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: Tax-Free First Home Savings Account

1 The Act is modified to give effect to the proposals relating to the Tax-Free First Home Savings Account as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

The government will work with financial institutions to allow individuals to open a Tax-Free First Home Savings Account (FHSA) at some point in 2023 to help them save for a first home. Contributions to an FHSA will be tax-deductible and the income earned in the account will be tax-free. Qualifying withdrawals (i.e., amounts used to make a qualifying first home purchase) from an FHSA will be tax-free but any withdrawal for other purposes will be taxable.

To open an FHSA, individuals must: (1) be at least 18 years of age; (2) be resident in Canada; and (3) not have lived in a home that they owned at any time during the year they opened the account or during the 4 preceding calendar years. They are limited to make non-taxable withdrawals from the account for only one property during their lifetime. Once they have made their non-taxable withdrawals to buy their home, they must close their account within a year after the first withdrawal and are not allowed to open another account during their lifetime.

Effective for 2023, individuals will be allowed to contribute a maximum of $8,000 per year and $40,000 during their lifetime to the FHSA. Any portion of the $8,000 annual contribution limit not contributed in a year cannot be carried forward to a subsequent year. Individuals may hold more than one account but their total contributions to the accounts cannot exceed those annual and lifetime limits.

Individual may transfer FHSA funds to an RRSP (before they turn 71) or a RRIF. These amounts will not be taxed when they are transferred but will be taxed when the funds are withdrawn from the RRSP or RRIF. Those transfers will not affect the RRSP room or FHSA contribution limits. An FHSA must be closed if it has been open for 15 years and funds have yet to be used to buy a qualifying first home. Unused FHSA savings may be transferred to an RRSP or RRIF or withdrawn on a taxable basis. RRSP funds may be transferred to an FHSA on a tax-free basis, subject to the $8,000 annual limit and $40,000 lifetime limit, but without any effect on the individuals' RRSP contribution room.

Note that individuals will not be able to make both a home buyers' plan (HBP) withdrawal and an FHSA withdrawal in respect of the same qualifying first home purchase.

Resolution 2: Home Buyers' Tax Credit

2 (1) Subsection 118.05(3) of the Act is replaced by the following:

First-time homebuyers' tax credit

(3) In computing the tax payable under this Part by an individual for a taxation year in which a qualifying home in respect of the individual is acquired, there may be deducted the amount determined by multiplying $10,000 by the appropriate percentage for the taxation year.

(2) Subsection (1) applies to the 2022 and subsequent taxation years.

DENTONS CANADA LLP COMMENTARY

For acquisitions of a qualifying home made on or after January 1, 2022, the First-Time Home Buyers' Tax Credit is doubled, from $5,000 to $10,000. This will provide up to $1,500 in tax relief to eligible home buyers.

Resolution 3: Multigenerational Home Renovation Tax Credit

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

DENTONS CANADA LLP COMMENTARY

A new Multigenerational Home Renovation Tax Credit is proposed for the 2023 and subsequent taxation years. Any work would need to be performed and paid for, and/or goods acquired, on or after January 1, 2023.

A qualifying renovation is one that creates a secondary dwelling unit to permit an eligible person (a senior or a person with a disability) to live with a qualifying relation. The value of the credit is 15 per cent of the lesser of eligible expenses and $50,000.

An eligible person is someone who, at the end of the taxation year that includes the end of the renovation period, is a senior who is 65 years of age or older or an individual at least 18 years old who is eligible for the Disability Tax Credit at any time in the year.

A qualifying relation is an individual who is 18 or over at the end of the taxation year that includes the end of the renovation period, and who is a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew of the eligible person. This also includes the spouse or common-law partner of one of those individuals.

The credit may be claimed by the qualifying relation, in respect of the eligible person, who owns the eligible dwelling. It may also be claimed by an individual who ordinarily (or intends to) reside in the eligible dwelling within 12 months of the end of the renovation period, and who is the eligible person, their spouse/common-law partner, or their qualifying relation.

More than one person may claim an amount in respect of an eligible renovation, but the total may not exceed $50,000. If there is more than one claimant and the claimants cannot agree on the portion of the amounts each can claim, the Minister of National Revenue is allowed to fix the portions.

An eligible dwelling is a housing unit that is owned (either jointly or otherwise) by the eligible person (or their spouse/common-law partner or their qualifying relation) and where the eligible person and qualifying relation ordinarily (or intend to) reside within 12 months after the end of the renovation period.

An eligible dwelling would include the land subjacent to the housing unit and the immediately contiguous land, but would not include the portion of that land that exceeds the greater of ½ hectare and the portion of that land that the individual establishes is necessary for the use and enjoyment of the housing unit as a residence.

A qualifying renovation is a renovation or alteration of, or addition to, an eligible dwelling that is:

- of an enduring nature and integral to the eligible dwelling, and

- undertaken to enable an eligible person to reside in the dwelling with a qualifying relation, by establishing a secondary unit within the dwelling for occupancy by the eligible relation or the qualifying relation.

A secondary unit would be defined as a self-contained dwelling unit with a private entrance, kitchen, bathroom facilities and sleeping area. The secondary unit could be newly constructed or created from an existing living space that did not already meet the requirements to be a secondary unit. To be eligible, relevant building permits for establishing a secondary unit must be obtained and renovations must be completed in accordance with the laws of the jurisdiction in which an eligible dwelling is located.

In regards to each eligible person, only one qualifying renovation can be claimed in their lifetime.

The renovation period means a period that:

- begins at the time that an application for a building permit for a qualifying renovation is submitted; and
- ends at the time when the qualifying renovation passes a final inspection, or proof of completion of the project according to all legal requirements of the jurisdiction in which the renovation was undertaken is otherwise obtained.

The credit is available to be claimed for the taxation year that includes the end of the renovation period.

Eligible expenses are those that:

- are made or incurred in the renovation period,
- are for the purpose of a qualifying renovation, and
- are reasonable in the context of that purpose.

Eligible expenses include the cost of labour and professional services, building materials, fixtures, equipment rentals and permits. Items such as furniture, as well as items that retain a value independent of the renovation (such as construction equipment and tools), would not be integral to the dwelling and expenses for such items would therefore not qualify for the credit.

The following are examples of other expenses that would not be eligible for the credit:

- the cost of annual, recurring or routine repair or maintenance;
- expenses for household appliances and devices, such as audiovisual;
- electronics;
- payments for services such as outdoor maintenance and gardening;
- housekeeping or security;
- the costs of financing a renovation (e.g., mortgage interest costs);
- goods or services provided by a person not dealing at arm’s length with the claimant, unless that person is registered for Goods and Services Tax/Harmonized Sales Tax purposes under the *Excise Tax Act*; and
- any expenses not supported by receipts.

Expenses that may be included in a claim must be reduced by any reimbursement or any other form of assistance that an individual is or was entitled to receive, including any related rebates, such as those for Goods and Services Tax/Harmonized Sales Tax. Expenses would not be eligible for the Multigenerational Home Renovation Tax Credit if they are claimed under the Medical Expense Tax Credit and/or Home Accessibility Tax Credit.

Resolution 4: Home Accessibility Tax Credit

4 (1) Paragraph (a) of the description of B in subsection 118.041(3) of the Act is replaced by the following:

(a) $20,000, and

(2) Paragraphs 118.041(5)(a) and (b) of the Act are replaced by the following:

(a) a maximum of $20,000 of qualifying expenditures for a taxation year in respect of a qualifying individual can be claimed under subsection (3) by the qualifying individual and all eligible individuals in respect of the qualifying individual;

(b) if there is more than one qualifying individual in respect of an eligible dwelling, a maximum of $20,000 of qualifying expenditures for a taxation year in respect of the eligible dwelling can be claimed under subsection (3) by the qualifying individuals and all eligible individuals in respect of the qualifying individuals; and

(3) Subsections (1) and (2) apply to the 2022 and subsequent taxation years.

DENTONS CANADA LLP COMMENTARY

The Home Accessibility Tax Credit is a non-refundable credit for eligible home renovations or alterations in respect of an eligible dwelling for individuals who are 65 or over at the end of a taxation year or who are eligible to claim the Disability Tax Credit at any time in a taxation year. Effective for 2022 and subsequent taxation years, the Home Accessibility Tax Credit is doubled for expenses incurred in those years. The maximum amount of eligible expenses will increase from $10,000 to $20,000. This would provide for more extensive renovations, such as building a bedroom or bathroom on the first floor.

Resolution 5: Residential Property Flipping Rule

5 The Act is modified to give effect to the proposals relating to the Residential Property Flipping Rule as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

The Government has stated that it is concerned about individuals flipping residential real estate and reporting the gain as a capital gain and, in certain cases, claiming the Principal Residence Exemption. In response to these concerns, Budget 2022 proposes that profits arising from dispositions of residential property (including a rental property) that was owned for less than 12 months would be deemed to be business income. Under the new deeming rule, the Principal Residence Exemption would not be available.

Dispositions that would otherwise be captured by the new deeming rule will be excluded if they are in relation to one or more of the following events:

- the death, or in anticipation of the death, of the taxpayer or a related person;
- an addition to a household (e.g., birth of a child, adoption, care of an elderly parent);
- separation because of a breakdown of a marriage or common-law partnership for a period of at least 90 days;
- a threat to personal safety;
- disability or illness;
- a change of employment requiring a new work location or due to an involuntary termination of employment. If due to a new work location, the new home must be at least 40 kilometres closer to the new work location;
- insolvency or to avoid insolvency;
- involuntary disposition such as expropriation or the destruction or condemnation of the taxpayer's residence due to a natural or man-made disaster.

Where the new deeming rule does not apply (i.e., because of a life event listed above or because the property has been owned for more than 12 months), it would remain a question of fact whether profits from the disposition are taxed as business income.

These provisions would apply to residential properties sold on or after January 1, 2023.

Resolution 6: Labour Mobility Deduction for Tradespeople

6 The Act is modified to give effect to the proposals relating to the Labour Mobility Deduction for Tradespeople as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

The budget introduces a new Labour Mobility Deduction for Tradespeople in the construction industry, for whom temporary relocation to obtain employment is relatively common, to recognize certain travel and relocation expenses. Currently, these types of expenses may not qualify as deductible moving or travel expenses, particularly if they do not involve a change in an individual's ordinary residence and the employer does not provide relocation assistance. This measure would allow eligible workers to deduct up to $4,000 in eligible expenses per year.

An eligible individual is a tradesperson or an apprentice who:

- makes a temporary relocation that enables them to obtain or maintain temporary employment in construction at a particular work location;
- ordinarily resided prior to the relocation at a residence in Canada; and
- during the period of the relocation, resided at temporary lodgings in Canada near that work location.

To qualify as an eligible temporary relocation:

- the temporary lodging must be at least 150 kilometres closer to the particular work location than the individual's ordinary residence;
- the particular work location must be located in Canada; and
- the temporary relocation must be for a minimum duration of 36 hours.

To ensure that this measure does not subsidize long-distance commuting or the expenses of those who choose to live far from where they typically work, it is also a requirement that the particular work location not be in the locality in which the eligible individual principally works (i.e., carries on employment or business activity).

Eligible expenses in respect of an eligible temporary relocation are reasonable amounts associated with expenses incurred for:

- temporary lodging for the eligible individual near the particular work location;
- transportation for the individual for one round trip from the location where the individual ordinarily resides to the temporary lodging; and
- meals for the individual in the course of travel while making one round trip to and from the temporary lodging.

An individual is not permitted to claim lodging expenses for a particular period unless they maintain an ordinary residence elsewhere that remains available for their or their immediate family's use during that period.

An individual is not allowed to claim expenses in respect of which they received financial assistance from an employer that is not included in income. The maximum amount of expenses that can be claimed in respect of a particular eligible temporary

relocation is capped at 50% of the worker's employment income from construction at that particular work location in the year.

Flexibility will be provided by allowing expenses to be claimed in a tax year before or after the year they were incurred, provided they were not deductible in a prior year. This will enable workers to claim expenses in the tax year they earned the associated employment income and will address the situation where expenses relate to a relocation spanning two tax years.

Amounts claimed under the Labour Mobility Deduction for Tradespeople will not be deductible under the existing Moving Expense Deduction. Similarly, amounts that are otherwise deducted cannot be claimed under the Labour Mobility Deduction for Tradespeople.

This measure applies to the 2022 and subsequent taxation years.

Resolution 7: Medical Expense Tax Credit for Surrogacy and Other Expenses

7 (1) Subsection 118.2(2) of the Act is amended by striking out "or" at the end of paragraph (t), by adding "or" at the end of paragraph (u) and by adding the following after paragraph (u):

(v) to a fertility clinic, or donor bank, in Canada as a fee or other amount paid or payable, to obtain sperm or ova to enable the conception of a child by the individual, the individual's spouse or common-law partner or a surrogate mother on behalf of the individual.

(2) Section 118.2 of the Act is amended by adding the following after subsection (2.2):

Surrogacy expenses

(2.21) An amount is deemed to be a medical expense of an individual for the purposes of this section if the amount

(a) is paid by the individual or the individual's spouse or common-law partner;

(b) is

(i) an expenditure described under any of sections 2 to 4 of the *Reimbursement Related to Assisted Human Reproduction Regulations*, or

(ii) paid in respect of a surrogate mother or donor, and would be an expenditure described in subparagraph (i) if it was paid to the surrogate mother or donor;

(c) would be a medical expense of the individual (within the meaning of subsection (2)) if the amount was paid in respect of a good or service provided to the individual or the individual's spouse or common-law partner;

(d) is an expense incurred in Canada; and

(e) is paid for the purpose of the individual becoming a parent.

(3) Subsections (1) and (2) apply to the 2022 and subsequent taxation years.

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Medical Expense Tax Credit for Surrogacy and Other Expenses

Budget 2022 proposes to allow a surrogate or a donor to fall within the definition of a patient for the purposes of the medical expense tax credit (METC).

Under this scenario, a patient would be defined as:

- the taxpayer;
- the taxpayer's spouse or common-law partner;
- a surrogate mother; or
- a donor of sperm, ova or embryos.

This allows medical expenses paid with respect to a surrogate mother or donor to be eligible for the METC.

Budget 2022 also proposes to allow a taxpayer's reimbursements of medical expenses incurred by a surrogate mother or sperm, ova or embryo donor to be eligible for the METC, provided the expenses generally otherwise qualify.

Budget 2022 also proposes to allow fees paid to fertility clinics and donor banks to obtain donor sperm or ova to be eligible for the METC as long as the sperm or ova are acquired for use by an individual to become a parent.

Only expenses incurred in Canada and in accordance with the *Assisted Human Reproduction Act* and associated regulations would be eligible.

This measure would apply to expenses incurred in the 2022 and subsequent taxation years.

Resolution 8: Annual Disbursement Quota for Registered Charities

8 The Act is modified to give effect to the proposals relating to the Annual Disbursement Quota for Registered Charities as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Canadian registered charities must spend an annual minimum amount on advancing their charitable purposes, based on the value of their investment assets ("disbursement quota").

Budget 2022 proposes to raise the disbursement quota from 3.5 per cent to 5 per cent for the portion of charitable assets not used in charitable activities or administration that exceeds $1 million.

Budget 2022 also proposes to clarify that expenditures for administration and management do not count towards a charity's disbursement quota.

While this 1.5 per cent increase will not materially affect many charities, it will have a significant impact on multi-billion dollar foundations with large asset bases from which the disbursement quota is calculated.

There may be instances where a charity seeks relief from its disbursement quota obligations. Budget 2022 proposes the following, in such cases:

- Canada Revenue Agency ("CRA") will have discretion to grant a reduction in a charity's disbursement quota obligation for any tax year;
- charities may make an application to CRA requesting relief;
- if CRA grants relief, the charity is deemed to have a charitable expenditure for the tax year; and
- CRA may publicly disclose information relating to its decision to grant a reduction.

In view of the above-noted relief measures, Budget 2022 proposes to remove the accumulation of property rule under the *Income Tax Act*, which allows a charity to make an application to CRA to accumulate property for a specific purpose.

If passed, these measures would apply to charities in respect of their fiscal periods beginning on or after January 1, 2023, and will be reviewed after five years.

Resolution 9: Charitable Partnerships

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

DENTONS CANADA LLP COMMENTARY

Canadian registered charities are required to devote their resources to exclusively charitable purposes for their own activities. In doing so, charities may either carry out such activities directly through staff and volunteers or indirectly, through appropriately structured third party relationships (e.g. contract for services, implementation agreement, joint venture, etc.).

For many charities, collaboration through partnering across organizations and institutions is critical to achieve impactful social outcomes.

Budget 2022 proposes changes to the way in which charities may partner with third parties. Most notably, subject to certain requirements ("accountability requirements"), it allows charities to make qualified disbursements to non-qualified donees (as defined under the *Income Tax Act)*.

Accountability requirements include:

- prior to any grant, conducting the appropriate due diligence, including review of the identity, past history, practices, activities and areas of expertise of the grantee;
- entering into the appropriate written agreement between the charity and the grantee;
- conducting ongoing monitoring (at least annually) with respect to the grantee's use of the charity's funds and implementation of activities;
- establishing and exercising (where necessary) remedial action concerning the grantee;
- receiving full and detailed final reports from grantees, supported by adequate documentation and evidence that the same were reviewed and approved by the charity;
- publicly disclosing on its annual return regarding grants above $5,000.

Additional accountability measures are proposed in Budget 2022, including:

- a requirement for charities to take all reasonable steps to obtain receipts, invoices, or other documentation from grantees to demonstrate appropriate use of funds; and
- a prohibition against charities accepting directed donations either expressly or implicitly conditional on making a gift to a non-qualified donee.

The charitable sector's efforts to modernize, expand the scope of collaboration models, and clarify direction and control rules has been a long-standing area of dialogue. These new measures provide new ways for Canadian charities to carry out critical work, particularly with respect to international development and relief activities.

Resolutions 10 to 22: Amendments to the Children's Special Allowances Act and to the Income Tax Act

10 (1) The portion of paragraph 81(1)(h) of the Act before subparagraph (i) is replaced by the following:

Social assistance

(h) where the taxpayer is an individual (other than a trust), a social assistance payment (other than a prescribed payment) ordinarily made on the basis of a means, needs or income test under a program provided for by an Act of Parliament, a law of a province or a law of an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*), to the extent that it is received directly or indirectly by the taxpayer for the benefit of another individual (other than the taxpayer's spouse or common-law partner or a person who is related to the taxpayer or to the taxpayer's spouse or common-law partner), if

(2) The portion of paragraph 81(1)(h.1) of the Act before subparagraph (i) is replaced by the following:

Social assistance for informal care programs

(h.1) if the taxpayer is an individual (other than a trust), a social assistance payment ordinarily made on the basis of a means, needs or income test provided for under a program of the Government of Canada, the government of a province or of an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*), to the extent that it is received directly or indirectly by the taxpayer for the benefit of a particular individual, if

(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.

11 (1) Paragraph (i) of the definition *eligible individual* in section 122.6 of the Act is replaced by the following:

(i) an individual shall not fail to qualify as a parent (within the meaning assigned by section 252) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada, the government of a province or an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*) for the benefit of the other individual; (*particulier admissible*)

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

12 (1) Subsection 122.7(1.2) of the Act is replaced by the following:

Receipt of social assistance

(1.2) For the purposes of applying the definitions *eligible dependant* and *eligible individual* in subsection (1) for a taxation year, an individual shall not fail to qualify as a parent (within the meaning assigned by section 252) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada, the government of a province or an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*) for the benefit of the other individual, unless the amount is a special allowance under the *Children's Special Allowances Act* in respect of the other individual in the taxation year.

