audits of large businesses where risk assessment models have found the greatest risk of non-compliance.
- Modernizing the CRA’s risk assessment process to prevent unwarranted and fraudulent GST/HST refund and rebate claims at the outset, and improve the ability to issue refunds for compliant businesses as quickly as possible.
- Enhancing capacity to identify tax evasion involving trusts and provide better service to executors and trustees.

The Budget estimates that these measures will recover \$810 million in revenues over five years, which does not include the additional revenues to be gained by the provinces and territories.

Strengthening the CRA

Budget 2021 proposes to provide \$230 million over five years, starting in 2021–22, for the CRA to improve its ability to collect outstanding taxes. It is anticipated that this proposal will lead to the collection of an additional \$5 billion in outstanding taxes over five years.

Consultation on Transfer Pricing

Citing the Federal Court of Appeal’s recent *Cameco* decision, the federal government believes that the current transfer pricing rules can encourage multinationals to inappropriately shift income out of Canada—the government perceives this as a risk to the integrity of Canada’s corporate tax system. As a result, the government intends to consult on Canada’s transfer pricing rules. In the coming months, the Department of Finance will release a consultation paper to provide stakeholders with an opportunity to comment on possible measures to improve Canada’s transfer pricing rules.

Modernizing the GAAR

The budget briefly reiterated the government’s commitment to strengthen and modernize Canada’s general anti-avoidance rule.

Investment Tax Credit for Carbon Capture

Budget 2021 proposes to introduce an investment tax credit for capital invested in CCUS projects with the goal of reducing emissions by at least 15 megatonnes of CO₂ annually. This measure will come into effect in 2022.

The government will move quickly with a 90-day consultation period with stakeholders on the design of the investment tax credit, after which it will announce more details—including the rate of the incentive. It is not intended that the investment tax credit be available for Enhanced Oil Recovery projects. The government intends to make the credit available for direct air capture projects. The government will be seeking input from all industrial subsectors (e.g. oil sands, refining, cement, fertilizer, power generation, direct air capture, etc.), recognizing that various subsectors face different challenges in adopting CCUS. The tax credit will also support hydrogen production. During the consultation, the government will consider how equivalent tax support could be provided to producers of green hydrogen. The consultation will include key provincial governments, encouraging them to create complementary measures for CCUS projects in their jurisdictions.

Following consultations, the government intends to introduce legislation at the earliest opportunity to implement the investment tax credit.

The government will also analyze how the tax system can be used to further support the commercialization and deployment of breakthrough technologies that may be critical to creating our net-zero future.

Disbursement Quotas for Charities

Budget 2021 proposes launching public consultations with charities over the coming months on potentially increasing the disbursement quota and updating the tools at the CRA's disposal, beginning in 2022. This could potentially increase support for the charitable sector and those that rely on its services by between \$1 billion and \$2 billion annually.

Duty and Tax Collection on Imported Goods

Budget 2021 proposes amendments to the *Customs Act* to improve the collection of duties and taxes on imported goods.

Currently, some importers with foreign ties value their goods at a lower price than most Canadian importers by using a previous foreign sale price. Pursuant to the proposed amendments to the *Customs Act* and related regulations, all importers will be required to value their goods using the value of the last sale for export to a purchaser in Canada, ensuring fairness for all importers and enhancing consistency with international rules.

A second element to the proposed amendments would support a broad modernization of payment processes for commercial importers in the *Customs Act* and regulations. They will support the implementation and enforcement of a streamlined and harmonized billing cycle for commercial importations that will include flexibility to make good-faith corrections without incurring penalties or interest. These changes would coincide with implementation of key functionalities

of the CBSA Assessment and Revenue Management initiative that is set to serve as a single portal for commercial importers.

Tax on Select Luxury Goods

Budget 2021 proposes to introduce a tax on the retail sale of new luxury cars and personal aircraft priced over \$100,000, and boats priced over \$250,000. For vehicles, aircraft and boats sold in or imported to Canada, the tax would apply at the point of purchase if the final sale price paid by a consumer (excluding of GST/HST or provincial sales tax) is above the \$100,000 or \$250,000 price threshold, as the case may be.

Tax Base

Luxury Vehicles

All new passenger vehicles typically suitable for personal use, including coupes, sedans, station wagons, sports cars, passenger vans and minivans equipped to accommodate less than 10 passengers, SUVs, and passenger pick-up trucks would be subject to the tax.

