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LEGISLATIVE SUMMARY

BILL C-59: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FALL ECONOMIC STATEMENT TABLED IN PARLIAMENT ON NOVEMBER 21, 2023 AND CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 28, 2023

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Research and Education

BUDGET IMPLEMENTATION BILL
UNEDITED

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For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

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Legislative Summary of Bill C-59
(Budget implementation bill)

44-1-C59-E

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LEGISLATIVE SUMMARY OF BILL C-59: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FALL ECONOMIC STATEMENT TABLED IN PARLIAMENT ON NOVEMBER 21, 2023 AND CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 28, 2023*

1 BACKGROUND

Bill C-59, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023 (short title: Fall Economic Statement Implementation Act, 2023),[1] was introduced in the House of Commons on 30 November 2023 by the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance.

The bill implements certain measures announced in the federal government's 2023 Fall Economic Statement and 2023 Budget, which were released on 21 November 2023 and 28 March 2023, respectively.

The bill has five parts:

- Part 1 implements certain tax measures, such as the doubling of the rural supplement rate for Climate Action Incentive payments, the creation of refundable investment tax credits for eligible carbon capture, utilization and storage and clean technology equipment, the introduction of a 2% tax on the net value of certain equity repurchases and the implementation of amendments to anti-avoidance rules (clauses 2 to 95);
- Part 2 enacts the Digital Services Tax Act and its regulations. This Act provides for the implementation of an annual tax of 3% on revenue from digital services provided in Canada that exceeds a threshold of $20 million, to be paid by businesses with total annual global revenues of €750 million or more (clauses 96 to 128);
- Part 3 implements certain measures respecting the Goods and Services Tax/Harmonized Sales Tax (GST/HST), such as expanding the GST/HST exemption for the services of certain health care practitioners to psychotherapists and counselling therapists and making available to certain cooperative housing corporations the 100% GST rebate for new purpose-built rental housing (clauses 129 to 144);
- Part 4 implements certain excise measures relating to vaping and the remitting of cannabis excise duties, including the requirement that a person importing vaping

products be at least 18 years old and the requirement that the volume of the vaping substance be marked on the package (clauses 145 to 167); and

- Part 5, which is itself divided into 12 divisions, implements various measures. It amends numerous Acts dealing with multiple areas of law. Part 5 also enacts the Canada Water Agency Act and the Department of Housing, Infrastructure and Communities Act (clauses 168 to 365).

This legislative summary briefly outlines the bill's key measures. For easy reference, the information is presented in the order it appears in the bill.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: IMPLEMENTATION OF VARIOUS INCOME TAX MEASURES

2.1.1 Restriction of Net Interest and Financing Expenses by Certain Corporations and Trusts

Introduced in Budget 2021, the excessive interest and financing expenses limitation (EIFEL) rules are based on the recommendations made in the *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 – 2015 Final Report* of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative that targets tax avoidance schemes often exploited by multinational enterprises.[2] In general, the EIFEL rules limit the deduction of interest and financing expenses by corporations and trusts to a fixed ratio of a taxpayer's "adjusted taxable income." Any interest and financing expenses that are calculated to be excessive are included as income for that taxation year but could be deducted from income in future taxation years.

Clause 7(1) of Bill C-59 adds sections 18.2 and 18.21 to the *Income Tax Act* (ITA),[3] which are the primary EIFEL rules. Key provisions are described below.

New section 18.2(1) presents relevant definitions:

- "Adjusted taxable income" refers to earnings before interest, taxes, depreciation, and amortization, and is calculated using the formula A + B - C, with A being a taxpayer's taxable income for the year, B referring to any amounts that are usually deducted, such as interest and financing expenses, and C, being amounts that are generally included as income, such as interest and financing revenues.
- "Excess capacity" for a taxation year is the amount by which the maximum interest and financing expenses a taxpayer can deduct for the year exceeds the taxpayer's actual interest and financing expenses for the year. Unused excess capacity can be carried forward for three taxation years. "Absorbed capacity"

refers to the unused excess capacity from previous taxation years that the taxpayer uses in the current taxation year. "Received capacity," which is regulated under new sections 18.2(4) to 18.2(8), 18.2(10) and 18.2(11), refers to cumulative unused excess capacity that, upon filing a joint election, can be transferred to a taxpayer from a taxable Canadian corporation or a fixed commercial trust that is related to the taxpayer. Additional conditions apply to financial institutions involved in receiving or transferring cumulative unused excess capacity.

- The definition of "interest and financing expenses" sets out the formula used to determine the amount of relevant expenses, with rules for other types of expenses provided in new section 18.2(3).
- "Ratio of permissible expenses" is the fixed ratio that indicates the amount of interest and financing expenses that can be deducted by a taxpayer. The ratio is set at:
  - 40% for taxation years beginning on or after 1 October 2023 and before 1 January 2024; and
  - 30% for taxation years that begin on or after 1 January 2024.

  A group ratio, as defined under new section 18.21(1), may be used for corporate groups that meet certain criteria.
- "Taxpayer" excludes natural persons and partnerships; therefore, the EIFEL rules only apply to corporations and trusts.
- "Excluded entity" sets out the entities that do not fall under the scope of the EIFEL rules as they do not typically engage in significant BEPS schemes. They include:
  - Canadian-controlled private corporations and any associated corporations that have taxable capital employed in Canada of less than $50 million;
  - groups of Canadian resident corporations and trusts whose total interest and financing expenses among their Canadian members is $1 million or less; and
  - Canadian corporations and trusts, alone or in eligible groups that consist solely of Canadian taxpayers, that meet certain conditions, such as carrying on all or substantially all of their activities in Canada or have minimal foreign affiliate holdings.
- The definition for "exempt interest and financing expenses" indicates that certain Canadian public-private partnership infrastructure projects are also exempt from the EIFEL rules.
- The definition for "excluded interest" states that related corporations can elect to exclude certain interest payments made to one another from the EIFEL rules.

New section 18.2(2) introduces the formula used to calculate the proportion of interest and financing expenses that are considered excessive and therefore non-deductible for a taxation year.

Anti-avoidance rules are provided in:

- new section 18.2(9,) to prevent taxpayers from using eligible group entity, financial institution group entity or financial holding corporation status to obtain a tax benefit under the EIFEL rules;
- new section 18.2(13), to prevent interest or financing revenues from being inflated or interest and financing expenses from being understated and thus increasing the taxpayer's excess capacity; and
- new section 18.2(14), to clarify the conditions described in the definition for "excluded entity."

New sections 18.2(12) and 18.2(15) to 18.2(17) describe how partnerships and related and affiliated group entities are identified under the EIFEL rules, while new section 18.2(19) excludes certain amounts of interest that are paid or payable between controlled foreign affiliates from the EIFEL rules.

New section 18.2(18) states that every taxpayer is required to file with their tax return a prescribed form containing prescribed information for the purposes of determining the deductibility of its interest and financing expenses and its exempt interest and financing expenses.

New section 18.21 sets out the rules for when a group ratio can be used. These rules allow Canadian members of a consolidated group of corporations and/or trusts to deduct interest and financing expenses in excess of the ratio of permissible expenses.

Clause 7(2) of the bill includes transitional rules with respect to how certain terms are to be interpreted in the taxation years before and after the EIFEL rules are in force.

Other key amendments include:

- Clause 2(1) adds section 12(1)(l.2) to the ITA to include excessive interest and financing expenses as income for a taxpayer that is a member of a partnership. As well, clause 2(5) makes technical amendments to section 12(2.02) to clarify sources of income.
- Clause 6(1) amends the thin capitalization rules found in section 18(4) of the ITA, which limit excessive deductions by corporations and trusts with respect to interest on debt owing to closely related non-residents. Clause 6(1) adds reference

to new section 18.2 and ensures that the thin capitalization rules apply in priority to the EIFEL rules.

- In the event of the amalgamation of two or more corporations, clauses 18(4) to 18(8) amend section 87(2.1)(a), add section 87(2.1)(a.1), amend sections 87(2.1)(b) and 87(2.1)(d), and add section 87(2.12) to the ITA, respectively, to include reference to the EIFEL rules. Clauses 18(4) and 18(6) apply in respect of amalgamations that occur on or after 1 October 2023, while clauses 18(5), 18(7) and 18(8) apply in respect of amalgamations that occur in any taxation year.
- In the event where a subsidiary corporation is wound up into its parent corporation, clauses 19(3) to 19(9) amend various parts of section 88(1.1) of the ITA to address how the subsidiary's unused interest and financing expenses and cumulative unused excess capacity should be treated by the parent corporation. Clauses 19(3) to 19(8) apply in respect of windings-up that begin on or after 1 October 2023 while clause 19(9) applies in respect of windings-up that begin in any taxation year.
- The "foreign accrual property income" rules (FAPI), found in section 95 of the ITA, are rules to ensure that passive income, such as interest or rent, earned by controlled foreign affiliates of Canadian corporations is treated in the same manner as if it was earned in Canada. Generally, passive income earned by a controlled foreign affiliate is included in the Canadian parent corporation's income for the taxation year. Clauses 24(4) to 24(6) amend section 95(2)(f.11)(ii)(A) and add new section 95(2)(f.11)(ii)(D) to the ITA to set out when the EIFEL rules apply to a controlled foreign affiliate's interest and financing expenses. Clause 21 amends section 91(1.2) of the ITA, which governs a foreign affiliate's year-end, to include reference to new sections 18.2 and 95(2)(f.11)(ii)(D). Similarly, clause 22 amends section 92(1)(a) of the ITA, which addresses the adjusted cost base of a share of a foreign affiliate, to include reference to new section 95(2)(f.11)(ii)(D).
- Section 111 of the ITA sets out the losses that a taxpayer can deduct from income for a taxation year. Clauses 27(1) and 27(4) to 27(12) add section 111(1)(a.1), modify sections 111(3)(a), 111(3)(b) and 111(5)(a), add section 111(5.01), amend the definition of "non-capital loss" in section 111(8), add a definition for "restricted interest and financing expense" to section 111(8), and amend section 111(9), to allow "restricted interest and financing expenses" from prior years to be deducted provided the taxpayer has cumulative unused excess capacity. In general, "restricted interest and financing expenses" are the amount of the taxpayer's interest and financing expenses for the year for which deductions were denied under the EIFEL rules. However, these expenses may be carried forward to any of the taxpayer's subsequent taxation years to be deducted, provided the taxpayer remains a resident and has cumulative unused excess capacity.

- Clause 47(5) adds section 152(4)(b.8) to the ITA to allow the Minister of National Revenue to make an assessment or reassessment of tax if a taxpayer does not file the prescribed form as described under new section 18.2(18). The Minister may reassess the taxpayer within four years (in the case of a corporation) or three years (in the case of a trust) from the date on which the taxpayer files the form.

Other clauses introduce consequential amendments to include reference to the new EIFEL rules:

- Clause 15 amends the definition of "commercial debt obligation" in section 80(1) of the ITA to include reference to new section 18.2(2).
- Clause 23 amends section 94.2(2) of the ITA, which addresses investments in non-resident commercial trusts, to include reference to the EIFEL rules.
- Clause 25(7) amends section 96(3) of the ITA, which governs agreements or elections made by partnership members, to include reference to the definition of "excluded interest" in section 18.2(1).
- Clause 60 amends section 216(1) of the ITA, which sets out non-resident taxpayers' options for calculating tax. It adds section 216(1)(e) to indicate that when calculating Part I tax, the definitions of "eligible group entity," "excluded entity" and "fixed-interest commercial trust and new section 18.21 do not apply.
- Clause 67(6) amends section 248(1) of the ITA to add definitions for "absorbed capital," "cumulative unused excess capacity," "excess capacity," "interest and financing expenses," "interest and financing revenues," "restricted interest and financing expense" and "transferred capacity," all of which have been defined in either new section 18.2(1) or section 111(8).
- Clause 69 amends the definition of "specific provision" in section 256.1(1) of the ITA, which deems an acquisition of control over a corporation to occur under certain circumstances, to include reference to new section 111(5.01), which restricts which amounts may be included in determining a taxpayer's cumulative unused excess capacity.
- Clause 82 amends section 5903(5) of the *Income Tax Regulations*,[4] which deals with deductible losses, to include new section 18.2 of the ITA.
- Clauses 83(2), 83(5) and 83(6) amend the definition of "earnings," "net earnings" and "net loss" in section 5907(1) of the *Income Tax Regulations* to include reference to new sections 18.2(2) and 95(2)(f.11)(ii)(D) in the ITA.

Clauses 2(1), 2(5), 6, 7(1), 21, 22, 23, 24(4) to 24(6), 27(1), 27(4) to 27(12), 67(6), 69, 82, 83(2), 83(5) and 83(6) apply in respect of taxation years that begin on or after 1 October 2023. However, these clauses will apply for taxation years that begin

before and end after 1 October 2023 if any of the three immediately preceding taxation years is shorter as a result of a transaction or event or series of transactions or events and it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of the EIFEL regime.

Clauses 15, 25(7), 47(5) and 60 apply in respect of taxation years that begin on or after 1 October 2023.

2.1.2 Implementation of Hybrid Mismatch Rules Addressing Cross-Border Tax Avoidance

Introduced in Budget 2021, the hybrid mismatch rules target arrangements used by multinational corporations to exploit differences in the income tax treatment of business entities or financial instruments under the laws of two or more countries, which may result in income not being taxed in any jurisdiction. The hybrid mismatch rules are based on the recommendations made in the *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report* of the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting initiative.[5] The hybrid mismatch rules address two types of hybrid mismatch:

- deduction/non-inclusion mismatches, where one jurisdiction allows a corporation to claim a deduction in respect of a payment it made, while the recipient of the payment in another jurisdiction does not fully include the payment in income; and
- double deduction mismatches, where a tax deduction is available in two or more jurisdictions with respect to the same amount.

2.1.2.1 Deduction/Non-inclusion Mismatches

For deduction/non-inclusion mismatches, the "primary rule" restricts the amount deductible by a taxpayer in respect of a payment made pursuant to a hybrid mismatch arrangement, while the "secondary rule" includes an amount in the income of a taxpayer who receives a payment pursuant to a hybrid mismatch arrangement.

Clause 8 introduces section 18.4 to the *Income Tax Act* (ITA)[6] to set out the "primary rule" that restricts deductions for payments made under hybrid mismatch arrangements. Some key definitions in new section 18.4(1) are:

- "hybrid mismatch arrangement" refers to three types of arrangements under which a payment arises:
  - a hybrid financial instrument;
  - a hybrid transfer arrangement; or
  - a substitute payment arrangement.

- "structured arrangement" means any transaction or series of transactions if:
  - the transaction includes a payment that gives rise to a deduction/non-inclusion mismatch; and
  - it can reasonably be considered that:
    - a portion of any economic benefit arising from the deduction/non-inclusion mismatch is reflected in the pricing of the transaction or series; or
    - the transaction or series was otherwise designed to, directly or indirectly, give rise to the deduction/non-inclusion mismatch.

Of note, new section 18.4(2) states that sections 18.4, 12.7, 113(5) and any related provisions in the ITA and the *Income Tax Regulations*[7] are to be interpreted consistently with the *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report*[8] published by the Organisation for Economic Co-operation and Development, unless the context requires otherwise.

New sections 18.4(3) to 18.4(5) indicate when the "primary rule" is applicable:

- New section 18.4(3) states that the primary rule applies in respect of a payment if the amount would, in general, be deductible in computing a taxpayer's income from a business or property for a taxation year and the amount is the deduction component of a hybrid mismatch arrangement.
- New section 18.4(4) states that if those conditions are met, no deduction can be claimed in respect of the payment.
- However, new section 18.4(5) provides an exemption for certain structured arrangements where the participants were unaware of the deduction/non-inclusion mismatch and derived no economic benefit from the mismatch.

New sections 18.4(6) and 18.4(7) set out the circumstances in which payment may give rise to a deduction/non-inclusion mismatch. In general, section 18.4(6) provides that a payment gives rise to a deduction/non-inclusion mismatch if the total amount deductible in respect of the payment for Canadian income tax purposes exceeds the total amount included in respect of the payment in taxable income for foreign income tax purposes or if the total amount deductible for foreign income tax purposes exceeds the total amount included for Canadian income tax purposes. Section 18.4(7) sets out the formula to determine the amount of the deduction/non-inclusion mismatch that would not be deductible from income.

New sections 18.4(10) to 18.4(15) set out specific criteria for the three main types of hybrid mismatch arrangements:

- hybrid financial instrument arrangements, which involve financial instruments that are treated differently under the tax laws of different jurisdictions;
- hybrid transfer arrangements, which involve the transfer of a financial instrument and the transfer is treated differently under the tax laws of different jurisdictions; and
- substitute payment arrangements, which in general are arrangements involving the transfer of a financial instrument, where payments are made that act as a substitute for returns on the transferred instrument.

For all three arrangements, general requirements include:

- the parties not dealing at arm's length or sharing at least 25% common ownership, or the payment being part of a structured arrangement if the parties are not related;
- the arrangement including a payment that meets the conditions set out for a general deduction/non-inclusion mismatch as described in new sections 18.4(6) and 18.4(7); and
- except for substitute payment arrangements, the hybrid mismatch occurring due to different tax treatment of the arrangement in different jurisdictions.

Other key provisions include:

- new section 18.4(8), which states that any amount cannot be double counted, meaning that the same amount cannot be taken into consideration more than once in computing foreign ordinary income and Canadian ordinary income;
- new section 18.4(9), which indicates that in cases where a jurisdiction allows a deduction for deemed interest on a non–interest bearing loan, the rules for hybrid financial instrument arrangements would apply and an amount equal to the deemed interest would be included in the Canadian taxpayer's income even though no interest payment was received;
- new sections 18.4(16) to 18.4(19), which provide rules for substituted financial instruments, specified entities, partnerships and payments sent to multiple recipients;
- new section 18.4(20), which provides an anti-avoidance rule that addresses situations that meet the essential characteristics of a hybrid mismatch arrangement, despite one or more of the technical requirements not being met; and
- new section 18.4(21), which requires each taxpayer to file with their tax return a prescribed form containing prescribed information regarding the amounts not deductible or amounts included as income under the hybrid mismatch rules.

Clause 8(1) applies to payments arising on or after 1 July 2022; however, new section 18.4(21) does not apply to a payment that arises before 1 July 2023.

Clause 3 introduces new section 12.7 to the ITA, to implement the "secondary rule" that requires the inclusion of a payment in income under a hybrid mismatch arrangement. Sections 12.7(1) and 12.7(2) indicate that the definitions in new section 18.4(1) apply in new section 12.7 and that the "secondary rule" applies in respect of a payment where a taxpayer is a recipient if:

- the payment arises under a hybrid mismatch arrangement; and
- there is a foreign deduction component of the hybrid mismatch arrangement.

Section 12.7(3) provides that if the secondary rule applies, then an amount equal to the hybrid mismatch amount in respect of the payment shall be included in computing the taxpayer's income. The payment is to be included in income for the last taxation year of the taxpayer that begins at or before the end of the other entity's taxation year when the deduction is expected to be claimed.

Clause 3 applies in respect of payments arising on or after 1 July 2022; however, new section 12.7(3) does not apply to a payment that arises under new section 18.4(9) and relates to the portion of a notional interest expense that is computed in respect of a period of time that precedes 1 January 2023.

2.1.2.2 Double Deduction Mismatches

To minimize double taxation, section 113 of the ITA allows a Canadian corporation to claim a deduction from income for dividends it receives from a foreign affiliate. Clause 29 adds new section 113(5) to the ITA to recharacterize certain dividends received by the corporation from a foreign affiliate when the dividend is deductible for foreign income tax purposes. Clause 29(1) amends section 113(3) to adopt the definitions of selected terms set out in new section 18.4(1) or section 95(1). Clause 29(2) introduces new section 113(5), which states that a dividend received by a corporation resident in Canada from a foreign affiliate of that corporation is not considered a dividend if the amount of the dividend is deductible in computing the income, or profits of the foreign affiliate. However, clause 29(2) adds new section 113(6) to allow the corporation to deduct an amount equal to the foreign withholding tax paid on that dividend. Clause 29(2) also adds section 113(7) to require a corporation to file with its income tax return a prescribed form containing prescribed information if section 113(5) applies. Clause 29 applies in respect of any dividend received by a corporation resident in Canada from a foreign affiliate on or after 1 July 2022; however, section 113(7) does not apply to any dividend received before 1 July 2023.