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

13 (1) Section 2 of the *Children's Special Allowances Act* is amended by adding the following in alphabetical order:

Indigenous governing body means an *Indigenous governing body* (as defined in section 1 of *An Act respecting First Nations, Inuit and Métis children, youth and families*) that

(a) has given notice under subsection 20(1) of that Act;

(b) has requested a coordination agreement under subsection 20(2) of that Act; or

(c) meets prescribed conditions. (*corps dirigeant autochtone*)

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

14 (1) Paragraphs 3(1)(a) and (b) of the *Children's Special Allowances Act* are replaced by the following:

(a) resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal and is maintained by

(i) a department or agency of the government of Canada or a province, or

(ii) an agency appointed by a province, including an authority established under the laws of a province, or by an agency appointed by such an authority, for the purpose of administering any law of the province for the protection and care of children;

(b) is maintained by an institution licensed or otherwise authorized under the law of the province to have the custody or care of children; or

(c) resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under the laws of an Indigenous governing body, and is maintained by

(i) the Indigenous governing body,

(ii) a department or agency of the Indigenous governing body, or

(iii) an agency appointed by the Indigenous governing body, including an authority established under the laws of the Indigenous governing body, or by an agency appointed by such an authority, for the purpose of administering any law of the Indigenous governing body for the protection and care of children.

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

15 (1) Paragraph 4(1)(a) of the *Children's Special Allowances Act* is replaced by the following:

(a) an application therefor has been made in the prescribed manner by the department, agency, institution or Indigenous governing body referred to in subsection 3(1) that maintains the child; and

(2) Subsection 4(3) of the *Children's Special Allowances Act* is replaced by the following:

No allowance payable

(3) No special allowance is payable for the month in which the child in respect of whom the special allowance is payable commences to be maintained by a department, agency, institution or Indigenous governing body, and no special allowance is payable in respect of a child for the month in which the child is born or commences to reside in Canada.

(3) Paragraph 4(4)(a) of the *Children's Special Allowances Act* is replaced by the following:

(a) ceases to be maintained by the department, agency, institution or Indigenous governing body;

(4) Subsections (1) to (3) are deemed to have come into force on January 1, 2020.

16 (1) Sections 5 and 6 of the *Children's Special Allowances Act* are replaced by the following:

Recipient of special allowance

5 Where payment of a special allowance is approved in respect of a child, the special allowance shall, in such manner and at such times as are determined by the Minister, be paid to the department, agency, institution or Indigenous governing body referred to in section 3 that maintains the child or, in the prescribed circumstances, to a foster parent.

Report to be made

6 Where a special allowance ceases to be payable in respect of a child for a reason referred to in paragraph 4(4)(a), (b) or (c), the chief executive officer of the department, agency, institution or Indigenous governing body that made the application under paragraph 4(1)(a) in respect of the child shall, as soon as possible after the special allowance ceases to be payable in respect of the child, notify the Minister in the prescribed form and manner.

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

17 (1) Subsections 9(1) and (2) of the English version of the *Children's Special Allowances Act* are replaced by the following:

Return of special allowance where recipient not entitled

9 (1) Any person, department, agency, institution or Indigenous governing body that has received or obtained by cheque or otherwise payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, shall, as soon as possible, return the cheque or the amount of the payment, or the excess amount, as the case may be.

Recovery of amount of payment as debt due to Her Majesty

(2) Where a person, department, agency, institution or Indigenous governing body has received or obtained payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, the amount of the special allowance or the amount of the excess, as the case may be, constitutes a debt due to Her Majesty.

(2) Subsection 9(3) of the *Children's Special Allowances Act* is replaced by the following:

Deduction from subsequent special allowance

(3) Where any person, department, agency, institution or Indigenous governing body has received or obtained payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, the amount of the special allowance or the amount of the excess, as the case may be, may be deducted and retained in such manner as is prescribed out of any special allowance to which the person, department, agency, institution or Indigenous governing body is or subsequently becomes entitled under this Act.

(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.

18 (1) Section 11 of the *Children's Special Allowances Act* is replaced by the following:

Agreements for exchange of information

11 The Minister may enter into an agreement with the government of any province, or an Indigenous governing body, for the purpose of obtaining information in connection with the administration or enforcement of this Act or the regulations and of furnishing to that government, or Indigenous governing body, under prescribed conditions, any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations, if the Minister is satisfied that the information to be furnished to that government, or Indigenous governing body, under the agreement is to be used for the purpose of the administration of a social program, income assistance program or health insurance program in the province or of the Indigenous governing body.

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

19 (1) Paragraph 13(a) of the English version of the *Children's Special Allowances Act* is replaced by the following:

(a) providing for the suspension of payment of a special allowance during any investigation respecting the eligibility of a department, agency, institution or Indigenous governing body to receive the special allowance and specifying the circumstances in which payment of a special allowance, the payment of which has been suspended, may be resumed;

(2) Paragraph 13(c) of the *Children's Special Allowances Act* is replaced by the following:

(c) specifying for the purposes of this Act the circumstances in which a child shall be considered to be maintained by a department, agency, institution or Indigenous governing body; and

(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.

20 (1) The definition *applicant* in section 2 of the *Children's Special Allowance Regulations* is replaced by the following:

applicant means a department, agency, institution or Indigenous governing body referred to in subsection 3(1) of the Act; (*demandeur*)

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

21 (1) The portion of section 7 of the *Children's Special Allowance Regulations* before paragraph (a) is replaced by the following:

Communication of Information

7 The information referred to in section 11 of the Act may be furnished to the government of a province or to an Indigenous governing body, under the terms of an agreement between the Minister and that government or Indigenous governing body, for the purpose of the administration of a social, income assistance or health insurance program of that province or Indigenous governing body that is specified in the agreement, on condition that

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

22 (1) Paragraphs 9(a) and (b) of the *Children's Special Allowance Regulations* are replaced by the following:

(a) the applicant, at the end of the month, provides for the child's care, maintenance, education, training and advancement to a greater extent than any other department, agency, institution, Indigenous governing body or any person; or

(b) the applicant is an entity referred to in any of paragraphs 3(1)(a) to (c) of the Act that has applied in respect of a child who

(i) was formerly in the care of foster parents or was formerly maintained by an entity referred to in any of paragraphs 3(1)(a) to (c) of the Act, and

(ii) has been placed in the permanent or temporary custody of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal, or under the laws of an Indigenous governing body, who has received financial assistance from the applicant for the month in respect of the child's maintenance.

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

DENTONS CANADA LLP COMMENTARY

Budget 2022 proposes amendments to the *Children's Special Allowances Act* and *Income Tax Act* in order to ensure that Indigenous caregivers and their children receive proper support.

First, the *Income Tax Act* will be amended to clarify that a kinship care provider is considered to be the parent of the child in their care for the purposes of the Canada Workers Benefit amount for families and the Canada Child Benefit, irrespective of whether they receive financial assistance from an Indigenous governing body, if they meet all the other criteria.

Second, the *Income Tax Act* will be amended to ensure that financial assistance for the care of a child paid from an Indigenous governing body to kinship care providers or foster parents is neither taxable nor included in income for the purposes of income-tested benefits and credits.

These measures apply for the 2020 and subsequent taxation years.

Also, though not tax-related, Budget 2022 also proposes various amendments to the *Children's Special Allowances Act* with respect to an Indigenous governing body.

Resolution 23: Borrowing by Defined Benefit Pension Plans

23 (1) The portion of paragraph 8502(i) of the *Income Tax Regulations* before subparagraph (i) is replaced by the following:

Borrowing

(i) in the case of a money purchase provision of the plan or in the case of an individual pension plan, a trustee or other person who holds property in connection with the plan does not borrow money for the purposes of the money purchase provision or the individual pension plan, as the case may be, except where

(2) Section 8502 of the *Income Tax Regulations* is amended by adding the following after paragraph (i.1):

Borrowing — defined benefit provision

(i.2) in the case of a defined benefit provision of the plan (other than an individual pension plan), a trustee or other person who holds property in connection with the provision does not borrow money for the purposes of the defined benefit provision, except

(i) in the case where money is borrowed for the purpose of acquiring real property, if

(A) the property may reasonably be considered to be acquired for the purpose of producing income from property,

(B) the aggregate of all amounts borrowed for the purpose of acquiring the property and any indebtedness incurred as a consequence of the acquisition of the property does not exceed the cost to the person of the property, and

(C) none of the property that is held in connection with the plan, other than the real property, is used as security for the borrowed money, and

(ii) in any other case, at any time that an amount is borrowed, if the total of that amount and the amount of any other outstanding borrowings in respect of the provision (other than those described in subparagraph (i)) does not exceed the lesser of the following amounts:

(A) the amount determined by the formula

$$0.20\,(A - B)$$

where

A is the value of the plan assets in respect of the provision on the first day of the fiscal period of the plan in which the amount is borrowed, and

B is the amount of outstanding borrowings in respect of the provision, determined on the first day of the fiscal period in which the amount is borrowed, and

(B) the amount determined by the formula

$$1.25 \times C - (D - E)$$

where

C is the amount of actuarial liabilities in respect of the provision, determined on the effective date of the plan's most recent actuarial report,

D is the amount determined for A in clause (A), and

E is the amount determined for B in clause (A);

(3) Subsection (1) is deemed to come into force on May 1, 2022.

(4) Subsection (2) is deemed to come into force on Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2022 proposes to provide more borrowing flexibility to administrators of defined benefit registered pension plans (other than individual pension plans) as follows:

The current rule in Regulation 8201(i), which imposes a 90-day term limit on borrowing (other than borrowing to acquire income-producing real property) is proposed to be amended such that it is only applicable to individual pension plans or a money purchase provision of a plan.

New proposed Regulation 8201(i.2) would apply to a defined benefit provision of a plan (other than an individual pension plan), and provides that:

- the borrowing rule for real property acquisitions is maintained; and
- the 90-day term limit on borrowings is replaced by a limit on the total amount of additional borrowed money (for purposes other than acquiring real property), equal to the lesser of:
  - 20 per cent of the value of the plan's assets (net of unpaid borrowed amounts); and
  - the amount, if any, by which 125 per cent of the plan's actuarial liabilities exceeds the value of the plan's assets (net of unpaid borrowed amounts)

The value of the plan's assets and other borrowed amounts are determined as of the first day of the fiscal period in which the new borrowing occurs. The actuarial liability is determined as of the most recent actuarial report.

New Regulation 8201(i.2) is proposed to come into force on Budget Day. The amendments to Regulation 8201(i) are proposed to come into force on May 1, 2022.

Resolution 24: Reporting Requirements for RRSPs and RRIFs

24 The Act is modified to give effect to the proposals relating to the Reporting Requirements for RRSPs and RRIFs as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Currently, financial institutions are required to annually report to the Canada Revenue Agency the payments out of, and contributions to, each Registered Retirement Savings Plan (RRSP) and Registered Retirement Investment Fund (RRIF) that they administer. Additionally, financial institutions are required to annually file comprehensive information returns in relation to each tax-free savings account (TFSA) that the financial institution administers, including the fair market value of the property held in the account.

Budget 2022 introduces a new requirement for financial institutions to annually report to the Canada Revenue Agency the total fair market value of property held in each RRSP and RRIF that they administer. The fair market value of the RRSPs and RRIFs will be determined at the end of the calendar year.

As a result, beginning in the 2023 taxation year and the taxation years thereafter, financial institutions will be required to report to the Canada Revenue Agency the fair market value of each RRSP, RRIF and TFSA that they administer.

Resolution 25: Canada Recovery Dividend and Additional Tax on Banks and Life Insurers

25 The Act is modified to give effect to the proposals relating to the Canada Recovery Dividend and Additional Tax on Banks and Life Insurers 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 2022 proposes to introduce the Canada Recovery Dividend ("CRD"), a one-time 15% tax on bank and life insurer groups, imposed in the 2022 taxation year and payable in equal amounts over five years. A group would include a bank or life insurer and any other financial institution (for the purposes of Part VI of the ITA) that is related to the bank or life insurer.

The CRD would be determined based on each corporation's taxable income for taxation years ending in 2021, with a proration rule applicable to short taxation years. Groups subject to the CRD may, by agreement, allocate a $1 billion taxable income exemption amongst group members.

Additional Tax on Banks and Life Insurers

Budget 2022 proposes to introduce an additional tax of 1.5% on the taxable income of members of bank and life insurer groups. As with the CRD, a group would include a bank or life insurer and any other financial institution (for the purposes of Part VI of the ITA) that is related to the bank or life insurer.

This additional tax is applicable for taxation years ending after Budget Day (and prorated based on the number of days in a corporation's taxation year after Budget Day). Groups subject to the additional tax may, by agreement, allocate a $100 million taxable income exemption amongst group members.

Resolution 26: Investment Tax Credit for Carbon Capture, Utilization, and Storage

26 The Act is modified to give effect to the proposals relating to the Investment Tax Credit for Carbon Capture, Utilization, and Storage as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Certain types of investment, such as scientific research and experimental development expenditures, are incentivized through the establishment of investment tax credits (“**ITCs**”) in section 127 of the *Income Tax Act*. Budget 2022 proposes to introduce an ITC for expenditures associated with technology used in carbon capture, utilization and storage (“**CCUS**”).

CCUS ITCs are available in respect of the cost of purchasing and installing eligible equipment used in an eligible project so long as the carbon dioxide (“$\mathbf{CO_2}$”) is used for an eligible use, subject to validation and verification.

Credit Rates

Equipment Type	Year Incurred	
	2021-2030	2030-2040
Eligible capture equipment used in a direct air capture project	60%	30%
All other eligible capture equipment	50%	25%
Eligible transportation, storage and use equipment	37.5%	18.75%

Eligible Projects

Projects eligible for CCUS ITCs must capture $\mathbf{CO_2}$, prepare it for compression, compress and transport it and store or use the captured CO_2. Direct air projects that capture CO_2 directly from ambient air will be eligible for an elevated ITC rate.

CO_2 capture projects must involve CO_2 captured in Canada, but the resultant CO_2 may be stored or used outside in Canada (subject to being used for eligible purposes and stored in accordance with certain requirements discussed below). Projects designed to reduce emissions in accordance to comply with the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations* and the *Regulations Limiting Carbon Dioxide Emissions from Natural Gas-fired Generation of Electricity* are not eligible for CCUS ITCs.

Eligible Equipment

Equipment used to capture, transport, store or use CO_2 as part of an eligible project is eligible equipment. ITCs relating to the acquisition of CCUS equipment arise in the taxation year in which the expenditures are incurred, whether or not the equipment is available for use at that time. ITCs may not be claimed twice for the same equipment (e.g. upon a sale by one owner to another).

Deduction of Capital Expenditures

In addition to the ITCs available in respect of eligible equipment, Budget 2022 proposes to craft two new capital cost allowance ("**CCA**") classes permitting the tax amortization of CCUS capital expenditures:

- 8%, on a declining balance basis:
  - Capture equipment, including equipment that solely captures CO_2, including processing and compression equipment but not dual purpose equipment that supports CCUS and production;
  - Transportation equipment, including injection and storage equipment; and
  - Storage equipment.
- 20%, on a declining balance basis:
  - Equipment required for the eligible use of CO_2.

Costs of converting existing equipment for use in a CCUS project, refurbishing eligible equipment, purchasing equipment to monitor and track CO_2 and constructing buildings or other structures existing solely for an eligible project would be added to the relevant CCA class. These classes are eligible for accelerated depreciation in the year of acquisition under the Accelerated Investment Incentive. Ineligible expenses include feasibility studies, front-end engineering design studies and operating expenses.

Equipment related to hydrogen production, natural gas processing, acid gas injection or other non-CCUS related technology is ineligible, as are exploration and development expenses associated with storing CO_2. New CCA classes for intangible exploration expenses and development expenses associated with CO_2 storage will be established, carrying declining-balance rates of depreciation of 100% and 30%, respectively.

Eligible Uses and Tracking

CCUS ITCs are only available to the extent that equipment is deployed in the use of CO_2 in a particular manner. Initial eligible uses include geological storage and storage in concrete, but not enhanced oil recovery. A reduction of the CCUS ITCs will apply in proportion to any non-eligible use of CO_2 arising from a particular project involving eligible equipment. In relation to each project, taxpayers must track the amount of CO_2 captured and the portions deployed in eligible and ineligible uses.

Storage Requirements

CO_2 must be stored either in dedicated geological storage or storage in concrete. In the former case, CCUS ITCs will only be available in jurisdictions with adequate regulations to ensure that CO_2 is permanently stored, as assessed by Environment and Climate Change Canada. Jurisdictions meeting this requirement at this time are the provinces of Alberta and Saskatchewan.

Storage in concrete must have its methodology approved by Environment and Climate Change Canada. Claimants must be able to show that 60% of the CO_2 stored is mineralized and locked into the concrete.

Validation and Verification

Projects anticipating more than $100M in eligible expenditures will generally undergo an initial project tax assessment, the result of which would identify expenses eligible for CCUS ITCs and the applicable tax credit rate. Such assessments could also be undertaken voluntarily.

Natural Resources Canada will verify CCUS ITC amounts as soon as possible after the end of the taxation year of a particular claimant in advance of the filing of its tax return, such that refunds could be available at the time of filing.

Recovery of Excess CCUS ITCs

Where the amount of CO_2 going to ineligible uses exceeds initial project plans, taxpayers may need to repay a portion of their previous ITCs. At five year intervals, to a maximum of twenty years, projects will be assessed to determine if a portion of the CCUS ITCs must be recovered, having regard to the total amount of CO_2 going to an eligible use during the review period. Should the amount of CO_2 going to an ineligible use deviate from the initial project plans (on the basis of which the initial ITC was paid) by more than 5%, an amount will be recovered from the claimant.

Knowledge Sharing and Climate Risk Disclosure

CCUS projects anticipating more than $250M in eligible expenditures would be required to contribute to a public knowledge-sharing regime in Canada. CCUS ITC eligibility would also be contingent on the development of a climate-related financial disclosure report illustrating the corporate governance measures, strategies, policies and practices designed to manage climate-related risks and opportunities and contribute to Canada's commitments under the Paris Agreement and goal of being net zero by 2050.

Coming into Force

ITCs will be able to be claimed in respect of CCUS expenditures incurred after 2021 and prior to 2041.

Resolution 27: Clean Technology Tax Incentives — Air-Source Heat Pumps

27 The Act is modified to give effect to the proposals relating to the Clean Technology Tax Incentives — Air-Source Heat Pumps 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 2022 proposes to provide two new tax incentives in relation to air-source heat pumps, which provide interior space by transferring heat from the outside air, reducing demand for heating dependent on fossil fuels.

Capital Cost Allowance

Air-source heat pumps primarily used for space or water heating will now be eligible for addition to capital cost allowance ("**CCA**") classes 43.1 and 43.2 established in Schedule II of the Income Tax Regulations. CCA classes 43.1 and 43.2 permit a taxpayer to deduct for tax purposes depreciation in respect of investments in specified clean energy generation and energy conservation equipment at rates of 30% and 50%, respectively. Property acquired after November 20, 2018 and prior to 2024 is eligible to be expensed immediately while property acquired after 2023 and prior to 2028 is to be phased out from these rules.

Eligible equipment must transfer heat from the outside air, including refrigerant piping, energy conversion equipment, thermal energy storage equipment, control equipment and equipment designed to interface with other heating and cooling equipment. Excluded are buildings and parts of buildings, energy equipment to back up an air-source heat pump and equipment to distribute heated or cooled air or water within a building.

Corporate Tax Reduction

Budget 2022 further proposes to expanded the temporarily reduced corporate income tax rates applicable to qualifying zero-emission technology manufacturers to the manufacturers of air-source heat pumps used for space or water heating. Where equipment is purpose-built or designed exclusively to form an integral part of an air-source heat pump, manufacturing of components or sub-assemblies would constitute eligible business activities.

Reduced tax rates applicable to eligible zero-emission technology manufacturing and processing income are 7.5%, where income would otherwise be taxed at the 15% general federal corporate rate, and 4.5%, where the income would otherwise be taxed at the 9% small business tax rate.