The following vehicles will be excluded:

- Motorcycles and certain off-road vehicles, such as all-terrain vehicles and snowmobiles;
- Racing cars;
- Motor homes, off-road, construction, and farm vehicles as well as certain commercial (e.g., heavy-duty vehicles such as some trucks and cargo vans) and public sector (such as buses, police cars and ambulances) vehicles and hearses would not be subject to the tax.

Aircraft

Budget 2021 also proposes that the tax apply to all new aircraft typically suitable for personal use, including aeroplanes, helicopters and gliders. Generally, large aircraft typically used in commercial activities, such as those equipped for the carriage of passengers and having a certified maximum carrying capacity of more than 39 passengers would fall outside the scope of the tax. Smaller aircraft used in certain commercial (such as public transportation) and public sector (police, military and rescue aircraft, air ambulances) activities would also not be subject to the tax.

Boats

The tax would also apply to new boats such as yachts, recreational motorboats and sailboats, typically suitable for personal use. Smaller personal watercraft (e.g., water scooters) as well as floating homes, commercial fishing vessels, ferries, and cruise ships would fall outside the scope of the tax.

Tax rate

For vehicles and aircraft priced over \$100,000, the amount of the tax would be the lesser of 10 per cent of the full value of the vehicle or the aircraft, or 20 per cent

of the value above \$100,000. For boats priced over \$250,000, the amount of the tax would be the lesser of 10 per cent of the full value of the boat or 20 per cent of the value above \$250,000.

Point of imposition

The tax would generally apply at the final point of purchase of new luxury vehicles, aircraft, and boats in Canada. In the case of imports, application would generally be either at the time of importation or at the time of the final point of purchase in Canada following importation.

Upon purchase or lease, the seller or lessor would be responsible for remitting the full amount of the federal tax owing.

In line with their treatment under other taxation regimes, exports will not be subject to the tax.

Treatment under the GST/HST

The GST/HST would apply to the final sale price, inclusive of the proposed tax.

These proposed rules would be effective as of January 1, 2022 and further details will be announced in the coming months.

Table of Effective Dates—2021

Notice of Ways and Means Motion to Amend the Income Tax Act and Other Related Legislation		
Resolution 1	Disability Tax Credit	Applicable to the 2021 and subsequent taxation years
Resolutions 2 to 3	Canada Workers Benefit	Applicable to the 2021 and subsequent taxation years
Resolution 4	Northern Residents Deductions	Applicable to the 2021 and subsequent taxation years
Resolution 5	Postdoctoral Fellowship Income	Applicable to the 2021 and subsequent years; retroactively applicable from 2011-2020 upon request.
Resolutions 6 to 8	Tax Treatment of COVID-19 Benefit Amounts	Deemed to have come into force on January 1, 2020
Resolution 9	Fixing Contribution Errors in Defined Contribution Pension Plans	Applicable in the 2021 and subsequent taxation years
Resolution 10	Taxes Applicable to Registered Investments	Applies on various dates
Resolutions 11 to 14	Registration and Revocation Rules Applicable to Charities	Applicable on Royal Assent
Resolution 15	Electronic Filing and Certification of Tax and Information Returns	In force on various dates
Resolutions 16 to 21	Emergency Business Supports and Canada Recovery Hiring Program	In force on various dates
Resolution 22	Immediate Expensing	Applicable for eligible property that is acquired on or after Budget Day and that becomes available for use before 2024.
Resolution 23	Rate Reduction for Zero-Emission Technology Manufacturers	In force on various dates
Resolution 24	Capital Cost Allowance for Clean Energy Equipment	In force on various dates
Resolution 25	Film or Video Production Tax Credits	Applicable in respect of productions for which eligible expenditures were incurred in taxation years ending in 2020 or 2021
Resolution 26	Mandatory Disclosure Rules	In force on various dates
Resolution 27	Avoidance of Tax Debts	Applicable in respect of transfers of property that occur on or after April 19, 2021

Resolution 28	Audit Authorities	In force on Royal Assent
Resolutions 29 to 30	Base Erosion and Profit Shifting	In force on various dates