Other clauses introduce consequential amendments:

- Clauses 8(2) to 8(6) amend various sections of new section 18.4 to include reference to new section 18.2, which implements the new excessive interest and financing expenses limitation (EIFEL) rules. Clauses 8(2) to 8(6) apply in respect of taxation years that begin on or after 1 October 2023; however, these clauses will apply for taxation years that begin before and end after 1 October 2023 if any of the three immediately preceding taxation years is shorter as a result of a transaction or event or series of transactions or events and it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of the EIFEL regime.
- Clause 9 adds new section 20(1)(yy) to the ITA to allow a deduction from income from business or property if new section 18.4(4) denied the deduction with respect to a payment and the taxpayer demonstrates that the amount was subject to tax in the foreign jurisdiction. Clause 9 applies to payments arising on or after 1 July 2022.
- Clauses 24(1) and 24(2) make amendments to the definition of "foreign accrual property income" (FAPI) found in section 95(1) of the ITA to include reference to the treatment of dividends under new section 113(5). The FAPI rules ensure that passive income earned by a controlled foreign affiliate of a Canadian corporation is treated in the same manner as if it was earned in Canada. As well, clause 24(7) adds new section 95(2)(f.11)(ii)(F) to include reference to new sections 12.7 and 18.4. Clauses 24(1) and 24(2) apply to any dividend received on or after 1 July 2024, while clause 24(7) applies to payments arising on or after 1 July 2024.
- In order to be aligned with the tax treatment of payments to non-residents under the thin capitalization rules found in section 18(4) of the ITA, clause 59 amends section 214(17) and adds new section 214(18) to deem interest paid by a corporation resident in Canada that is not deductible because of the hybrid mismatch rule in new section 18.4(4), to be a dividend and not interest for the purposes of Part XIII of the ITA, which applies a 25% withholding tax on payments made to non-residents. Clause 59 applies to payments arising on or after 1 July 2022.
- Section 227 sets out the process by which withholding tax for payments to non-residents is deducted and submitted to the Canada Revenue Agency. Clause 63 adds new section 227(6.3) and amends section 227(7.1) to:
  - provide a refund for the withholding tax when new section 20(1)(yy) applies;
  - describe the process for applying for the refund; and
  - allow the Minister of National Revenue to send a notice of determination to the taxpayer if the Minister does not agree that a refund should be paid.

Clause 63 applies to payments arising on or after 1 July 2022.

- Clauses 83(1), 83(3), 83(4) and 83(7) amend the definitions of "earnings," "exempt surplus," "hybrid surplus" and "taxable surplus" in section 5907(1) of the *Income Tax Regulations* to include reference to new sections 12.7(3), 18.4(4), and 113(5). Clause 83(1) applies to payments arising on or after 1 July 2022, while clauses 83(3), 83(4) and 83(7) apply to any dividend received on or after 1 July 2024.

2.1.3 Expansion of the Definitions of Canadian Exploration Expenses and Canadian Development Expenses for the Purposes of the Critical Mineral Exploration Tax Credit and the Issuance of Flow-Through Shares in Order to Include all Lithium-Related Expenses

Section 66 of the *Income Tax Act* (ITA)[9] provides for the deduction of certain expenses related to natural resource exploitation and clean energy generation. Specifically, the ITA allows specified principal-business corporations that undertake certain exploration and development activities to issue flow-through shares and renounce expenses to their investors. In turn, the investors can deduct the expenses in calculating their taxable income, at 100% for exploration expenses and 30% for development expenses, respectively.

Budget 2023 proposed to expand the list of activities for principal-business corporations so that producers of lithium from brines can issue flow-through shares and benefit from the tax deductions.[10]

Clause 12(1) of Bill C-59 amends section 66(15) of the ITA to expand the definition of "principal-business corporation" to include the production and marketing of lithium and the manufacturing of products where the processing of lithium as eligible activities.

Section 66.1(6)(f) of the ITA defines eligible mining-related expenses under the definition of "Canadian exploration expense" while sections 66.2(5)(c.2) and 66.2(5)(d) provide definitions for mining-related expenses under the definition of "Canadian development expense."

Clause 12(2) of Bill C-59 introduces new section 66(21) to the ITA to provide clarification regarding the eligibility of lithium brine extraction in relation to the Canadian exploration expense and the Canadian development expense as defined in sections 66.1(6)(f), 66.2(5)(c.2) and 66.2(5)(d) of the ITA.

Specifically, the new section 66(21)(a) explicitly states that a well for the extraction of materials from lithium brine deposits is considered a mine. Section 66(21)(b) stipulates that all the lithium brine wells of a taxpayer are deemed to be one mine if the material extracted from each well is sent to the same processing plant. Lastly,

section 66(21)(c) permits all lithium brine wells of a taxpayer to be considered one mine if the Minister of National Revenue, in consultation with the Minister of Natural Resources, determines that the wells constitute one project.

Clause 12(3) provides that the amendments made by clauses 12(1) and 12(2) are deemed to have come into force on 28 March 2023.

Clause 13(1) of Bill C-59 amends sections 66.2(5)(c.2) and 66.2(5)(d) to allow expenses incurred in drilling wells for the extraction of lithium from brines, including new wells after the mine has come into production, to qualify as Canadian development expenses.

Clause 13(2) provides that the amendment made by clause 13(1) applies in respect of expenses incurred on or after 28 March 2023.

Additionally, clause 67(4) of Bill C-59 amends section 248(1)(d)(ii) of the ITA to add lithium in the definition of "mineral resource." This amendment provides clarification in determining the eligibility of a taxpayer for the Canadian exploration expenses and the Canadian development expenses.

Clause 67(13) stipulates that the amendment is deemed to have come into force on 28 March 2023 and, for greater certainty, clarifies that clause 67(4) does not apply in respect of expenses incurred before that date.

2.1.4 Tightening of Rules Governing Intergenerational Business Transfers

Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation),[11] which received Royal Assent on 29 June 2021, sought to exempt qualified small business corporations and qualified family farm or fishing corporations from the application of certain anti-avoidance rules, making certain intercorporate dividend transfers tax free, provide for the tax-free splitting of these corporations, as well as allow for corporate intergenerational sales of such businesses to be treated as capital gains and therefore subject to the lifetime capital gains deduction. During committee study of the bill, the Department of Finance explained these exceptions could be used by individuals to avoid paying taxes without genuine intergenerational transfers taking place. Following the bill's passage, the government undertook a consultation process as to how the existing rules could be strengthened to protect the integrity of the tax system while continuing to facilitate genuine intergenerational business transfers (IBTs) and subsequently announced a number of amendments in Budget 2023 that are enacted in Bill C-59.

Clause 17 amends section 84.1 of the *Income Tax Act* (ITA)[12] to provide for two options for IBTs such that the proceeds of that transfer would be treated as

capital gains – which are 50% taxable – rather than fully taxable dividends. These two options are immediate IBTs (new section 84.1(2.31)) and gradual IBTs (new section 84.1(2.32)), both of which require the child of the transferor (the parent) to take on a "management" role in the company. A "child" for these purposes is defined as an individual who is 18 years of age or older, is the factual child of the parent, their niece or nephew, as well as the child, niece or nephew of their spouse or common-law partner, and the spouse or common-law partner or children of such nieces or nephews. "Management" refers to the direction or supervision of business activities but does not include the provision of advice.

New sections 84.1(2.31) and 84.1(2.32) detail that both immediate and gradual IBTs require – in order for the transaction to be treated as capital gains:

- that the parent has not previously implemented IBT plan to transfer shares;
- that the business in question is a qualified small business corporation or qualifying farm or fishing corporation;
- the transferee is a corporation controlled by one or more child;
- the parent must transfer the full balance of voting shares and common growth shares within 36 months of the transfer;
- the parent cannot continue to legally control the transferred business and/or the child's corporation that acquired it; and
- the parent and each child must file a joint election regarding the IBT in a prescribed form.

In addition to these requirements, the transfer must also meet the following conditions specific to each transfer option. For immediate IBTs, under new section 84.1(2.31), the following additional requirements must be met:

- the parent must not have legal or factual control – such as economic or other influence – after the share transfer;
- full management transfer must occur between the parent and the child within 36 months (or a "greater period as is reasonable in the circumstances");
- the child must retain legal control and active involvement of the transferee company for at least 36 months after the share transfer; and
- the business of the transferred company must remain active for the 36-month period.

For gradual IBTs, under new section 84.1(2.32), the following additional requirements must be met:

- the parent must reduce their debt and equity interests in the business within 10 years of the share transfer to 30% of their value for qualified small business corporations or 50% for qualifying farm or fishing corporations;
- full management transfer must occur between the parent and the child within 60 months (or a "greater period as is reasonable in the circumstances");
- the child retains legal control and active involvement of the transferee company for at least 60 months after the share transfer; and
- the business of the transferred company must remain active for the 36-month period.

Provided that either the immediate or gradual IBT conditions have been satisfied, clause 10(2) amends section 40 of the ITA to allow a parent to claim a capital gains reserve on the share transfer for a maximum of 10 years, rather than five years.

Clause 47(6) amends section 152(4) to extend the limitation period for reassessing the parent's liability for tax that may arise on the transfer by three years for an immediate business transfer and by 10 years for a gradual business transfer. Clause 50(1) amends section 160 of the ITA to make the child (or children) jointly and severally liable for any additional taxes payable by the parent, in respect of a transfer that does not meet the above conditions.

These changes come into force and accordingly apply to transactions that occur on or after 1 January 2024.

2.1.5 Denial of the Dividend Deduction for Dividends Received by Canadian Financial Institutions on Certain Shares Held as Mark-to-Market Property

Dividends received by a corporation are generally included as income; however, in order to limit the double taxation of corporate income, section 112 of the *Income Tax Act* (ITA)[13] allows a corporation to deduct from income the amount of any dividends it received from certain corporations that are resident in Canada, with some exceptions. Mark-to-market property is defined in section 142.2 of the ITA, and generally is property whose value is determined by market conditions, such as shares. Under the mark-to-market rules in the ITA, financial institutions must include as income any realized or unrealized gains on shares that are mark-to-market property annually. The intercorporate dividend deduction and the mark-to-market rules would appear to conflict with each other with respect to whether financial institutions should deduct from income dividends received from shares that are mark-to-market property.

Clause 28(1) of Bill C-59 creates a new exception to the intercorporate dividend deduction by adding new sections 112(2.01) and 112(2.02) to the ITA. New section 112(2.01) states that a dividend deduction is not permitted by a corporation with respect to a dividend received on a share if the corporation is a financial institution at any time in the taxation year and the share is or would be a mark-to-market property of the corporation.

As well, new section 112(2.02)(a) provides that a share is deemed to be a mark-to-market property if the share is or would be "tracking property" of the corporation at any time in the year. Tracking property is also defined in section 142.2 of the ITA and refers to property whose fair market value is determined by reference to one or more criteria in respect of the property, such as revenue. However, new section 112(2.02)(b) indicates that a "taxable preferred share" is deemed not to be a mark-to-market property of the corporation and thus a deduction is allowed with respect to dividends received for these shares.

Clause 28(2) amends section 112(6) of the ITA to clarify that "tracking property" has the meanings assigned in section 142.2(1).

Section 260 of the ITA sets out the rules governing securities lending transactions, including when a taxpayer can claim a deduction for dividend compensation payments received under certain arrangements. Clause 70 adds new section 260(6.3) to clarify the effect of new section 112(2.01) on these deductions.

Clauses 28 and 70 apply in respect of dividends received after the year 2023.

2.1.6 Doubling of the Rate of the Rural Supplement for Climate Action Incentive Payments and Changing of the Eligibility Criteria

Section 122.8 of the *Income Tax Act* (ITA)[14] provides for the payment of Climate Action Incentive (CAI) payments to eligible individuals in provinces where the federal fuel charge is levied.

Clause 30(1) amends section 122.8(1), which contains definitions used in the determination of CAI payments, to add the definition of "relevant census," which means the 2016 census published by Statistics Canada for the 2023 and 2024 taxation years, and, subsequently, the last census published by Statistics Canada before the taxation year.

As well, clause 30(2) amends section 122.8(4) to change the description of variable E used in the calculation of CAI payments to increase from 10% to 20% of the base CAI payment the supplement paid to eligible individuals who do not reside in a census metropolitan area (CMA), as determined in the relevant census, if there is

a CMA in the relevant province. There is a CMA in every province, except Prince Edward Island. According to the Canada Revenue Agency, the basic CAI amount for that province currently includes the 10% rural supplement, as all residents are considered to be living in a small and rural community.[15]

Clause 30(3) states that these changes apply to the 2023 and subsequent taxation years.

2.1.7 Creation of a Refundable Investment Tax Credit for Eligible Carbon Capture, Utilization and Storage Equipment

In Budget 2021, the Government announced its intention to introduce an investment tax credit for investments in carbon capture, utilization and storage (CCUS) projects and subsequently released draft legislation in August 2022. Budget 2023 announced new details regarding the CCUS tax credit in response to these consultations, which are enacted by Bill C-59.

"Captured carbon" refers to captured carbon dioxide (CO_2) that would otherwise be released into the atmosphere, or that is captured directly from the ambient air.

Clause 35(1) adds new section 127.44 to the *Income Tax Act* (ITA)[16] to introduce an investment tax credit for businesses that incur qualified expenditures related to CCUS projects after 2021 and before 2041. In general, qualified CCUS expenditures include equipment situated in Canada used in qualified CCUS projects, which can either be used solely to capture, transport, store or use carbon dioxide as part of a qualified CCUS project, or may be certain dual-use equipment that produces heat and/or electrical power and is used in support of a CCUS project as well as another process. Eligible equipment also includes certain property that is functionally integrated with eligible CCUS equipment and is used solely to support the functioning of that equipment, such as monitoring and control equipment (see definition of "qualified carbon capture expenditure" in new section 127.44(1)). This equipment is included in new capital cost allowance (CCA) classes 57 and 58, which have 8% and 20% declining-balance-basis CCA rates, respectively (see definition of "preliminary CCUS work activity" in new section 127.44(1)).

The credit is made up of a cumulative CCUS development tax credit under new section 127.44(4) for qualified CCUS expenditures incurred before the first day of commercial operations of a CCUS project, and a CCUS refurbishment tax credit under new section 127.44(5) for qualified CCUS expenditures during the CCUS project period. For qualified CCUS expenditures incurred after 2021 and before 2031, credit rates (specified percentage) are 60% for qualified carbon capture expenditures used to capture carbon directly from ambient air, 50% for other qualified carbon capture expenditures, and 37.5% for qualified carbon transportation, storage, or use expenditures. These credit rates are reduced by half for eligible expenses incurred

after 2030 and before 2041 (see definition of "specified percentage" in new section 127.44(1)). The tax credit may be claimed in the taxation year in which qualified CCUS expenditures are incurred.

The extent to which the tax credit will be available is also dependent on the projected eligible use percentage of the CO_2 being captured. Projects must have a "project plan" that describes the quantity of captured carbon that the CCUS project is expected to support for storage, in each calendar year over the life of the project (see definition of "project plan" in new section 127.44(1)). This plan contains the projected eligible use percentage of the CO_2 being captured, which refers to the quantity of captured carbon that the CCUS project is expected to support for storage or other eligible use, divided by the total quantity of captured carbon expected for both eligible and ineligible uses. In practice, the projected eligible use percentage is applied to the capital cost of the taxpayer on incurring the qualified carbon capture expenditure, then multiplied by the specified percentage to arrive at the credit amount. Notably, storage or use of captured carbon for enhanced oil recovery is listed as an ineligible use under the definitions in new section 127.44(1).

To be eligible, the carbon captured must be stored in "dedicated geological storage" or used in "qualified concrete storage process" (see respective definitions in new section 127.44(1)) in specified jurisdictions, which include Alberta, British Columbia, Saskatchewan and any other jurisdiction in Canada or the United States designated by the Minister of the Environment (see "designated jurisdiction" (section 127.44(13)).

Clause 58(1) creates new section 211.92(1) to impose a recovery tax to recover any excess tax credits claimed where the projected eligible use percentage is not met at the end of each project period.

Additional labour requirements are attached to this credit, which include a prevailing wage requirement and an apprenticeship requirement, where the failure to meet these requirements would reduce the available credit by 10 percentage points. These requirements are addressed below in 2.1.9 of this legislative summary.

2.1.8 Creation of a Refundable Investment Tax Credit for Eligible Clean Technology Equipment

Clause 36 creates new section 127.45 of the *Income Tax Act*[17] to introduce a 30% refundable investment tax credit for eligible investments in clean technology equipment that is acquired and becomes available for use on or after 28 March 2023, and will be phased out for property that becomes available for use after 2033. In particular, the credit is reduced to 15% in 2034, and is fully phased out in 2035 (see "specified percentage" in section 127.45(1)). The credit is available only to

taxable Canadian corporations or mutual fund trusts that are real estate investment trusts (see “qualifying taxpayer” in section 127.45(1)).

Eligible equipment includes certain newly acquired property described in capital cost allowance classes 43.1, 43.2 and 56, as well as concentrated solar energy equipment – including fixed location electrical storage property – certain geothermal energy equipment, and small modular nuclear reactors (see respective definitions in new section 127.45(1)), that are situated in Canada and intended exclusively for Canadian use. New section 127.45(5)(a) excludes property from the credit for which the new carbon capture, utilization and storage credit (clause 35) was claimed. New section 127.45(5)(b) reduces the amount of the capital cost of property that is eligible for the clean technology investment tax credit equal to any other government or non-government financial assistance provided for its purchase.

New sections 127.45(12) and 127.45(13) require the taxpayer to repay all or part of the credit for property that has been converted to a non-clean technology use, exported from Canada or is otherwise disposed of. The repayment is based on the proportion of the value of the property that has been used by the taxpayer prior to it being converted, exported, or disposed of.

Additional labour requirements are attached to this credit, which include a prevailing wage requirement and an apprenticeship requirement, where the failure to meet these requirements would reduce the available credit by 10 percentage points. These requirements are addressed below in 2.1.9 of this legislative summary.

This measure is deemed to have come into force on 28 March 2023.

2.1.9 Increase to the Rate of Certain Investment Tax Credits if Certain Labour Requirements Are Met

Clause 37 adds new section 127.46 to the *Income Tax Act*[18] to introduce prevailing wage and apprenticeship requirements for purposes of the new investment tax credits in carbon capture, utilization and storage (CCUS) and for clean technologies (see 2.1.7 and 2.1.8 of this legislative summary, respectively). Taxpayers that do not elect to meet the labour requirements can claim these credits at a rate reduced by 10 percentage points. The requirements apply with respect to “covered workers,” who are those who are engaged in the preparation or installation of specified property at a “designated work site” and whose work is primarily manual or physical in nature.

To receive the maximum tax credit rates under these investment tax credits, businesses are required under new section 127.46(3) to pay a total compensation package that equates to the prevailing wage. This can generally be determined with respect to a multi-employer collective bargaining agreement or corresponding project

labour agreement in the applicable provincial jurisdiction. In addition, new sections 127.46(5) to 127.46(15) outline the apprenticeship requirements which ensure that at least 10% of tradesperson hours worked are performed by registered apprentices in Red Seal trades on the preparation or installation of specified property, as well as how failing to meet the labour requirements will result in non-compliance penalties. In particular, where a taxpayer has claimed the full tax credit rate but has failed to meet the prevailing wage requirements, new section 127.46(6) places a special tax of $20 per day for each covered worker paid at less than the prevailing wage. Where a taxpayer has claimed the full tax credit rate but has failed to meet the apprenticeship requirements, new section 127.46(7) applies a special tax equal to $100 multiplied by the difference between the number of hours that were required to have been performed by apprentices and the number of hours of labour that were actually performed by apprentices. Theses penalties are superseded in the event a taxpayer has claimed the full tax credit rate but has failed to meet either labour requirement because of intentional conduct or gross negligence, wherein new section 127.46(9) disentitles the taxpayer to the regular tax credit rate that was claimed and must pay a penalty equal to 50% of the difference between the amount of the specified tax credit claimed and the amount that the incentive claimant would have been entitled to claim at the reduced rate credit rate. New section 127.46(9) does not apply to in respect of CCUS refurbishment tax credits contained in new section 127.44(5).