Resolution 28: Critical Minerals Exploration Tax Credit

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

DENTONS CANADA LLP COMMENTARY

Supplemental to the tax incentives available in section 66 of the *Income Tax Act* in relation to investment in "flow-through shares" ("**FTS**") is a Mineral Exploration Tax Credit ("**METC**") available to holders of FTS in the capital stock of corporations carrying on a mining business. A METC of 15% of renounced specified mineral exploration expenses is incorporated into the investment tax credit regime of the Act by operation of paragraph (a.2) of the definition of "investment tax credit" in subsection 127(9).

Budget 2022 proposes a new, enhanced Critical Mineral Exploration Tax Credit ("**CMETC**") for certain specified minerals used in batteries and permanent magnets (which are used in zero-emission vehicles) or are used in the manufacturing of advanced materials, clean technology or semiconductors. Specified minerals include copper, nickel, lithium, cobalt, graphite, rare earth elements, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, platinum group metals and uranium. The CMETC will be implemented and administered in manner analogous to the METC, though both credits could not be claimed in relation to the same eligible expenditures.

Successful CMETC claims will be contingent on certification by a qualified person that there is a reasonable expectation that the minerals targeted by a particular exploration project are primarily specified minerals. Expenditures renounced to holders of mining FTS under agreements after Budget Day and prior to March 31, 2027 will be eligible for the CMETC.

Resolution 29: Flow-Through Shares for Oil, Gas and Coal Activities

29 The Act is modified to give effect to the proposals relating to Flow-Through Shares for Oil, Gas and Coal Activities 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 66 of the *Income Tax Act* establishes a specialized taxation regime applicable to a “flow-through share” (“**FTS**”). The regime incentivizes investment in Canadian oil, gas and coal exploration and development activity by permitting the holder of an FTS to deduct certain Canadian exploration expenses or Canadian development expenses of the underlying corporation from its own taxable income. This favourable tax treatment permits a shareholder to benefit from the liability protection and commercial advantages of conducting development activity through a corporation while adopting the flow-through treatment of losses incurred by a partnership. Accordingly, investors in oil, gas and coal exploration ventures can employ FTS to avoid “trapped” losses in the costly early stages of development or the application of the “at risk” rules limiting losses flowed through a limited partnership.

Under the current provisions, an FTS must be a share of capital stock (or a right to acquire a share of capital stock) of a “principal-business corporation” (“**PBC**”) as defined in subsection 66(15). The principal business of a PBC must be (i) drilling, production, refining or marketing of petroleum, petroleum products or natural gas, (ii) mining, exploring for minerals, (iii) the processing and marketing of mineral ores and their byproducts, (iv) the fabrication of metals, (v) the operation of an oil or gas pipeline and (vi) the production or marketing of certain compounds. An FTS must further be acquired pursuant to a written agreement between the shareholder and the PBC whereby the PBC agrees to use the consideration received for the share to incur Canadian exploration expenses or Canadian development expenses and to renounce to the shareholder the amount of expenditures so incurred. Canadian exploration expenses may then be deducted by the shareholder at a 100% rate; Canadian development expenses may be deducted on a declining-balance basis at a rate of 30%.

Budget 2022 proposes to eliminate the special tax treatment of FTS for oil, gas and coal activities, effectively abolishing the indirect subsidy the current regime provides to investment in the oil, gas and coal industries.

Resolution 30: Small Business Deduction

30 The Act is modified to give effect to the proposals relating to the Small Business Deduction 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 2022 proposes to increase the availability of the small business deduction to medium-sized enterprises.

The small business deduction provides for a reduced rate of corporate income tax on up to $500,000 per year of qualifying active business income (the "business limit") of a Canadian-controlled private corporation ("CCPC"). However, the business limit is reduced or eliminated in certain circumstances. In particular, the business limit is reduced on a straight-line basis when the combined taxable capital employed in Canada of the CCPC and its associated corporations reaches $10 million, and is eliminated entirely at $15 million. As an example, under the present rules, a CCPC with $12.5 million in taxable capital is subject to a 50% reduction in the business limit (a business limit of $250,000), and a CCPC with $20M in taxable capital is not entitled to a business limit.

Budget 2022 proposes to increase the upper limit of taxable capital employed in Canada for purposes of calculating the reduction to the business limit. The new range would be $10 million to $50 million, and the reduction of the business limit would continue to be applied on a straight line basis. For example, a CCPC with $30 million in taxable capital would be subject to a 50% reduction in the business limit under these proposed amendments, with access to a business limit of $250,000 (whereas it is currently ineligible entirely), and a CCPC with $40 million in taxable capital would be subject to a 75% reduction in the business limit under these proposed amendments, with access to a business limit of $125,000.

The proposed amendments will apply to taxation years that begin on or after Budget Day.

Resolution 31: International Financial Reporting Standards for Insurance Contracts (IFRS 17)

31 The Act is modified to give effect to the proposals relating to the International Financial Reporting Standards for Insurance Contracts (IFRS 17) as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

On January 1, 2023, IFRS 17, the new accounting standards for insurance contracts, will change financial reporting for Canadian insurers. The new IFRS 17 reserve (i.e., the contract service margin – CSM), is expected to result in a significant deferral of profits earned on underwritten insurance contracts of life insurers. The profits related to this reserve would then be brought into income over the estimated life of the insurance contracts. Where an insurance contract is greater than one year, the CSM could lead to an income tax deferral that is unacceptable to the Government.

On May 28, 2021, the Government issued a news release (May 2021 Release) to announce that while it intended to generally support the use of IFRS 17 for income tax purposes, there were certain adjustments they considered necessary to avoid any undue income tax deferrals and recognize underwriting profits as taxable income when key economic activities occurred.

Consistent with the May 2021 Release, Budget 2022 proposes the following changes in respect of IFRS 17:

- Segregated Funds Life Insurance: The CSM associated with life insurance policies that are segregated funds will be deductible for tax purposes because the fee income earned by such funds will continue to be recognized as the relevant economic activities occur.
- Non-Segregated Funds Life Insurance: 10% of the CSM associated with life insurance contracts (other than segregated funds) will be deductible for tax purposes. This deductible amount would then be brought back into income for tax purposes when so-called non-attributable expenses are incurred in the future.
- Transition: (i) a 5-year transition period will apply to smooth out the tax impact of converting insurance reserves from IFRS 4 to IFRS 17, including the non-deductible portion of the CSM; (ii) a 5 year transition period will apply for the mark-to-market gains or losses on certain fixed-income assets related to insurers adoption of IFRS 9 on January 1, 2023; and (iii) certain reserves will be reclassified from insurance contracts (under IFRS 4) to investment contracts (under IFRS 17). A deduction for the investment contract amount will be allowed on transition since the premiums for these contracts have been included in income for accounting and tax purposes.
- Adjustments to Maintain Minimum Tax: To maintain Part VI (of the Act) capital-base taxes on large financial institutions (i.e., a minimum tax), such financial institutions will be required to include the non-deductible CSM and accumulated other comprehensive income (AOCI) in their tax base amount used to calculate such taxes. Generally, IFRS 17 would decrease this tax base

amount (and thus these minimum taxes), as a result of an increase in reserves (including the CSM) and the reclassification of certain gains and losses from retained earnings to AOCI. Additionally, deferred tax assets (i.e., income taxes expected to be recovered in the future), which are currently deductible in calculating this tax base amount, will no longer be deductible.

- Mortgage Title Insurance: Similar to life insurers above, 10% of the CSM for mortgage and title insurance contracts will be tax deductible. These deductions would then be brought back into income for tax purposes when the non-attributable expenses are incurred in the future. A 5-year transition period is proposed to smooth out the tax impact of these changes.
- Property and Casualty (P&C) Insurance: These changes would not apply to P&C insurance contracts (other than title and mortgage insurance contracts), due to the short-term nature of these contracts that typically do not last longer than a year. A 5-year transition period is proposed, however, to smooth out the tax impact of converting P&C insurance reserves from IFRS 4 to IFRS 17.

These Budget 2022 proposals, including the transitional rules, would apply as of July 1, 2023.

Resolutions 32 and 33: Hedging and Short Selling by Canadian Financial Institutions

32 (1) The definition *dividend rental arrangement* in subsection 248(1) of the Act is amended by adding the following after paragraph (b):

(b.1) any specified hedging transaction, in respect of a DRA share of the person,

(2) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

specified hedging transaction, in respect of a DRA share of a person or partnership (referred to in this definition as the "particular person"), means a *transaction* (in this definition, as defined in subsection 245(1)) or series of transactions

(a) that is entered into by

(i) the particular person if the particular person is a registered securities dealer or a partnership each member of which is a registered securities dealer, or

(ii) a registered securities dealer or a partnership each member of which is a registered securities dealer (in either case, referred to in this definition as the "connected dealer"), where such connected dealer does not deal at arm's length with, or is affiliated with, the particular person,

(b) that has the effect, or would have the effect if the transaction or series were entered into by the particular person instead of the connected dealer, of eliminating all or substantially all of the particular person's risk of loss and opportunity for gain or profit in respect of the DRA share, and

(c) if the transaction or series is entered into by the connected dealer, it can reasonably be considered to have been entered into with the knowledge, or where there ought to have been the knowledge, that the effect described in paragraph (b) would result; (*opération de couverture déterminée*)

(3) Subsections (1) and (2) apply in respect of dividends that are paid or become payable on or after Budget Day. However, subsections (1) and (2) do not apply in respect of dividends paid or payable before October 2022, if the specified hedging transaction was entered into before Budget Day.

33 (1) Paragraph 260(6)(a) of the Act is replaced by the following:

(a) if the taxpayer is a registered securities dealer and the particular amount is deemed by subsection (5.1) to have been received as a taxable dividend, no more than 2/3 of the particular amount (unless, for greater certainty, the particular amount is an amount for which a deduction in computing income may be claimed under subsection (6.1) or (6.2) by the taxpayer); or

(2) Section 260 of the Act is amended by adding the following after subsection (6.1):

Deductible amount for registered securities dealer

(6.2) If a registered securities dealer enters into a specified hedging transaction in respect of a DRA share of the registered securities dealer or a person that does not deal at arm's length with, or is affiliated with, the registered securities dealer, there may be deducted in computing the income of the registered securities dealer under Part I from a business or property for a taxation year an amount (other than any portion of the amount for which a deduction in computing income may be claimed under subsection (6.1) by the registered securities dealer) equal to the lesser of

(a) the total of all amounts each of which is an amount that the registered securities dealer becomes obligated in the taxation year to pay to another person as compensation for a dividend under the specified hedging transaction that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend, and

(b) the amount of the dividends that were received in respect of the DRA share by the registered securities dealer or the person that does not deal at arm's length with, or is affiliated with, the registered securities dealer (as the case may be, referred to as the "dividend recipient" in this paragraph) and that were identified in the dividend recipient's return of income under Part I for the year as an amount in respect of which no amount was deductible because of subsection 112(2.3) in computing the dividend recipient's taxable income or taxable income earned in Canada.

(3) The portion of subsection 260(7) of the Act before paragraph (a) is replaced by the following:

Dividend refund

(7) For the purpose of section 129, if a corporation pays an amount for which no deduction in computing the corporation's income may be claimed under subsection (6.1) or (6.2) and subsection (5.1) deems the amount to have been received by another person as a taxable dividend,

(4) Paragraphs 260(11)(b) and (c) of the Act are replaced by the following:

(b) for the purpose of applying paragraphs (6.1)(a) and (6.2)(a) in respect of the taxation year, to become obligated to pay its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of the amount the partnership becomes, in that fiscal period, obligated to pay to another person under the arrangement described in that paragraph; and

(c) for the purpose of applying section 129 in respect of the taxation year, to have paid

(i) if the partnership is not a registered securities dealer, the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) or (6.2) by the corporation), and

(ii) if the partnership is a registered securities dealer, 1/3 of the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) or (6.2) by the corporation).

(5) Subsections (1) to (4) apply in respect of amounts paid or credited on or after Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2022 proposed to amend certain rules relating to securities lending arrangements to limit the availability of a deduction for registered securities dealers (or taxpayers not dealing at arm's length with a registered securities dealer) may take in connection with securities lending arrangements where certain tax planning has taken place.

Generally, where a corporation receives a taxable dividend from a taxable Canadian corporation it may be able to deduct an amount equal to the dividend for purposes of computing its taxable income pursuant to subsection 112(1) of the Tax Act. The intent of this provision is to avoid multiple layers of corporate taxation on the same income. In addition, under the securities lending arrangement rules contained in section 260 of the Tax Act, registered securities dealers who enter into securities lending arrangements (SLAs) can deduct 2/3 of certain SLA compensation payments or dealer compensation payments made on shares. The Minister has identified an undesirable series of transactions where one corporate taxpayer purchases a share of a Canadian corporation and a related registered securities dealer borrows an identical security under a SLA before selling that security short. The result of these transactions is that the first corporate taxpayer receives a tax free dividend and the securities dealer receives a 2/3 deduction against an amount paid to the lender of shares (theoretically being funded directly or indirectly by the dividend amount the first taxpayer received tax free).

While the Minister believes these arrangements could be challenged based on the current rules contained in the Tax Act, to stop these transactions from achieving their intended benefit, Budget 2022 proposes to add a new definition of "specified hedging transactions" to subsection 248(1) of the Tax Act that seeks to define the arrangement set forth above that involves a registered securities dealer or a person that does not deal at arm's length with a particular registered securities dealer and that has the effect of eliminating all or substantially all of the risk of loss and opportunity of gain or profit in respect of a DRA share (within the meaning of subsection 248(1)). Further, Budget 2022 proposes to confirm that a "specified hedging transaction" is a dividend rental arrangement by including reference to it in a new paragraph (b.1) of the definition of "dividend rental arrangement" contained in subsection 248(1) of the Tax Act.

These proposals will apply in respect of dividends that are paid or become payable on or after Budget Day. However, with respect to specified hedging transactions entered into before Budget Day, these proposals will not apply in respect of dividends paid or payable before October 2022.

In addition, Budget 2022 proposes to change certain rules contained in section 260 to restrict deductions available to registered securities dealers by adding a new subsection (6.2) and amending various other provisions to make reference to this new subsection. New subsection 260(6.2) provides if a registered securities dealer enters into a specified hedging transaction in respect of a DRA share of the registered securities dealer or a person that does not deal at arm's length with, or is affiliated with, the registered securities dealer, the deduction is limited to the lesser of:

(a) the total of all amounts each of which is an amount that the registered securities dealer becomes obligated in the taxation year to pay to another person as compensation for a dividend under the specified hedging transaction that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend, and

(b) the amount of the dividends that were received in respect of the DRA share by the registered securities dealer or the person that does not deal at arm's length with, or is affiliated with, the registered securities dealer (as the case may be, referred to as the "dividend recipient" in this paragraph) and that were identified in the dividend recipient's return of income under Part I for the year as an amount in respect of which no amount was deductible because of subsection 112(2.3) in computing the dividend recipient's taxable income or taxable income earned in Canada.

These proposed amendments will apply in respect of amounts paid or credited on or after Budget Day.

Resolutions 34 and 35: Application of the General Anti-Avoidance Rule to Tax Attributes

34 (1) Subsection 152(1.11) of the Act is replaced by the following:

Determination under subsection 245(2)

(1.11) If at any time the Minister ascertains the tax consequences to a taxpayer because of subsection 245(2) with respect to a transaction, the Minister

(a) shall, in the case of a determination under subsection 245(8), determine any amount that is, or could at a subsequent time be, relevant for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act;

(b) may, in any case not described in paragraph (a), determine any amount referred to in paragraph (a); and

(c) shall, if a determination is made under this subsection, send to the taxpayer, with all due dispatch, a notice of determination stating the amount so determined.

(2) Subsection (1) applies in respect of determinations made on or after Budget Day. For greater certainty, determinations made under subsection 152(1.11) of the Act prior to Budget Day continue to be binding, to the extent provided under subsection 152(1.3) of the Act.

35 (1) The definitions *tax benefit* and *tax consequences* in subsection 245(1) of the Act are replaced by the following:

tax benefit means

(a) a reduction, avoidance or deferral of tax or other amount payable under this Act, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act but for a tax treaty,

(b) an increase in a refund of tax or other amount under this Act, and includes an increase in a refund of tax or other amount under this Act as a result of a tax treaty, or

(c) a reduction, increase or preservation of an amount that could at a subsequent time

(i) be relevant for the purpose of computing an amount referred to in paragraph (a) or (b), and

(ii) result in any of the effects described in paragraph (a) or (b); (*avantage fiscal*)

tax consequences, to a person, means

(a) the amount of income, taxable income or taxable income earned in Canada of the person under this Act,

(b) the tax or other amount payable by, or refundable to, the person under this Act, or

(c) any other amount that is, or could at a subsequent time be, relevant for the purpose of computing an amount referred to in paragraph (a) or (b); (*attribut fiscal*)

(2) Subsection (1) applies in respect of transactions that occur

(a) on or after Budget Day; or

(b) before Budget Day if a determination is made under subsection 152(1.11) of the Act on or after Budget Day in respect of the transaction.

DENTONS CANADA LLP COMMENTARY

Budget 2022 proposes to amend the general anti-avoidance rule (the "**GAAR**") in section 245 of the Act such that the GAAR may apply to transactions that affect tax attributes that have not yet been used to realize a reduction in taxes or other amounts payable under the Act.

In general, the GAAR applies where a taxpayer has obtained a *tax benefit*, which is defined in s.245(1) to mean, generally, a reduction, avoidance or deferral of tax or other amount payable under the Act or an increase in a refund of tax or other amount under the Act.

The proposed measures are in response to the decision in *Perry Wild/1245989 Alberta Ltd v. Canada*, 2018 FCA 114 ("**Wild**"), in which Federal Court of Appeal

concluded that the increase of a tax attribute that had not yet been used to realize a reduction in taxes was not a tax benefit for the purposes of the GAAR. In *Wild*, the taxpayer undertook a series of transactions that resulted in an increase to the paid-up capital of shares owned by an individual that could eventually be distributed to the individual as a capital gain. The Minister reassessed under s.84.1 and the GAAR. However, at the time of reassessment the taxpayer had not made a distribution to which s.84.1 applied. The Court concluded that no tax benefit had been realized even though there was no doubt that the taxpayer obtained an increase in a tax attribute, being the paid-up capital of the shares.

Budget 2022 expands the application of the GAAR so that it can apply to transactions that affect tax attributes that have not yet become relevant to the computation of tax. This is achieved by amending the definition of a *taxable benefit* to include a reduction, increase or preservation of an amount that *could at a subsequent time* be relevant in computing a reduction, avoidance, or deferral of tax or other amount payable under the Act or an increase in a refund or other amount under the Act. Consequential amendments are proposed such that the Minister may apply the GAAR to transactions that *could at a subsequent time* be relevant in computing an amount under the Act.

This measure would apply to notices of determination issued on or after Budget Day.

Resolutions 36 and 37: Substantive CCPCs

36 (1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

Substantive CCPC means a private corporation (other than a Canadian-controlled private corporation) that at any time in a taxation year

(a) is controlled, directly or indirectly in any manner whatever, by one or more Canadian resident individuals, or

(b) would, if each share of the capital stock of a corporation that is owned by a Canadian resident individual were owned by a particular individual, be controlled by the particular individual. (*SPCC en substance*)

(2) Section 248 of the Act is amended by adding the following after subsection (42):

Substantive CCPC — anti-avoidance

(43) For the purposes of this Act, a corporation (other than a Canadian-controlled private corporation) that is resident in Canada and would not, in the absence of this subsection, be a substantive CCPC, is deemed to be a substantive CCPC if it is reasonable to consider that one of the purposes of any *transaction* (as defined in subsection 245(1)), or series of transactions, was to cause the corporation not to qualify as a substantive CCPC.

