

2023 Issue No. 52
18 December 2023

Tax Alert – Canada

Bill C-59 to implement outstanding indirect tax measures receives first reading

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 30 November 2023, Bill C-59, *Fall Economic Statement Implementation Act, 2023*, received first reading in the House of Commons. The bill contains a number of GST/HST and other indirect tax proposals, which were included in a notice of ways and means motion tabled on 28 November 2023.

Bill C-59 implements several proposed measures, including:

- ▶ Certain measures from the draft legislative proposals released on 4 August 2023, such as prescribing certain payment card authorization services as exempt financial services for GST/HST purposes, and updating the excise duties regime applicable to vaping products under the *Excise Act, 2001*;
- ▶ Outstanding GST/HST measures from the 9 August 2022 draft legislative proposals;
- ▶ Measure regarding excise duty reporting requirements for cannabis licensees introduced in the 2023 federal budget;
- ▶ Measures regarding GST/HST input tax credit information requirements and excise tax rebates for goods purchased by provinces introduced in the 2021 federal budget; and
- ▶ Measure to exempt psychotherapy and counselling services from GST/HST, which was introduced in the 2023 Fall Economic Statement.

This bill also proposes to extend the proposed enhancement to the GST rental rebate on new purpose-built rental housing to cooperative housing corporations.

In addition to indirect tax measures, Bill C-59 contains income tax proposals as well as a revised version of the proposed *Digital Services Tax Act*. For more information on these measures, see [EY Tax Alert 2023 Issue No. 44](#) and [EY Tax Alert 2023 Issue No. 48](#), respectively.



Building a better
working world

GST/HST measures

Bill C-59 includes the following GST/HST amendments to the *Excise Tax Act* (ETA) and the related regulations:

Prescribed financial services – Paragraph (r.6) of the definition of “financial service” in subsection 123(1) of the ETA excludes certain services rendered by a payment card network operator (PCNO) from the definition. In general, this provision applies to a service rendered by a PCNO in respect of a payment card network, where the supply includes a service of authorizing a payment card transaction, clearing or settlement services, or any other service rendered in conjunction with such services. These services are considered taxable supplies and subject to GST/HST. However, paragraph (r.6) does not include prescribed services, which remain exempt.

Bill C-59 amends the *Financial Services and Financial Institutions (GST/HST) Regulations* to specify which services are prescribed services for the purposes of paragraph (r.6). Very generally, these include:

- ▶ Services supplied by a PCNO that provide a merchant with access to a payment card network for the transmission or processing of the payments;
- ▶ Services rendered to the holder of a payment card by the PCNO in its capacity as the issuer of the card;
- ▶ The settlement of a transaction by a PCNO in its capacity as the acquirer or the issuer; and
- ▶ A service, in respect of the settlement of a payment card transaction, that is supplied by a PCNO to the acquirer, where the supply consists of paying the acquirer the amount charged to the payment card for the transaction, and the issuer pays the same consideration to the PCNO in respect of the transaction.

Accordingly, under these amendments, PCNO services under the three-party model (i.e., when the PCNO is either the acquirer or the issuer) may be exempt. However, PCNO services under the four-party model (i.e., when the PCNO is not acting as an acquirer or issuer) would be taxable.

The amendments apply to a supply of a service for which:

- ▶ Any consideration becomes due, or is paid without becoming due, after 28 March 2023; or
- ▶ All of the consideration became due, or was paid, before 29 March 2023.

For more information with respect to the introduction of paragraph (r.6) to the ETA, see [EY Tax Alert 2023 Issue No. 21](#).

Exemption for psychotherapy and counselling therapy services – Bill C-59 removes the GST/HST from psychotherapists' and counselling therapists' services by adding these practitioners to the list of health care practitioners whose professional services are exempt from GST/HST when rendered to individuals. This amendment will take effect when the bill receives Royal Assent.

New residential rental property rebate – Cooperative housing corporation – Bill C-56, *The Affordable Housing and Groceries Act*, which received Royal Assent on 15 December 2023, increases the GST rental housing rebate on new purpose-built rental housing from the current 36% to 100% with no phase-out thresholds and no limits on the rebate amount. This enhancement is a temporary measure that would apply to residential units that qualify for the current GST rental rebate if construction of the building or addition begins after 13 September 2023, but before 2031, and is substantially completed before 2036.