Where a claimant did not meet the prevailing wage requirements – with the exception of cases of intentional conduct or gross negligence (section 127.46(9)) – new sections 127.46(11) to 127.46(13) can provide a "top-up" payment to each covered worker equal to the difference between the prevailing wages that were required to have been paid to the covered worker for a taxation year and the amount that the covered worker was actually paid for the year. This top-up payment is deemed to be salary and wages for tax purposes under new section 127.46(14). Furthermore, claimants would be penalized an amount equal to 120% of the top-up amount in respect of each worker that is not paid the top-up amount, payable to the Receiver General.

This measure applies in respect of specified property prepared or installed on or after 28 November 2023.

2.1.10 Removal of the Requirement that Credit Unions Derive No More than 10% of their Revenue from Sources other than Certain Specified Sources

The definition of "credit union" under section 137(6) of the *Income Tax Act* (ITA)[19] provides three alternative requirements for an organization to qualify as a credit union. Paragraph (a) of that definition provides that an organization must derive all or

substantially all of its revenues from a list of specified sources. Clause 42(1) replaces that paragraph so that an organization may be considered as a credit union if it is a federal credit union as defined in section 2 of the *Bank Act*,[20] or a provider of financial services that is organized on cooperative principles and incorporated by or under a law of a province, thereby removing the requirement related to revenue sources. As well, subparagraph (b)(i) of that definition contains a similar requirement related to revenue sources. Clause 42(2) amends subparagraph (b)(i) to eliminate this requirement. Clause 42(4) states that these changes are deemed to have come into force on 1 January 2016.

Clause 42(3) amends paragraph (b) of the definition of "member" under section 137(6) of the ITA, which treats a Registered Retirement Savings Plan, a Registered Retirement Income Fund, a Tax-Free Savings Account or a Registered Education Savings Plan as a member if the annuitant, holder or subscriber is a member as defined under paragraph (a), to add First Home Savings Accounts to the list of registered plans treated as a member. Clause 42(5) states that this change is deemed to have come into force on 1 April 2023.

2.1.11 Extension and Expansion of the Temporary Measure Permitting a Qualifying Family Member to Open a Registered Disability Savings Plan for an Adult Whose Contractual Competence is in Doubt and Who Has No Legal Representative

A Registered Disability Savings Plan (RDSP) is a tax-assisted savings vehicle for individuals who qualify for the disability tax credit, which are generally those deemed by a medical practitioner as having a "severe and prolonged impairment." The federal government supplements private contributions to the plan with the Disability Savings Grant and the Canada Disability Savings Bond. Upon the death of an RDSP beneficiary, the RDSP must be closed and all amounts remaining in the plan must be paid out to the beneficiary's estate by 31 December of the year following the calendar year.

Prior to 2012, an individual aged 18 years or older who wished to be a beneficiary of the RDSP also had to be the plan holder (the individual who opened the plan), unless the beneficiary lacked the legal capacity to enter into a contract, in which case the beneficiary's guardian or other legal representative could open the plan on their behalf. As the standards for capacity and competence were not the same in all provinces, the only way that an RDSP could be opened in certain cases was for the individual to be declared legally incompetent by a court or tribunal and have someone named as their legal guardian, a process that could have significant repercussions for the individual in other aspects of their lives. For this reason, a temporary measure was introduced in 2012 to allow qualifying family members (spouses, common-law partners or parents) to become plan holders of the RDSP for

an adult who might not be able to otherwise enter into a contract, without the need for a legal declaration of incompetence.

Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023,[21] extended the temporary measure from 31 December 2023 to 31 December 2026. It also amended the definition of "qualifying family member" in section 146.4(1) of the *Income Tax Act* (ITA)[22] to expand the definition to also include the siblings of the beneficiary.

Clause 45(6) adds new section 146.4(4)(b.1) to the ITA to permit a qualifying family member of an RDSP beneficiary to become a successor holder of the RDSP if the existing holder of the RDSP dies before 2027. The remainder of clause 45(6) makes consequential amendments to sections 146.4(1), 146.4(1.5), 146.4(1.6), 146.4(1.7), 146.4(4)(b)(iv), 146.4(13)(e) and 146.4(14).

These amendments apply upon Royal Assent.

2.1.12 Implementation of Consequential Changes of a Technical Nature to Facilitate the Operation of the Existing Rules for First Home Savings Accounts

Enacted in December 2022, the First Home Savings Account (FHSA) allows first-time home buyers to save $40,000 on a tax-free basis. Bill C-59 introduces several technical amendments to the rules governing FHSAs, which are primarily found in section 146.6 of the *Income Tax Act* (ITA),[23] as well as other related amendments.

Section 128(2) of the ITA provides rules for individuals who file for bankruptcy. Clause 39 of Bill C-59 adds new section 128(2)(d.3) to the ITA to clarify references to a "taxation year" with respect to an FHSA during bankruptcy.

Section 135.2 of the ITA addresses the status of entities created as part of the continuance of the Canadian Wheat Board. Clause 41 amends section 135.2(4)(f) of the ITA to add that a security held by an eligible trust that was established as part of the continuance of the Canadian Wheat Board is not a qualified investment for an FHSA. Clause 41 also amends section 135.2(4)(g) of the ITA to state that if the security of an eligible trust is acquired through an FHSA, the ITA's tax for overcontributions to registered plans would be levied on the FHSA holder. Clause 41 is deemed to have come into force on 4 August 2023.

Clauses 43 and 44 modify the definition of "excluded premium" found in sections 146.01(1) and 146.02(1) of the ITA, which respectively govern the Home Buyers' Plan and Lifelong Learning Plan that are available through the Registered Retirement Savings Plan (RRSP), to add the FHSA to the list of registered plans from

which amounts can be transferred. Clauses 43 and 44 are deemed to have come into force on 28 November 2023.

Clause 46 introduces several amendments to section 146.6 of the ITA to make changes to the rules governing FHSAs:

- Clauses 46(1) and 46(2) provide clarifying amendments for the definition of “survivor” and the French definition of “bénéficiaire” found in section 146.6(1).
- Clause 46(3) amends the formula used to calculate the “annual FHSA limit” found in section 146.6(1) to modify the language regarding RRSP to FHSA transfers in variable E and removing variable G from the formula. Clauses 46(5) and 46(7) introduce related amendments by adding a definition for “net RRSP-to-FHSA transfer amount” in section 146.6(1) and modifying the language in section 146.6(5)(b)(ii) to include reference to the net RRSP-to-FHSA amount.
- Clause 46(4) amends the definition of “FHSA carryforward” in section 146.6(1) to clarify that it includes amounts contributed in the same year but after the taxpayer’s first qualifying withdrawal from an FHSA.
- Clause 46(6) adds section 146.6(3.1) to the ITA to indicate that interest or income added to a deposit account that is an FHSA is deemed not to be received by the holder of the FHSA solely because of the interest was added, and therefore the holder is not required to include that amount in income.
- Clause 46(8) amends section 146.6(7)(c), which addresses transfers from an FHSA, to clarify those provisions respecting the last holders of an FHSA.
- Clause 46(9) amends sections 146.6(13)(a) and 146.6(13)(b), which provide the rules for a successor holder of an FHSA, to clarify when a survivor has not entered into a new qualifying arrangement with respect to the FHSA.
- Clause 46(10) modifies section 146.6(15)(a), which deals with transfers from a deceased holder’s FHSA to their legal representative and survivor, to remove paragraph (ii) and thus remove the requirement that the transfers meet certain conditions described in sections 146.6(7) to 146.6(10).
- Clause 46(11) makes several amendments to sections 146.6(17)(a) to 146.6(17)(c), which set out the rules for when an arrangement ceases to be an FHSA, and adds new sections 146.6(17)(d) and 146.6(17)(e), in order to:
  - Include reference to new section 146.6(3.1);
  - Clarify that the time the fair market value of an FHSA is determined and deemed to have been received or distributed is the time when an arrangement ceases to be an FHSA; and
  - Introduce rules for when an arrangement is a trust, deposit account or an annuity contract.

Clause 48 amends section 153(1)(v) of the ITA, which sets out when tax is to be withheld from payments out of an FHSA, to repeal reference to "an arrangement that ceased to be an FHSA by application of subsection 146.6(16)." This amendment is consequential to the amendments introduced to section 146.6(17).

Clause 51 repeals section 160.2(2.3) of the ITA, which sets out a joint and several liability for a taxpayer that receives benefits from another person's FHSA, as section 160 includes similar measures.

Clause 54 amends section 204.2(1.2), which addresses excess RRSP amounts, to add transfers from an FHSA to an RRSP.

Clause 55 makes several amendments to section 207.01 of the ITA, which is an anti-avoidance rule that taxes overcontributions to registered plans:

- Clause 55(1) amends paragraph (a) in the definition of "excess FHSA amount" in section 207.01(1) to clarify the formula used to calculate an excess FHSA amount so that it reflects a calculation that is made for a given taxation year.
- Clause 55(1) also amends paragraph (b) of the "excess FHSA amount" definition in section 207.01(1) to provide the Minister of National Revenue the discretion to determine a lower amount than that calculated in paragraph (a).
- Clause 55(2) makes a technical amendment to the definition of "designated amount," which refers to a withdrawal of funds to correct an overcontribution, to ensure the language refers to the correct provision.
- Clauses 55(3) to 55(5) make amendments to the definition of "swap transaction" to exclude transfers between FHSAs, from FHSAs to RRSPs or Registered retirement income funds (RRIFs), or from an RRSP to an FHSA.

Clauses 55(4) and 55(5) are deemed to have come into force on 4 August 2023.

Clause 67(1) amends the definition of "disposition" in section 248(1) of the ITA and clause 67(9) amends section 248(3.2)(d) of the ITA, which set out the criteria for a qualifying arrangement, to include reference to an FHSA.

Sections 200 to 299 of the *Income Tax Regulations*[24] set out various requirements related to the filing of income tax returns. Clauses 74 to 77 add section 204(3)(h) and modify sections 205(3), 205.1(1) and 209(5), respectively, to include reference to an FHSA.

Clause 80 amends the definition of "governing plan" in section 4901(2) of the *Income Tax Regulations*, which governs registered plans and investments, to include an FHSA.

Clauses 84 and 85 add sections 9005(p) and 9006(l) to the *Income Tax Regulations*, which describe non-reporting financial institutions and prescribed excluded accounts, respectively, to include FHSAs.

Clauses 39, 46, 48, 51, 54, 55(1) to 55(3), 67(1), 67(9), 74 to 77, 80, 84 and 85 are deemed to have come into force on 1 April 2023.

2.1.13 Introduction of a Tax on the Net Value of Equity Repurchases by Certain Canadian Corporations, Trusts and Partnerships Whose Equity is Listed on a Designated Stock Exchange

The government had originally announced its intention to tax share buybacks in the *Fall Economic Statement 2022*,[25] stating that with this measure, it wished "to make sure that large corporations pay their fair share, and to encourage them to reinvest their profits in workers and in Canada."[26]

To that end, clause 53(1) of Bill C-59 adds Part II.2, Tax on Repurchases of Equity, to the *Income Tax Act* (ITA)[27]. This new tax applies to "covered entities" that have redeemed, acquired or cancelled their "equity," other than "substantive debt," as these terms are defined in new section 183.3(1) of the ITA.

Generally speaking, in order for an entity to qualify as a "covered entity," its "equity" must be listed on a "designated stock exchange"[28] and the entity must be either:

- a corporation resident in Canada, with the exception of a "mutual fund corporation"[29];
- one of the types of trust covered by the measure, including a "real estate investment trust"[30]; or
- a "SIFT partnership."[31]

Considering the many legal forms that a covered entity may take, the definition of "equity" states that equity means a share of capital stock, an income or capital interest, or a partnership interest, as the case may be. Equity does not include a covered entity's "substantive debt," generally defined as equity that carries no voting rights, pays only fixed dividends and has a cash surrender value equal to the fair market value (FMV) of the consideration for which the equity was issued.

In general, under new section 183.3(2) of the ITA, this new tax applies at a rate of 2% of the FMV of redemptions, acquisitions or cancellations of equity of a covered entity net of the FMV of the equity issued by that entity.[32]

However:

- the new tax applies only where the FMV of redemptions, acquisitions or cancellations of equity of a covered entity is greater than or equal to $1 million (new section 183.3(4) of the ITA);
- acquisitions from and dispositions by a "specified affiliate" may be excluded in certain cases;[33] and
- equity that is redeemed, acquired or cancelled as part of a "reorganization transaction"[34] is generally excluded.[35]

New sections 183.3(3) and 183.3(6) of the ITA also set out anti-avoidance provisions for a "transaction"[36] or series of transactions by a covered entity that attempts either to change the values to be included in the formula for calculating the new tax, or to avoid being subject to the new tax because of the definition of "specified affiliate" in new section 183.3(1) of the ITA.

With regard to compliance, under new sections 183.4(1) and 183.4(2) of the ITA, a covered entity that redeems, acquires or cancels its equity must file a return in prescribed form and pay the tax owing within a specified period, which is determined according to its legal form.

Lastly, new section 183.4(3) of the ITA generally subjects this new tax to certain provisions concerning the issuance of notices of assessment under Part I of the ITA, payment, objections and appeals, as well as the interest and penalties applicable to these notices of assessment, with the necessary adaptations.

In accordance with clause 53(2), this new tax applies to transactions occurring after 2023.

2.1.14 Exemption of Certain Fees From the Refundable Tax Applicable to Contributions Under Retirement Compensation Arrangements

A retirement compensation arrangement is an employer-sponsored plan that enables an employer to provide benefits to an employee who retires or loses their employment. Such an arrangement is often used to complement a registered pension plan. Employers may:

- prefund these benefits through contributions to a trust. The contributions are deductible for the employer and non-taxable for the employee. A refundable tax of 50 % on contributions to a trust is paid and then refunded when the trust distributes retirement benefits to the employee; or
- settle the retirement benefits as they become due. They can obtain a letter of credit or surety bond from a financial institution to provide security to their employees.

> To secure the letter of credit, employers pay an annual fee charged by the issuer, which is subject to the refundable 50 % tax. When retirement benefits from an unfunded plan become due, the employer pays them out of its revenues. As a result, the refund of the 50 % tax does not occur, and employers are required to pay the tax balances in their refundable tax account with the Canada Revenue Agency while having no practical way of recovering them.

Clauses 56(1) and 56(2) of the bill amend the definition of "refundable tax" and define an "excluded contribution" for the purposes of calculating that tax in section 207.5(1) of the *Income Tax Act* (ITA) so that the amounts paid to obtain or renew a letter of credit or surety bond issued by a financial institution to secure future retirement benefit payments are no longer subject to the refundable tax.[37] Pursuant to clause 56(3), these changes apply to amounts paid as of 28 March 2023.

Clause 57(1) adds sections 207.71(1) to 207.71(4) to the ITA to define "eligible employer" and "specified refundable tax" and to add the calculation and conditions for the refund. The goal is to enable eligible employers to claim a refund of the refundable tax paid prior to 28 March 2023 in respect of fees or premiums for letters of credit. Employers are therefore eligible for a refund of 50 % of retirement benefits paid, up to the amount of refundable tax already paid. Pursuant to clause 57(2), this change applies to retirement benefits paid after 2023.

2.1.15 Amendment of a Technical Nature to the Provision Authorizing the Sharing of Taxpayer Information for the Purposes of the Canadian Dental Care Plan

Clause 65(2) of the bill amends section 241(4)(d)(xx.1)(A) of the *Income Tax Act* to enable Public Services and Procurement Canada to receive confidential information in order to administer or enforce the Canadian Dental Care Plan, as was already the case for Employment and Social Development Canada and Health Canada.[38]

2.1.16 Amendments to the General Anti-avoidance Rule, Introduction of a Penalty and Extension of the Normal Reassessment Period in Certain Circumstances

Section 245 of the *Income Tax Act* (ITA)[39] provides a general anti-avoidance rule (GAAR) to all persons in order to prevent them from benefitting from transactions undertaken primarily for the purpose of avoiding, reducing, or deferring the payment of tax, or increasing a refund or rebate or other amount. If a transaction is inconsistent with the overall spirit and intent of the ITA, then an anti-avoidance rule may apply. Section 245(5) provides that the tax consequences of applying the GAAR will be determined as is reasonable in the circumstances in order to deny the tax benefit that would occur in the absence of the GAAR, directly or indirectly, from the transaction or series of transactions in question.

Bill C-59 makes a number of amendments to the GAAR, including clause 66(1) which adds new section 245(0.1) as a preamble to clarify the GAAR's intended purpose and operation, which comes into force on Royal Assent.

Where a taxpayer derives a tax benefit, the GAAR will not apply if it is reasonable that the transaction was undertaken primarily for a bona fide (legitimate) purpose other than to obtain the tax benefit. Clause 66(2) amends section 245(3) to replace the "primarily for a bona fide purpose" test with a "one of the main purposes" test. This change applies to transactions that occur on or after 1 January 2024.

Clause 66(3) adds new sections 245(4.1) and 245(4.2) to provide that if an avoidance transaction is significantly lacking in economic substance, it would indicate that the GAAR should be applied to that transaction. Factors used in this analysis include; whether all or substantially all of the opportunity for gain or profit and risk of loss of the taxpayer remains unchanged, whether the expected value of the tax benefit exceeded the expected non-tax economic return, and whether the entire, or almost entire, purpose for undertaking or arranging the transaction or series of transactions was to obtain the tax benefit. This change applies to transactions that occur on or after 1 January 2024.

Clause 66(4) adds new section 245(5.1) to create a penalty equal to 25% of the amount of the tax benefit if a transaction is subject to the GAAR. Where the tax benefit involves a tax attribute that has not yet been used to reduce tax, the amount of the tax benefit would be considered to be zero. Clause 64(1) adds section 237.3(12.1) such that the penalty could be avoided if the transaction is disclosed to the Canada Revenue Agency (CRA) in accordance with the proposed disclosure rules. An exception from the penalty is also provided in new section 245(5.2) if it can be demonstrated that the taxpayer had relied upon current case law or published administrative guidance or statements. This penalty applies to transactions that occur on or after the later of 1 January 2024 or the day on which this bill receives Royal Assent.

Clause 47(4) adds new section 152(4)(b)(viii) to extend the normal reassessment period for GAAR assessments by three years unless the transaction had been disclosed to the CRA. This change applies to transactions that occur on or after 1 January 2024.

2.1.17 Implementation of New Rules to Facilitate the Use of Employee Ownership Trusts to Acquire and Hold Shares of a Corporation

Bill C-59 introduces several amendments to the *Income Tax Act* (ITA)[40] to facilitate the creation of employee ownership trusts. An employee ownership trust holds the shares of a corporation for the benefit of the corporation's employees.

Section 15(2) of the ITA requires a loan to a shareholder from a corporation to be included in the shareholder's income in the year in which the loan occurred. Clause 5 of Bill C-59 adds section 15(2.51) to the ITA to state that section 15(2) does not apply to a loan that arose from a qualifying business transfer if:

- the lender is a qualifying business and the borrower is the employee ownership trust that controls the qualifying business;
- the sole purpose of the loan is to facilitate the qualifying business transfer; and
- at the time the loan was made, bona fide arrangements were made for repayment of the loan within 15 years of the qualifying business transfer.

Section 40 of the ITA sets out the computation of capital gain on the disposition of property. Clause 10(2) adds section 40(1.3) to indicate how to calculate capital gains from the disposition of the shares of a qualifying business to an employee ownership trust or to a Canadian-controlled private corporation that is controlled and wholly owned by an employee ownership trust pursuant to a qualifying business transfer.

Section 80.4 of the ITA states that an individual is deemed to have received a benefit if the individual receives a loan from their employer. Clause 16 adds section 80.4(3)(c) to the ITA to indicate that section 80.4 does not apply to loans in relation to new section 15(2.51) of the ITA.

The definition of "trust" found in section 108(1) of the ITA excludes certain trusts from being treated as trusts for specific purposes, including to be exempt from the 21-year deemed disposition rule that applies to most trusts. Clause 26(2) adds paragraph (h) to the definition of "trust" so that employee ownership trusts are excluded from the definition of trust. As well, clause 26(1) amends paragraph (a.1) in the definition of "trust" to include reference to new paragraph (h) in the definition of trust in the ITA.