(3) Subsections (1) and (2) apply to

(a) taxation years of a corporation that begin on or after Budget Day, if

(i) the corporation's first taxation year that ends on or after Budget Day ends due to a loss restriction event caused by a sale of all or substantially all of the shares of a corporation to a purchaser before 2023,

(ii) the purchaser deals at arm's length (determined without reference to a right referred to in paragraph 251(5)(b)) with the corporation immediately prior to the loss restriction event, and

(iii) the sale occurs pursuant to a written purchase and sale agreement entered into before Budget Day; and

(b) in any other case, taxation years that end on or after Budget Day.

37 The Act is further modified to give effect to the proposals relating to Substantive CCPCs as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Substantive CCPCs

Budget 2022 proposes targeted amendments to the *Income Tax Act* to align the taxation of investment income earned and distributed by "substantive CCPCs" with the rules that currently apply to CCPCs.

Budget 2022 defines a "substantive CCPC" as a private corporation that at any time in a taxation year:

a. is controlled, directly or indirectly in any manner whatever, by one or more resident individuals, or

b. would, if each share of the capital stock of a corporation that is owned by a Canadian resident individual were owned by a particular individual, be controlled by the particular individual.

The proposed measures are aimed at addressing tax planning that manipulates CCPC status without affecting genuine non-CCPCs (e.g., private corporations that are ultimately controlled by non-resident persons and subsidiaries of public corporations). Further, a corporation would be considered a substantive CCPC in circumstances where the corporation would have been a CCPC but for the fact that a non-resident or public corporation has a right to acquire its shares.

Budget 2022 proposes that substantive CCPCs earning and distributing investment income would be subject to the same anti-deferral and integration mechanisms as CCPCs with respect to such income. Specifically, investment income would be subject to a combined federal and provincial/territorial tax rate of approximately 50 per cent (depending on jurisdiction), of which 30 2/3 percent would be refundable upon distribution. Furthermore, the investment income earned by a substantive CCPC would be added to their "low rate income pool" such that distributions of such income would not entitle the shareholder to the enhanced dividend tax credit. For all other purposes of the *Income Tax Act* a substantive CCPC would be treated as a non-CCPC.

In addition, Budget 2022 includes a targeted ant-avoidance rule to address particular arrangements or transactions where it is reasonable to consider that the particular arrangement, transaction, or series of transactions was undertaken to avoid qualifying as a substantive CCPC. It also proposes targeted amendments to facilitate the administration of the rules applicable to investment income earned and distributed by substantive CCPCs, including a one year extension of the normal reassessment period for any consequential assessment of Part IV tax that arises from a corporation being assessed or reassessed a dividend refund.

These measures would apply to taxation years that end on or after Budget Day and include an exemption for genuine commercial transactions entered into before Budget Day where the taxation year of the corporation ends because of an acquisition of control caused by the sale of all or substantially all of the shares of a corporation to an arm's length purchaser. The purchase and sale agreement in this case must have been entered into before Budget Day and the share sale must occur before the end of 2022.

Deferring Tax Using Foreign Resident Corporations

Further, with respect to foreign resident corporations, Budget 2022 proposes targeted amendments to eliminate the tax-deferral advantage available to CCPCs and their shareholders earning investment income through controlled foreign affiliates. The current deferral advantage would be addressed by applying the same relevant tax factor to individuals, CCPCs and substantive CCPCs (i.e., the relevant tax factor currently appliable to individuals). As the relevant tax factor is calibrated based on the highest combined federal and provincial or territorial personal income tax rate, it essentially eliminates any tax incentive for CCPCs and their shareholder to earn investment income in a controlled foreign affiliate.

This rule is accompanied by amendments to address the integration of FAPI as it is repatriated to and is distributed by CCPCs and substantive CCPCs to their individual shareholders as due to the new relevant tax factor for CCPCs and substantive CCPCs, the current rules would not effectively integrate such amounts.

Integration would be addressed by adding an amount to the capital dividend account of a CCPC or a substantive CCPC. The amount added would approximate the portion of the after-tax earnings repatriated to the corporation from its foreign affiliate to the extent such earnings had been subject to a notional tax rate of 52.63 per cent. In addition, other dividend income from foreign affiliates for which a foreign tax credit is effectively provided through the relevant tax factor mechanism (dividends paid out of hybrid surplus and taxable surplus other than FAPI) would be

treated in the same manner. The treatment of dividends paid out of exempt surplus and pre-acquisition surplus would be unaffected.

More specifically, Budget 2022 proposes to:

- remove from the general rate income pool of a CCPC an amount equal to the deductions claimed in respect of repatriations of a foreign affiliate's hybrid surplus (representing certain capital gains) and taxable surplus (generally representing FAPI and active business income earned in a country with which Canada does not have a tax treaty or tax information exchange agreement), and in respect of the payment of withholding tax to a foreign government on inter-corporate dividends received from a foreign affiliate prescribed to be paid out of taxable surplus; and
- include in the capital dividend account of a CCPC (and a substantive CCPC) upon repatriation:
  - the amount of an inter-corporate dividend deduction claimed with respect to a dividend paid out of hybrid surplus less the amount of withholding tax paid with respect to the dividend (representing the non-taxable half of hybrid surplus plus the after-tax portion of the taxable half of hybrid surplus that was subject to sufficient foreign tax, as determined based on the new relevant tax factor less any withholding tax paid in respect of the dividend prescribed to have been paid out of hybrid surplus);
  - the amount of an inter-corporate dividend deduction claimed with respect to a dividend paid out of taxable surplus (representing the after-tax amount of the foreign accrual tax-sheltered FAPI (i.e., the amount of foreign accrual tax-sheltered FAPI less foreign accrual tax) repatriated to Canada as well as other non-FAPI amounts included in taxable surplus that were subject to sufficient foreign tax, as determined based on the new relevant tax factor); and
  - the amount of a withholding tax deduction claimed less the withholding tax paid in respect of repatriations of taxable surplus (representing the after-tax amount of withholding tax sheltered amounts, i.e., the amount of the deduction for withholding tax paid on dividends prescribed to have been paid out of taxable surplus less the withholding tax paid).

These measures would apply to taxation years that end on or after Budget Day.

Resolution 38: Exchange of Tax Information on Digital Economy Platform Sellers

38 The Act is modified to give effect to the proposals relating to the Exchange of Tax Information on Digital Economy Platform Sellers 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 2022 proposes to implement a new reporting obligation on certain online platform operators. While Budget 2022 does not contain draft legislation with respect to this new obligation, the legislation is expected to follow the OECD's model rules for reporting by digital platform operators with respect to platform sellers. The new rules will apply to calendar years beginning after 2023.

The new reporting regime will apply to platform operators that are engaged in the following activities:

- Contracting directly or indirectly with sellers to make the software that runs the platform available for the sellers to be connected to other users; or
- Collecting compensation for the relevant activities facilitated through the platform.

The measures generally apply to (i) platform operators that are resident in Canada for tax purposes and (ii) platform operators that are not resident in either Canada or a partner jurisdiction and that facilitate relevant activities by sellers resident in Canada or with respect to the rental of immovable property located in Canada.

Certain digital platforms are not subject to the new rules, including software that exclusively facilitates the processing of compensation in relation to relevant activities, the mere listing or advertising of relevant activities or the transfer of users to another platform. Certain other platform operators (including those where total compensation for facilitating relevant activities is less than €1 million in the previous year) are exempted from the reporting rules.

Platform operators that are subject to these rules will be required to report to the CRA specified information regarding reportable sellers by January 31 of the year following the calendar year for which a seller is identified as a reportable seller. However, there will also be provisions to avoid duplicate reporting.

Resolution 39: Interest Coupon Stripping

39 (1) Section 212 of the Act is amended by adding the following after subsection (20):

Interest coupon stripping arrangement – conditions

(21) Subsection (22) applies at any time in respect of a taxpayer if

(a) the taxpayer pays or credits a particular amount at that time as, on account or in lieu of payment of, or in satisfaction of, interest to a person or partnership (in this subsection and subsection (22) referred to as the "interest coupon holder") in respect of a debt or other obligation, other than a specified publicly offered debt obligation, owed to another person or partnership (in this subsection and subsection (22) referred to as the "non-arm's length creditor") that is

(i) a non-resident person with whom the taxpayer is not dealing at arm's length, or

(ii) a partnership other than a Canadian partnership; and

(b) the tax that would be payable under this Part in respect of the particular amount, if the particular amount were paid or credited to the non-arm's length creditor rather than the interest coupon holder, is greater than the tax payable under this Part (determined without reference to subsection (22)) in respect of the particular amount.

Interest coupon stripping arrangement – application

(22) If this subsection applies at any time in respect of a taxpayer, then for the purpose of paragraph (1)(b), the taxpayer is deemed, at that time, to pay interest to the non-arm's length creditor, the amount of which is determined by the formula

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

where

A is the particular amount referred to in paragraph (21)(a);

B is the rate of tax that would be imposed under this Part in respect of the particular amount if the particular amount were paid by the taxpayer to the non-arm's length creditor rather than the interest coupon holder at that time; and

C is the rate of tax imposed under this Part in respect of the particular amount paid or credited to the interest coupon holder at that time.

Specified publicly offered debt obligation

(23) For the purposes of subsection (21), ***specified publicly offered debt obligation*** means a debt or other obligation that meets the following conditions:

(a) it was issued by the taxpayer as part of an offering that is lawfully distributed to the public in accordance with a prospectus, registration statement or similar document filed with and, where required by law, accepted for filing by a public authority; and

(b) it can reasonably be considered that none of the main purposes of a transaction or event, or series of transactions or events, as a part of which the taxpayer pays or credits an amount as, on account or in lieu of payment of, or in satisfaction of, interest to a person or partnership in respect of the debt or other obligation is to avoid or reduce tax that would otherwise be payable under this Part by a non-resident person or partnership to whom the debt or other obligation is owed.

(2) Subsection (1) applies in respect of interest that accrues on or after Budget Day and is paid or payable by a taxpayer to an interest coupon holder in respect of a debt or other obligation owed to a non-arm's length creditor. However, subsection (1) does not apply to interest that accrues before April 7, 2023, if the interest is paid or payable

(a) in respect of a debt or other obligation incurred by the taxpayer before Budget Day; and

(b) to an interest coupon holder that deals at arm's length with the non-arm's length creditor and that acquired the entitlement to the interest as a consequence of an agreement or other arrangement entered into by the interest coupon holder, and evidenced in writing, before Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2022 proposes amendments targeting so-called "coupon stripping" arrangements whereby taxpayers attempt to avoid Canadian withholding tax under Part XIII of the Act on interest payments made to non-resident lenders. In general, this is accomplished by the non-resident lender selling its right to receive future interest payments ("**interest coupons**") in connection with a loan made to a non-arm's length Canadian-resident borrower to a person that is not subject to

withholding tax, such as a US-resident lender or another Canadian lender. However, the non-resident lender generally retains its right to the principal amount under the loan. While amendments were made to the Act in 2011 to address the particular arrangement seen in *The Queen v. Lehigh Cement Limited*, 2010 DTC 1239 (TCC), aff'd 2011 DTC 5069 (FCA), these amendments did not address two other variations of the arrangement.

The proposed amendments in Budget 2022 target two types of coupon stripping arrangements. In the first arrangement, a non-resident lender, not resident in the U.S., sells the interest coupons in connection with a loan made to a non-arm's length Canadian-resident borrower to another person who is resident in the U.S. To the extent that the U.S. interest coupon holder is entitled to benefits under the Canada-U.S. tax treaty, the applicable rate of withholding tax on any interest payments would be reduced to nil. This variation also includes arrangements involving interest coupon sales made by a non-resident in a non-treaty country or a country with a higher treaty withholding rate on interest payments to a purchaser in a country with a lower treaty rate.

In the second type of arrangement, a non-resident lender, not resident in the U.S., sells the interest coupons in connection with a loan made to a non-arm's length Canadian-resident borrower to a person resident in Canada. Since the interest payment is not to a non-resident, the payment is not subject to withholding tax. In these circumstances, taxpayers take the position that certain potentially applicable provisions in the Act do not apply to deem an interest payment to be made by the Canadian-resident interest coupon holder to the non-resident lender.

Budget 2022 addresses coupon stripping arrangements by introducing measures to ensure that the total withholding tax paid under such arrangements is the same as if the interest had been paid to the original non-resident lender.

In general, the new rules will apply to arrangements where a borrower pays or credits a particular amount to a person or partnership (the *interest coupon holder*) as interest on a debt owed to a non-resident person with whom the borrower is not dealing at arm's length or to a partnership other than a Canadian partnership (the *non-resident lender*), and the tax that would be payable under Part XIII in respect of the particular amount, if the particular amount were paid or credited to the non-resident lender, is greater than the tax payable under Part XIII on the particular amount paid or credited to the interest coupon holder.

If the relevant conditions are met, the Canadian borrower would be deemed, for the purposes of s.212(1)*(b)* of the Act, to pay an amount of interest to the non-resident lender such that the Part XIII tax on the deemed interest payment equals the Part XIII tax that would otherwise be payable but for the coupon stripping arrangement.

These provisions will not apply to publicly offered debt obligations (defined as "specified publicly offered debt obligations" in proposed subsection 212(23)), provided that the following conditions are met:

- the obligation was issued as part of an offering that is lawfully distributed to the public in accordance with a prospectus, registration statement or similar

document that is filed with and, if required by law, accepted for filing by a public authority; and

- it can reasonably be considered that none of the main purposes of a transaction or event, or series of transactions or events, as a part of which the borrower pays or credits interest, or an amount on account of or in lieu of interest, to the interest coupon holder in respect of the debt, is to avoid or reduce tax that would otherwise by payable under Part XIII by a non-resident lender.

The proposed rules will apply to interest paid or payable by a Canadian-resident borrower to an interest coupon holder to the extent that such interest accrued on or after Budget Day.

However, the proposed rules would only apply to interest payments to the extent that such interest accrued on or after the day that is one year after Budget Day where the interest payments meet the following conditions:

- it is in respect of a debt or other obligation incurred by the Canadian-resident borrower before Budget Day; and
- it is made to an interest coupon holder that deals at arm's length with the non-resident lender and that acquired the interest coupon as a consequence of an agreement or other arrangement entered into by the interest coupon holder, and evidenced in writing, before Budget Day

Editorial Comment on GST/HST and Excise Budget Resolutions

That it is expedient to amend the Excise Tax Act:

Resolution 1: GST/HST Health Care Rebate

1 (1) Clause (a)(ii)(C) of the definition *facility supply* in subsection 259(1) of the *Excise Tax Act* is replaced by the following:

(C) a nurse practitioner acting in the course of the practise of a nurse practitioner, or

(2) Clause (a)(iii)(B) of the definition *facility supply* in subsection 259(1) of the Act is replaced by the following:

(B) a physician or nurse practitioner be at, or be on-call to attend at, the public hospital or qualifying facility at all times when the individual is at the public hospital or qualifying facility,

(3) Subparagraph (a)(ii) of the definition *home medical supply* in subsection 259(1) of the Act is replaced by the following:

(ii) after a physician acting in the course of the practise of medicine, a nurse practitioner acting in the course of the practise of a nurse practitioner or a prescribed person acting in prescribed circumstances has identified or confirmed that it is appropriate for the process to take place at the individual's place of residence or lodging (other than a public hospital or a qualifying facility),

(4) Paragraph (b) of the definition *home medical supply* in subsection 259(1) of the Act is replaced by the following:

(b) in respect of which the property is made available, or the service is rendered, to the individual at the individual's place of residence or lodging (other than a public hospital or a qualifying facility), on the authorization of a person who is responsible for coordinating the process and under circumstances in which it is reasonable to expect that the person will carry out that responsibility in consultation with, or with ongoing reference to instructions for the process given by, a physician acting in the course of the practise of medicine, a nurse practitioner acting in the course of the practise of a nurse practitioner or a prescribed person acting in prescribed circumstances,

(5) Subsections (1) to (4) apply for the purposes of determining a rebate of a person under section 259 of the Act for claim periods ending after Budget Day, except that, in determining a rebate of a person for the claim period that includes Budget Day, the rebate is to be determined as if those subsections did not apply in respect of

(a) an amount of tax that became payable by the person on or before Budget Day;

(b) an amount that is deemed to have been paid or collected by the person on or before Budget Day; and

(c) an amount that is required to be added in determining the person's net tax

(i) as a result of a branch or division of the person becoming a small supplier division on or before Budget Day, or

(ii) as a result of the person ceasing to be a registrant on or before Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2022 proposes to amend the GST/HST eligibility rules for the expanded hospital rebate (83% for hospitals and charities and non-profit organizations that provide health care services similar to those traditionally performed in hospitals) to recognize the increasing role of nurse practitioners in delivering health care services, including in non-remote areas. It is proposed that to be eligible for the expanded hospital rebate, a charity or non-profit organization must deliver the health care service with the involvement of, or on the recommendation of, either a physician or

a nurse practitioner, irrespective of their geographical location. In other words, the expanded hospital rebate would no longer distinguish between health care services rendered by physicians and nurse practitioners.

Resolution 2: GST/HST on Assignment Sales by Individuals

2 (1) The Act is amended by adding the following after section 192:

New housing — assignment of agreement

192.1 If a taxable supply by way of sale of a *single unit residential complex* (as defined in subsection 254(1)) or of a residential condominium unit is made in Canada under an agreement of purchase and sale (in this section referred to as the "purchase agreement") entered into with a builder of the single unit residential complex or of the residential condominium unit and if another supply by way of assignment of the purchase agreement is made by a person (other than the builder) under another agreement, then the following rules apply for the purposes of this Part:

(a) the other supply is deemed to be a taxable supply, by way of sale, of real property that is an interest in the single unit residential complex or residential condominium unit; and

(b) the consideration for the other supply is deemed to be equal to the amount determined by the formula

$$A - B$$

where

A is the consideration for the other supply as otherwise determined for the purposes of this Part, and

B is

(i) if the other agreement indicates in writing that a part of the consideration for the other supply is attributable to the reimbursement of a deposit paid under the purchase agreement, the part of the consideration for the other supply, as otherwise determined for the purposes of this Part, that is solely attributable to the reimbursement of the deposit paid under the purchase agreement, and

(ii) in any other case, zero.

(2) Subsection (1) applies in respect of any supply by way of assignment of an agreement of purchase and sale if the supply is made on or after the day that is one month after Budget Day.

DENTONS CANADA LLP COMMENTARY

An assignment sale in respect of residential housing is a transaction in which a purchaser (an "assignor") under an agreement of purchase and sale with a builder of a new home sells their rights and obligations under the agreement to another person (an "assignee"). Currently, an assignment sale in respect of newly constructed or substantially renovated residential housing may be either taxable or exempt.

For example, currently, if the individual had originally entered into the agreement to occupy the home as a place of residence, the assignment sale would generally be exempt.

Budget 2022 proposes to amend the Excise Tax Act to make all assignment sales in respect of newly constructed or substantially renovated residential housing taxable for GST/HST purposes. As a result, the GST/HST would apply to the total amount paid for a new home by its first occupant and there would be greater certainty regarding the GST/HST treatment of assignment sales.

Typically, the consideration for an assignment sale includes an amount attributable to a deposit that had previously been paid to the builder by the assignor. Since the deposit would already be subject to GST/HST when applied by the builder to the purchase price on closing, Budget 2022 proposes that the amount attributable to the deposit be excluded from the consideration for a taxable assignment sale.

As is currently the case, the assignor in respect of a taxable assignment sale would generally continue to be responsible for collecting the GST/HST and remitting the tax to the Canada Revenue Agency (CRA). Where an assignor is non-resident, the assignee would continue to be required to self-assess and pay the GST/HST directly to the CRA.

These changes may affect the amount of a GST New Housing Rebate or of a new housing rebate in respect of the provincial component of the HST that may be available in respect of a new home.