Amendments in Bill C-59 allow a person that is a cooperative housing corporation to qualify for the enhanced GST rental housing rebate by deeming that person not to be a cooperative housing corporation for purposes of section 255 and subsections 256.2(3) and (5) of the ETA. This amendment will be deemed to have come into force on 14 September 2023.

For more information about Bill C-56 and the GST rental housing rebate enhancement, see [EY Tax Alert 2023 Issue No. 38](#).

Financial instruments – Bill C-59 amends the definition of “financial instrument” in subsection 123(1) of the ETA to include a right, whether absolute or contingent, to receive an amount that can reasonably be regarded as all or part of the capital, revenue or income of a corporation that does not have share capital. However, this would not include a right to receive an amount as a creditor. The amendment is deemed to have come into force on 10 August 2022.

De minimis financial institutions – A person with financial revenues (or income derived from certain sources) for the previous taxation year in excess of certain thresholds is considered to be a financial institution for GST/HST purposes, in accordance with the *de minimis* tests set out in subsection 149(1) of the ETA. Interest and dividends received from a related corporation are excluded from financial revenues for purposes of the *de minimis* tests. Bill C-59 amends the ETA to allow partnerships to also benefit from this rule. Specifically, interest and dividend income from a related corporation will not be included in a partnership's financial revenues or income for the purposes of paragraphs 149(1)(b) and (c), respectively. The amendment applies to taxation years beginning after 9 August 2022.

Revocation of an election for exempt supplies of financial services – The ETA permits two corporations that are members of the same closely related group, of which a listed financial institution is a member, to elect to treat certain supplies of property and services made between them as exempt supplies of financial services. The election can be revoked by the members at any time after one year. Currently, the revocation must be made jointly in the prescribed form and specify the day on which it takes effect. Proposed subsection 150(4.1) of the ETA would also require the form to be filed on or before:

- ▶ The particular day that is the first day either of the two members is required to file a return for its reporting period that includes the specified revocation date; and
- ▶ Any day after the particular day that the minister allows.

The general intent of this amendment, which is deemed to have come into force on 10 August 2022, is to prevent the parties to an election from revoking the election retroactively.

Election for nil consideration – To simplify tax accounting, section 156 of the ETA permits certain closely related Canadian corporations and Canadian partnerships that are resident in Canada and engaged exclusively in commercial activities to elect to treat supplies between them as if they were made for no consideration.

Amendments in Bill C-59 would allow a group of corporations and partnerships, each closely related to the other, to constitute a qualifying group, even if a partnership in the group has a member that is a corporation or a partnership that is not resident in Canada. However, this would not change the current requirement that any member of a qualifying group that makes the election must be a corporation resident in Canada or a partnership, each member of which is resident in Canada. These measures are deemed to have come into force on 10 August 2022.

In addition, a corporation that falls within the definition of “temporary member” can make the election in respect of a supply it receives, if the supply is made in contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(b)(i) of the *Income Tax Act* (i.e., a “butterfly transaction”). Bill C-59 removes the requirement that the reorganization be one described in that subparagraph and add conditions that would:

- ▶ Limit the type of property that could be included in the supply (i.e., neither a financial instrument nor property having a nominal value could be included); and
- ▶ Generally require that the consumption, use or supply of the property before and after the supply be exclusively in the course of commercial activities.

This measure is deemed to have come into force on 9 August 2022.

Annual information return for financial institutions – Currently, a person that is a GST/HST registrant that is a financial institution, including a *de minimis* financial institution, with total annual revenue exceeding \$1 million must file an annual information return within six months of their year-end. Bill C-59 increases the income threshold at which a financial institution is required to file an annual information return from \$1 million to \$2 million, applicable to fiscal years of a person that end after 9 August 2022.

Division IV tax – For the purposes of Division IV tax, the term “permitted deduction” describes the amounts that a qualifying taxpayer (i.e., a financial institution) may deduct in determining an amount of qualifying consideration, an external charge or an internal charge. The definition of permitted deduction is amended to include consideration for a supply that is:

- ▶ Deemed by subsection 150(1) of the ETA to be a financial service; and
- ▶ Made to the qualifying taxpayer by another person, if the other person is a qualifying taxpayer throughout each specified year of the other person during which the other person makes an outlay or incurs an expense outside Canada for the purpose of making the supply.

This measure would apply to any specified year of a person that ends after 16 November 2005, subject to certain transitional rules.