Clause 67 introduces amendments to various definitions found in section 248(1) of the ITA. Clause 67(2) adds paragraph (b.1) to the definition of "employee benefit plan" so that an employee ownership trust is not included in an arrangement for an employee benefit plan. As well, clause 67(3) amends the definition of "employee trust" so that it excludes an employee ownership trust.

Clause 67(8) introduces definitions for the terms "employee ownership trust," "qualifying business" and "qualifying business transfer" to section 248(1) of the ITA.

Generally, an "employee ownership trust" must meet several conditions, including:

- the trust is resident in Canada;

- the trust is exclusively for the benefit of employees of the qualifying business controlled by the trust, or if the trust allows, former employees, and not for the benefit of certain shareholders of the qualifying business;
- the capital and income interest for each beneficiary is based on any combination of the total hours of employment service, total salary, wages or remuneration, or total period of employment;
- all or substantially all of the fair market value of the property of the trust is attributable to the shares of the capital stock of one or more qualifying businesses that the trust controls;
- trustees must meet certain conditions:
  - trustees must be an individual or a corporation licensed in Canada to offer its services as a trustee;
  - each trustee has an equal vote;
  - trustees are prohibited from exercising their discretion to act in the interest of one beneficiary at the detriment of another;
  - at least one-third of the trustees must be beneficiaries;
  - at least 60% of trustees must be at arm's length with certain persons who sold shares in the qualifying business to the trust; and
- more than 50% of the beneficiaries must approve certain transactions.

"Qualifying business" is defined as a corporation controlled by a trust that is a Canadian-controlled private corporation where not more than 40% of the directors are individuals that owned, directly or indirectly, together with related partnerships or persons, 50% or more of the fair market value of the shares or the indebtedness of the corporation. As well, the corporation must deal at arm's length with any person that owned, directly or indirectly, 50% or more of the fair market value of the shares or indebtedness of the corporation before the trust acquired control of the corporation.

"Qualifying business transfer" is generally defined as a disposition by a taxpayer of the shares of a corporation to a trust or a Canadian-controlled private corporation that is controlled and wholly owned by a trust, and where:

- immediately before the disposition, all or substantially all the fair market value of the assets of the corporation is attributable to assets used principally in an active business carried on by the corporation;
- at the time of disposition,
  - the taxpayer, corporation and trust must deal at arm's length;
  - the trust acquires control of the corporation; and

  - the trust is an employee ownership trust whose beneficiaries are employed in the business;
- after the disposition,
  - the taxpayer deals at arm's length with the corporation and trust; and
  - the taxpayer does not retain any right or influence to control the corporation or trust.

Section 256(7) of the ITA addresses circumstances where control of a corporation may have been acquired. Clause 68 adds new section 256(7)(j) to clarify that acquiring control of the qualifying business does not occur solely due to a change in trustee as long as the trust remains an employee ownership trust immediately after the change of trustee.

Clauses 5, 10(2) and 26 apply in respect to transactions that occur on or after 1 January 2024.

Clauses 16, 67(2), 67(3), 67(8) and 68 come into force or are deemed to have come into force on 1 January 2024.

2.1.18 Implementation of Specific New Anti-avoidance Rules for Substantive Canadian-Controlled Private Corporations

A Canadian-controlled private corporation (CCPC) is a privately held corporation incorporated in Canada that is not controlled by non-residents and/or public corporations. CCPCs are subject to refundable tax on certain types of passive income to ensure tax neutrality between personally held investments and investments earned through a corporation, which are generally taxed at a lower rate. In essence, a tax is levied on certain passive income earned by a corporation and a portion of this tax is refundable when the company pays a dividend, taxable at the individual level to account for the refundable portion. Investment income generally includes net property income and net taxable capital gains. Non-CCPCs, such as public corporations and corporations controlled by non-residents, are not subject to this refundable tax.

Budget 2022 noted the possibility for a CCPC to technically lose its status as a CCPC – for example, by changing its corporate address to another tax jurisdiction outside Canada – while nevertheless remaining a Canadian tax resident as long as the "mind and management" of the corporation (its owners) remained in Canada. This would have the consequence of avoiding the imposition of the refundable tax and subjecting the corporation to the lower non-CCPC tax rate on investment income immediately before realizing a large gain. This would allow the CCPC to have the benefit of being a CCPC but ultimately avoid the imposition of the refundable tax once the gain is realized.

To address this tax planning strategy, clause 67(5) adds the definition of "substantive CCPC" to the definitions listed in section 248(1) of the *Income Tax Act* (ITA)[41]. It is defined as a private corporation – other than a CCPC – that is controlled, directly or indirectly in any manner whatsoever, by one or more Canadian resident individuals, or 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.

Bill C-59 amends the ITA so that the investment income of substantive CCPCs will generally be taxed in the same manner as a CCPC. Substantive CCPC status only applies for these purposes, and these corporations will continue to be treated as non-CCPCs for other tax purposes (e.g., they will continue to be ineligible to the small business deduction). These amendments are found in clauses 20, 31, 32, 40(2), and 40(3) that amend sections 89(1), 123.3, 123.4(1), 129(4), and 129(4)(a) of the ITA, respectively. These amendments generally apply to taxation years that end on or after 7 April 2022.

Clause 67(10) adds new section 248(43) to the ITA to introduce an anti-avoidance rule intended to address transactions or arrangements reasonably considered to be undertaken to avoid the additional the tax otherwise payable on the corporation's aggregate investment income under section 123.3 of the ITA. In particular, this provision would deem a corporation to be a substantive CCPC where it is reasonable to consider that one of the purposes of any transaction – or series of transactions – is to avoid tax otherwise payable under section 123.3 on the corporation's aggregate investment income. This amendment generally applies to taxation years that end on or after 7 April 2022.

2.1.19 Extension of the Phase-Out of the Reduced Tax Rate for the Manufacture of Zero-Emission Technologies and Expansion of the Eligible Activities

Section 125.2 of the *Income Tax Act* (ITA)[42] reduces the corporate income tax rate applicable to profits that arise from qualified zero-emission technology manufacturing activities performed in Canada by 50% for tax years beginning after 2021 and before 2029. Specifically, the reduced tax rates on qualified zero-emission technology manufacturing income are:

- 7.5%, where such income would otherwise be taxed at the general corporate income tax rate of 15%; and
- 4.5%, where such income would otherwise be taxed at the small business tax rate of 9%.

These tax rates are then scheduled to gradually return to their previous level in tax years beginning after 2028 and before 2032.

Clause 33 amends section 125.2(2) of the ITA to extend the availability of these reduced tax rates by three years, meaning that the reduced tax rates are now available until the tax years beginning before 2032, and are scheduled to gradually return to their previous level in tax years beginning after 2031 and before 2035.

Clause 81 amends the definition of "qualified zero-emission technology manufacturing activities" in section 5202 of the *Income Tax Regulations*[43], which describes the activities that may qualify for the reduced tax rates, to include the manufacturing or processing of nuclear energy equipment, heavy water used for nuclear energy generation, nuclear fuels used for nuclear energy generation and nuclear fuel rods. This measure applies to taxation years that begin after 2023.

2.2 PART 2: ENACTMENT OF THE DIGITAL SERVICES TAX ACT AND ITS REGULATIONS

2.2.1 General

In 2020, the federal government announced its intention "to implement a tax on corporations providing digital services."[44] Based on details in Budget 2021,[45] an initial consultation was launched. Then, as announced in Budget 2023,[46] a new version of the draft Digital Services Tax Act was released on 4 August 2023 and a second consultation was launched.[47]

From the outset, the government announced that the tax would only apply until there was "an acceptable common approach," recognizing "the mutual benefits of multilateral coordination in international taxation and therefore [having] a strong preference for a multilateral approach to address these issues."[48] This preference was subsequently reiterated.[49]

At the time Bill C-59 was tabled, no such multilateral approach had yet been adopted. However, as stated by the Organisation for Economic Co-operation and Development, a draft text of a Multilateral Convention to Implement Amount A of Pillar One (the MLC) was released in October 2023 and, although the MLC is not yet open for signature, it "reflects the consensus achieved so far among members."[50]

It is in this context that clause 96(1) enacts the Digital Services Tax Act (DSTA). The DSTA, which is the responsibility of the Minister of National Revenue (the minister),[51] comprises 126 sections divided into seven parts.

Pursuant to clause 96(2), the DSTA comes into force on a day that is fixed by order of the Governor in Council, but not earlier than 1 January 2024. Furthermore, in fixing that day, the Governor in Council must consider the intent of the *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*[52] and Canada's preference for a multilateral approach.

However, since it was initially announced that the tax would apply on 1 January 2022,[53] the DSTA provides that

> liability [for the "first year of application"] will be calculated by reference to certain Canadian digital services revenue earned from January 1, 2022, up to and including that first year.[54]

Generally speaking, a "taxpayer" is required to pay a tax equal to 3% of its "taxable Canadian digital services revenue" (TCDSR), calculated in accordance with Part 4 of the DSTA, if that "taxpayer" has both

- total revenue, for a "fiscal year" that ended in the preceding calendar year, equal to or greater than the "global revenue threshold," which is set at €750 million[55] (first threshold); and
- "Canadian digital services revenue" (CDSR), calculated in accordance with Part 3 of the DSTA, greater than the "in-scope revenue threshold," which is set at $20 million[56] (second threshold and collectively, the thresholds).

It should be noted that the term "taxpayer" is defined very broadly and includes a trust, a partnership, a corporation and any other body of persons or organization of any kind, whether or not they are liable to pay tax, with the exception of entities owned, directly or indirectly, by His Majesty in Right of Canada or a province, or both.[57]

2.2.2 Canadian Digital Services Revenue

Generally speaking, the CDSR is equal to the sum of four types of revenue, which are set out in separate divisions of Part 3 of the DSTA:

- Canadian online marketplace services revenue.
  - An "online marketplace" of the taxpayer is generally defined as a "digital interface" (such as a website or application) that allows "users" to interact with other "users" and facilitates the "supply" of products or services, including "digital content" (such as video, images or software), between them.

- Canadian online advertising services revenue.
  - This must pertain to an "online targeted advertisement," which is generally defined as an advertisement that consists of "digital content," placed on or transmitted through a "digital interface," and targeted at "users" based on any part of the "user data" associated with them.
- Canadian social media services revenue.
  - Revenue must be earned in respect of a "social media platform" of the taxpayer, which is generally defined as a "digital interface" whose main purpose is to allow "users" to find and interact with other "users" or with "digital content" generated by them.
- Canadian user data revenue.
  - "User data" collected by the taxpayer is generally defined as representations, in any form, of information or concepts generated by, or collected from the interaction (directly or indirectly in any manner whatever) between a "user" and a "digital interface."

The DSTA determines which sources must be included in the calculation of each of these types of revenue. Exclusions are specifically provided for.[58] The taxpayer must then calculate its Canadian revenue for these four types of global revenue. The DSTA determines which revenue sources are included in this calculation. Generally speaking, the revenue must have a connection with Canada, for example because the supplier, purchaser or "user" is located in Canada,[59] as the case may be.

However, for calendar years preceding the "first year of application," a taxpayer may elect to calculate its CDSR using a simplified formula based on its CDSR for the "first year of application."

2.2.3 Taxable Canadian Digital Services Revenue

As defined in Part 4, a taxpayer's TCDSR is generally equal to its CDSR less the "deduction amount" of $20 million.[60]

This means that a taxpayer generally pays tax only on the portion of its CDSR in excess of $20 million.

2.2.4 Consolidated Groups

The thresholds set out in the DSTA take into account a situation where a taxpayer is part of a "consolidated group" as a "constituent entity," either in the preceding calendar year or in the current calendar year, as the case may be. The government justifies these rules on the grounds that

> a firm's administrative capacity is linked to its overall size and the revenue-generating activities linked to Canadian users may be dispersed across multiple entities in a business group.[61]

Therefore, if the "total consolidated group revenue" and the group's total CDSR exceed the thresholds, the taxpayer will generally be liable for the tax. In addition, other special rules are provided, such as in the event that a taxpayer joins a group during the year, as well as in the calculation of the CDSR and TCDSR in order, respectively, to avoid double counting certain revenue and to allocate the taxpayer's share of the "deduction amount." A taxpayer may also designate another "constituent entity" to act on its behalf in respect of obligations under the DSTA, which are set out in Part 6 of the DSTA and briefly described below.

Generally speaking, a "consolidated group" is defined as an "ultimate parent entity" and one or more other "entities" that are required to prepare "consolidated financial statements" for financial reporting purposes under "acceptable accounting principles," or would be so required if equity interests in the "ultimate parent entity" were traded on a public securities exchange. Conversely, to qualify as a "constituent entity," a taxpayer must be included in the group's "consolidated financial statements," subject to certain exceptions.

Unless otherwise indicated, the information presented in this legislative summary does not take into account the rules applicable to consolidated groups.

2.2.5 Implementation, Administration and Enforcement

Part 6 of the DSTA contains provisions relating to the general implementation, administration and enforcement of the DSTA. Many of these provisions are modelled on those in other tax statutes. The following subsections briefly and generally describe some of the provisions found in the various divisions of Part 6 of the DSTA.

2.2.5.1 Registration

In accordance with Division B, unless exempted by the minister, a taxpayer must generally apply to register within a certain period of time in order to obtain a registration number if, for a calendar year, the taxpayer's CDSR is greater than both nil and the "registration threshold" of $10 million,[62] and the taxpayer's total revenue is equal to or greater than the first threshold. The minister may also de-register a taxpayer upon request in certain cases, as well as register a taxpayer that the minister believes should be registered.

Of note, since the registration threshold is lower than the second threshold, there may be situations when a taxpayer is not liable for the tax for a given year but is

nonetheless required to make an application for registration for that same year. The government states that "[t]his lower threshold enables the Minister to identify taxpayers that are close to the threshold for liability under the DSTA."[63]

2.2.5.2 Returns and Records

In accordance with Division C, a taxpayer must file a return by 30 June of the following year if its CDSR is greater than nil during the year and its relevant revenue exceeds the thresholds. The minister may also extend the deadline for filing a return and send a taxpayer a demand to file a return.

Of note, since the second threshold differs from the amount of the deduction in the calculation of the TCDSR, there may be situations when a taxpayer "[is] required to file a return even though its [tax] liability [is] zero."[64]

Under Division H, a person must generally keep and retain all "records"[65] for a certain period of time as are necessary to verify whether the person has complied with the DSTA and, if the person is or was a "constituent entity" of a "consolidated group," to verify whether all other entities in the group have complied with the DSTA.

The minister may also require a person to keep such "records" as the minister may specify, or to provide any information or "records" within a reasonable time (subject to judicial authorization in certain cases), or to require a person to keep "records" and retain them for a specified period.

2.2.5.3 Assessments, Objections and Appeals

In accordance with Division I, the minister may assess or reassess a person for any tax payable. In such cases, a notice of assessment is sent to the person concerned. In addition, in accordance with Division G, an overpayment of a refund or interest may also be assessed by the minister at any time. Generally, no assessment in respect of any tax or other amount payable by a person under the DSTA is permitted more than seven years after the day on which the return concerned was filed.

In accordance with Division D, the minister may also assess a particular "constituent entity" of a "consolidated group" in respect of, among other things, tax payable by another "constituent entity" of the group, in which case both entities are jointly and severally, or solidarily, liable to pay the tax assessed. There is also a provision for joint and several liability in the event of a transfer of "property" between persons not dealing at "arm's length,"[66] including anti-avoidance rules similar to those found in many tax statutes.

Divisions J and K respectively set out the procedures for objection and appeal to the Tax Court of Canada of assessments made by the minister.

It should be noted that Part 5 of the DSTA contains specific provisions dealing with avoidance transactions, which are similar to those of the general anti-avoidance rule in the *Income Tax Act*.

2.2.5.4 Payment, Refunds and Collection

In accordance with Division D, unless an exception applies, the tax is payable in Canadian dollars no later than the time the return is filed, namely 30 June of the following year. Payment must generally be made electronically when the amount payable is $10,000 or more.

Division G sets out the terms and conditions for refunds in cases where a person has paid amounts in error (i.e., otherwise than because of an assessment).

Division P sets out the procedures for debt collection. Generally, no collection actions may be commenced after 10 years, beginning 90 days after the date on which the notice of assessment was sent.

2.2.5.5 Interest, Penalties and Charges

In accordance with Division E, any person who fails to pay an amount as and when required under the DSTA is required to pay interest at the rate prescribed by regulation,[67] compounded daily on that amount. In addition, interest, the rate of which is also prescribed by regulation,[68] is payable by the minister to a taxpayer in certain cases.

In accordance with Division L, a taxpayer who fails to register or file a return is liable to penalties, which increase in the event of a repeated failure, subject to the conditions set out in this division. Other penalties are also provided for in this division.

In accordance with Division F, charges for dishonoured instruments may be applied pursuant to the schedule set out in the *Financial Administration Act*.[69] Such charges are then deemed to have become payable under the DSTA.

2.2.5.6 Inspection, Offences, Punishment, Evidence and Procedure

Division N deals with the powers of persons authorized by the minister to inspect and investigate taxpayers' compliance with their obligations under the DSTA.

Division M provides for a number of offences and their punishment, including breaches of the "confidential information"[70] obligations set out in Division O. Of note, in certain cases, a person may present a defence of due diligence.

Lastly, Division Q deals with evidence and procedure in connection with the administration and enforcement of the DSTA.

2.2.6 Digital Services Tax Regulations

Part 7 of the DSTA deals with regulations. In particular, section 123 of the DSTA provides that the Governor in Council may make certain regulations, including regulations to carry out the purposes and provisions of the DSTA.

Clause 97(1) enacts the Digital Services Tax Regulations (DSTR), which comprise seven sections. Pursuant to clause 97(2), the DSTR come into force on the date on which the DSTA comes into force. In addition, clause 97(3) specifies that the DSTR are deemed to have been made under section 123 of the DSTA and to have complied with the requirements set out in sections 5(1) and 11(1) of the *Statutory Instruments Act*.[71]

2.3 PART 3: IMPLEMENTATION OF CERTAIN GOODS AND SERVICES TAX/HARMONIZED SALES TAX MEASURES

2.3.1 Part 3(a): Interest in a Corporation that Does Not Have Its Capital Divided into Shares

Generally, financial services are exempt from the application of the Goods and Services Tax/Harmonized Sales Tax (GST/HST). The term "financial instrument" is used to describe some of the activities that are considered financial services.

Clause 130(1) of Bill C-59 adds new paragraph (b.1) to the definition of "financial instrument" found in subsection 123(1) of *the Excise Tax Act* (ETA)[72] to include a right, other than a right as a creditor, conferred by a corporation that does not have capital divided into shares to receive an amount that can reasonably be regarded as all or part of the capital, revenue or income of the corporation. A corporation without share capital is otherwise known as a non-profit organization and the right being conferred is comparable to the right held by a shareholder in a corporation that issues shares. Clause 130(2) amends paragraph (h) of the definition of "financial instrument" to include reference to new paragraph (b.1).

Clause 130 is deemed to have come into force on 10 August 2022.

2.3.2 Part 3(b): Interest and Dividend Income from a Closely Related Partnership

Section 149(1) of the ETA[73] sets out the criteria used to determine whether a person is a financial institution in a particular taxation year, referred to as the *de minimis* threshold test. The test includes calculations of income earned from various sources of income. Section 149(4) excludes, from the calculation of income, interest or dividends from a corporation related to the person.

Clause 131(1) amends section 149(4) of the ETA to clarify when a corporation would be considered related to a person if that person is a partnership.

Clause 131 applies to taxation years that begin after 9 August 2022.

2.3.3 Part 3(c): Election Related to Supplies Made Within a Closely Related Group of Persons that Includes a Financial Institution

Section 150 of the ETA[74] allows members of a closely related group that includes financial institutions to file a joint election to deem taxable supply made between the members as a supply of a financial service, and thus exempt from the GST/HST.

Clause 132(1) amends section 150(4)(c) of the ETA to clarify the effective period for an election that has been revoked by a member of the closely related group. Clause 132(2) adds section 150(4.1) to the ETA to specify the process by which an election can be revoked, including deadlines for filing the revocation with the Minister of National Revenue.

Clause 132 is deemed to have come into force on 10 August 2022.