This measure would apply in respect of any assignment agreement entered into on or after the day that is one month after Budget Day.

Notice of Ways and Means Motion to amend the Excise Act, 2001 and Other Related Texts

Resolutions 1 to 73: Taxation of Vaping Products

Excise Act, 2001

1 (1) The definitions *container*, *excise stamp* and *manufacture* in section 2 of the *Excise Act, 2001* are replaced by the following:

container, in respect of a tobacco product, a cannabis product or a vaping product, means a wrapper, package, carton, box, crate, bottle, vial or other container that contains the tobacco product, cannabis product or vaping product. (*contenant*)

excise stamp means a tobacco excise stamp, a cannabis excise stamp or a vaping excise stamp. (*timbre d'accise*)

manufacture includes

(a) in respect of a tobacco product, any step in the preparation or working up of raw leaf tobacco into the tobacco product, including packing, stemming, reconstituting, converting or packaging the raw leaf tobacco or tobacco product; and

(b) in respect of a vaping product, any step in the production of the vaping product, including inserting a vaping substance into a vaping device or packaging the vaping product. (*fabrication*)

(2) Paragraph (a) of the definition *packaged* in section 2 of the Act is replaced by the following:

(a) in respect of raw leaf tobacco, a tobacco product, a cannabis product or a vaping product, packaged in a prescribed package; or

(3) The definition *stamped* in section 2 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 adding the following after paragraph (b):

(c) in respect of a vaping product, that a vaping excise stamp, and all prescribed information in a prescribed format in respect of the vaping product, are stamped, impressed, printed or marked on, indented into or affixed to the vaping product or its container in the prescribed manner to indicate that duty has been paid on the vaping product. (*estampillé*)

(4) Paragraph (b) of the definition *take for use* in section 2 of the Act is replaced by the following:

(b) in respect of a cannabis product or a vaping product, to consume, analyze or destroy the cannabis product or vaping product. (*utilisation pour soi*)

(5) Section 2 of the Act is amended by adding the following in alphabetical order:

additional vaping duty means a duty imposed under section 158.58. (*droit additionnel sur le vapotage*)

immediate container of a vaping substance means the container that is in direct contact with the vaping substance. It does not include a vaping device. (*contenant immédiat*)

specified vaping province means a prescribed province. (*province déterminée de vapotage*)

vaping device means property (other than prescribed property) that is

(a) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol;

(b) a vaping pod or another part that may be used with a device referred to in paragraph (a); or

(c) a prescribed property. (*dispositif de vapotage*)

vaping duty means a duty imposed under section 158.57. (*droit sur le vapotage*)

vaping excise stamp means a stamp that is issued by the Minister under subsection 158.36(1) and that has not been cancelled under section 158.4. (*timbre d'accise de vapotage*)

vaping product means

(a) a vaping substance that is not contained within a vaping device; or

(b) a vaping device that contains a vaping substance.

It does not include a cannabis product. (*produit de vapotage*)

vaping product drug means a vaping product (other than a prescribed vaping product) that is

(a) a drug that has been assigned a drug identification number under the *Food and Drug Regulations*; or

(b) a prescribed vaping product. (*drogue de produit de vapotage*)

vaping product licensee means a person that holds a vaping product licence issued under section 14. (*titulaire de licence de produits de vapotage*)

vaping product marking means prescribed information that is required under this Act to be printed on, or affixed to, a container of vaping products that are not required under this Act to be stamped. (*mention obligatoire pour vapotage*)

vaping substance means

(a) a substance or mixture of substances, whether or not it contains nicotine, that is produced to be used, or sold for use, with a vaping device to produce emissions in the form of an aerosol; or

(b) a prescribed substance, material or thing.

It does not include a prescribed substance, material or thing. (*substance de vapotage*)

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

Constructive possession

5 (1) For the purposes of section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37, subsections 158.38(1) and 158.44(1) and (2), sections 230 and 231 and subsection 238.1(1), if one of two or more persons, with the knowledge and consent of the rest of them, has anything in the person's possession, it is deemed to be in the custody and possession of each and all of them.

(2) The portion of subsection 5(2) of the Act before paragraph (a) is replaced by the following:

Definition of *possession*

(2) In this section and in section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37 and subsections 158.38(1), 158.44(1) and (2) and 238.1(1), ***possession*** means not only having in one's own personal possession but also knowingly

3 Subsection 14(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 vaping product licence, authorizing the person to manufacture vaping products.

4 Subsection 19(1) of the Act is replaced by the following:

Issuance of licence

19 (1) Subject to the regulations, on application, the Minister may issue an excise warehouse licence to a person that is not a retailer of alcohol authorizing the person to possess in their excise warehouse manufactured tobacco, cigars or vaping products that are not stamped or non-duty-paid packaged alcohol.

5 Paragraph 23(3)(b) of the Act is replaced by the following:

(b) shall, in the case of a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence, require security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations; and

6 The Act is amended by adding the following after section 158.34:

PART 4.2

Vaping Products

Manufacturing and Stamping

Manufacturing without licence prohibited

158.35 (1) No person shall, other than in accordance with a vaping product licence issued to the person, manufacture vaping products.

Deemed manufacturer

(2) A person that, whether for consideration or otherwise, provides or offers to provide in their place of business equipment for use in that place by another person in the manufacturing of a vaping product is deemed to be manufacturing the vaping product and the other person is deemed not to be manufacturing the vaping product.

Exception — manufacture for personal use

(3) An individual who is not a vaping product licensee may manufacture vaping products for their personal use.

Exception — regulations

(4) Subsection (1) does not apply in respect of a prescribed person that manufactures prescribed vaping products in prescribed circumstances or for a prescribed purpose.

Issuance of vaping excise stamps

158.36 (1) On application in the prescribed form and manner, the Minister may issue, to a vaping product licensee or to a prescribed person that is importing vaping products, stamps the purpose of which is to indicate that vaping duty and, if applicable, additional vaping duty have been paid on a vaping product.

Quantity of vaping excise stamps

(2) The Minister may limit the quantity of vaping excise stamps that may be issued to a person under subsection (1).

Security

(3) No person shall be issued a vaping excise stamp unless the person has provided security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations.

Supply of vaping excise stamps

(4) The Minister may authorize a producer of vaping excise stamps to supply, on the direction of the Minister, vaping excise stamps to a person to which those stamps are issued under subsection (1).

Design and construction

(5) The design and construction of vaping excise stamps shall be subject to the approval of the Minister.

Counterfeit vaping excise stamps

158.37 No person shall produce, possess, sell or otherwise supply, or offer to supply, without lawful justification or excuse the proof of which lies on the person, anything that is intended to resemble or pass for a vaping excise stamp.

Unlawful possession of vaping excise stamps

158.38 (1) No person shall possess a vaping excise stamp that has not been affixed to the container of a vaping product in the manner prescribed for the purposes of the definition *stamped* in section 2 to indicate that duty has been paid on the vaping product.

Exceptions — possession

(2) Subsection (1) does not apply to the possession of a vaping excise stamp by

(a) the person that lawfully produced the vaping excise stamp;

(b) the person to which the vaping excise stamp is issued;

(c) a sufferance warehouse licensee that possesses the vaping excise stamp in their sufference warehouse on behalf of the person described under paragraph (b); or

(d) a prescribed person.

Unlawful supply of vaping excise stamps

158.39 No person shall dispose of, sell or otherwise supply, or offer to supply, a vaping excise stamp otherwise than in accordance with this Act.

Cancellation of vaping excise stamps

158.4 The Minister may

(a) cancel a vaping excise stamp that has been issued; and

(b) direct that it be returned or destroyed in a manner specified by the Minister.

Unlawful packaging or stamping

158.41 No person shall package or stamp a vaping product unless

(a) the person is a vaping product licensee;

(b) the person is the importer or owner of the vaping product and the vaping product has been placed in a sufferance warehouse for the purpose of being stamped; or

(c) the person is a prescribed person.

Unlawful removal

158.42 (1) Except as permitted under section 158.52 or if prescribed circumstances exist, no person shall remove a vaping product from the premises of a vaping product licensee unless it is packaged and

(a) if the vaping product is intended for the duty-paid market,

(i) it is stamped to indicate that vaping duty has been paid, and

(ii) if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid; or

(b) if the vaping product is not intended for the duty-paid market, all vaping product markings that are required under this Act to be printed on, or affixed to, its container are so printed or affixed.

Exceptions

(2) Subsection (1) does not apply to a vaping product licensee that removes from their premises a vaping product if it is

(a) being removed for

(i) delivery to another vaping product licensee,

(ii) export, or

(iii) delivery to a person for analysis or destruction in accordance with subparagraph 158.66(a)(iv); or

(b) a vaping product drug.

Removal by Minister

(3) Subsection (1) does not apply to the removal of a vaping product for analysis or destruction by the Minister.

Prohibition — vaping products for sale

158.43 No person shall purchase or receive for sale a vaping product

(a) from a manufacturer that the person knows, or ought to know, is not a vaping product licensee;

(b) that is required under this Act to be packaged and stamped unless it is packaged and stamped in accordance with this Act; or

(c) that the person knows, or ought to know, is fraudulently stamped.

Unlawful possession or sale of vaping products

158.44 (1) Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession a vaping product unless

(a) it is packaged; and

(b) it is stamped to indicate that vaping duty has been paid.

Unlawful possession or sale — specified vaping province

(2) Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession a vaping product in a specified vaping province unless it is stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

Exception — possession of vaping products

(3) Subsections (1) and (2) do not apply to the possession of vaping products

(a) in the case of imported vaping products,

(i) by an excise warehouse licensee in their excise warehouse,

(ii) by a sufferance warehouse licensee in their sufferance warehouse, or

(iii) by a customs bonded warehouse licensee in their customs bonded warehouse;

(b) by a prescribed person that is transporting the vaping products under prescribed circumstances and conditions;

(c) by a person that possesses the vaping products for analysis or destruction in accordance with subparagraph 158.66(a)(iv);

(d) by an accredited representative for their personal or official use;

(e) by an individual who has imported the vaping products for their personal use in quantities not in excess of prescribed limits;

(f) by an individual who has manufactured the vaping products in accordance with subsection 158.35(3); or

(g) if the vaping products are vaping product drugs.

Exception — sale or offer to sale

(4) Subsections (1) and (2) do not apply to the disposal, sale, offering for sale or purchase of a vaping product if

(a) the vaping product is an imported vaping product, an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product for export and the vaping product is exported by the licensee in accordance with this Act;

(b) the vaping product is an imported vaping product and an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product to an accredited representative for their personal or official use; or

(c) the vaping product is a vaping product drug.

Sale or distribution by licensee

158.45 (1) Except if prescribed circumstances exist, no vaping product licensee shall distribute a vaping product or sell or offer for sale a vaping product to a person unless

(a) it is packaged;

(b) it is stamped to indicate that vaping duty has been paid; and

(c) if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid.

Exceptions

(2) Subsection (1) does not apply to the distribution, sale or offering for sale of a vaping product by a vaping product licensee

(a) to another vaping product licensee;

(b) to an accredited representative for their personal or official use;

(c) if the vaping product is exported by the vaping product licensee in accordance with this Act; or

(d) if the vaping product is a vaping product drug.

Packaging and stamping of vaping products

158.46 A vaping product licensee that manufactures a vaping product shall not enter the vaping product into the duty-paid market unless

(a) the vaping product has been packaged by the licensee;

(b) the package has printed on it prescribed information;

(c) the vaping product is stamped at the time of packaging to indicate that vaping duty has been paid; and

(d) if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped at the time of packaging to indicate that additional vaping duty in respect of the specified vaping province has been paid.

Packaging and stamping of imported vaping products

158.47 (1) Except if prescribed circumstances exist, if a vaping product is imported, it must, before it is released under the *Customs Act* for entry into the duty-paid market,

(a) be packaged in a package that has printed on it prescribed information;

(b) be stamped to indicate that vaping duty has been paid; and

(c) if the vaping product is to be entered in the duty-paid market of a specified vaping province, be stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

Exceptions for certain importations

(2) Subsection (1) does not apply to a vaping product

(a) that is imported by a vaping product licensee for further manufacturing by the licensee;

(b) that a vaping product licensee is authorized to import under subsection 158.53(2); or

(c) that is imported by an individual for their personal use in quantities not in excess of prescribed limits.

Notice — absence of stamping

158.48 **(1)** The absence on a vaping product of stamping that indicates that vaping duty has been paid is notice to all persons that vaping duty has not been paid on the vaping product.

Notice — absence of stamping

(2) The absence on a vaping product of stamping that indicates that additional vaping duty in respect of a specified vaping province has been paid is notice to all persons that additional vaping duty in respect of the specified vaping province has not been paid on the vaping product.

Unstamped products to be warehoused

158.49 If vaping products manufactured in Canada are not stamped by a vaping product licensee, the vaping product licensee must immediately enter the vaping products into the licensee's excise warehouse.

No warehousing of vaping products without markings

158.5 **(1)** Subject to subsection (4), no person shall enter into an excise warehouse a container of vaping products unless the container has printed on it, or affixed to it, vaping product markings and other prescribed information.

No delivery of imported vaping products without markings

(2) Subject to subsections (3) and (4), no person shall deliver a container of imported vaping products that does not have printed on it, or affixed to it, vaping product markings and other prescribed information to

(a) an accredited representative; or

(b) a customs bonded warehouse.

Delivery of imported stamped vaping products

(3) A container of imported vaping products that were manufactured outside Canada and are stamped may be delivered to a customs bonded warehouse.

Exception in prescribed circumstances

(4) A container of vaping products does not require vaping product markings to be printed on it, or affixed to it, if prescribed circumstances exist.

Non-compliant imports

158.51 **(1)** If an imported vaping product intended for the duty-paid market is not stamped to indicate that vaping duty has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

Non-compliant imports — specified vaping province

(2) If an imported vaping product intended for the duty-paid market of a specified vaping province is not stamped to indicate that additional vaping duty in respect of the province has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

Exception

(3) Subsections (1) and (2) do not apply in prescribed circumstances.

Vaping products — waste removal

158.52 **(1)** No person shall remove a vaping product that is waste from the premises of a vaping product licensee other than the licensee or a person authorized by the Minister.

Removal requirements

(2) If a vaping product that is waste is removed from the premises of a vaping product licensee, it shall be dealt with in the manner authorized by the Minister.

Re-working or destruction of vaping products

158.53 **(1)** A vaping product licensee may re-work or destroy a vaping product in the manner authorized by the Minister.

Importation for re-working or destruction

(2) The Minister may authorize a vaping product licensee to import vaping products manufactured in Canada by the licensee for re-working or destruction by the licensee in accordance with subsection (1).

Responsibility for Vaping Products

Responsibility — vaping products manufactured in Canada

158.54 **(1)** Subject to section 158.55, a person is responsible for a vaping product manufactured in Canada at any time if

(a) the person is

(i) the vaping product licensee that owns the vaping product at that time, or

(ii) if the vaping product is not owned at that time by a vaping product licensee, the vaping product licensee that last owned it; or

(b) the person is a prescribed person.

Responsibility — imported vaping products

(2) Subject to sections 158.55 and 158.56, a person is responsible for an imported vaping product at any time if the person

(a) imported the vaping product; or

(b) is a prescribed person.

Person not responsible

158.55 A person that is responsible for a vaping product ceases to be responsible for it if

(a) it is packaged and stamped and the duty on it is paid;

(b) it is consumed or used in the manufacturing of a vaping product that is

(i) a vaping product drug, or

(ii) a prescribed vaping product;

(c) it is taken for use and the duty on it is paid;

(d) it is taken for use in accordance with any of subparagraphs 158.66(a)(i) to (iv);

(e) it is exported;

(f) it is delivered to an accredited representative for their personal or official use;

(g) it is lost in prescribed circumstances and the person fulfils any prescribed conditions; or

(h) prescribed circumstances exist.

Imports for personal use

158.56 An individual that imports vaping products for their personal use in quantities not in excess of prescribed limits is not responsible for those vaping products.

Imposition and Payment of Duty on Vaping Products

Imposition

158.57 Duty is imposed on vaping products manufactured in Canada or imported in the amount determined under Schedule 8 and is payable

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and

(b) in the case of imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

Imposition — additional vaping duty

158.58 In addition to the duty imposed under section 158.57, a duty in respect of a specified vaping province is imposed on vaping products manufactured in Canada, or imported, in prescribed circumstances in the amount determined in a prescribed manner and is payable

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and

(b) in the case of imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

Application of *Customs Act*

158.59 The duties imposed under sections 158.57 and 158.58 on imported vaping products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duties were a duty levied under section 20 of the *Customs Tariff*, and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

Duty on vaping products taken for use

158.6 (1) If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, the following rules apply:

(a) if the vaping products are packaged, they are relieved of the duty imposed under subsection 158.57; and

(b) duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

Specified vaping province — taken for use

(2) If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. This duty is in addition to the duty imposed under subsection (1).

Duty payable

(3) The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

Duty on unaccounted vaping products

158.61 (1) If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), the following rules apply:

(a) if the vaping products are packaged, they are relieved of the duty imposed under subsection 158.57; and

(b) duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

Specified vaping province — duty on unaccounted vaping products

(2) If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. This duty is in addition to the duty imposed under subsection (1).

Duty payable

(3) The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

Exception

(4) Subsection (1) does not apply in circumstances in which the particular person referred to in that subsection is convicted of an offence under section 218.2.

Duty relieved — unstamped vaping products

158.62 (1) The duties imposed under sections 158.57 and 158.58 are relieved on a vaping product that is not stamped.

Vaping products imported by individual for personal use

(2) Subsection (1) does not apply to the importation of vaping products by an individual for their personal use to the extent that the quantity of the products imported exceeds the quantity permitted under Chapter 98 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff* to be imported without the payment of *duties*, as defined in Note 4 to that Chapter.

Duty relieved — stamped vaping product imported by individual

158.63 (1) The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured in Canada and are stamped.

Duty relieved — reimportation

(2) The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured outside Canada, were previously imported into Canada and are stamped.

Duty relieved — importation for destruction

158.64 The duties imposed under paragraphs 158.57(b) and 158.58(b) are relieved on a stamped vaping product that was manufactured in Canada by a vaping product licensee and that is imported for re-working or destruction in accordance with section 158.53.

Duty relieved — prescribed circumstances

158.65 The duties imposed under section 158.57 or 158.58 are relieved on a vaping product in prescribed circumstances.

Duty not payable

158.66 Duty is not payable on a vaping product

(a) that is

(i) taken for analysis, or destroyed, by the Minister,

(ii) taken for analysis by a vaping product licensee in a manner approved by the Minister,

(iii) destroyed by a vaping product licensee in a manner approved by the Minister,

(iv) delivered by a vaping product licensee to another person for analysis or destruction by that person in a manner approved by the Minister,

(v) a vaping product drug, or

(vi) a prescribed vaping product; or

(b) in prescribed circumstances.

Excise Warehouses

Restriction — entering vaping products

158.67 No person shall enter into an excise warehouse

(a) a vaping product that is stamped; or

(b) any other vaping product except in accordance with this Act.

Prohibition on removal

158.68 (1) Except if prescribed circumstances exist, no person shall remove from an excise warehouse vaping products manufactured in Canada.

Removal of Canadian manufactured vaping products

(2) Subject to the regulations, a vaping product manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured it only if it is

(a) for export by the licensee in accordance with this Act; or

(b) for delivery to an accredited representative for their official or personal use.

Removal from warehouse for re-working or destruction

(3) Subject to the regulations, vaping products manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured them if they are removed for re-working or destruction by the licensee in accordance with section 158.53.

Removal of imported vaping products

158.69 (1) Except if prescribed circumstances exist, no person shall remove imported vaping products from an excise warehouse.