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

Resolutions 1 to 12	Application of the GST/HST to E-commerce	In force on various dates
Resolution 13	GST New Housing Rebate Conditions	In force on various dates
Resolution 14	Rebate of Excise Tax for Goods Purchased by Provinces	In force on various dates
Resolution 15	Electronic Filing and Certification of Tax and Information Returns	In force on various dates
Resolution 16	Avoidance of Tax Debts	Applicable in respect of transfers of property that occur on or after April 19, 2021
Resolutions 17 to 18	Audit Authorities	In force on Royal Assent

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

Resolutions 1 to 9	Excise Duty on Tobacco	Deemed to have come into force on April 20, 2021
Resolutions 10 to 12	Electronic Filing and Certification of Tax and Information Returns	In force on various dates
Resolutions 13 to 14	Avoidance of Tax Debts	Applicable in respect of transfers of property that occur on or after April 19, 2021
Resolutions 15 to 17	Audit Authorities	In force on Royal Assent
Resolution 18	Excise Duty on Vaping Products	Effective in 2022 and subsequent years

Notice of Ways and Means Motion to introduce an Act to implement a Tax on Select Luxury Goods

In force on various dates

Draft Amendments to Various GST/HST Regulations

Resolutions 1 to 3	Input Tax Credit Information Requirements	Deemed to have come into force on April 20, 2021
Resolutions 4 to 5	GST New Housing Rebate Conditions	In force on various dates

Department of Finance News Release

Budget 2021: A Recovery Plan for Jobs, Growth, and Resilience

April 19, 2021 - Ottawa, Ontario - Department of Finance Canada

Today, Deputy Prime Minister and Minister of Finance, the Honourable Chrystia Freeland, released Budget 2021: A Recovery Plan for Jobs, Growth, and Resilience, the Government of Canada's plan to finish the fight against COVID-19 and ensure a robust economic recovery that brings all Canadians along.

The COVID-19 recession is the steepest and fastest economic contraction since the Great Depression. It has disproportionately affected low-wage workers, young people, women, and racialized Canadians. For businesses, it has been a two-speed recession, with some finding ways to prosper and grow, but many businesses—especially small businesses—fighting to survive. Budget 2021 is an historic investment to address the specific wounds of the COVID-19 recession, put people first, create jobs, grow the middle class, set businesses on a track for long-term growth, and ensure that Canada's future will be healthier, more equitable, greener, and more prosperous.

The Government of Canada's top priority remains protecting Canadians' health and safety, particularly during this third, aggressive wave of the virus and its variants. Vaccine rollout is underway across Canada, with federal government support in every province and territory. Budget 2021 invests in Canada's bio-manufacturing and life sciences sector to rebuild domestic vaccine manufacturing capacity, and has a plan to put in place national standards for long-term care and mental health services.

Budget 2021 is a plan to bridge Canadians and Canadian businesses through the crisis and towards a robust recovery. It proposes to extend business and income support measures through to the fall and to make investments to create jobs and help businesses across the economy come roaring back. It will support almost 500,000 new training and work opportunities including 215,000 opportunities for youth; support businesses in our most affected sectors such as tourism and arts and culture; and accelerate investment in digital transformation of small and medium-sized businesses. Budget 2021 is a plan that puts the government on track to meet its commitment to create 1 million jobs by the end of the year.

Budget 2021 makes a generational investment to build a Canada-wide early learning and child care system. This is a plan to drive economic growth, a plan to increase women's participation in the workforce, and a plan to offer each child in Canada the best start in life. This plan will aim to reduce fees for parents with children in regulated child care by 50 per cent on average, by 2022, with a goal of reaching \$10 per day on average by 2026, everywhere outside of Quebec. Budget 2021 will invest almost \$30 billion over the next five years and provide permanent ongoing funding, working with provincial and territorial, and Indigenous partners to support quality, not-for-profit child care, and ensuring the needs of early childhood educators are at the heart of the system.

Budget 2021 is also a plan for a green recovery that fights climate change, helps more than 200,000 Canadians make their homes greener, builds a net-zero economy by investing in world-leading technologies that make industry cleaner, helps Canada reach its goal of conserving 25 per cent of our lands and oceans by 2025, and creates good middle-class jobs in the green economy along the way.