2.3.4 Part 3(d): Election that Allows Electing Members of a Closely Related Group to Treat Certain Supplies Made Between Them

Section 156 of the ETA[75] allows certain members of a qualifying group of closely related corporations and partnerships to elect to treat certain supplies between them as having been made for nil consideration and thus be tax-free. Currently, a “qualifying group” is limited to a group of corporations, a group of Canadian partnerships or a group of Canadian partnerships and corporations. Clause 133 introduces several changes to section 156 of the ETA to expand the definition of qualifying group to include corporations or partnerships that are not resident in Canada.

Clause 133(7) introduces the term “specified partnership” to section 156(1) of the ETA, which means “a partnership each member of which is a corporation or a partnership.” It replaces “Canadian partnership,” which is repealed in clause 133(1).

Clauses 133(2) and 133(3) amend the definitions of "qualifying group" and "qualifying member" found in section 156(1) of the ETA, respectively, to change the text to refer to specified partnerships and to clarify the circumstances when a member must be resident in Canada. Similarly, clauses 133(8) to 133(14) amend sections 156(1.1), 156(1.1)(a)(i)(B), 156 (1.1)(a)(ii)(B), 156(1.1)(b)(i)(B), 156(1.1)(b)(iii)(B), 156(1.1)(b)(iv), and 156(1.2) of the ETA to change the text to refer to specified partnerships.

Clauses 133(4) to 133(6) make various amendments to the definition of "temporary member" in section 156(1) of the ETA. A "temporary member" is a corporation that is a member of a qualifying group and whose role is to receive a transfer of property as part of a corporate reorganization regulated under section 55(3)(b) of the *Income Tax Act* (ITA). The key change is that clause 133(5) amends paragraph (f) of the definition of "temporary member" found in section 156(1) of the ETA to remove reference to section 55(3)(b) of the ITA and replaces it with conditions on the types of supplied property that fall within the definition of "temporary member." As well, clause 133(15) amends section 156(1.2)(c) of the ETA to include reference to the new conditions set out in paragraph (f) of the "temporary member" definition.

Clauses 133(1) to 133(3) and 133(7) to 133(14) are deemed to have come into force on 10 August 2022. Clauses 133(4) to 133(6) are deemed to have come into force on 9 August 2022. Clause 133(15) applies in respect of any supply made on or after 9 August 2022.

2.3.5 Part 3(e): Certain Supplies Between the Members of a Closely Related Group

An imported taxable supply is a service that is provided outside of Canada to a recipient who is resident in Canada, and thus is regarded by the Canada Revenue Agency as being received by the recipient for use in Canada. Sections 218 and 218.01 of the ETA[76] indicate that every recipient of an imported taxable supply shall pay the Goods and Services Tax (GST) on the value of the consideration for the supply, with section 218.01 applying specifically to the imported taxable supply of financial institutions. The recipient of an imported taxable supply is required to self-assess the tax on the supply and remit the GST payable to the Canada Revenue Agency. More specifically, the GST is applied to "qualifying consideration," which consists of certain expenses incurred outside Canada, minus "permitted deductions," as defined in section 217 of the ETA.

Clause 134(2) introduces new paragraph (k.2) to the definition of "permitted deduction" in section 217 of the ETA to include consideration for a supply deemed by section 150(1) of the ETA to be a supply of a financial service that is made to a qualifying taxpayer by another person. Section 150(1) of the ETA allows members of

a closely related group that includes financial institutions to file a joint election to deem taxable supply made between the members as a supply of a financial service, which is exempt from GST. This amendment clarifies that supplies that are deemed exempt supply under section 150(1) of the ETA are not then taxed under section 218.01 of the ETA. As well, clause 134(1) amends paragraph (k) of the definition of “permitted deduction” in section 217 of the ETA to include reference to new paragraph (k.2).

Clauses 134(1) and 134(2) apply to any specified year of a person that ends after 16 November 2005. A “specified year” can be the taxation year, the fiscal year or the calendar year of the person, depending on how the person is classified in the definition of “taxation year” found in section 123(1) of the ETA. Clauses 134(3) and 134(4) also provide transitional rules in relation to the interpretation of “permitted deduction” with respect to consideration for specified non-arm’s length supply that became due on or before 17 November 2005, as well as with respect to deadlines for requesting an assessment or reassessment from the Minister of National Revenue on the tax payable for imported taxable supply.

2.3.6 Part 3(f): Income Threshold to File an Information Return by Certain Financial Institutions

Section 273.2 of the ETA[77] requires a person to file an annual information return with the Canada Revenue Agency if the person meets certain criteria, such as if it is a financial institution, a registrant, or earns a certain amount of income annually. Clause 135(1) amends section 273.2 (2)(c) of the ETA to increase the income reporting threshold from $1 million to $2 million.

Clause 135 applies in respect of fiscal years of a person that end after 9 August 2022.

2.3.7 Part 3(g): Timelines for Assessments of the Net Tax Adjustments Owed by Certain Financial Institutions

Clause 136 adds new section 298(1)(a.01) to the ETA,[78] which governs the timelines for assessments, to extend the limitation period for assessments with respect to tax payable for imported taxable supply from four to seven years. This amendment ensures consistency with other provisions in section 298(1) of the ETA that pertain to imported taxable supply. An imported taxable supply is a good or service that is provided outside of Canada to a recipient who is resident in Canada and thus is regarded by the Canada Revenue Agency as being received by the recipient for use in Canada.

Clause 136 is deemed to have come into force on 4 August 2023.

2.3.8 Part 3(h): GST/HST Exemption for Services Rendered by Psychotherapists and Counselling Therapists

In general, health care services are exempt from the application of the GST/HST. Clause 137(1) amends the definition of "practitioner" in section 1, Part II, Schedule V of the ETA,[79] which lists exempt supplies, to include "psychotherapy" and "counselling therapy." Similarly, clause 137(2) adds paragraphs (j.1) and (j.2) to section 7, Part II, Schedule V to include psychotherapy services and counselling therapy services as exempt services if the service is rendered to an individual by a practitioner of the service.

Clause 144 describes the coordination of amendments between clause 137 and Bill C-323, An Act to amend the Excise Tax Act (mental health services),[80] which was introduced in the 1st Session of the 44th Parliament, as they both contain similar but not identical amendments. As of 21 December 2023, the House of Commons Standing Committee on Finance has not commenced its study of Bill C-323. Clauses 144(2) to 144(4) indicate the consequences if Bill C-323 or clause 137 receives Royal Assent first. Clause 144(5) clarifies that if clause 137 receives Royal Assent, then Bill C-323 is deemed never to have produced its effects.

2.3.9 Part 3(i): Relief in Relation to the GST/HST Treatment of Payment Card Clearing Services

Pursuant to paragraph (r.6) in the definition of "financial service" in section 123(1) of the ETA,[81] except for prescribed services, the services provided by payment card network operators are not considered financial services and thus they are subject to the GST/HST.

Clause 138(1) adds new section 3.2 to the *Financial Services and Financial Institutions (GST/HST) Regulations*,[82] to describe the prescribed services that are exempt from the GST/HST. Section 3.2(1) indicates that "acquirer," "issuer," "payment card," "payment card network" and "payment card network operator" have the same meanings as section 3 of the *Payment Card Networks Act*.[83] Section 3.2(2) provides that the following services are prescribed services for the purposes of paragraph (r.6):

- A service that is supplied by a payment card network operator in its role as the acquirer for a transaction made by payment card, and is supplied to the person that accepted the payment card used for the transaction or to a payment service provider engaged by that person;
- A service that is rendered to a holder of a payment card and that is supplied by a payment card network operator in its role as the issuer of the payment card;

- A service, in respect of the settlement of a transaction made by payment card, that is supplied:
  - by a payment card network operator, in its role as the acquirer for the transaction, to the issuer of the payment card, or
  - by a payment card network operator, in its role as the issuer of the payment card, to the acquirer for the transaction; and
- a service, in respect of the settlement of a transaction made by payment card, that is supplied by a payment card network operator to the acquirer for the transaction and that consists of paying to the acquirer the amount charged to the payment card in respect of the transaction, but only if the issuer of the payment card supplies to the payment card network operator a service, in respect of the settlement of the transaction, of paying to the payment card network operator the amount charged to the payment card in respect of the transaction.

Clause 138 applies to a supply of a service for which any consideration becomes due, or is paid without having become due, after 28 March 2023, as well as any consideration that was due or was paid before 29 March 2023.

As well, clause 139 makes a technical amendment to the *Financial Services and Financial Institutions (GST/HST) Regulations*, by renumbering section 4.1 as section 4.2 so that it is consistent with the amendments put forth by *Regulations Amending Various GST/HST Regulations, No. 11*.[84]

2.3.10 Part 3(j): Joint Venture Election

Under the ETA,[85] participants in prescribed joint ventures that are listed in the *Joint Venture (GST/HST) Regulations*[86] are eligible to make an election to simplify the GST/HST accounting with respect to the joint venture.

Clause 140 adds section 3(1)(q) to the *Joint Venture (GST/HST) Regulations* to include as a prescribed activity "the operation of a pipeline, rail terminal or truck terminal if the pipeline, rail terminal or truck terminal is used for the transportation of oil, natural gas or related or ancillary products."

Clause 140 is deemed to have come into force on 1 January 1991.

2.3.10.1 Part 3(k): Input Tax Credit

Input tax credits are claimed by GST/HST registrants to recover the GST/HST paid for property or services acquired during their commercial activities. The *Input Tax Credit Information (GST/HST) Regulations*[87] set out the information that is required to file a return in which an input tax credit is claimed. The amount of information that

must be provided with respect to a supply increases with the amount paid in respect of the supply.

Clause 141 amends the definition of "intermediary" in section 2 of the *Input Tax Credit Information (GST/HST) Regulations* to expand the definition to include billing agents that are referred to in section 177(1.11) of the ETA.[88]

Clauses 142(1), 142(2) and 142(3) amend sections 3(a), 3(b) and 3(c) of the *Input Tax Credit Information (GST/HST) Regulations*, respectively, to raise the monetary thresholds that set out the amount of information that must be provided regarding a supply. The thresholds are increased from "less than $30" to "less than $100," from between "$30 or more and less than $150" to between "$100 or more and less than $500," and from "$150 or more" to "$500 or more."

Clauses 141 and 142 are deemed to have come into force on 20 April 2021.

2.3.11 Part 3(l): Cooperative Housing Corporations

Bill C-56, An Act to amend the Excise Tax Act and the Competition Act,[89] received Royal Assent on 15 December 2023. It amends the ETA[90] by adding section 256.2(3.1), which provides a temporary 100% GST New Residential Rental Property Rebate in respect of new purpose-built rental housing.

Clause 143 of Bill C-59 adds new section 256.2(2.1) to the ETA, which states that if a cooperative housing corporation meets all the conditions of section 256.2(3.1), which was introduced by Bill C-56, and other prescribed conditions, the corporation is deemed not to be a cooperative housing corporation in respect of the taxable supply. Consequently, the corporation would then be considered purpose-built rental housing and eligible for the temporary 100% GST New Residential Rental Property rebate.

Clause 143 is deemed to have come into force on 14 September 2023.

2.3.12 Additional Measure

Part III of the ETA[91] imposes an excise tax on certain goods manufactured or imported into Canada that are listed in Schedule I to the ETA, such as automobiles, air conditioners for vehicles, gasoline and diesel fuel. Section 68.19 of the ETA provides a 100% tax rebate for the tax paid under Part III in respect of goods purchased or imported by a province, paid either to the province itself or to the importer, manufacturer or other third party used by the province to purchase or import the goods.

Clause 129(1) amends section 68.19(1) of the ETA to update the language to reflect the coronation of King Charles III and to change the format of the provision.

Clause 129(1) also adds sections 68.19(1.1), 68.19(1.2), 68.19(1.3) to the ETA to:

- clarify that an application for the rebate must be made within two years after the province purchased or imported those goods;
- indicate that the rebate will automatically be paid to the province unless a joint election is made that allows the third party to apply for and be paid the rebate; and
- allow only one election with respect to a particular purchase or importation of goods.

Clause 129(1) also amends section 68.19(2) of the ETA to indicate that the election does not apply with respect to goods purchased or imported by a province at a time when a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements Act*[92] is in force with respect to the province.

Lastly, clause 129(1) adds section 68.19(3) to the ETA to clarify that if an application for a rebate is made under new section 68.19(1), then section 68.2(1) of the ETA, which provides a rebate under Part III for goods that are subsequently resold, does not apply with respect to those goods.

Clause 129 applies in respect of any goods purchased or imported after 2021.

2.4 PART 4: IMPLEMENTATION OF CERTAIN EXCISE MEASURES

2.4.1 Amendments to the Excise Duty Framework for Vaping Products

2.4.1.1 Import by a Vaping Product Licensee of Packaged Vaping Products for Stamping by that Licensee

In general, before the amendments in Bill C-59, "[e]very person that intend[ed] to import packaged vaping products to be released … for entry into the duty-paid market [had to] apply to … obtain vaping excise stamps."[93] As such, a vaping product licence was not required unless the person was also manufacturing vaping products. In addition, "[p]ackaged vaping products [had to] be stamped with a vaping excise stamp prior to importation into Canada."[94]

Clause 145(1) amends section 14(1)(f) of the *Excise Act, 2001*[95] to allow the Minister to issue to a person, on application, a vaping product licence authorizing the licensee to both manufacture vaping products and import packaged vaping products for stamping by the licensee (packaged vaping products). Pursuant to clause 145(2), this amendment comes into force or is deemed to have come into force on 1 January 2024. Clause 145(3) clarifies that a vaping product licence issued to

a person before the amendment comes into force will automatically authorize the person to import packaged vaping products as of 1 January 2024.

This amendment results in a number of consequential amendments to other provisions of the *Excise Act, 2001* on the labelling and stamping of vaping products, which are briefly described below.

Clauses 146(1) and 146(2) amend section 158.46 of the *Excise Act, 2001* and its structure. This section outlines the conditions under which a vaping product licensee that manufactures a vaping product can enter the product in the duty-paid market. First, these conditions are expanded to vaping product licensees that import packaged vaping products (with the necessary adjustments). Second, vaping product licensees can henceforth package vaping products that they manufacture or release under the *Customs Act*[96] (release) packaged vaping products, as the case may be, without immediately stamping them, provided that a maximum time frame is respected (the time frame). Pursuant to clauses 146(3) and 146(4), these amendments apply to vaping products manufactured in Canada that are packaged, or to products that are imported to Canada or released, as the case may be, after 2023.

Clause 147(1) is a consequential amendment to section 158.47(2) of the *Excise Act, 2001* to exclude packaged vaping products from the packaging and stamping requirements applicable to imported packaged vaping products. Pursuant to clause 147(2), this amendment applies in respect of vaping products that are imported into Canada or released after 2023.

Clauses 162(1) and 164(1) make consequential amendments to the preambles of sections 3.6 and 3.8 of the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* (SMTCVPR),[97] which refer to section 158.46 of the *Excise Act, 2001*. Pursuant to clauses 162(3) and 164(2), these amendments come into force or are deemed to have come into force on 1 January 2024.

Clause 148(2) amends section 158.49 of the *Excise Act, 2001* and its structure. This section requires vaping product licensees to store all unstamped vaping products manufactured in Canada in an excise warehouse. In addition to incorporating the time frame, this requirement is also extended to licensees that import packaged vaping products but do not stamp them within the time frame. Pursuant to clause 148(4), these amendments apply in respect of vaping products manufactured in Canada that are packaged, or imported into Canada, or released, as the case may be, after 2023.

Clauses 148(1) and 148(2) add two exceptions to this obligation, respectively:

- for vaping products that are "vaping product drugs";[98] and

- when there are prescribed circumstances.

Pursuant to clause 148(3), the first exception is deemed to have come into force on 1 October 2022, while the second exception applies in respect of vaping products manufactured in Canada that are packaged, or are imported into Canada, or released, as the case may be, after 2023, pursuant to clause 148(4).

Clause 150(1) makes a consequential amendment to section 158.51(3) of the *Excise Act, 2001* to exclude packaged vaping products from the requirement to place unstamped imported vaping products in a “sufferance warehouse.”[99] Pursuant to clause 150(2), this amendment applies in respect of vaping products that are imported into Canada or released after 2023.

Clause 151(1) adds new section 158.511 to the *Excise Act, 2001* to provide that packaged vaping products must be delivered to the premises of the vaping product licensee for stamping immediately after they are released. Pursuant to clause 151(2), these amendments apply in respect of vaping products that are imported into Canada or released after 2023.

Furthermore, clause 149(1) adds new section 158.5(1.1) to the *Excise Act, 2001* to prohibit the export or delivery to an “accredited representative”[100] of unstamped containers of vaping products that do not have the required vaping product markings and other prescribed information, unless it is in prescribed circumstances. Pursuant to clause 149(2), this amendment applies in respect of vaping products manufactured in Canada that are packaged, or are imported into Canada or released, as the case may be, after 2023.

Clause 167(1) makes a consequential amendment to section 8(1) of the SMTCVPR on required vaping product markings, adding a reference to new section 158.5(1.1) of the *Excise Act, 2001*. Pursuant to clause 167(2), this amendment comes into force or is deemed to have come into force on 1 January 2024.

Clauses 152(1) and 153(1) amend sections 158.57 and 158.58 of the *Excise Act, 2001*, respectively, to provide that the duty on vaping products and the additional vaping duty[101] are payable by the vaping product licensee at the time they are stamped in the case of vaping products manufactured in Canada or packaged vaping products. Pursuant to clauses 152(2) and 153(2), these amendments apply in respect of vaping products manufactured in Canada that are packaged, or imported into Canada, or released, as the case may be, after 2023.

Clause 154(1) makes a consequential amendment to section 158.59 of the *Excise Act, 2001* so that the *Customs Act* applies only to excise duties on imported vaping products and not to excise duties on packaged vaping products. Pursuant to

clause 154(2), this amendment comes into force or is deemed to have come into force on 1 January 2024.

2.4.1.2 Marking of Vaping Products

Clauses 162(2) and 163(1) amend sections 3.6 and 3.7 of the SMTCVPR, respectively, which provide the prescribed information that must be included on the packaging of a manufactured vaping product or a packaged vaping product imported by a licensee, or an imported vaping product, as the case may be. Now the packaging must indicate the volume in millilitres or the weight in grams of the vaping substance in each vaping device or immediate container in the package, as well as the number of vaping devices and immediate containers in the package. In addition, it is no longer necessary to include the name and address of the manufacturer that packaged the imported vaping products. Pursuant to clauses 162(4) and 163(2), these changes come into force on the day that is six months after the first day of the month in which the bill receives Royal Assent.

Clause 165(1) makes a technical amendment to section 4(4)(b) of the SMTCVPR. Pursuant to clause 165(2), this amendment is deemed to have come into force on 23 June 2022.

2.4.1.3 Offences and Administrative Penalties

Clause 156 adds new section 233.3 to the *Excise Act, 2001* to provide for a penalty for the contravention of the conditions for the packaging and stamping of imported vaping products as outlined in section 158.47 of the *Excise Act, 2001*. This penalty is equal to double the applicable vaping product duties, which is multiplied by two if the contravention occurred in a specified vaping province.

Clause 157 amends section 234.2 of the *Excise Act, 2001*, which provides for a penalty in certain cases, by removing the references to specific actions, maintaining only the references to the relevant sections.

Clause 158 adds new section 249.1 to the *Excise Act, 2001* to provide for a penalty in case new section 158.511 is contravened. This penalty is equal to half of the applicable vaping product duties, which is multiplied by two if the contravention occurred in a specified vaping province.

Clause 159 amends the references to certain sections of the *Excise Act, 2001* appearing before the heading for Schedule 8 in order to include the references to the new sections that create penalties.

Clause 160 amends section 3(2)(b) of the *Returning Persons Exemption Regulations*[102] in order to exclude vaping products (other than a "vaping product drug")[103] imported by a person who has not attained 18 years of age from the free rates of customs duty given to certain goods.

All these amendments come into force on the day on which the bill receives Royal Assent.