Exception

(2) Subject to the regulations, imported vaping products may be removed from an excise warehouse

(a) for delivery to another excise warehouse;

(b) for delivery to an accredited representative for their official or personal use; or

(c) for export by the excise warehouse licensee in accordance with this Act.

7 (1) The portion of subsection 159(1) of the Act before paragraph (a) is replaced by the following:

Determination of fiscal months

159 (1) The fiscal months of a person other than a cannabis licensee or a vaping product licensee shall be determined in accordance with the following rules:

(2) Subsection 159(1.01) of the Act is replaced by the following:

Fiscal months — cannabis or vaping product licensee

(1.01) For the purposes of this Act, the fiscal months of a cannabis licensee or a vaping product licensee are calendar months.

8 Section 180 of the Act is replaced by the following:

No refund — exportation

180 Subject to this Act, the duty paid on any tobacco product, cannabis product, vaping product or alcohol entered into the duty-paid market shall not be refunded on the exportation of the tobacco product, cannabis product, vaping product or alcohol.

9 The Act is amended by adding the following after section 187.1:

Refund of duty — destroyed vaping product

187.2 The Minister may refund to a vaping product licensee the duty paid on a vaping product that is re-worked or destroyed by the licensee in accordance with section 158.53 if the licensee applies for the refund within two years after the vaping product is re-worked or destroyed.

10 (1) Paragraph 206(1)(d) of the Act is replaced by the following:

(d) every person that transports a tobacco product, cannabis product or vaping product that is not stamped or non-duty-paid packaged alcohol.

(2) Subsection 206 of the Act is amended by adding the following after subsection (2.01):

Keeping records — vaping product licensee

(2.02) Every vaping product licensee shall keep records that will enable the determination of the amount of vaping product manufactured, received, used, packaged, re-worked, sold or disposed of by the licensee.

11 (1) The portion of section 214 of the Act before paragraph (a) is replaced by the following:

Unlawful production, sale, etc.

214 Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1 and 158.37 to 158.39 is guilty of an offence and liable

(2) The portion of section 214 of the Act before paragraph (a), as enacted by subsection (1), is replaced by the following:

Unlawful production, sale, etc.

214 Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1, 158.35, 158.37 to 158.39, 158.41 and 158.43 is guilty of an offence and liable

12 The Act is amended by adding the following after section 218.1:

Punishment — sections 158.44 and 158.45

218.2 (1) Every person that contravenes section 158.44 or 158.45 is guilty of an offence and liable

(a) on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of $500,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

Minimum amount

(2) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the offence relates, using the rates of duty applicable at the time the offence was committed, and

B is

(i) if the offence occurred in a specified vaping province, the amount determined for A, and

(ii) in any other case, 0; and

(b) $1,000 in the case of an indictable offence and $500 in the case of an offence punishable on summary conviction.

Maximum amount

(3) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the amount determined by the formula

(A + B) × 300%

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the offence relates, using the rates of duty applicable at the time the offence was committed, and

B is

(i) if the offence occurred in a specified vaping province, the amount determined for A, and

(ii) in any other case, 0; and

(b) $2,000 in the case of an indictable offence and $1,000 in the case of an offence punishable on summary conviction.

13 Paragraph 230(1)(a) of the Act is replaced by the following:

(a) the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1), 218.2(1) or 231(1); or

14 Paragraph 231(1)(a) of the Act is replaced by the following:

(a) the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1) or 218.2(1); or

15 Subsection 232(1) of the Act is replaced by the following:

Part XII.2 of *Criminal Code* applicable

232 (1) Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence under section 214, subsection 216(1), 218(1), 218.1(1) or 218.2(1) or section 230 or 231.

16 The Act is amended by adding the following after section 233.1:

Contravention of section 158.46 or 158.49

233.2 Every vaping product licensee that contravenes section 158.46 or 158.49 is liable to a penalty equal to the amount determined by the formula

(A + B) × 200%

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

B is

(a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

17 (1) Subsection 234(1) of the Act is replaced by the following:

Contravention of certain sections

234 (1) Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5 or 158.67 is liable to a penalty of not more than $25,000.

(2) Subsection 234(1) of the Act, as enacted by subsection (1), is replaced by the following:

Contravention of certain sections

234 (1) Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5, 158.52 or 158.67 is liable to a penalty of not more than $25,000.

(3) Section 234 of the Act is amended by adding the following after subsection (3):

Failure to comply

(4) Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b) is liable to a penalty of not more than $25,000.

(4) Subsection 234(4) of the Act, as enacted by subsection (3), is replaced by the following:

Failure to comply

(4) Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b), or that fails to re-work or destroy a vaping product in the manner authorized by the Minister under section 158.53, is liable to a penalty of not more than $25,000.

18 The Act is amended by adding the following after section 234.1:

Contravention — sections 158.35 and 158.43 to 158.45

234.2 Every person that contravenes section 158.35, that receives for sale vaping products in contravention of section

158.43 or that sells or offers to sell vaping products in contravention of section 158.44 or 158.45 is liable to a penalty equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

B is

(a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

19 Subsection 237(6) of the Act is replaced by the following:

Diversion of unstamped vaping products

(5.1) Every vaping product licensee is liable to a penalty on a vaping product manufactured in Canada that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.68(2) if the product is not delivered or exported, as the case may be, for that purpose.

Diversion of imported vaping products

(5.2) Every excise warehouse licensee is liable to a penalty on an imported vaping product that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.69(2) if the product is not delivered or exported, as the case may be, for that purpose.

Amount of penalty for diversion of vaping products

(5.3) The amount of a penalty for each vaping product that is removed from an excise warehouse for a purpose referred to in subsection (5.1) or (5.2) and that is not delivered or exported, as the case may be, for that purpose is equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is removed from the excise warehouse; and

B is

(a) if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is removed from the excise warehouse, the amount determined for A, and

(b) in any other case, 0.

Exception

(6) A licensee that would otherwise be liable to a penalty under this section is not liable if the licensee proves to the satisfaction of the Minister that the alcohol, tobacco product or vaping product that was removed from their excise warehouse or special excise warehouse was returned to that warehouse.

20 The Act is amended by adding the following after section 238:

Penalty in respect of unaccounted vaping products

238.01 (1) Every excise warehouse licensee is liable to a penalty on a vaping product entered into their excise warehouse if the licensee cannot account for the vaping product

(a) as being in the warehouse;

(b) as having been removed from the warehouse in accordance with this Act; or

(c) as having been destroyed by fire while kept in the warehouse.

Amount of penalty

(2) The amount of a penalty for each vaping product that cannot be accounted for is equal to the amount determined by the formula

$$(A + B) \times 200\%$$

where

A is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is entered into the excise warehouse; and

B is

(a) if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is entered into the excise warehouse, the amount determined for A, and

(b) in any other case, 0.

21 (1) Paragraph 238.1(1)(a) of the Act is replaced by the following:

(a) the person can demonstrate that the stamps were affixed to tobacco products, cannabis products, vaping products or their containers in the manner prescribed for the purposes of the definition *stamped* in section 2 and that duty, other than special duty, has been paid on the tobacco products, cannabis products or vaping products; or

(2) Subsection 238.1(2) of the Act is amended by striking out "or" at the end of paragraph (a), by adding "or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) in the case of a vaping excise stamp

(i) if the stamp is in respect of a specified vaping province, $10.00, and

(ii) in any other case, $5.00.

22 The portion of section 239 of the Act before paragraph (a) is replaced by the following:

Other diversions

239 Unless section 237 applies, every person is liable to a penalty equal to 200% of the duty that was imposed on packaged alcohol, a tobacco product, a cannabis product or a vaping product if

23 Section 264 of the Act is replaced by the following:

Certain things not to be returned

264 Despite any other provision of this Act, any alcohol, specially denatured alcohol, restricted formulation, raw leaf tobacco, excise stamp, tobacco product, cannabis product or vaping product that is seized under section 260 must not be returned to the person from whom it was seized or any other person unless it was seized in error.

24 Subsection 266(2) of the Act is amended by striking out "and" at the end of paragraph (d), by adding "and" at the end of paragraph (e) and by adding the following after paragraph (e):

(f) a seized vaping product only to a vaping product licensee.

25 (1) Paragraph 304(1)(c.1) of the Act is replaced by the following:

(c.1) respecting the types of security that are acceptable for the purposes of subsection 158.03(3) or 158.36(3), and the manner by which the amount of the security is to be determined;

(2) Paragraph 304(1)(f) of the Act is replaced by the following:

(f) respecting the information to be provided on tobacco products, packaged alcohol, cannabis products and vaping products and on containers of tobacco products, packaged alcohol, cannabis products and vaping products;

(3) Paragraph 304(1)(i) of the Act is replaced by the following:

(i) respecting the entry and removal of tobacco products, alcohol or vaping products from an excise warehouse or a special excise warehouse;

(4) Paragraph 304(1)(n) of the Act is replaced by the following:

(n) respecting the sale under section 266 of alcohol, tobacco products, raw leaf tobacco, specially denatured alcohol, restricted formulations, cannabis products or vaping products seized under section 260;

26 The Act is amended by adding the following after section 304.2:

Definition of *coordinated vaping duty system*

304.3 (1) In this section, ***coordinated vaping duty system*** means the system providing for the payment, collection and remittance of duty imposed under any of section 158.58 and subsections 158.6(2) and 158.61(2) and any provisions relating to duty imposed under those provisions or to refunds in respect of any such duty.

Coordinated vaping duty system regulations — transition

(2) The Governor in Council may make regulations, in relation to the joining of a province to the coordinated vaping duty system,

(a) prescribing transitional measures, including

(i) a tax on the inventory of vaping products held by a vaping product licensee or any other person, and

(ii) a duty or tax on vaping products that are delivered prior to the province joining that system; and

(b) generally to effect the implementation of that system in relation to the province.

Coordinated vaping duty system regulations — rate variation

(3) The Governor in Council may make regulations

(a) prescribing rules in respect of whether, how and when a change in the rate of duty for a specified vaping province applies (in this section any such change in the rate of duty is referred to as a “rate variation”), including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is imposed or payable and when duty is required to be reported and accounted for;

(b) if a manner of determining an amount of duty is to be prescribed in relation to the coordinated vaping duty system,

(i) specifying the circumstances or conditions under which a change in the manner applies, and

(ii) prescribing transitional measures in respect of a change in the manner, including

(A) a tax on the inventory of vaping products held by a vaping product licensee or any other person, and

(B) a duty or tax on vaping products that are delivered prior to the change; and

(c) prescribing amounts and rates to be used to determine any refund that relates to, or is affected by, the coordinated vaping duty system, excluding amounts that would otherwise be included in determining any such refund, and specifying circumstances under which any such refund shall not be paid or made.

Coordinated vaping duty system regulations — general

(4) For the purpose of facilitating the implementation, application, administration and enforcement of the coordinated vaping duty system or a rate variation or the joining of a province to the coordinated vaping duty system, the Governor in Council may make regulations

(a) prescribing rules in respect of whether, how and when that system applies and rules in respect of other aspects relating to the application of that system in relation to a specified vaping province, including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is imposed or payable and when duty is required to be reported and accounted for;

(b) prescribing rules related to the movement of vaping products between provinces, including a duty, tax or refund in respect of such movement;

(c) providing for refunds relating to the application of that system in relation to a specified vaping province;

(d) adapting any provision of this Act or of the regulations made under this Act to the coordinated vaping duty system or modifying any provision of this Act or those regulations to adapt it to the coordinated vaping duty system;

(e) defining, for the purposes of this Act or the regulations made under this Act, or any provision of this Act or those regulations, in its application to the coordinated vaping duty system, words or expressions used in this Act or those regulations including words or expressions defined in a provision of this Act or those regulations;

(f) providing that a provision of this Act or of the regulations made under this Act, or a part of such a provision, does not apply to the coordinated vaping duty system;

(g) prescribing compliance measures, including penalties and anti-avoidance rules; and

(h) generally in respect of the application of that system in relation to a province.

Conflict

(5) If a regulation made under this Act in respect of the coordinated vaping duty system states that it applies despite any provision of this Act, in the event of a conflict between the regulation and this Act, the regulation prevails to the extent of the conflict.

27 The Act is amended by adding, after Schedule 7, the Schedule 8 set out in the Schedule to this Motion.

Criminal Code

28 (1) Subparagraph (g)(i) of the definition *offence* in section 183 of the *Criminal Code* is replaced by the following:

(i) section 214 (unlawful production, sale, etc., of tobacco, alcohol, cannabis or vaping products),

(2) Paragraph (g) of the definition *offence* in section 183 of the Act is amended by adding the following after subparagraph (iii.1):

(iii.2) section 218.2 (unlawful possession, sale, etc., of unstamped vaping products),

Excise Tax Act

29 The definition *excisable goods* in subsection 123(1) of the *Excise Tax Act* is replaced by the following:

excisable goods means beer or malt liquor (within the meaning assigned by section 4 of the *Excise Act*) and spirits, wine, tobacco products, cannabis products and vaping products (within the meaning assigned by section 2 of the *Excise Act, 2001*); (*produit soumis à l'accise*)

Federal-Provincial Fiscal Arrangements Act

30 Subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* is amended by adding the following in alphabetical order:

coordinated vaping product taxation agreement means an agreement or arrangement entered into by the Minister on behalf of the Government of Canada under Part III.3, including any amendments or variations to the agreement or arrangement made in accordance with that Part; (*accord de coordination de la taxation des produits de vapotage*)

31 The Act is amended by adding the following after section 8.82:

PART III.3

Coordinated Vaping Product Taxation Agreements

Coordinated Vaping Product Taxation Agreement

8.9 (1) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement or arrangement with the government of a province respecting the taxation of vaping products and, without restricting the generality of the foregoing, respecting

(a) the collection, administration and enforcement of taxes on vaping products in respect of the province under a single Act of Parliament;

(b) the provision to the Government of Canada by the government of the province, or to the government of the province by the Government of Canada, of

(i) information acquired in the administration and enforcement of Acts imposing taxes on vaping products and Acts providing for rebates, refunds or reimbursements of taxes on vaping products, paid or payable, or of amounts paid or payable as or on account of the taxation of vaping products, and

(ii) other information related to the regulation of vaping and the distribution of vaping products relevant to the system of taxation of vaping products under a single Act of Parliament;

(c) the accounting for taxes collected in accordance with the agreement;

(d) the implementation of and transition to the system of taxation of vaping products contemplated under the agreement;

(e) payments, and the eligibility for payments, by the Government of Canada to the government of the province in respect of the revenues from the system of taxation contemplated under the agreement and to which the province is entitled under the agreement, the time when such payments will be made, and the remittance by the government of the province to the Government of Canada of any overpayments by the Government of Canada or the right of the Government of Canada to set off any overpayments against other amounts payable by the Government of Canada to the government of the province, whether under the agreement or any other agreement or arrangement or any Act of Parliament;

(f) the payment by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, of the taxes on vaping products payable under the system of taxation of vaping products contemplated under the agreement and the accounting for the taxes on vaping products so paid;

(g) the compliance by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, with the Act of Parliament under which the system of taxation of vaping products is administered and regulations made under that Act; and

(h) other matters that relate to, and that are considered advisable for the purposes of implementing or administering, the system of taxation of vaping products contemplated under the agreement.

Amending agreements

(2) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement with the government of a province amending or varying an agreement or arrangement with the province entered into under subsection (1) or this subsection.

Payments

8.91 If there is a coordinated vaping product taxation agreement with the government of a province, the appropriate minister may pay to the province out of amounts received in a fiscal year under the Act of Parliament referred to in paragraph 8.9(1)(a)

(a) amounts determined in accordance with the agreement as provided, and at such times as are specified, in the agreement; and

(b) subject to the regulations, advances in respect of the amounts referred to in paragraph (a).

Statutory authority to make payments

8.92 Despite any other Act, the payments paid under a coordinated vaping product taxation agreement under the authority of section 8.91 may be made without any other or further appropriation or authority.

32 (1) Paragraph 40(b) of the Act is replaced by the following:

(b) respecting the calculation and payment to a province of advances on account of any amount that may become payable to the province under this Act, an administration agreement, a reciprocal taxation agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement and the adjustment, by way of reduction or set off, of other payments to the province because of those advances;

(2) Paragraph 40(d) of the Act is replaced by the following:

(d) prescribing the time and manner of making any payment under this Act, an administration agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement;

Customs Act

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

immediate container has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

vaping device has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

vaping product licensee has the same meaning as in section 2 of the *Excise Act, 2001*; (*titulaire de licence de produits de vapotage*)

vaping substance has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

34 Subsection 97.25(3) of the Act is amended by adding the following after paragraph (c):

(c.1) if the good is a vaping product, to a vaping product licensee;

35 Subsection 109.2(2) of the Act is replaced by the following:

Contravention relating to tobacco, cannabis and vaping products and to designated goods

(2) Every person that

(a) removes tobacco products, cannabis products, vaping products or designated goods or causes tobacco products, cannabis products, vaping products or designated goods to be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or

(b) sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts,

is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products, cannabis products, vaping products or designated goods released in like condition at the rates of duties applicable to like tobacco products, cannabis products, vaping products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct.

36 Subsection 117(2) of the Act is replaced by the following:

No return of certain goods

(2) Despite subsection (1), if spirits, wine, specially denatured alcohol, restricted formulations, cannabis, raw leaf tobacco, excise stamps, tobacco products or vaping products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

37 Subsection 119.1(1.1) of the Act is amended by striking out "and" at the end of paragraph (c) and by adding the following after paragraph (c):

(c.1) a vaping product may only be to a vaping product licensee; and

38 The portion of subsection 142(1) of the Act before paragraph (a) is replaced by the following:

Disposal of things abandoned or forfeit

142 (1) Unless the thing is spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, an excise stamp, a tobacco product or a vaping product, anything that has been abandoned to Her Majesty in right of Canada under this Act and anything the forfeiture of which is final under this Act shall

39 (1) Subsection 142.1(1) of the Act is replaced by the following:

Dealing with abandoned or forfeited alcohol, etc.

142.1 (1) If spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, a tobacco product or a vaping product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it.

(2) Subsection 142.1(2) of the Act is amended by striking out "and" at the end of paragraph (c) and by adding the following after paragraph (c):

(c.1) a vaping product may only be to a vaping product licensee; and

40 Paragraph 164(1)(h.2) of the Act is replaced by the following:

(h.2) respecting the sale of alcohol, a tobacco product, raw leaf tobacco, specially denatured alcohol, a restricted formulation or a vaping product detained, seized, abandoned or forfeited under this Act;

Customs Tariff

41 Paragraph 83(a) of the *Customs Tariff* is replaced by the following:

(a) in the case of goods that would have been classified under tariff item No. 9804.10.00 or 9804.20.00, the value for duty of the goods shall be reduced by an amount equal to that maximum specified value and, in the case of alcoholic beverages, vaping products and tobacco, the quantity of those goods shall, for the purposes of assessing duties other than a duty under section 54 of the *Excise Act, 2001*, be reduced by the quantity of alcoholic beverages, vaping products and tobacco and up to the maximum quantities specified in tariff item No. 9804.10.00 or 9804.20.00, as the case may be;

42 Subsection 89(2) of the Act is replaced by the following:

Exception

(2) Relief of the duties or taxes levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise Tax Act* may not be granted under subsection (1) on tobacco products, vaping products or designated goods.

43 Subsection 113(2) of the Act is replaced by the following:

No refund

(2) No refund or drawback of the duties imposed on tobacco products or vaping products under the *Excise Act, 2001* shall be granted under subsection (1), except if a refund of the whole or the portion of the duties is required to be granted under Division 3.

44 (1) The Description of Goods of tariff item No. 9804.10.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with "For the purpose of this tariff item," and ending with "of manufactured tobacco." with a reference to "For the purpose of this tariff item, goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers."

(2) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9804.20.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:

(a) goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if included in the baggage accompanying the person at the time of return to Canada; and

(b) if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) acquired abroad are not included in the baggage accompanying the person, they may be classified under this tariff item if they are reported by the person at time of return to Canada.