Period for assessment – Imported taxable supplies – Amendment to provide an exception to the general four-year limitation period for an assessment of a person’s net tax. Specifically, a seven-year limitation period applies if the minister assesses a person’s net tax for a reporting period and the assessment is made solely to account for an amount of GST payable under section 218.01 of the ETA. This measure is deemed to have come into force on 4 August 2023.

Input tax credit (ITC) information requirements – The *Input Tax Credit (GST/HST) Regulations* prescribe specific information requirements for the documents necessary to support an ITC claim. Information requirements are graduated, with more information required when the amount paid or payable in respect of a supply equals or exceeds thresholds of \$30 or \$150. Depending on the amount paid or payable, either the supplier or the intermediary must provide its business name and its GST/HST registration number. Currently, an *intermediary* does not include a billing agent.

Bill C-59 increases the current ITC information thresholds to \$100 (from \$30) and \$500 (from \$150). As well, the amendments allow billing agents to be treated as intermediaries for purposes of the ITC information rules. These measures, which were introduced as part of the 2021 federal budget, are deemed to have come into force on 20 April 2021.

Expansion of joint venture election – Amendment to the *Joint Venture (GST/HST) Regulations* to expand the joint venture election to include, as a prescribed activity, the operation of a pipeline, rail terminal or truck terminal used to transport oil, natural gas, or related or ancillary products. This amendment is retroactive to 1 January 1991.

Excise tax measures

Rebate of excise tax for goods purchased by provinces – Provinces are provided relief from federal excise tax imposed under Part III of the ETA on motive fuels, air conditioners in automobiles, and fuel-inefficient vehicles, which they purchase or import for the province's own use. When these goods are sold to a province for its own use, either the province or the vendor may claim a "provincial-use rebate" equal to the tax. A province may claim the rebate if it does not have an agreement with the federal government under which the province and the federal government mutually agree to pay each other's taxes.

Bill C-59 amends the ETA to specify that the vendor alone is eligible to apply for the rebate only if it makes a joint election with the province to be the eligible party. This measure, which was introduced as part of the 2021 federal budget, applies in relation to goods purchased or imported by a province on or after 1 January 2022.

Excise duties measures

Removal of quarterly period filing threshold for cannabis licensees – Currently, the minister may authorize a cannabis licensee to file returns and remit duties on a quarterly rather than a monthly basis, if the licensee's total duties payable under Part 4.1 of the *Excise Act, 2001* have not exceeded a threshold amount of \$1 million in the previous 12 calendar months.

Bill C-59 amends the *Excise Act, 2001* to remove the \$1 million threshold. As a result, all licensed cannabis producers are permitted to remit excise duties on a quarterly rather than monthly basis, retroactive to the quarter beginning on 1 April 2023.

Security re cannabis products – Currently, an applicant for a cannabis licence under the *Excise Act, 2001* is required to post security of not less than \$5,000, up to a maximum amount of \$5 million. Bill C-59 amends the *Regulations Respecting Excise Licences and Registrations* to set out different security requirements in accordance with a licensee's reporting periods. A licensee authorized to have quarterly reporting periods would be required to provide security equal to one-third of the amount of duty referred to in paragraph 160(b) of the *Excise Act, 2001*, up to a maximum amount of \$5 million. A licensee with monthly reporting periods is required to post security equal to the amount of duty referred to in paragraph 160(b), up to a maximum amount of \$5 million.

This amendment is deemed to have come into force on 1 April 2023.

Imposition of duty on vaping products – Amendments to the *Excise Act, 2001* would, in the case of vaping products manufactured in Canada, make duty (and additional duty, if applicable¹) payable at the time the packaged products are stamped rather than when they are

¹ The *Excise Act, 2001* imposes an additional duty on vaping products in respect of specified vaping provinces. No provinces or territories are currently listed as specified vaping provinces. However, Ontario and Prince Edward Island have passed legislation to enter into coordinated vaping product taxation agreements with the federal government. Alberta and Yukon have also indicated their intention to enter into such agreements.

packaged. Similarly, if a vaping product licensee imported packaged vaping products for the purpose of stamping them, duty would be payable at the time they are stamped. For any other imported vaping products, duty would remain payable 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*.

These amendments apply to domestically manufactured vaping products that are packaged after 2023, and to vaping products that are imported into Canada or released under the *Customs Act* after 2023.

Vaping product licence – A vaping product licence authorizes a person to manufacture vaping products. An amendment to the *Excise Act, 2001* would also authorize a licence holder to import packaged vaping products for stamping by the person. This amendment is deemed to have come into force on 1 January 2024. However, a person who was issued a vaping product licence before that date will not have to apply for a new licence in order to import vaping products for stamping.