2.4.2 Amendments to the Excise Duty Framework for Cannabis Products and Other Amendments

2.4.2.1 Payment of Excise Duties

Clauses 155(1) and 155(2) amend section 159.2 of the *Excise Act, 2001* in order to remove the condition that the threshold amount of a cannabis licensee for a calendar quarter cannot exceed $1 million "as a condition for the Minister of National Revenue authorizing a cannabis licensee to have reporting periods that are calendar quarters."[104] Clause 155(3) makes consequential amendments to sections 159.2(6) and 159.2(7) of the *Excise Act, 2001*, which outline the consequences of the revocation of such an authorization, and it combines them. Pursuant to clause 155(4), these amendments are deemed to have come into force on 1 April 2023.

Furthermore, clause 161(2) amends section 5(1) of the *Regulations Respecting Excise Licences and Registrations* (RRELR)[105] "to provide a separate amount of security for a cannabis licensee, depending on the licensee's reporting period."[106] Therefore, in a case where an authorization has been granted by the Minister of National Revenue under section 159.2 of the *Excise Act, 2001*, the amount of security must be sufficient to ensure payment of one third of the amount of duty. In a case where no such authorization has been granted, the amount of security must be sufficient to ensure payment of the total amount of duty. However, in all cases, the amount of security must not exceed $5 million per licence. Pursuant to clause 161(3), this amendment is deemed to have come into force on 1 April 2023.

2.4.2.2 Other

Clause 161(1) makes a grammatical change to the preamble of the English version of section 5(1) of the RRELR. Pursuant to clause 161(3), this amendment is deemed to have come into force on 1 April 2023.

Clause 166 fixes a numbering error in the provision of the SMTCVPR on service agreements in respect of cannabis products. This amendment comes into force on the day on which the bill receives royal assent.

2.5 PART 5: IMPLEMENTATION OF VARIOUS MEASURES

2.5.1 Division 1 – Amendments to the *Budget Implementation Act, 2018, No. 1*, the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act* Regarding Certain Provisions Governing Federal Financial Institutions

2.5.1.1 Division 1, Subdivision A

In 2018, the *Budget Implementation Act, 2018, No. 1*[107] expanded the types of financial technology–related activities in which federal financial institutions can participate to facilitate investments by federal financial institutions in fintech firms and improve their ability to leverage technology and other commercial activities in-house. This section further clarifies the scope of these activities and makes other amendments.

Clauses 168, 171, 176 and 179 of Bill C-59 add the word "information" to certain paragraphs to allow financial institutions to be involved in and deal with information technology–related activities – subject to the terms, conditions and restrictions set out in regulations – as agents for any persons involved in the provision of financial services.

Clauses 169 and 170, 172 to 175, 177 and 178 and 180 to 185 remove discrepancies between the English and French versions of the Act.

2.5.1.2 Division 1, Subdivision B

The *Trust and Loan Companies Act*,[108] the *Bank Act*[109] and the *Insurance Companies Act*[110] set out the timing and circumstances of biannual meetings required of federal financial institutions and each state that the company may apply to the court for an order extending the time for calling an in-person annual meeting, if required.

Clauses 186 to 195 amend the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act* to permit federal financial institutions to hold shareholder meetings virtually, as determined by the directors and shareholders according to the by-laws, without having to obtain a court order. The Acts are also amended to allow for electronic voting, in accordance with any regulations. Finally, the Acts are amended to remove discrepancies between the English and French versions of the Acts.

Clause 196 specifies that these changes will come into force on a day to be fixed by order of the Governor in Council.

2.5.2 Division 2 – Amendments to the *Canada Labour Code* Respecting a New Leave of Absence for Pregnancy Loss and Bereavement Leave

Division 2 of Part 5 of Bill C-59 amends the *Canada Labour Code* (CLC)[111] to, among other things, establish a leave of absence in the event of a pregnancy loss and modify certain provisions related to bereavement leave.

In a 2019 mandate letter, the Prime Minister of Canada instructed the Minister of Labour to "[a]mend the *Canada Labour Code* to provide up to five new paid leave days for federally regulated employees who experience a miscarriage or still birth."[112]

In Budget 2023, the government announced that it would amend the CLC "to create a new stand-alone leave for workers in federally regulated sectors who experience a pregnancy loss."[113] It added that this new leave would also apply to parents planning to have a child through adoption or surrogacy. The government reiterated this proposal in its *2023 Fall Economic Statement*.[114]

2.5.2.1 Legislative Framework under the *Canada Labour Code*

Under Part III of the CLC, employees of federally regulated businesses and industries[115] are entitled to various unpaid and paid leaves of absence. Among these leaves are maternity and bereavement leave.

Section 206 of the CLC allows a pregnant employee to take an unpaid maternity leave of up to 17 weeks. It may be taken starting 13 weeks prior to the estimated date of confinement and must end no later than 17 weeks following the actual date of confinement.[116]

Under section 210 of the CLC, an employee who experiences the death of an immediate family member (including a child of the employee, or a child of the employee's spouse or common-law partner[117]) is entitled to take up to 10 days of bereavement leave. The first three days of this leave are paid if the employee has completed three consecutive months of continuous employment with the employer.

2.5.2.2 Leave Related to Pregnancy Loss

Clause 198 of the bill amends the CLC to add section 206.51, establishing a leave of absence related to pregnancy loss. Under new section 206.51(2), an employee is eligible for such a leave if their pregnancy, or that of their spouse or common-law partner, does not result in a live birth. Employees are also eligible if they had intended to be the legal parent of a child who would have been born had another person's pregnancy resulted in a live birth. In the case of a pregnancy involving more than one foetus, if the pregnancy ends without a live birth in respect of at least one foetus,

it is deemed, according to new section 206.51(4)(b), to be a pregnancy that does not result in a live birth.

"Common-law partner" is defined, at new section 206.51(1) of the CLC, as "a person who is cohabiting with the [relevant] individual in a conjugal relationship, having so cohabited for a period of at least one year."

New section 206.51(3) of the CLC provides that eligible employees are entitled to up to eight weeks of leave for pregnancy loss, if the pregnancy resulted in a stillbirth, or three days, in any other case. "Stillbirth" is defined, at new section 206.51(1), as

> the complete expulsion or extraction of a foetus from a person on or after the 20th week of pregnancy or after the foetus has attained at least 500 g, without any breathing, beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle from the foetus after the expulsion or extraction.

New section 206.51(4)(a) of the CLC specifies that, in the case of a pregnancy with more than one foetus, the employee may take only one pregnancy-loss leave in respect of that pregnancy.

According to new section 206.51(5) of the CLC, the period during which the employee may take the leave starts the day on which the pregnancy does not result in a live birth and ends 26 weeks after that day. Under new section 206.51(7), the leave may be taken in one or two periods, and the employer may require that each period be no shorter than one day.

New section 206.51(6) of the CLC provides that if the employee has completed three consecutive months of continuous employment with the employer, the employee is entitled to the first three days of pregnancy-loss leave with pay.

Pursuant to new section 206.51(8), of the CLC the Governor in Council may make regulations defining any expression for the purposes of section 206.51.

Clauses 197, 199(1), 199(2), 200(1) and 200(2) amend sections 187.1, 207.3(3), 207.3(5), 209.4(a) and 209.4(g) of the CLC, respectively, to reflect the addition of the pregnancy-loss leave to provisions that set out various requirements and consequences related to certain leaves provided for under the CLC.

2.5.2.3 Bereavement Leave

An Act to amend the Criminal Code and the Canada Labour Code (ACCCLC)[118] was enacted on 17 December 2021. Section 6.1 of the ACCCLC amends section 210(1) of

the CLC, with respect to bereavement leave, to allow for up to eight weeks of leave in the event of

- the death of a child of the employee or of the employee's spouse or common-law partner; or
- a stillbirth experienced by the employee or the employee's spouse or common-law partner, or where the employee would have been a parent.[119]

Section 8(3) of the ACCCLC provides that section 6.1 will come into force on a day to be fixed by order of the Governor in Council.

Clause 204(1) amends section 6.1 of the ACCCLC by replacing the section 210(1) of the CLC that it enacts with a differently worded section 210(1), one that no longer refers to the entitlement to a bereavement-loss leave of up to eight weeks in the event of a stillbirth. Clause 204(2) further amends section 6.1 of the ACCCLC to remove associated provisions concerning stillbirth.

Clause 205 replaces section 8(3) of the ACCCLC to provide that section 6.1 comes into force on the day on which clause 198 of this bill comes into force.

Clause 201(1) amends section 210(1.3) of the CLC to add various requirements and consequences relating to the notice that an employee who takes a bereavement leave must submit to the employer. According to clause 206, these requirements and consequences apply only with respect to bereavement leaves that begin on or after the day on which clause 201(1) comes into force.

Clause 201(2) repeals section 210(3) of the CLC, which sets out the authority of the Governor in Council to make certain regulations.

Clause 202 adds provisions to the CLC specifying certain rights granted to employees who take bereavement leave, namely

- to be informed during their absence of employment opportunities and changes in wages and benefits (new sections 210.1 and 210.2(4));
- to be reinstated in the same position or, if this cannot be done for a valid reason, in a comparable position (new section 210.2);
- if, during their absence, there was a reorganization affecting wages and benefits, to receive the wages and benefits to which they would have been entitled had they been working at the time of the reorganization (new section 210.2(3)); and
- to accumulate benefits and seniority during the leave (new section 210.3(1)).

Regarding benefits, clause 202 adds provisions to the CLC addressing the payment of contributions during the leave (new sections 210.3(2) to 210.3(4)); deeming the employment to have been continuous, notwithstanding the leave, for the purposes of calculating certain benefits (new section 210.3(5)); and establishing the effect of the leave on entitlement to benefits (new section 210.4).

Clause 202 adds new section 210.5 to the CLC, prohibiting employers from:

- taking negative action (such as dismissing the employee) because the employee has applied for, intends to take or has taken bereavement leave; or
- taking into account the fact that the employee has applied for, intends to take or has taken bereavement leave in any decision to promote or train the employee.

Under section 246.1(1) of the CLC, employees may make a complaint to the Canada Industrial Relations Board if they believe that their employer has taken any of the reprisals listed under this section against them. Clause 203 amends this section to add to that list the acts prohibited by new section 210.5.

Finally, clause 202 also adds section 210.6 to the CLC authorizing the Governor in Council to make certain regulations.

2.5.2.4 Coordinating Amendments

Clause 207 provides for two consequences if section 6.1 of the ACCCLC comes into force before clause 204 of this bill.

First, under clause 207(2)(a), clauses 204 and 205 are deemed never to have come into force and are repealed.

Second, under clauses 207(2)(b) and 207(2)(c), the amendments to the ACCCLC contemplated by clauses 204 and 205 of this bill are made instead to section 210(1) of the CLC. That is to say, section 210(1) of the CLC is amended such that it no longer refers to the entitlement to a bereavement-loss leave of up to eight weeks in the event of a stillbirth.

Clause 207(3) states that if section 6.1 of the ACCCLC and clause 204 of this bill come into force on the same day, clause 204 is deemed to have come into force before section 6.1.

2.5.2.5 Coming into Force

Finally, clause 208 provides that clauses 197 to 203 of the bill come into force on the 540th day after the day on which that Act receives Royal Assent or on an earlier day to be fixed by order of the Governor in Council.

2.5.3 Division 3 – Enactment of the Canada Water Agency Act

Division 3 of Part 5 of Bill C-59 enacts the Canada Water Agency Act and establishes the Canada Water Agency as a standalone entity reporting to the Minister of the Environment (i.e., the Minister of Environment and Climate Change).

Currently within the federal government, over 20 departments and agencies have responsibilities for water management, as per their respective legislative mandates.[120] Water management is an area of shared jurisdiction, and the *Canada Water Act*[121] provides the Minister of the Environment with a framework for collaboration with provincial/territorial governments on water management issues. The *Department of the Environment Act*[122] designates Environment and Climate Change Canada as the lead federal department on all matters relating to water that are not assigned to any other department.

The Government of Canada identified a need for a "permanent coordinating mechanism with a whole-of-federal government view on freshwater" that could coordinate with others to effectively address freshwater challenges.[123] In his 2019 mandate letter from the Prime Minister's Office, the Minister of the Environment was directed to create the Canada Water Agency "to work together with the provinces, territories, Indigenous communities, local authorities, scientists and others to find the best ways to keep our water safe, clean and well-managed."[124] Funding for the development of the Canada Water Agency was provided through budgets 2021, 2022, and 2023.[125] Since 2022, Environment and Climate Change Canada has been "establishing structures within the department to support the function of a Canada Water Agency"[126] in anticipation of legislation to create it.

Clause 209 of Bill C-59 lays out the preamble to the Canada Water Agency Act, including its guiding principles. It underscores the importance of working collaboratively to address threats to the health and sustainable management of freshwater ecosystems, of relying on scientific knowledge, and of fostering reconciliation with Indigenous peoples while respecting their rights, among other things. Section 3 establishes the Canada Water Agency "for the purpose of assisting the Minister in exercising or performing the Minister's powers, duties and functions in relation to freshwater under any Act of Parliament, including the *Department of the Environment Act*[127] and the *Canada Water Act*.[128]"

Sections 4 and 5 provide that the Minister of the Environment shall preside over the Agency and that the Governor in Council may designate any place in Canada as its head office. Section 6 allows the Minister to delegate to an officer or employee of the Agency any of the Minister's powers, duties, or functions under any Act of Parliament in relation to freshwater, with the exception of the power to make regulations. Sections 7 to 9 enable the Governor in Council to appoint a President to be the chief executive officer of the Agency, as is already the case with the other agencies that report to the Minister of the Environment: the Parks Canada Agency and the Impact Assessment Agency of Canada.[129]

Section 13 enables the Minister of the Environment to establish advisory committees in relation to freshwater, and to provide for those committees' membership, duties, functions and operation. Members may be remunerated and reimbursed of expenses incurred in the performance of their duties and functions, in accordance with Treasury Board directives.

Sections 14 to 18 contain provisions to transition from the "former agency" (the portion of Environment and Climate Change Canada currently acting as the Canada Water Agency de facto) to the "new agency" established through section 3. Funds appropriated by an Act of Parliament for the expenditures of the former agency (during the fiscal year in which the transitional provision come into force) are deemed to be appropriated for the expenditures of the new agency. Powers, duties, and functions exercisable by officers or employees of the former agency are exercisable by the appropriate officer or employee of the new agency. Employees of the former agency are to occupy their same positions in the new agency.

Consequential amendments add the Canada Water Agency to the *Access to Information Act*,[130] *Financial Administration Act*,[131] *Privacy Act*,[132] and *Public Service Superannuation Act*.[133] The Canada Water Agency Act comes into force on a day or days to be fixed by order of the Governor in Council.

2.5.4 Division 4 – Amendments to the *Tobacco and Vaping Products Act*

The *Tobacco and Vaping Products Act* (TVPA) regulates the manufacture, sale, labelling and promotion of tobacco and vaping products.[134] Bill C-59 amends the TVPA to enable the establishment of fees or charges and related administration and enforcement measures to implement a tobacco cost recovery framework. Developing such a framework was announced in Budget 2023 and the *2023 Fall Economic Statement*.[135]

Clause 217 of the bill adds new section 42.1 to the TVPA authorizing the Minister of Health to make regulations respecting fees or charges to be paid by manufacturers

to recover the costs incurred by the federal Crown in carrying out the purpose of the TVPA.[136] These regulations may, among other things:

- establish the fees or charges or the manner of their calculation;
- require manufacturers to submit to the Minister information for the calculation of the fees or charges;
- prescribe the time and manner of payment of the fees or charges; and
- determine the information that the Minister must make available to the public.

New section 42.1(2) stipulates that, before making such regulations, the Minister of Health must consult with any persons or entities that the Minister considers to be interested in the matter.

New section 42.11 authorizes the Minister of Health to remit all or part of any fee or charge provided for under Part V of the TVPA. Such remissions may be conditional; if the condition is not fulfilled, the remission is cancelled.

New section 42.12 requires manufacturers to keep certain documentation in the prescribed manner and for the prescribed time, and to submit it to the Minister of Health upon request.

New section 42.13 requires the Minister of Health to make certain information on the fees and charges available to the public, within the prescribed time.

According to new section 42.14(1), any fees or charges payable under Part V of the TVPA constitute a debt due to the federal Crown that may be recovered in a court. New section 42.14(2) stipulates that proceedings for recovery of such a debt cannot be started later than five years after the day on which the debt became payable.

New section 42.15 pertains to the certification of a default of payment and the registration of that certificate in the Federal Court.

New section 42.16 allows the Minister of Health to prohibit the sale of a tobacco or vaping product by a manufacturer who fails to pay the applicable fees or charges or submit the required information.

Clause 218 amends the TVPA by adding section 46.1, which establishes that every manufacturer who contravenes the documentation provisions under section 42.12(1) or 42.12(2) or a sale prohibition order made under section 42.16(1) is guilty of an offence and liable to a fine of up to $50,000.

2.5.5 Division 5 – Amendments to the *Canadian Payments Act* Regarding the Entitlement of Additional Persons to be Members of the Canadian Payments Association and the Composition of the Association's Stakeholder Advisory Council

In the *2023 Fall Economic Statement*, the federal government proposes to amend the *Canadian Payments Act* (CPA)[137] to expand the eligibility for membership in the Canadian Payments Association (the Association), clarify the composition of the Stakeholder Advisory Council and provide for a statutory review within four years.[138]

Clause 220 of Bill C-59 amends section 4(2) of the CPA to add local credit unions, clearing houses and payment service providers to the list of entities that are eligible to become members of the Association.

Clauses 225(1) and 225(2) amend sections 21.2(1) and 21.2(5) of the CPA to stipulate that the Stakeholder Advisory Council shall consist of individuals who are independent of the Association and of its members and shall be broadly representative of users and payment service providers that are not members of the Association.

Section 49 of the CPA requires the Minister of Finance to conduct a review of the CPA three years after this section coming into effect in 2014 and table a report in Parliament once the review is completed.[139] Clause 229 of the bill replaces section 49 of the CPA with new section 50 that contains similar requirements. Specifically, the new section 50 requires that on the fourth anniversary of this section coming into force, the Minister of Finance shall conduct a review of the CPA and table a report in Parliament after the review is completed.

Between clauses 219 and 228, Division 5 of the bill contains multiple similar technical amendments, principally related to the term "person." Clause 219(2) amends section 2(1) of the CPA to state that "person" includes an entity, and that "entity" includes a corporation, trust, partnership, fund, agency and unincorporated association or organization. As a result of this interpretation, consequential amendments are made to several sections of the CPA by amending the term "person" so that a natural person is referred to as an "individual" in the English version where such clarification is needed. In the French version, corresponding changes are done by amending "personne" to "personne physique."

Clause 230 provides that the amendments made by clauses 219 to 228 come into force on a day or days to be fixed by order of the Governor in Council.

2.5.6 Division 6 – Amendments to the *Competition Act* and the *Competition Tribunal Act*

The *2023 Fall Economic Statement*[140] contains measures to modernize Canada's competition framework by proposing amendments to the *Competition Act*[141] and the *Competition Tribunal Act*.[142]

2.5.6.1 Amendments to the *Competition Act*

Division 6 introduces amendments to the *Competition Act* that aim to:

- strengthen the enforcement framework against abuses of dominance by big companies;
- reform the merger review process;
- enhance protections for consumers, workers and the environment;
- empower the Commissioner of Competition to review an expanded selection of anti-competitive conduct;
- broaden private parties' access to bring challenges before the Competition Tribunal over restrictive trade practices and obtain financial compensation; and
- introduce a "right to repair."[143]

2.5.6.1.1 Deceptive Marketing Enforcement

The practice of drip pricing[144] constitutes a reviewable matter and is explicitly prohibited, both criminally and civilly, under sections 52(1.3) and 74.01(1.1) of the *Competition Act*. Clauses 234(1) and 237 respectively add new sections 52.01(4.1) and 74.011(3.1) to specify that drip pricing is unlawful unless additional charges or fees are imposed by federal or provincial governments, such as sales tax. Clause 237 also creates section 74.011(3.2) to further specify that proof of deception is not required in determining whether a person who made a misrepresentation – whether in the sender information or subject matter information of an electronic message, an electronic message or a locator – engaged in drip pricing.

The Competition Bureau enforces against false or misleading representations of a product's benefits towards the environment that are not based on adequate and proper testing – a practice known as greenwashing – under sections 52 and 74.01(1)(c) of the *Competition Act*.[145] Clause 236(1) adds new section 74.01(1)(b.1) to explicitly prohibit this conduct.