(3) The Description of Goods of tariff item No. 9804.30.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with "For the purpose of this tariff item," and ending with "or manufactured tobacco." with a reference to "For the purpose of this tariff item, goods shall not include those which could otherwise be imported into Canada free of duties, nor alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products."

(4) The Description of Goods of tariff item No. 9804.40.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “For the purpose of this tariff item,” and ending with “or manufactured tobacco.” with a reference to “For the purpose of this tariff item, goods shall not include alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products.”

(5) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9805.00.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:

(a) the provisions shall apply to either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if they are included in the baggage accompanying the importer, and no relief from payment of duties is being claimed in respect of alcoholic beverages, tobacco or vaping products under another item in this Chapter at the time of importation;

(b) if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) are not accompanying the person returning from abroad, they may be classified under this item when imported at a later time if they are reported by the person at the time of return to Canada; and

(6) The Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by striking out “and” at the end of subparagraph (a)(i), by adding “and” at the end of subparagraph (a)(ii), and by adding the following after subparagraph (a)(ii):

(iii) vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers;

(7) Paragraph (c) of the Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “(other than alcoholic beverages, cigars, cigarettes, tobacco sticks and manufactured tobacco)” with a reference to “(other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products)”.

(8) The Description of Goods of tariff item No. 9816.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “and not being advertising matter, tobacco or alcoholic beverages,” with a reference to “and not being advertising matter, tobacco, alcoholic beverages or vaping products,”.

(9) The Description of Goods of heading 98.25 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “alcoholic beverages; tobacco; tobacco products;” with a reference to “alcoholic beverages; tobacco; tobacco products; vaping products;”.

(10) The Description of Goods of heading 98.26 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “alcoholic beverages; tobacco; tobacco products;” with a reference to “alcoholic beverages; tobacco; tobacco products; vaping products;”.

(11) The Description of Goods of tariff item No. 9827.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with “Goods, which may include” and ending with “of manufactured tobacco,” with a reference to “Goods, which may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco products not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers,”

(12) The Description of Goods of tariff item No. 9906.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to “other than alcoholic beverages and tobacco products,” with a reference to “other than alcoholic beverages, tobacco products and vaping products,”.

Amendments to Various Regulations

Tariff Item No. 9805.00.00 Exemption Order

45 Section 3 of the *Tariff Item No. 9805.00.00 Exemption Order* is amended by adding the following after paragraph (b):

(b.1) vaping products owned by and in the possession of the importer;

Postal Imports Remission Order

46 (1) Paragraph (a) of the definition *goods* in section 2 of the *Postal Imports Remission Order* is replaced by the following:

(a) alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

(2) Section 2 of the Order is amended by adding the following in alphabetical order:

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

Courier Imports Remission Order

47 (1) Paragraph (a) of the definition *goods* in section 2 of the *Courier Imports Remission Order* is replaced by the following:

(a) alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

(2) Section 2 of the Order is amended by adding the following in alphabetical order:

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

Customs Sufferance Warehouses Regulations

48 Subsection 15(4) of the *Customs Sufferance Warehouses Regulations* is replaced by the following:

(4) For the purposes of subsection 39.1(1) of the Act, firearms, prohibited ammunition, prohibited devices, prohibited or restricted weapons, tobacco products and vaping products are goods of a prescribed class that are forfeit if they are not removed from a sufferance warehouse within 14 days after the day on which they were reported under section 12 of the Act.

49 Paragraph 17(a) of the Regulations is replaced by the following:

(a) stamping the goods, if the goods consist of

(i) imported raw leaf tobacco or imported tobacco products that are placed in the sufferance warehouse in accordance with section 39 of the *Excise Act, 2001*, or

(ii) imported vaping products that are placed in the sufferance warehouse in accordance with section 158.51 of the *Excise Act, 2001*;

Non-residents' Temporary Importation of Baggage and Conveyances Regulations

50 Section 2 of the *Non-residents' Temporary Importation of Baggage and Conveyances Regulations* is amended by adding the following in alphabetical order:

immediate container has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

vaping device has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

vaping substance has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

51 Subsection 4(1) of the Regulations is amended by striking out "or" at the end of paragraph (b) and by adding the following after that paragraph:

(b.1) 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers; or

Tariff Item No. 9807.00.00 Exemption Order

52 Paragraph 2(b) of the *Tariff Item No. 9807.00.00 Exemption Order* is replaced by the following:

(b) tobacco products and vaping products;

Customs Bonded Warehouses Regulations

53 Section 2 of the *Customs Bonded Warehouses Regulations* is amended by adding the following in alphabetical order:

vaping product has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

54 Section 14 of the Regulations is amended by striking out "and" at the end of paragraph (e), by adding "and" at the end of paragraph (f) and by adding the following after paragraph (f):

(g) vaping products that are not stamped.

55 The Regulations are amended by adding the following after section 16:

16.1 No licensee shall receive into or remove from a bonded warehouse imported vaping products unless they are to be removed from the warehouse for sale to a foreign diplomat in Canada or export from Canada.

56 Section 18 of the Regulations is replaced by the following:

18 For the purposes of subsections 37(2) and 39.1(2) of the *Customs Act*, tobacco products, packaged spirits and vaping products are a prescribed class of goods and are forfeit if they have not been removed from the bonded warehouse within five years of the day on which the goods are described in the form prescribed under subsection 19(2) of that Act.

Regulations Respecting Excise Licences and Registrations

57 Subparagraph 2(2)(b)(i) of the *Regulations Respecting Excise Licenses and Registrations* is replaced by the following:

(i) failed to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of or controls on alcohol, tobacco products or vaping products or any regulations made under it, or

58 Section 4 of the Regulations is replaced by the following:

4 A licence is valid for the period specified in the licence, which period shall not exceed

(a) in the case of a vaping product licence, three years; and

(b) in any other case, two years.

59 (1) The portion of subsection 5(1) of the Regulations before paragraph (a) is replaced by the following:

5 (1) For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence is an amount of not less than $5,000 and

(2) Paragraph 5(1)(b) of the Regulations is replaced by the following:

(b) in the case of a tobacco licence, a cannabis licence or a vaping product licence, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence.

60 Paragraph 12(1)(e) of the Regulations is replaced by the following:

(e) fails to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of or controls on alcohol, tobacco products or vaping products, or any regulations made under it; or

Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped

61 The title of the *Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped* is replaced by the following:

Regulations Respecting the Possession of Tobacco, Cannabis or Vaping Products That Are Not Stamped

62 The Regulations are amended by adding the following after section 1.3:

1.4 For the purposes of paragraph 158.44(3)(b) of the *Excise Act, 2001*, a person may possess a vaping product that is not stamped if

(a) the person is authorized by an officer under section 19 of the *Customs Act* to transport vaping products that have been reported under section 12 of that Act and is acting in accordance with that authorization; or

(b) the person has in their possession documentation that provides evidence that the person is transporting the vaping product on behalf of

(i) a vaping product licensee,

(ii) an excise warehouse licensee, or

(iii) an accredited representative.

Stamping and Marking of Tobacco and Cannabis Products Regulations

63 The title of the *Stamping and Marking of Tobacco and Cannabis Products Regulations* is replaced by the following:

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

64 Paragraph 2(c) of the Regulations is replaced by the following:

(c) a cannabis product or a vaping product is packaged in a prescribed package when it is packaged in the smallest package — including any outer wrapper, package, box or other container — in which it is sold to the consumer.

65 (1) Subsection 4(1) of the Regulations is replaced by the following:

4 (1) For the purposes of subsections 25.1(1) and 158.36(1) of the Act, a prescribed person is a person that satisfies the requirements set out in paragraphs 2(2)(a) to (e) of the *Regulations Respecting Excise Licences and Registrations*.

(2) Section 4 of the Regulations is amended by adding the following after subsection (3):

(4) For the purposes of paragraph 158.38(2)(d) of the Act, the following persons are prescribed:

(a) a person that transports a vaping excise stamp on behalf of a person described in paragraph 158.38(2)(a) or (b) of the Act; and

(b) a person that has in their possession vaping excise stamps only for the purpose of applying adhesive to the stamps on behalf of the vaping product licensee to which the stamps are issued.

66 The Regulations are amended by adding the following after section 4:

4.01 (1) If the Minister holds, at any time in a calendar month, security that a person has provided under subsection 158.36(3) of the Act and if the person is not a vaping product licensee throughout the calendar month, the person must file with the Minister an information return for the calendar month in respect of the possession and use of any vaping excise stamps issued to the person.

(2) The information return of a person for a particular calendar month must

(a) be made in prescribed form containing prescribed information; and

(b) be filed in prescribed manner on or before the last day of the first calendar month following the particular calendar month.

67 The Regulations are amended by adding the following after section 4.1:

4.11 (1) Subject to subsections (2) to (4), the amount of security for the purpose of subsection 158.36(3) of the Act is the greater of

(a) $1.00 multiplied by the number of vaping excise stamps that either are in the applicant's possession at the time of application or are to be issued in respect of the application, and

(b) $5,000.

(2) Subject to subsections (3) and (4), if the amount determined under paragraph (1)(a) is greater than $5 million, the amount of security for the purpose of subsection 158.36(3) of the Act is $5 million.

(3) If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is equal to or greater than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is nil.

(4) If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is less than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is the difference between the amount of security determined in accordance with subsections (1) and (2) and the amount of security provided by the person under paragraph 23(3)(b) of the Act.

68 The portion of section 4.2 of the Regulations before paragraph (a) is replaced by the following:

4.2 For the purposes of the definition *stamped* in section 2 of the Act and subsections 25.3(1), 158.05(1) and 158.38(1) of the Act, the prescribed manner of affixing an excise stamp to a package is by affixing the stamp

69 The Regulations are amended by adding the following after section 5:

5.1 (1) For the purposes of paragraphs 158.44(3)(e) and 158.47(2)(c) and section 158.56 of the Act, the prescribed limit is five units of vaping products.

(2) For the purposes of subsection (1), a unit of vaping products consists of 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers.

70 The heading after section 7 of the Regulations is replaced by the following:

Vaping Product Marking

8 (1) For the purposes of subsection 158.5(1) of the Act, the required vaping product markings are

(a) for containers of vaping products manufactured in Canada, the marking set out in Schedule 7; and

(b) for containers of vaping products manufactured outside Canada, the marking set out in Schedule 8.

(2) The vaping product markings must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in the appropriate Schedule.

9 (1) For the purposes of subsection 158.5(2) of the Act, the required vaping product marking is the marking set out in Schedule 8.

(2) The vaping product marking must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in Schedule 8.

71 The heading of Schedule 7 to the Regulations is replaced with the following:

SCHEDULE 7

(Sections 6 and 8)

Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured in Canada

72 The heading of Schedule 8 to the Regulations is replaced with the following:

SCHEDULE 8

(Sections 6 to 9)

Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured Outside Canada, Containers of Cigars Manufactured in Canada and Intended for Delivery to a Duty Free Shop or as Ships' Stores and Containers of Imported Manufactured Tobacco and Cigars Referred to in Subsection 38(2) of the Act

Application

73 (1) Sections 158.35, 158.51 to 158.53, 158.68 and 158.69 of the *Excise Act, 2001*, as enacted by section 6, subsection 11(2), sections 12 to 16, subsections 17(2) and (4), sections 18, 19 and 22, subsection 28(2) and sections 29, 34 to 52, 62 and 69 come into force on October 1, 2022.

(2) Sections 158.41, 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 6, apply in respect of vaping products manufactured in Canada that are packaged on or after October 1, 2022 and to vaping products that are imported into Canada or *released* (as defined in the *Customs Act*) on or after that day. Those sections of the *Excise Act, 2001* also apply in respect of

(a) vaping products manufactured in Canada that are packaged before October 1, 2022 if the vaping products are stamped after the day on which section 6 receives royal assent; and

(b) vaping products that are imported into Canada or *released* (as defined in the *Customs Act*) after the day on which section 6 receives royal assent but before October 1, 2022 if the vaping products are stamped when they are reported under that Act.

(3) Sections 158.42 to 158.47 and 158.49, subsection 158.5(2), sections 158.54 to 158.56, 158.6 and 158.61 of the *Excise Act, 2001*, as enacted by section 6, subsection 10(1) and sections 54 to 56 come into force on October 1, 2022. However, those provisions of that Act, subsection 10(1) and sections 54 to 56 do not apply before 2023 in respect of

(a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and

(b) vaping products that are imported into Canada or *released* (as defined in the *Customs Act*) before October 1, 2022 and that are not stamped.

(4) In applying sections 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 6, in respect of vaping products manufactured in Canada that are packaged before October 1, 2022, paragraph (a) of each of those sections 158.57 and 158.58 is to be read as follows:

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the later of the beginning of October 1, 2022 and the time they are stamped; and

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CANNABIS

Excise Duty Quarterly Remittances

Budget 2022 proposes to allow licensed cannabis producers to remit excise duties on a quarterly rather than monthly basis. This option would only be available in respect of a fiscal quarter beginning on or after April 1, 2022, of a licensee that was required to remit less than a total of $1M in excise duties during the four fiscal quarters immediately preceding that fiscal quarter.

Contracts-for-Service

Budget 2022 proposes to allow the CRA to approve certain contract-for-service arrangements between two licensed cannabis producers which would permit, as the case may be, the producers to:

- transfer stamps and packaged but unstamped products between them;
- stamp and enter cannabis products into the retail market that have been packaged by the other producer; and
- pay the excise duty on cannabis products that were stamped by the other producer.

Penalties

Budget 2022 proposes to amend the penalty provision for lost stamps so that the higher penalty for losing stamps for a province or territory with an additional cannabis duty adjustment only applies if the adjustment rate is greater than 0%. Budget 2022 also proposes that existing cannabis penalty provisions would apply to situations where unlicensed parties illegally possess or purchase cannabis products, and where licensed parties illegally distribute cannabis products.

Licences

Budget 2022 proposes to exempt holders of a Health Canada-issued Research Licence or Cannabis Drug Licence from the requirement to be licensed under the excise duty regime.

Excise duty licences issued by the CRA for cannabis producers are only valid for up to two years, while Health Canada-issued licences, which are a necessary prerequisite for receiving a CRA-issued excise licence, may be granted for up to five years at a time. Budget 2022 proposes to allow the CRA to issue licences that would be valid for up to the lesser of five years or the longest period for which the relevant Health Canada licence or licences are valid.

VAPING PRODUCTS

The proposed federal excise duty framework for vaping products would come into force on October 1, 2022. Retailers may continue to sell until January 1, 2023, unstamped products that are in inventory as of October 1, 2022.

Tax Base

The taxation base would be comprised of vaping products that include either liquid or solid vaping substances (whether or not they contain nicotine), with an

equivalency of 1 ml of liquid = 1 gram of solids. Vaping products that are already subject to the cannabis excise duty framework, as well as those produced by individuals for their personal use, would be excluded.

Duty Rates

A federal excise duty rate of $1 per 2 ml, or fraction thereof, is proposed for the first 10 ml of vaping substance, and $1 per 10 ml, or fraction thereof, for volumes beyond that. The excise duty would be based on the volume of vaping substance in each vaping product.

If a province or territory chooses to participate in a coordinated vaping taxation regime administered by the federal government, an additional duty rate would be imposed in respect of dutiable vaping products intended for sale in that participating jurisdiction. The additional duty rate in respect of that participating province or territory would be equal to the proposed federal excise duty rate, so that the proposed combined rate would be $2 per 2 ml, or fraction thereof, for the first 10 ml of vaping substance, and $2 per 10 ml, or fraction thereof, for volumes beyond that.

Travellers' Exemption

Budget 2022 proposes to allow duty-free importations by travellers returning to Canada of unstamped vaping products for personal use. There is no duty-free importation of vaping products for personal use for an absence of less than 48 hours. For an absence of 48 hours or more, there is duty-free importation for personal use of up to twelve vaping products of less than 10 ml each (for a total of 120 ml), or any combination of vaping products of 10 ml or more so long as the total volume imported is below 120 ml.

Federal-provincial-territorial Taxation Coordination

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

EXCISE ACT, 2001, GENERAL ADMINISTRATION

Budget 2022 proposes to:

- add cancellation criteria for an excise licence, other than a proactive request by a licensee to cancel its licence, to the criteria that may be used to suspend an excise licence;
- require all excise licensees and excise applicants to comply with federal and provincial legislation and regulations regarding the taxation and control of cannabis products;
- remove cash and transferable bonds issued by the Government of Canada, and add bank drafts and Canada Post money orders, to the types of financial security that could be accepted by the CRA; and
- confirm the ability of the CRA to carry out virtual audits and reviews of all licensees where the CRA deems it appropriate.

Resolutions 74 to 77: WTO Settlement on the 100-per-cent Canadian Wine Exemption

74 (1) Section 87 of the *Excise Act, 2001* is amended by adding "and" at the end of paragraph (a) and by repealing paragraph (a.1).

(2) Subsection (1) comes into force, or is deemed to have come into force, on June 30, 2022.

75 (1) Paragraph 88(2)(i) of the Act is replaced by the following:

(i) that is wine referred to in paragraph 135(2)(b) may be possessed by any person; and

(2) Subsection (1) comes into force, or is deemed to have come into force, on June 30, 2022, but does not apply to wine packaged before that day.

76 (1) Subsection 134(3) of the Act is replaced by the following:

Exception

(3) Subsection (1) does not apply to wine that is produced by an individual for their personal use and that is consumed in the course of that use.

(2) Subsection (1) applies to wine taken for use on or after June 30, 2022.

77 (1) Paragraph 135(2)(a) of the Act is repealed.

(2) Subsection (1) applies to wine packaged on or after June 30, 2022.

SCHEDULE

(Section 27)

SCHEDULE 8

(Sections 158.57, 158.6, 158.61, 218.2, 233.2, 234.2 and 238.1)

Duty on Vaping Products

1 Vaping products that are vaping devices that contain vaping substances or that are vaping substances in immediate containers: for each vaping device or immediate container of vaping substance

(a) if the vaping substance is in liquid form, the amount equal to the total of:

(i) for the first 10 millilitres of vaping substance in the vaping device or immediate container: $1.00 per two millilitres of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance in the vaping device or immediate container: $1.00 per ten millilitres of vaping substance or fraction thereof; and

(b) if the vaping substance is in solid form, the amount equal to the total of:

(i) for the first 10 milligrams of vaping substance in the vaping device or immediate container: $1.00 per two milligrams of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance in the vaping device or immediate container: $1.00 per ten milligrams of vaping substance or fraction thereof.

2 Vaping products that are vaping substances not in any vaping device or container:

(a) if the vaping substance is in liquid form, the amount equal to the total of:

(i) for the first 10 millilitres of vaping substance: $1.00 per two millilitres of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance: $1.00 per ten millilitres of vaping substance or fraction thereof; and

(b) if the vaping substance is in solid form, the amount equal to the total of:

(i) for the first 10 milligrams of vaping substance: $1.00 per two milligrams of vaping substance or fraction thereof, and

(ii) for any additional amount of vaping substance: $1.00 per ten milligrams of vaping substance or fraction thereof.

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Under the Excise Act, 2001, wine is subject to excise duties. For a typical 750mL bottle of wine, as of April 1, 2022, the excise duty is $0.688 per litre or about 52 cents per bottle. Currently, Wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada (i.e., 100-per-cent Canadian wine) is exempt from excise duties.

In 2018, the 100-per-cent Canadian wine excise duty exemption was challenged

at the World Trade Organization (WTO). Canada reached a settlement on this dispute in July 2020, in which it agreed to repeal the excise duty exemption by June 30, 2022.

To give effect to the settlement, Budget 2022 proposes to repeal the 100-per-cent Canadian wine excise duty exemption.

The proposed measure would come into force on June 30, 2022.