Vaping products – Warehousing – Currently, all packaged vaping products (other than vaping products) that are not stamped by a vaping product licensee must be immediately entered into the licensee's excise warehouse. Amendments in Bill C-59 provide that if a licensee does not stamp the vaping product before the end of the particular month following the month in which the product is packaged, the licensee must enter the vaping product into an excise warehouse before the end of the particular month. This measure would apply to vaping products manufactured in Canada that are packaged after 2023.

As a general rule, if an imported vaping product that is intended for the duty-paid market is not stamped at the time it is imported, it must be placed in a sufferance warehouse for stamping. The *Excise Act, 2001* is amended to provide an exception for a vaping product that is imported by a vaping product licensee for stamping. In that case, the licensee must deliver the vaping product to its premises immediately after it is released under the *Customs Act*. As well, the licensee will be required to enter the vaping product into its excise warehouse unless the product is stamped before the end of the month following the month in which the product is released under the *Customs Act*. These measures apply to vaping products that are imported into Canada or released under the *Customs Act* after 2023.

Stamping and marking of vaping products – The *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* are amended to prescribe additional information requirements for packages of vaping products. Specifically, a package of vaping products that is manufactured or imported by a vaping product licensee and entered into the duty-paid market must show the volume in millilitres of the vaping substance in liquid form, and the weight in grams of the vaping substance in solid form, contained in each vaping device or immediate container in the package, as well as the number of vaping devices and immediate containers in the package. These amendments come into force on the day that is six months after the first day of the month following the month in which Bill C-59 receives Royal Assent.

The regulations prescribe certain persons that may possess vaping excise stamps that have not been affixed to a vaping product. This includes a person that possesses stamps to apply adhesive to them on behalf of a vaping produce licensee. Bill C-59 broadens this provision to include a person that possesses stamps to apply adhesive on behalf of any person. This amendment is deemed to have come into force on 23 June 2022.

Customs duties measures

Returning persons exemption – An exemption from customs duties listed under heading No. 98.04 of the Schedule to the *Customs Tariff* applies when a resident or temporary resident of Canada acquires goods abroad for their personal or household use (or as souvenirs and gifts) and returns to Canada with the goods. The *Returning Persons Exemptions Regulations* set out conditions that must be met for the exemption to apply, including, among other things, that the exemption does not apply to tobacco imported by a person under the age of 18.

The regulations are amended to provide that the exemption does not apply to vaping products (other than a vaping product drug) imported by a person who is under the age of 18. This measure will take effect on Royal Assent.

Learn more

For more information, please contact your EY or EY Law advisor or one of the following professionals:

East

Jadys Bourdelais

+1 514 879 6380 | jadys.bourdelais@ca.ey.com

Central

Jan Pedder

+1 416 943 3509 | jan.s.pedder@ca.ey.com

Sania Ilahi

+1 416 941 1832 | sania.ilahi@ca.ey.com

Tariq Nasir

+1 416 932 6143 | tariq.nasir@ca.ey.com

David D. Robertson

+1 403 206 5474 | david.d.robertson@ca.ey.com

West

Thomas Brook

+1 416 943 2117 | thomas.brook@ca.ey.com

Jonathan Ip

+1 403 206 5409 | jonathan.ip@ca.ey.com

Owen Clarke

+1 403 206 5360 | owen.clarke@ca.ey.com

Jeanne Posey

+1 604 648 6722 | jeanne.posey@ca.ey.com

EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation is available via ey.com/privacy. For more information about our organization, please visit ey.com.

About EY's Tax Services

EY's tax professionals across Canada provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We offer a range of tax-saving services backed by in-depth industry knowledge. Our talented people, consistent methodologies and unwavering commitment to quality service help you build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its potential. It's how we make a difference.

For more information, visit ey.com/ca/tax.

About EY Law LLP

EY Law LLP is a national law firm affiliated with EY in Canada, specializing in tax law services, business immigration services and business law services.

For more information, visit eylaw.ca.

About EY Law's Tax Law Services

EY Law has one of the largest practices dedicated to tax planning and tax controversy in the country. EY Law has experience in all areas of tax, including corporate tax, human capital, international tax, transaction tax, sales tax, customs and excise.

For more information, visit <http://www.eylaw.ca/taxlaw>

© 2023 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

ey.com/ca