2.5.6.1.2 Application for Leave and Remedies

Currently, section 103.1 of the *Competition Act* allows private parties to seek orders from the Competition Tribunal under sections 75 (refusal to deal), 76 (price maintenance), 77 (exclusive dealing) and 79 (abuse of dominant position). Under sections 75, 77 and 79, the Tribunal may grant leave to an applicant "if it has reason to believe that the applicant is directly and substantially affected" with respect to its business.

Clause 254 amends section 103.1 to allow parties to bring actions before the Tribunal for the first time under sections 74.01 (deceptive marketing practices) and 90.1 (agreements or arrangements that prevent or lessen competition substantially) of the Act. A party may obtain leave to make an application under section 74.1 if it meets the public interest standard. Regarding sections 75, 77, 79 and 90.1, the standard for leave is modified so that the Tribunal may grant leave to an applicant if the whole or part of their business is directly and substantially affected, or, if the Tribunal is satisfied that it is in the public interest to do so.

Moreover, clauses 239(4) and 248(7) respectively create new sections 74.1(10) and 90.1(10.3) to prevent the Tribunal from drawing inferences from the Commissioner's action or inaction towards a matter raised in an application under those sections.

2.5.6.1.3 Restrictive Trade Practices

Prevailing copyright law restricts the ability of consumers and independent repair businesses to repair consumer electronics.[146] According to the Government of Canada, amendments in Bill C-59 will "prevent manufacturers from refusing to provide the means of repair of devices and products in an anti-competitive manner."[147] To that end, clause 244(1) amends section 75(1) of the *Competition Act* to allow the Tribunal to compel suppliers of a product to provide a means of diagnosis or repair in prescribed cases. Clause 244(3) defines "means of diagnosis or repair" under new section 75(3) to include "diagnostic and repair information, technical updates, diagnostic software or tools and any related documentation and service parts."

2.5.6.1.4 Disgorgement Orders

If a party is found in violation of section 75, 76, 77, 79 or 90.1 of the *Competition Act*, clauses 244(2), 245(2), 246, 247(2) and 248(7) allow the Tribunal to make additional orders against the party to pay "an amount not exceeding the value of the benefit derived from the conduct," according to the terms it considers appropriate.

2.5.6.1.5 Consent Agreements

Consent agreements allow for parties to a merger to implement remedial measures deemed appropriate by the Competition Commissioner to address the likelihood of the merger's anti-competitive effects.[148] Agreements that are registered with the Tribunal have the force and effect of an order made under Part VII.1 or VIII of the *Competition Act*. Parties that fail to comply with the terms of a registered consent agreement are guilty of an offence under section 66 of the Act.

Clauses 242 and 258 introduce new penalties of up to $10,000 for each day for parties in contravention of a consent agreement registered under sections 74.12(3), 74.131(4), 105(3) or 106.1(4) of the Act.

2.5.6.1.6 Competitor Collaborations

Private right of action does not currently exist under section 90.1 of the *Competition Act*. Remedies are injunctive in nature and include prohibition orders or orders on consent of the parties. Clause 248(3) substantively amends the provision to introduce new remedies. These include new section 90.1(1.1), which allows the Competition Tribunal to order the divestiture of assets or shares that are reasonable and necessary to overcome the effects of the agreement or arrangement, and new section 90.1(1.3), which allows the Tribunal to order the payment of administrative monetary penalties. Penalty amounts do not exceed the greater of $10,000,000 (if it is a first order) or $15,000,000 (if it is a subsequent order) and triple the value of the benefit derived from the anti-competitive practice, or, if that amount cannot be reasonably determined, 3% of the person's annual worldwide gross revenues.

In addition, clause 248(5) extends the limitation period for the application of this section beyond existing or proposed conduct to conduct that has occurred within the past three years (new section 90.1(9.1)).

2.5.6.1.7 Mergers

Bill C-59 increases the scope of notifiable transactions that are subject to review. First, clause 249(1) amends the *Competition Act* to include the consideration of labour issues in substantive merger reviews.

Notably, clause 249(2) repeals section 92(2), which prohibits the Competition Tribunal from determining that a merger is likely to prevent or lessen competition substantially solely based on evidence of concentration or market share. Accordingly, clause 250(2) adds new section 93(g.4) so that the Tribunal must consider "any effect from the change in concentration or market share that the merger or proposed merger has brought about or is likely to bring about" in its evaluations. Under new section 93(g.5) the Tribunal must also consider the likelihood of express or tacit

coordination within a market. Clause 268 provides that section 92(2) continues to apply to proposed transactions that were subject to notification under section 114 of the *Competition Act* or to a merger that is substantially completed before the day on which the section is repealed.

Lastly, clause 251 extends the limitation period under section 97 during which the Competition Commissioner may challenge mergers that were not formally notified from one year to three years.

2.5.6.1.8 Reprisal Action

Clause 260 adds new sections 107.1 to 107.6 to the *Competition Act*. New section 107.1 defines "reprisal action" as:

> an action taken by a person to penalize, punish, discipline, harass or disadvantage another person because of that person's communications with the Commissioner or because that person has cooperated, testified or assisted, or has expressed an intention to cooperate, testify or assist in an investigation or proceeding under [the] Act.

New section 107.2 provides that a court may make an order prohibiting a person engaging, has engaged or likely to engage in a reprisal action. Under new section 107.3, the court may also impose administrative monetary penalties against a person engaging in or has engaged in a reprisal action. The penalty amount for an individual does not exceed $750,000 for the first order and $1,000,000 for each subsequent order, whereas for a corporation, it does not exceed $10,000,000 for the first order and $15,000,000 for each subsequent order.

Furthermore, new section 107.5 lists aggravating or mitigating factors that the court should consider when determining the amount of an administrative monetary penalty. These include the frequency and duration of the conduct, the vulnerability of persons likely to be affected by the conduct and the financial position against whom the order is made.

2.5.6.1.9 Notifiable Transactions

Provisions in Part IX of the *Competition Act* require parties to notify the Competition Bureau of transactions in or from Canada that would exceed either the aggregate value or yearly gross revenue prescribed under sections 110(7) and 110(8). Clause 261(2) amends the notification threshold under section 110(3)(a)(ii) to include "sales into Canada" and to require the aggregation of assets that would be owned by the continuing entity. As a result, two foreign companies with limited assets in Canada could be subject to a pre-merger notification under the Act if the continuing entity has an operating business in Canada and sufficient sales into Canada.[149]

2.5.6.1.10 Agreements and Arrangements Related to Protecting the Environment

Clause 265 adds sections 124.3 to 124.7 to the *Competition Act* to create a new certificate regime for agreements and arrangements made "for the purpose of protecting the environment" that are not likely to prevent or lessen competition substantially in a market. While the clause also specifies under new section 124.5 that sections 45, 46, 47, 49 and 90.1 of the Act do not apply to agreements or arrangements made under such a certificate, the Competition Tribunal retains the right to rescind or vary a certificate by virtue of new section 124.7.

2.5.6.2 Amendments to the *Competition Tribunal Act*

The Competition Tribunal may award costs against the Crown during case adjudication. To ensure that legal cost awards do not prohibit a robust defence of competition,[150] clause 266 amends section 8.1(3) of the *Competition Tribunal Act* to allow the Tribunal to award costs against the Crown if it is necessary to maintain confidence in the administration of justice or if not doing so would have a substantial adverse effect on the other party's ability to carry on business. This amendment is likely in response to the Tribunal's decision in *Canada (Commissioner of Competition) v Rogers Communications Inc and Shaw Communications Inc*,[151] where it recognized that the level of costs awarded against the Commissioner could cause "a chilling effect on his willingness to bring responsible cases that are in the public interest." The amended section would only apply to proceedings commenced after its entry into force (clause 269).

2.5.6.3 Coming into Force

Certain amendments will come into effect one year after Bill C-59 receives Royal Assent, such as those that expand private parties' right of access under sections 74.01 and 90.1 of the *Competition Act*, and those that allow for disgorgement orders under sections 75, 76, 77, 79 and 90.1 of the Act.

2.5.7 Division 7 – Amendments to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* Respecting the Exclusion of Public Post-secondary Educational Institutions from their Application

The *Bankruptcy and Insolvency Act* (BIA)[152] provides a framework for addressing both consumer and commercial insolvencies. Section 2 of the BIA defines a "corporation" as:

> a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income

> trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies or loan companies.

The *Companies' Creditors Arrangement Act* (CCAA),[153] which applies only to companies with debts over $5 million, provides a framework for the restructuring of an insolvent company. Section 2 of the CCAA defines a "company" as:

> any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies.

Clauses 273 and 274 amend the definition of "corporation" in the BIA and the definition of "company" in the CCAA to exclude prescribed public post-secondary education institutions. As a result, such institutions are unable to begin proceedings under either Act.

Clause 277 states that these changes come into force two years after Royal Assent or at an earlier date fixed by an order in council. Clauses 275 and 276 provide that these changes apply only to proceedings that are commenced on or after the day clauses 273 and 274 come into force.

2.5.8 Division 8 – Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Budget Implementation Act, 2023, No. 1*, and the *Criminal Code*

2.5.8.1 Subdivision A – Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the *Budget Implementation Act, 2023, No. 1*

Established by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA),[154] the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada's financial intelligence unit. It collects financial intelligence and oversees the activity of entities subject to the PCMLTFA, referred to as "reporting entities" listed under section 5 of the PCMLTFA. FINTRAC has legislative authority to issue administrative monetary penalties to reporting entities that are in non-compliance with their obligations under the PCMLTFA and its regulations.

Clauses 278(2), 280 and 282 amend sections 2(1), 7 and 10 of the PCMLTFA, respectively, to require reporting entities to report to FINTRAC when they have

reasonable grounds to suspect that a transaction or attempted transaction is related to a “sanctions evasion offence,” which is defined as “an offence arising from the contravention of a restriction or prohibition established by an order or a regulation made under the *United Nations Act*, the *Special Economic Measures Act* or the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.”

The application of these core provisions comes into force on the 60th day after the day on which Bill C-59 receives Royal Assent. Consequential amendments are made by clauses 286, 287, 288, 289, 290, 291, 292, 293, 294 and 295 to amend aspects of sections 40, 54, 55, 55.1(3), 56, 56.1, 58, 59(1) and 60 of the PCMLTFA, respectively.

Clause 283 adds section 11.42(4)(d) to the PCMLTFA to expand the circumstances under which the Minister of Finance can issue a directive to a reporting entity to also include where a person or entity may be facilitating sanctions evasion.

Clause 284 adds new section 11.49(3)(c) – with respect to the circumstances under which the Minister of Finance can recommend to the Minister of Foreign Affairs that a limitation or a prohibition be placed on any financial transaction originating from or bound for any foreign state, foreign entity or entity – to include the risk of sanctions evasion being facilitated by or in that foreign state.

Clauses 278(3) and 279 amend sections 2(1) and 5 of the PCMLTFA to require entities that provider “acquirer” services in relation to private automated banking machine to register as money services businesses. “Acquirer” is defined as “an entity that connects a private automated banking machine to a payment card network, as defined in section 3 of the *Payment Card Networks Act*,[155] to facilitate transactions.” “Private automated banking machine” is defined as “any automated banking machine that is not owned or operated by a bank as defined in section 2 of the *Bank Act*,[156] by an association regulated by the *Cooperative Credit Associations Act*[157] or by a cooperative credit society, a savings and credit union or a caisse populaire regulated by a provincial Act.” These provisions come into force on a day to be fixed by order of the Governor in Council.

Clause 281 amends section 9.5(a) of the PCMLTFA to require reporting entities to keep identifying information of a person or entity that requested or holds funds being withdrawn in the course of a prescribed electronic funds transfer.

Clause 285 adds new Part 2.1 to the PCMLTFA to require – except under prescribed conditions – that importers and/or exporters of goods under section 12 or 95 of the *Customs Act*[158] declare to an officer, in accordance with the regulations, whether the goods are proceeds of crime or relate to money laundering, to the financing of terrorist activities or to sanctions evasion; and that the goods are actually being imported or exported. Importers and/or exporters will also be required to keep

prescribed records and answer a customs officer's questions accurately. A customs officer will be able to retain associated goods for a prescribed period, conduct searches and seizures, and must record in writing reasons for their decisions related to these goods. New Part 2.1 also contains the provisions related to the review and appeal process for goods seized under this part, the ability of the Governor in Council to make regulations establishing an administrative monetary penalties scheme for the purpose of promoting compliance with this Part, the use and disclosure of information as well as certain administrative operations. These provisions come into force on a day to be fixed by order of the Governor in Council. Consequential amendments are made by clauses 296 and 297 to sections 73(1)(k) and 74(1) of the PCMLTFA, respectively.

Clause 288(4) amends section 55(3) of the PCMLTFA to permit FINTRAC to disclose designated information to the Department of the Environment and the Department of Fisheries and Oceans, subject to certain conditions.

Clauses 299 and 300 make coordinating amendments to sections 181 and 204(2) of the *Budget Implementation Act, 2023, No. 1*,[159] respectively. Consequential amendments are also made by clauses 301, 302 and 303 to the *Customs Act*, *Seized Property Management Act*[160] and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*,[161] respectively.

2.5.8.2 Subdivision B – Amendments to the *Criminal Code* and Consequential Amendments to Other Acts

The amendments in this subdivision of Bill C-59 strengthen Canada's Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) regime.[162]

2.5.8.2.1 Offence of Laundering Proceeds of Crime

Section 462.31 of the *Criminal Code* (the Code) makes laundering proceeds of crime an offence.[163] To obtain a conviction, the prosecution must establish the following four elements beyond a reasonable doubt:

- the accused carried out one of the activities listed in section 462.31(1) of the Code in respect of property or proceeds of property;
- the property or proceeds were obtained by crime (a designated offence within the meaning of section 462.3(1) of the Code);
- the accused knew, believed or was reckless as to whether the property or proceeds had been obtained by crime;[164] and
- the accused intended to conceal or convert the property or proceeds.[165]

The court has found that the accused does not need to know the details of the designated offence from which the proceeds of crime derived (e.g., the type of drug that was trafficked). However, a general belief that the property originated in criminal activity is insufficient for a conviction.[166]

Clause 308 of the bill lessens the burden of proof for the offence of laundering proceeds of crime. First, the bill specifies that the prosecution need not prove that "the accused knew, believed they knew or was reckless as to the specific nature of the designated offence" (new section 462.32(1.1) of the Code). Second, the bill adds that the court may infer that the accused had the necessary mental element if it is satisfied that "the manner in which the accused dealt with the property or its proceeds is markedly unusual or the accused's dealings are inconsistent with lawful activities typical of the sector in which they take place, including business activities" (new section 462.32(1.2) of the Code). An exception is provided for an accused who is also charged with the designated offence within the meaning of section 462.3(1) of the Code that was the source of the property obtained by crime (new section 462.32(1.3) of the Code). In other words, if the accused is also charged with the designated offence, the element of knowledge of that offence must exist for the accused to be convicted. However, the bill does not specify whether new sections 462.32(1.1) and 462.32(1.2) apply if the prosecution of the designated offence in question is discontinued or stayed.

This provision of the bill is intended to address the difficulties of investigating and prosecuting third-party money launderers, who are not necessarily involved in committing the original offence (e.g., professionals who conceal funds in exchange for a commission).[167] It also follows on the findings of the 2022 report of the Cullen Commission in British Columbia.[168]

2.5.8.2.2 Changes to Special Warrants and Restraint Orders

In the case of special search warrants and restraint orders, the Code requires a judge, before making a decision, to have the Attorney General give any undertakings that the judge considers appropriate to ensure the payment of damages or costs that issuing the warrant or order in question may entail.

Clauses 307, 309, 310 and 311 of the bill delete this requirement by amending sections 83.13(11), 462.32(6), 462.321(7) and 462.33(7) of the Code, respectively. Clauses 314 and 316 make consequential amendments to sections 13(3)(b) and 16 of the *Seized Property Management Act* and section 5(b)(ii) of the *Forfeited Property Sharing Regulations*,[169] respectively.[170]

Concerns were raised about the requirement that the Attorney General give an undertaking respecting damages caused by the execution of a special search warrant or restraint order. The Department of Finance Canada reported the following:

> Some provincial Attorneys General are reluctant to apply for seizure or restraint of proceeds of crime as a result of this undertaking or maintain operational procedures which may restrict the use of these tools and limit the recovery of proceeds of crime for possible forfeiture.[171]

Clause 309 amends section 462.32 of the Code by adding new subsection (2.01), under which the judge can subject a special warrant to search and seize property that is proceeds of crime to any reasonable conditions the judge sees fit. This wording reflects the conditions that can be imposed on a restraint order under section 462.33(4) of the current Code.

Clauses 309 and 310 amend the wording of the provisions authorizing the issuance of a special warrant to search and seize property that is proceeds of crime, namely, sections 462.32(1) and 462.321(1) of the Code, respectively.

Clause 310 amends section 462.321 of the Code by adding new subsection (3.1), which provides that a warrant for the search and seizure of digital assets that are proceeds of crime may be executed anywhere in Canada. The wording is identical to that of section 462.32(2.1) of the current Code.

Clause 313 adds references to sections 462.32 of the Code (warrant for the search and seizure of property that is proceeds of crime) and 462.321 of the Code (warrant for the search and seizure of digital assets that are proceeds of crime) to Form 1 of Part XXVIII of the Code (Information To Obtain a Search Warrant).

2.5.8.2.3 Production Order for Financial Data Pertaining to Accounts Associated with Digital Assets

Under section 487.018(1) of the Code, a justice or judge may order a financial institution or specified entity to prepare and produce a document setting out the data in their possession or control on a specified account, including the name associated with the account, the account number, the type of account, the status of the account and the date on which it was opened or closed. Under section 487.018(2) of the Code, other information may also be subject to the production order for the purpose of confirming the identify of a person. In addition, before making the order, the justice or judge must be satisfied that, based on statements made through Form 5.004 of the Code, the peace officer or public officer applying for the order has reasonable grounds to suspect that an offence under the Code or another Act of Parliament has been or will be committed and that the data sought will assist in the investigation of the offence.

Clause 312 of the bill expands the scope of sections 487.018(1) and 487.018(2) of the Code by adding the notion of an "identifier" to the data that may be ordered produced. The Department of Finance Canada stated that the goal of this amendment is to address the rapid evolution of financial crime by making the provision apply more effectively to accounts associated with digital assets.[172] Some stakeholders that the department consulted pointed out the potential challenges of applying the current section 487.018 of the Code to the data held by centralized cryptocurrency exchanges.[173]

2.5.8.2.4 Effective Date

Clause 317 of the bill provides that this subdivision comes into force 90 days after the bill receives Royal Assent.

2.5.9 Division 9 – Amendments to the *Federal–Provincial Fiscal Arrangements Act* Regarding the Information to be Published about Certain Payments

Section 42 of the *Federal-Provincial Fiscal Arrangements Act*[174] (FPFAA) stipulates that the Minister of Finance "shall publish the details of all amounts authorized to be paid under this Act on the website of the Department of Finance as soon as feasible after the payment of such amounts."

Clause 318 of the bill replaces section 42 so that, after the payment of an amount under Parts I, I.1, II or V.1 of the FPFAA, which are related to Equalization, Territorial Financing, the Fiscal Stabilization Payments and the Canada Health Transfer and the Canada Social Transfer, respectively, the Minister of Finance shall publish "on a Government of Canada website as soon as possible" the following information: the amount, the name of the province to which the payment was made and the date of the payment.

Clause 319 provides for the coming into force of this change on 22 June 2023.

2.5.10 Division 10 – Amendments to the *Public Sector Pension Investment Board Act* Respecting the Number of Directors of the Public Sector Pension Investment Board and the Consultation of the Portion of the National Joint Council of the Public Service that Represents Employees

In its 2022 Budget, the federal government stated its intention to amend the *Public Sector Pension Investment Board Act*[175] to increase the size of the board of directors of the Public Sector Pension Investment Board by adding two representatives of federal public service bargaining agents. This section of Bill C-59 implements the promise made in Budget 2022 and provides for consultation with the National Joint Council of the Public Service of Canada as part of the selection process when filling those two seats.