Notice of Ways and Means Motion to amend the Excise Act

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

Resolutions 1 to 2: Beer Taxation

1 (1) The portion of the definition *beer* or *malt liquor* in section 4 of the *Excise Act* before paragraph (a) is replaced by the following:

beer or ***malt liquor*** means any product (other than *wine*, as defined in section 2 of the *Excise Act, 2001*) containing more than 0.5% absolute ethyl alcohol by volume that is

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2022.

2 (1) Subsection 170.1(3) of the Act is replaced by the following:

Exclusion of exports

(3) In subsection (1), the reference to "first 75,000 hectolitres of beer and malt liquor brewed in Canada" does not include beer or malt liquor that is exported or deemed to be exported under section 173.

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2022.

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Budget 2022 proposes to eliminate excise duty for beer containing no more than 0.5 per cent alcohol per volume ("ABV"), bringing the tax treatment of such beer into line with the treatment of wine and spirits with the same alcohol content. The proposed measure would come into force on July 1, 2022.

Other Measures and Previously Announced Measures

Amendments to the Nisga'a Final Agreement Act to Advance Tax Measures in the Nisga'a Nation Taxation Agreement

The Nisga'a Indigenous agreement in 2000 was negotiated between the Nisga'a Nation, British Columbia, and the government of Canada. The Nisga'a agreement (also called a "treaty") was one of the first to provide preferential tax treatment for a self-governing Indigenous government. At the time it was enacted, the treaty (officially called the *Nisga'a Final Agreement Act*), which is the federal settlement legislation giving effect to the Nisga'a treaty, provided force-of-law to only specific provisions of the treaty and not the whole treaty.

Budget 2022 proposes to amend the treaty to provide force-of-law to all provisions of the treaty, including a forthcoming amendment with respect to an income tax exemption for amounts received by citizens of the Nisga'a Nation from a registered pension plan to the extent that the employment income on which the pension amounts are based was itself exempt from tax.

Minimum Tax for High Earners

Canada, like many other countries, has had an alternative minimum tax, intended to tax certain high-income earners who receive tax-preferential amounts like capital gains, employee stock options, and certain other tax expenditure amounts. Apparently, the government feels that the current system is not achieving its goals in terms of "fair taxation". Accordingly, Budget 2022 announces the government's commitment to examine a new minimum tax regime, which will go further towards ensuring that all wealthy Canadians pay their fair share of tax. The government will release details on a proposed approach in the 2022 fall economic and fiscal update.

Review of Tax Support to R&D and Intellectual Property

The Scientific Research and Experimental Development ("SR&ED") tax incentives (deductions and or credits) are meant to encourage and assist Canadian businesses undertaking SR&ED. The Budget papers indicate that the government intends to undertake a review of the program, first to ensure that it is effective in encouraging this research that benefits Canada, and second to explore opportunities to modernize and simplify it. Specifically, the review will examine whether changes to eligibility criteria would be warranted to ensure adequacy of support and improve overall program efficiency. As part of this review, "the government will also consider whether the tax system can play a role in encouraging the development and retention of intellectual property stemming from R&D conducted in Canada. In particular, the government will consider, and seek views on, the suitability of adopting a patent box

regime in order to meet these objectives." No timeline was provided on the possible changes to the SR&ED rules.

Previously Announced Measures

According to the Budget documents, Budget 2022 "confirms the government's intention to proceed with the following previously announced tax and related measures, as modified to take into account consultations and deliberations since their release:"

- Legislative proposals relating to the *Select Luxury Items Tax Act* released on March 11, 2022 (proposed to start on September 1, 2022, with respect to certain highly-priced aircraft, vehicles, and vessels);
- Legislative proposals released on February 4, 2022 in respect of the following measures:
  - electronic filing and certification of tax and information returns;
  - immediate expensing rather than capital cost allowance. The immediate expensing incentive is available for "designated immediate expensing property" acquired by an "eligible person or partnership" on or after one of two dates in 2021 (depending on the nature of the eligible person or partnership) and that becomes available for use before January 1, 2024 (or January 1, 2025 in the case of individuals and Canadian partnerships all the members of which are individuals), up to a maximum amount of $1.5 million per taxation year. If the eligible person or partnership is a Canadian-controlled private corporation, property can qualify as designated immediate expensing property if, among other conditions, it is acquired after April 18, 2021. If the eligible person or partnership is an individual or a Canadian partnership, the property must be acquired after December 31, 2021 to qualify;
  - the Disability Tax Credit (for example, among other changes, that the requirement that certain types of therapy for the individual be administered at least three times each week is reduced to at least two times each week);
  - the rate reduction for zero-emission technology manufacturers (corporate rate reduction and CCA and other changes);
  - film or video production tax credits (extends the former two-year period that precedes the date on which principal photography of a production begins to a three-year period);
  - postdoctoral fellowship income (will be considered "earned income" for RRSP purposes);
  - fixing contribution errors in registered pension plans;
  - a technical fix related to the revocation tax applicable to charities;
  - capital cost allowance for clean energy equipment;
  - enhanced reporting requirements for certain trusts (generally, certain trusts with assets with a total fair market value of more $50,000 throughout the relevant year even if they have no net income in the year);

  - allocation to redeemers methodology for mutual fund trusts;
  - mandatory disclosure rules;
  - avoidance of tax debts;
  - taxes applicable to registered investments;
  - audit authorities;
  - interest deductibility limits (in accordance with the OECD base erosion of profits initiative); and
  - crypto asset mining.
- Legislative proposals tabled in a Notice of Ways and Means Motion on December 14, 2021 to introduce the *Digital Services Tax Act* (which would levy a tax of 3% on revenues derived by residents and non- residents of Canada from certain digital services they provide).
- Legislative proposals released on December 3, 2021 with respect to Climate Action Incentive payments.
- The income tax measure announced in Budget 2021 with respect to Hybrid Mismatch Arrangements (for example, where a Canadian corporation pays an amount to a non-resident corporation, deducts the amount and the non-resident also deducts or does not include the amount under their foreign law).
- The transfer pricing consultation announced in Budget 2021 (dealing with transfers of goods or services between Canadian resident corporations and non-resident related parties).
- The anti-avoidance rules consultation announced on November 30, 2020 in the Fall Economic Statement.
- The income tax measure announced on December 20, 2019 to extend the maturation period of amateur athletes trusts maturing in 2019 by one year, from eight years to nine years.
- Measures confirmed in Budget 2016 relating to the Goods and Services Tax/Harmonized Sales Tax joint venture election.

Genuine Intergenerational Share Transfers

The Budget also addressed a possible amendment to a "surplus stripping" rule. Previous Bill C-208, which received Royal Assent on June 29, 2021, introduced an exception to this rule to facilitate intergenerational business transfers, particularly where the purchaser (say, a child of the vendor) purchased the shares of the vendor parent's corporation through their own corporation. According to the Budget papers, "the exception may unintentionally permit surplus stripping without requiring that a genuine intergenerational business transfer takes place." As a result, Budget 2022 announced a "consultation process for Canadians to share views as to how the existing rules could be modified to protect the integrity of the tax system while continuing to facilitate genuine intergenerational business transfers. The government is committed to bringing forward legislation to address these issues, which would be included in a bill to be tabled in the fall after the conclusion of the consultation

process." Comments and suggestions to the Department of Finance will be accepted until June 17, 2022.

The Budget 2022 papers also indicate "the government's commitment to move forward as required with technical amendments to improve the certainty and integrity of the tax system."

International Tax Reform

On October 8, 2021, the OECD released a two-pillar plan regarding tax challenges arising from the digitalization of the economy (the "October Statement"). Canada was one of 137 OECD members to sign onto the plan. The October Statement envisions two separate pillars to deal with these issues. Pillar One is intended to reallocate some taxing rights over the profits generated by the world's largest multinational enterprises (MNEs) to jurisdictions where the enterprise's customers and users are located. The Canadian government is continuing to work with international partners to develop new model rules for Pillar One. However, as previously announced, the Government has introduced a digital services tax (DST) to be imposed as of January 1, 2024 (retroactive to January 1, 2022) but only if Pillar One is not implemented as of that date. In Budget 2022, the government reiterated its hope that Pillar One will be implemented such that the DST can be abandoned.

Pillar Two is intended to implement a global minimum effective tax rate of 15% on the profits of large MNEs regardless of where the profits are earned. With respect to Pillar Two, there are two key components: the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR) with the IIR being the primary rule and UTPR being a backstop. In situations where the effective tax rate for a MNE is less than 15%, the MNE would be subject to a top-up tax.

Budget 2022 proposes to implement Pillar Two along with a domestic minimum top-up tax that would apply to Canadian entities of MNEs that are within the scope of Pillar Two. Budget 2022 is also launching a public consultation with specific questions included in the budget materials and announced the government's plans to release draft legislation with the goal that the IRR and domestic minimum top-up tax would come into effect sometime in 2023. The UTPR would come into effect in 2024. The government is asking for submissions from interested parties by July 7, 2022.

Table of Effective Dates—2022

Notice of Ways and Means Motion to Amend the *Income Tax Act* and Other Related Legislation		
Resolution 1	**Tax-Free First Home Savings Account**	TBD ("at some point in 2023").
Resolution 2	**First-Time Home Buyers' Tax Credit**	Applies to the 2022 and subsequent taxation years.
Resolution 3	**Multigenerational Home Renovation Tax Credit**	Applies to the 2023 and subsequent taxation years, in respect of work performed and paid for and/or goods acquired on or after January 1, 2023.
Resolution 4	**Home Accessibility Tax Credit**	Applies to the 2022 and subsequent taxation years.
Resolution 5	**Residential Property Flipping Rule**	Applies in respect of residential properties sold on or after January 1, 2023.
Resolution 6	**Labour Mobility Deduction for Tradespeople**	Applies to the 2022 and subsequent taxation years.
Resolution 7	**Medical Expense Tax Credit for Surrogacy and Other Expenses**	Applies to expenses incurred in the 2022 and subsequent taxation years.
Resolution 8	**Annual Disbursement Quota for Registered Charities**	Applies to charities in respect of their fiscal periods beginning on or after January 1, 2023. The amendment removing the accumulation of property rule would not apply to approved property accumulations resulting from applications submitted by a charity prior to January 1, 2023.
Resolution 9	**Charitable Partnerships**	Applies as of royal assent of the enacting legislation.
Resolution 10-22	**Amendments to the Children's Special Allowances Act and to the Income Tax Act**	Applies for the 2020 and subsequent taxation years.
Resolution 23	**Borrowing by Defined Benefit Pension Plans**	Applies to amounts borrowed by defined benefit registered pension plans (other than individual pension plans) on or after April 7, 2022.
Resolution 24	**Reporting Requirements for RRSPs and RRIFs**	Applies to the 2023 and subsequent taxation years.
Resolution 25	**Canada Recovery Dividend and Additional Tax on Banks and Life Insurers**	The CRD liability would be imposed for the 2022 taxation years. The proposed additional tax would apply to taxation years that end after April 7, 2022, prorated for the number of days in the taxation year after April 7, 2022.
Resolution 26	**Investment Tax Credit for Carbon Capture, Utilization, and Storage**	Applies to eligible expenses incurred after 2021 and before 2041.

Resolution 27	**Clean Technology Tax Incentives — Air-Source Heat Pumps**	Applies in respect of property that is acquired and that becomes available for use on or after April 7, 2022, where it has not been used or acquired for use for any purpose before April 7, 2022. The reduced tax rates would apply to taxation years that begin after 2021, subject to a phase-out starting in taxation years that begin in 2029, and would be fully phased out for taxation years that begin after 2031.
Resolution 28	**Critical Minerals Exploration Tax Credit**	Applies to expenditures renounced under eligible flow-through share agreements entered into after April 7, 2022 and on or before March 31, 2027.
Resolution 29	**Flow-Through Shares for Oil, Gas and Coal Activities**	Applies to expenditures renounced under flow-through share agreements entered into after March 31, 2023.
Resolution 30	**Small Business Deduction**	Applies to taxation years that begin on or after April 7, 2022.
Resolution 31	**International Financial Reporting Standards for Insurance Contracts (IFRS 17)**	Applies as of January 1, 2023.
Resolution 32-33	**Hedging and Short Selling by Canadian Financial Institutions**	Applies in respect of dividends that are paid or become payable on or after April 7, 2022, but do not apply in respect of dividends paid or payable before October 2022, if the specific hedging transaction was entered into before April 7, 2022.
Resolution 34-35	**Application of the General Anti-Avoidance Rule to Tax Attributes**	Applies to notices of determination issued on or after April 7, 2022.
Resolution 36-37	**Substantive CCPCs**	Deferring Tax Using Foreign Entities applies to taxation years that end on or after April 7, 2022 (with some exceptions); Deferring Tax Using Foreign Resident Corporations applies to taxation years that begin on or after April 7, 2022.
Resolution 38	**Exchange of Tax Information on Digital Economy Platform Sellers**	Applies to calendar years beginning after 2023.
Resolution 39	**Interest Coupon Stripping**	Applies in respect of interest that accrues on or after April 7, 2022, with some exceptions.

Notice of Ways and Means Motion to amend the Excise Tax Act		
Resolution 1	**GST/HST Health Care Rebate**	Applies to rebate claim periods ending after April 7, 2022 in respect of tax paid or payable after that date.
Resolution 2	**GST/HST on Assignment Sales by Individuals**	Applies in respect of any assignment agreement entered into on or after the day that is one month after April 7, 2022.

Notice of Ways and Means Motion to amend the *Excise Act, 2001*		
Resolutions 1 to 73	**Taxation of Vaping Products**	The proposed federal excise duty framework for vaping products would come into force on October 1, 2022. It is also proposed that retailers may continue to sell until January 1, 2023 unstamped products that are in inventory as of October 1, 2022.
Resolutions 74 to 77	**WTO Settlement on the 100-per-cent Canadian Wine Exemption**	Comes into force on June 30, 2022.

Notice of Ways and Means Motion to amend the *Excise Act*		
Resolutions 1 to 2	**Beer Taxation**	Comes into force on July 1, 2022.

Department of Finance News Release

Government of Canada releases Budget 2022

April 7, 2022 - Ottawa, Ontario - Department of Finance Canada

Today, the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, released *Budget 2022: A Plan to Grow Our Economy and Make Life More Affordable*.

Since the depths of the pandemic recession, the government's focus on jobs—on keeping Canadians employed and on keeping their employers afloat—has ensured Canada's economy has made a rapid and strong recovery. Canada has seen the best jobs recovery in the G7, having recovered 112 per cent of the jobs lost, and with an unemployment rate that sits at just 5.5 per cent—close to the 5.4 per cent low in 2019 that was Canada's best in five decades.

In Budget 2022, the government makes targeted and responsible investments to create jobs and prosperity today, and build a stronger economic future for all Canadians. These include:

1. **Investing in Canadians and Making Life More Affordable**: Canadians are the backbone of a strong and growing economy, and measures that support access to housing and a growing workforce are imperative for economic growth. Budget 2022 housing measures include: Putting Canada on the path to double housing construction over the next decade; helping Canadians save for and buy their first home; banning foreign investment that makes housing less affordable for Canadians; and curbing unfair practices that make housing more expensive for Canadians. Budget 2022 also invests in ensuring Canadian workers have the skills they need for the good-paying jobs of today and tomorrow, and will make it easier for the skilled immigrants that our economy needs to make Canada their home. Budget 2022 makes significant further investments in affordable child care, in reducing the backlogs of surgeries and medical procedures in our public health care system, and in advancing reconciliation with Indigenous peoples.
2. **Investing in Economic Growth and Innovation**: The key to Canada's long-term prosperity is economic growth. Budget 2022 builds off of Budget 2021's historic investments in early learning and child care—which could increase real GDP by as much as 1.2 per cent over the next two decades—and includes further critical investments to make Canada's economy both stronger and more innovative. These investments include a new Canada Growth Fund that will attract tens of billions of dollars in private investment in Canadian industries and Canadian jobs, and a new innovation and investment agency that will help drive productivity and growth across our economy. Budget 2022 also includes up to $3.8 billion to implement Canada's first Critical Minerals Strategy—one that will create thousands of good jobs and capitalize on a growing need for the minerals used in everything from phones to electric cars. Measures also include steps to build more resilient supply chains, to cut taxes for Canada's

growing small businesses, and to drive the creation, and ensure the protection, of Canadian intellectual property.

3. **Investing in a Clean Economy**: Protecting our environment and fighting climate change is the right thing to do for the planet, and it is also the right thing to do for our economy. Through Budget 2022, the government will help Canadians and Canadian businesses benefit from the global transition to a clean economy, including through new incentives for the development of clean technologies and carbon capture, utilization, and storage. In addition to further investments to protect our land, lakes, and oceans, the government will also make it more affordable for Canadians to purchase zero-emission vehicles, build and expand a national network of zero-emission vehicle charging stations, and make new investments in clean energy.

Canada entered the pandemic with the lowest net debt-to-GDP ratio of all G7 countries, an advantage that has since increased relative to other countries. With Budget 2022, Canada will maintain this leading position, while also seeing the second fastest recovery in the G7 by the end of this year. With the federal government having invested eight out of every ten dollars to support Canadians and the Canadian economy during the pandemic, Budget 2022 represents a fiscally responsible approach to economic growth and builds an economy that works for everyone. Crucially, it upholds the government's fiscal anchor—a declining debt-to-GDP ratio and the unwinding of COVID-19-related deficits, which will ensure that Canada's finances remain sustainable in the long-term.

Quotes

"Budget 2022 is about growing our economy, creating good jobs, and building a Canada where nobody gets left behind. Our plan is responsible and considered, and it is going to mean more homes and good-paying jobs for Canadians; cleaner air and cleaner water for our children; and a stronger and more resilient economy for years to come."

The Honourable Chrystia Freeland,
Deputy Prime Minister and Minister of Finance

Quick facts

- **Measures in Budget 2022 to make housing more affordable include:**
  - Putting Canada on the path to doubling the construction of new homes in the next decade;
  - Helping Canadians buy their first home, including by introducing the Tax-Free First Home Savings Account and doubling the First-Time Home Buyers' Tax Credit; and
  - Launching a new Housing Accelerator Fund that will target the creation of 100,000 net new housing units in the next five years.
- **Measures in Budget 2022 to fight climate change include:**
  - More than $3 billion in funding to make zero-emission vehicles more affordable and build a national network of charging stations;

  - Significant new investments to protect our land, lakes, and oceans; and
  - The creation of the Canada Growth Fund to help attract tens of billions of dollars in private capital towards building a net-zero economy by 2050.
- **Further significant measures in Budget 2022 include:**
  - $5.3 billion over five years to provide dental care for Canadians with family incomes of less than $90,000 annually, starting with under 12-years-olds in 2022, expanding to under 18-years-olds, seniors, and persons living with a disability in 2023, and with full implementation by 2025. The program would be restricted to families with an income of less than $90,000 annually, with no co-pays for those under $70,000 annually in income;
  - Up to $3.8 billion to implement Canada's first Critical Minerals Strategy;
  - $11 billion in additional funding to continue to support Indigenous children and their families, and help Indigenous communities continue to grow and shape their futures;
  - More than $8 billion in new funding to better equip the Canadian Armed Forces, strengthen Canada's contributions to our core alliances like NATO and NORAD, and reinforce Canada's cyber security;
  - Further support for Ukraine and its people in the face of Russia's illegal invasion, including up to $1 billion in new loan resources to the Ukrainian government through a new Administered Account for Ukraine at the International Monetary Fund (IMF), and an additional $500 million in military aid;
  - A temporary Canada Recovery Dividend, representing a one-time 15 per cent tax on the 2021 taxable income above $1 billion of Canada's largest banking and life insurers' groups, to help support Canada's broader recovery; and
  - A permanent 1.5 percentage point increase in the corporate income tax rate of banking and life insurance groups on taxable income above $100 million.

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