The pandemic has laid bare long-standing inequities in our economy. Budget 2021 is an inclusive plan that takes action to break down barriers to full economic participation for all Canadians. The budget will establish a \$15 federal minimum wage; support more than 35,000 affordable homes, especially for the most vulnerable Canadians; take action to end gender-based violence; ensure Canada has one of the largest support packages for youth in the world; support entrepreneurs from diverse groups; address systemic racism in our society; lift over 100,000 people out of poverty; and make an historic investment in Indigenous peoples and reconciliation.

Canada entered the pandemic in a strong fiscal position. This allowed the government to take quick and decisive action, supporting people and businesses, and put it in the position to make historic investments in the recovery. Recovery has been uneven to date as Canada has now faced three waves of the virus. The greatest danger to our economy would have been not doing enough; strong fiscal support is necessary to prevent economic scarring and make sure Canada's recovery leaves no one behind. Budget 2021 is a prudent plan that sets out a new fiscal anchor that is committed to reducing the federal debt as a share of the economy over the medium-term and unwinding COVID-19-related deficits. This framework is prudent and sustainable, with the federal debt-to-GDP ratio expected to fall to 49.2 per cent by 2025-26 and the deficit to reach 1.1 per cent of GDP that same year, a lower deficit ratio than was forecast—in December 2019 prior to the onset of COVID-19—for 2019-20 and 2020-21.

Quotes

“This budget is about finishing the fight against COVID-19. It's about healing the wounds left by the COVID-19 recession. And it's about creating more jobs and prosperity for Canadians in the days—and decades—to come.”

Deputy Prime Minister and Minister of Finance, the Honourable Chrystia Freeland

Quick Facts

- Budget 2021 includes \$101.4 billion over three years in proposed investments as part of the Government of Canada's growth plan that will create good jobs and support a resilient and inclusive recovery. Key measures include:
- Establishing a Canada-wide early learning and child care system, in partnership with provincial, territorial, and Indigenous partners, which will help all families access affordable, high-quality, and flexible child care no matter where they live, and no longer shoulder the burden of high child care costs. The budget proposes new investments totalling almost \$30 billion over the next five years and \$8.3 billion ongoing to support this vision.

- Extending emergency supports to bridge Canadians and Canadian businesses through to recovery, including:
 - Extending the Canada Emergency Wage Subsidy, the Canada Emergency Rent Subsidy and Lockdown Support until September 25, 2021.
 - Extending the number of weeks available for important income support for Canadians such as the Canada Recovery Benefit and the Canada Recovery Caregiving Benefit.
- Enhancing Employment Insurance sickness benefits from 15 to 26 weeks.
- Increasing Old Age Security for seniors age 75 and older to provide them with better financial security.
- Supporting small and medium-sized businesses through several transformative programs, such as:
 - A new Canada Digital Adoption Program that will assist over 160,000 businesses with the cost of new technology. And it will provide them with the advice they need to get the most of new technology with the help of 28,000 young Canadians who will be trained to work with them.
 - Allowing Canadian small businesses to fully expense up to \$1.5 million in capital investments in a broad range of assets, including digital technology and intellectual property. This represents an additional \$2.2 billion investment in the growth of Canada's entrepreneurs over the next five years.
- Revitalizing Canada's tourism sector through \$1 billion to help tourism businesses recover and support festivals and cultural events that provide jobs and growth in many of our cities and communities.
- Supporting women, Black Canadians, and other underrepresented entrepreneurs who face barriers to launching and owning businesses through \$300 million to enhance initiatives like the Black Entrepreneurship Program and the Women Entrepreneurship Strategy.
- Establishing a \$15 federal minimum wage.
- Enriching the Canada Workers Benefit, which will support about 1 million more Canadians and lift nearly 100,000 people out of poverty. This will result in additional support of \$8.9 billion over six years for Canada's low-wage workers.
- Helping to build, repair, and support 35,000 affordable housing units for vulnerable Canadians through an investment of \$2.5 billion and a reallocation of \$1.3 billion in existing funding.
- Investing \$17.6 billion in a green recovery that will help Canada to reach its target to conserve 25 per cent of Canada's lands and oceans by 2025, exceed its Paris climate targets and reduce emissions by 36 per cent below 2005 levels by 2030, and move forward on a path to reach net-zero emission by 2050.
- Closing the gaps between Indigenous and non-Indigenous peoples, supporting healthy, safe, and prosperous Indigenous communities, and advancing meaningful reconciliation with First Nations, Inuit, and the Métis Nation through an historic investment of over \$18 billion.

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