Clause 320 increases the size of the Public Service Pension Investment Board from 11 to 13 members and disqualifies members of the advisory councils for the three federal public service pension plan advisory councils: the public service pension plan, the Canadian Forces pension plan and the Royal Canadian Mounted Police pension plan. The advisory councils are comprised of representatives from bargaining agents, the employer and retirees.

Clauses 321 and 322 add a requirement for the nominating committee that is responsible for finding and proposing board candidates to the President of the Treasury Board for ministerial recommendation resulting from the nominating process for the two additional seats. The nominating committee must recommend directors for those two seats, chosen from a list of qualified candidates that is created in consultation with the portion of the National Joint Council of the Public Service of Canada that represents employees.

2.5.11 Division 11 – Enactment of the Department of Housing, Infrastructure and Communities Act and Repeal of the *Canada Strategic Infrastructure Fund Act*

2.5.11.1 Department Established

Division 11 of Part 5 enacts the Department of Housing, Infrastructure and Communities Act (DHICA), which transfers parts of the federal housing portfolio to the Office of Infrastructure of Canada, thereby creating a new department as per the *Financial Administration Act* Schedule I. The stated aim is to advance public infrastructure and housing outcomes.

2.5.11.2 Ministers

Clause 323 establishes the DHICA. Sections 5 to 10 of the new Act clarify that the new department falls under the responsibility of the Minister of Infrastructure and Communities who is accountable for matters of public infrastructure not assigned to any other federal organization.[176] A Minister of Housing may also be appointed to advance national housing priorities and the reduction and prevention of homelessness. If a Minister of Housing is not appointed, their duties fall to the Minister of Infrastructure and Communities.

2.5.11.3 General Duties and Powers

Section 11 of the DHICA gives both ministers the power to make grants and contributions, undertake and publish research, and enter into agreements with federal or provincial/territorial departments, local governments, Indigenous bodies, institutions or individuals. Section 12 adds that either minister may establish advisory committees.

2.5.11.4 Transitional Provisions

Clauses 324 to 325 confirm that all employees of the existing Office of Infrastructure, including the Deputy Minister, become employees of the new department on the day that the bill receives Royal Assent. In addition, all unspent federal appropriations of the Office are transferred to the new department on the same day.

2.5.11.5 Consequential Amendments

Clauses 327 to 337 list consequential amendments to the following acts to recognize the new department: *Access to Information Act*, *Financial Administration Act*, *Privacy Act*, *Salaries Act* and *Public Sector Compensation Act*.

2.5.11.6 *National Housing Strategy Act*

Clause 339 replaces "Canada Mortgage and Housing Corporation" with "Minister" in section 12 of the *National Housing Strategy Act*, requiring the Minister of Housing to provide administrative services to the National Housing Council.[177] This clause comes into force either two years after Royal Assent or on a day to be determined by the Governor in Council.

2.5.11.7 Repeal

Clause 340 notes the repeal of the *Canada Strategic Infrastructure Fund Act*. This clause comes into force on a day to be determined by the Governor in Council.

2.5.12 Division 12 – Amendments to the *Employment Insurance Act* Regarding a New Employment Insurance Benefit and to the *Canada Labour Code* Respecting a Leave of Absence for Adoption

2.5.12.1 Introduction

In the *2023 Fall Economic Statement*, the federal government proposed to introduce "a new 15-week shareable [employment insurance (EI)] adoption benefit" and "amendments to the *Employment Insurance Act* [EIA],[178] as well as corresponding changes to the *Canada Labour Code* [CLC],[179] to ensure that workers in federally regulated industries have the job protection they need while receiving the EI adoption benefit."

2.5.12.2 Amendments to the Employment Insurance Act

2.5.12.2.1 New Benefit for the Placement or Arrival of a Child

Clauses 345 and 350 of Bill C-59 add sections 22.1 and 152.041 to the EIA to establish a new EI benefit for responsibilities related to a child's placement or arrival

into the claimant's care. These clauses determine the following parameters for the new benefit:

- a major attachment claimant (defined in the EIA as someone who has accumulated at least 600 hours of insurable employment in their qualifying period) [180] or a self-employed person is eligible for the benefit to carry out responsibilities relating to the placement of one or more children with them for the purpose of adoption, or to the arrival of one or more newborn children, conceived via surrogacy, into their care (sections 22.1(1) and 152.041(1));
- the benefit period (i.e., the period during which benefits may be paid) begins with the earlier of: five weeks before the week in which the placement or arrival of the child or children is expected, or the week in which the child or children are actually placed or arrive into the claimant's care; and ends 17 weeks after the week in which the child or children are actually placed or arrive into the claimant's care (sections 22.1(2) and 152.041(2));
- the benefit period can be extended in cases where a child's placement or arrival is delayed by the number of weeks during which it was delayed (sections 10(11.1) and 152.11(12.1), added by clauses 342(1) and 353(1)), up to a total of 52 weeks after the week in which the placement or arrival of the child was expected (sections 22.1(3) and 152.041(3));
- if the child is hospitalized during the benefit period, the benefit period can be extended by the number of weeks the child is hospitalized; the extended period must end no later than 52 weeks after the week in which the child or children are actually placed or arrive into the claimant's care (sections 22.1(4), 22.1(5), 152.041(4) and 152.041(5)); and
- the benefit can be clawed back or eliminated based on provincial benefits or allowances that are provided for the same purpose (sections 22.1(6) and 152.041(6)).[181]

2.5.12.2.2 Number of Weeks of Benefits

Clauses 343 and 354 add sections 12(3)(a.1), 12(4)(a.1), 152.14(1)(a.1) and 152.14(2)(a.1) to the EIA to establish that the maximum number of weeks that can be paid to a claimant under the new benefit in a single benefit period, and for a single placement or arrival of one or more newborn children as a result of a single pregnancy, is 15. Clauses 345 and 350 also add sections 22.1(8) and 152.041(8), which state that the 15 weeks can be divided between two parents (and that if they cannot agree how to divide these, the weeks of benefits are divided according to prescribed rules).[182]

2.5.12.2.3 Waiting Period

Clauses 345 and 350 address the EI waiting period by adding sections 22.1(7), 152.041(7), 22.1(10), 152.041(10), 22.1(11) and 152.041(11) to the EIA.

Section 22.1(7) establishes that, for the purpose of the EI waiting period (a one-week period at the start of a benefit period, during which no benefits are paid), claimants are not required to prove they are available for work, unable to work, or engaged in jury service, provided that this period immediately precedes the benefit period for the placement or arrival of a child.

Section 152.041(7) establishes that, for the purpose of the waiting period, for self-employed persons, the week preceding the benefit period as described above is deemed to be included in the benefit period.

Sections 22.1(10) and 152.041(10) describe the circumstances under which a major attachment claimant or self-employed person making a claim pertaining to the new benefit can have their waiting period deferred until they make a claim for other benefits in the same benefit period. Specifically, the waiting period can be deferred if the claimant has already made a claim for the new benefit in respect of the same child or children and has served the waiting period; if another major attachment claimant or self-employed person has made a claim for the new benefit in respect of the same child or children and has served the waiting period; another major attachment claimant or self-employed person is making a claim for the new benefit in respect of the same child or children at the same time as the claimant and elects to serve the waiting period; or the claimant, or another major attachment claimant or self-employed person meets the prescribed requirements.

Sections 22.1(11) and 152.041(11) clarify that if a major attachment claimant and a self-employed individual both make a claim for the new benefit in respect of the same child or children and one of them has served or elected to serve the waiting period, then the other person is either not required to serve the waiting period (if they are the major attachment claimant) or may have their waiting period deferred (if they are the self-employed individual).

2.5.12.3 Amendments to the *Canada Labour Code*

Clause 357 of Bill C-59 adds section 206.01 to the CLC to provide for a new leave for the placement of a child.

2.5.12.3.1 New Leave for the Placement of a Child

Section 206.01(2) of the CLC establishes new leave eligibility of up to 16 weeks for carrying out responsibilities related to the placement of a child. Section 206.01(1)

defines “placement” as the placement of a child into the actual care of an employee for the purposes of adoption under the laws governing adoption in the province in which the employee resides; the arrival of a new-born child of an employee into the employee’s actual care, where the child was conceived via surrogacy; and any other case prescribed by regulation. Clause 363(2) adds sections 209.4(c.1) and 209.4(c.2) to the CLC to authorize the Governor in Council to make regulations in this regard, and describe any word or expression that is used but not defined relating to section 206.01.

2.5.12.3.2 Number of Weeks of Leave

Under new section 206.01(7) of the CLC, an employee is eligible for a total of up to 16 weeks of leave for the placement of a child. In cases where an employee is informed that a placement will not occur, section 206.01(8) establishes that the employee may continue to take the leave until the end of the week after the week in which the employee is informed. Section 206.01(1) defines “week” as the period between midnight on Saturday and midnight on the immediately following Saturday.

Under the CLC, employees in the federally regulated private sector can access up to 63 weeks of parental leave.[183] Parents who choose to share the parental leave can access up to 71 weeks of leave in total.[184] Clause 358 of Bill C-59 adds section 206.21 to the CLC to establish that the maximum total amount of leave for the placement of a child, as well as parental leave, is 85 weeks for more than one employee in respect of the same child, and 77 weeks for each individual in respect of the same child.

2.5.12.3.3 Period During Which Leave May Be Taken

Section 206.01(3) of the CLC states that the leave may be taken during the period beginning six weeks before the estimated date of the placement, or the week preceding the actual date of the placement if that comes first, and ending 17 weeks following the week of the actual date of the placement. If the placement is delayed, the leave period must end no later than 52 weeks after the estimated date of placement (section 206.01(4)).

Section 206.01(5) of the CLC indicates that when the child is hospitalized during the leave period, that period is extended by the number of weeks during which the child is hospitalized. Despite this, section 206.01(6) clarifies that a leave period that is extended due to a hospital stay may not extend longer than 52 weeks after the actual date of placement.

2.5.12.4 Accessory Amendments

Clauses 342(2), 344, 346, 347, 348, 349, 351, 352 and 353(2), are accessory amendments that reflect the new benefit for the placement or arrival of a child in existing sections of the EIA. Clauses 356, 359, 360, 361, 362 and 363(1) are accessory amendments that reflect the new leave for the placement of a child in existing sections of the CLC.

2.5.12.5 Transitional Provisions

Clause 355 of Bill C-59 states that the new benefit is not available in cases where a child or children are already in the care of potential claimants before the day on which provisions establishing the new benefit (clauses 345 and 350) come into force.

Clause 364(2) establishes that, if an employee is on parental leave when clause 357 of Bill C-59 comes into force (and the new leave for the placement of a child takes effect), that employee may, if eligible for the new leave, interrupt their parental leave to take the new leave and resume their parental leave once the interruption ends. Clause 364(3) requires the employee to notify their employer of this interruption.

2.5.12.6 Coming Into Force

Clause 365 states that Division 12 of Part 5 of Bill C-59 comes into force on a day to be fixed by order of the Governor in Council.

NOTES

* This Legislative Summary was prepared by the following authors:

- Ambrozas, Diana, section 2.6.11;
- Capwell, Brett, sections 2.1.4, 2.1.7, 2.1.8, 2.1.9, 2.1.11, 2.1.16 and 2.1.18;
- Fan, Dana, section 2.6.6;
- Farrah, Kelly, section 2.6.4;
- Howard, Brett, sections 2.6.1.1, 2.6.1.2 and 2.6.10;
- Kachulis, Eleni, section 2.6.12;
- Kiarsi, Mehrab, section 2.6.9;
- Lambert-Racine, Michaël, sections 2.1.6, 2.1.10, 2.1.19 and 2.6.7;
- Léonard, André, sections « Background », 2.1.14 and 2.1.15;
- Malo, Joëlle, sections 2.1.13, 2.3 and 2.5;
- Pu, Shaowei, sections 2.1.3 and 2.6.5;
- Trinh, Tu-Quynh, section 2.6.2;
- Yakobowski, Sarah, section 2.6.3;
- Yong, Adriane, sections 2.1.1, 2.1.2, 2.1.5, 2.1.12, 2.1.17 and 2.4;
- Zazulya, Iryna, section 2.6.8.2.

1 Bill C-59, Fall Economic Statement Implementation Act, 2023.

2. Organisation for Economic Co-operation and Development, OECD/G20 Base Erosion and Profit Shifting Project, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 – 2015 Final Report*.

3. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

4. *Income Tax Regulations*, C.R.C., c. 945.

5. Organisation for Economic Co-operation and Development, OECD/G20 Base Erosion and Profit Shifting Project, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report*.

6. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

7. *Income Tax Regulations*, C.R.C., c. 945.

8. Organisation for Economic Co-operation and Development, OECD/G20 Base Erosion and Profit Shifting Project, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report*.

9. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

10. Government of Canada, "3.2 A Growing, Clean Economy," *A Made-In-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.

11. *An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation)*, S.C. 2021, c. 21.

12. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

13. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

14. *Income Tax Act* (ITA), R.S.C. 1985, c. 1 (5th Supp.).

15. Government of Canada, *Climate action incentive payment*.

16. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

17. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

18. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

19. *Income Tax Act* (ITA), R.S.C. 1985, c. 1 (5th Supp.).

20. *Bank Act*, S.C. 1991, c. 46.

21 *Budget Implementation Act, 2023, No. 1*, S.C. 2023, c. 26.

22. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

23. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

24. *Income Tax Regulations*, C.R.C., c. 945.

25. Department of Finance Canada, "Chapter 3.1, A Fair Tax System," *Fall Economic Statement 2022*, p. 39.

26. Department of Finance Canada, *Fall Economic Statement 2022*, p. ii.

27. *Income Tax Act* (ITA), R.S.C., 1985, c. 1 (5th Supp.).

28. Section 248(1) of the ITA generally defines the term "designated stock exchange" as a stock exchange for which a designation by the Minister of Finance under section 262 of the ITA is in effect. Pursuant to section 262(4) of the ITA, a list of these exchanges is available on the Department of Finance website: Department of Finance Canada, *Designated Stock Exchanges*.

29. As defined in section 248(1) of the ITA, which refers to section 131(8) of the ITA. Generally speaking, it is a Canadian public corporation whose only undertaking is to invest its funds in property or to acquire, hold, maintain, improve, lease or manage real property, and whose shares include a right of redemption at the demand of the holder. Other conditions apply.

30. As defined in section 122.1(1) of the ITA.

31. Or would be "if its assets were situated in Canada": Department of Finance Canada, *Explanatory Notes to Legislative Proposals Relating to the Income Tax Act and Regulations*. The term "SIFT partnership" is defined in s. 248(1) of the ITA, which refers to section 197 of the ITA.

32. It must be a "qualifying issuance," as defined in new section 183.3(1) of the ITA, which includes an issuance made in exchange for cash or to an employee of the covered entity in the course of the employee's employment.

33. See paragraphs (b) of the descriptions of A and C in the formula in new section 183.3(2) of the ITA, as well as new section 183.3(5) of the ITA. Pursuant to the definition in new section 183.3(1) of the ITA, generally speaking, to qualify as a specified affiliate of a covered entity, a covered entity must control, be the majority-interest beneficiary of, or be a majority-interest partner, as the case may be, of that other entity. Note that this definition generally excludes registered securities dealers dealing in the ordinary course of business, as well as trusts established for the benefit of employees and former employees of the covered entity who meet certain conditions.

34. As defined in new section 183.3(1) of the ITA.

35. See paragraph (a) of the description of A in the formula in new section 183.3(2) of the ITA. However, equity that is redeemed, acquired or cancelled as part of certain exchanges and amalgamations must be factored in and reduced by the fair market value of the consideration received in such transaction comprising equity, in accordance with the description of B in this same formula.

36. As defined in section 245(1) of the ITA in the context of the application of the general anti-avoidance rule.

37. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

38. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

39. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

40. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

41. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

42. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

43. *Income Tax Regulations*, C.R.C., c. 945.

44. Government of Canada, "4.8 A Fair Tax System," *Fall Economic Statement 2020: Supporting Canadians and Fighting COVID-19*.

45. Government of Canada, "Annex 7: Consultations on Other Tax Measures: Supplementary Information," *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.

46. Government of Canada, "*Tax Measures: Supplementary Information – Previously Announced Measures*," *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.

47. Department of Finance Canada, *Government consults Canadians on Budget 2023 measures to grow the clean economy, close tax loopholes, and deliver tax relief for Canadians*, News release, 29 September 2023.

48. Government of Canada, "4.8.1.3 Fair Taxation of Short-Term Accommodation through Digital Platforms," *Fall Economic Statement 2020: Supporting Canadians and Fighting COVID-19*.

49. In particular, see Department of Finance Canada, *2023 Fall Economic Statement: Building a strong economy that works for everyone*, pp. 66–67.

50. Organisation for Economic Co-operation and Development, *International tax reform: Multilateral Convention to Implement Amount A of Pillar One*.

51. See sections 2 and 37–40 of Division A of Part 6 of the Digital Services Tax Act (DSTA).

52. Organisation for Economic Co-operation and Development, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, 8 October 2021.

53. Government of Canada, "4.8 A Fair Tax System," *Fall Economic Statement 2020: Supporting Canadians and Fighting COVID-19*.

54. Government of Canada, *Explanatory Notes for the* Draft Digital Services Tax Act *and Related Regulations*. See section 10(2) of the DSTA. Unless otherwise indicated, terms in quotation marks in this part of the legislative summary are defined in section 2 of the DSTA.

55. See the definition of "global revenue threshold" in section 2 of the DSTA and section 3 of the Digital Services Tax Regulations (DSTR).

56. See the definition of “in-scope revenue threshold” in section 2 of the DSTA and section 4 of the DSTR.

57. The term “taxpayer” refers to the term “entity,” which means a “person” other than an individual, while the term “person” is defined as including an individual, a trust, a partnership, a corporation and any other body of persons or organization of any kind (section 2 of the DSTA). Note that Part 5 of the DSTA contains specific provisions dealing with partnerships.

58. Additional sources and exclusions may also be prescribed by regulations. The DSTR, as enacted by Bill C-59, makes no such provision.

59. Of note, the term “user located in Canada” is specifically defined in section 11 of the DSTA.

60. See the definition of “deduction amount” in section 23 of the DSTA and section 7 of the DSTR.

61. Government of Canada, “Annex 7: Consultations on Other Tax Measures: Supplementary Information,” *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.

62. See the definition of “registration threshold” in section 36(1) of the DSTA and section 5 of the DSTR.

63. Government of Canada, *Explanatory Notes for the* Draft Digital Services Tax Act *and Related Regulations*.

64. Ibid.

65. As defined by section 36(1) of the DSTA.

66. As defined by section 8 of the DSTA.

67. Under section 2(1) of the DSTR, this is the total of both rates.

68. Under section 2(2) of the DSTR, this is the rate provided in section 2(1)(a) of the DSTR.

69. *Financial Administration Act*, R.S.C. 1985, c. F-11.

70. As defined by section 108(1) of the DSTA.

71. *Statutory Instruments Act*, R.S.C. 1985, c. S-22.

72. *Excise Tax Act*, R.S.C. 1985, c. E-15.

73. Ibid.

74. Ibid.

75. Ibid.

76. Ibid.

77. Ibid.

78. Ibid.

79. Ibid.

80. Bill C-323, An Act to amend the Excise Tax Act (mental health services), 44th Parliament, 1st Session.

81. *Excise Tax Act,* R.S.C. 1985, c. E-15.

82. *Financial Services and Financial Institutions (GST/HST) Regulations*, SOR/91-26.

83. *Payment Card Networks Act,* S.C. 2010, c. 12, s. 1834.

84. *Regulations Amending Various GST/HST Regulations No. 11*, SOR 2019-59.

85. *Excise Tax Act,* R.S.C. 1985, c. E-15.

86. *Joint Venture (GST/HST) Regulations,* SOR/91-36.

87. *Input Tax Credit Information (GST/HST) Regulations*, SOR/91-45.

88. *Excise Tax Act,* R.S.C. 1985, c. E-15.

89. Bill C-56, An Act to amend the Excise Tax Act and the Competition Act, 44th Parliament, 1st Session.

90. *Excise Tax Act*, R.S.C. 1985, c. E-15.

91. Ibid.

92. *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

93. Canada Revenue Agency, "Who is required to apply," *Excise Duty Notice EDN81, Becoming a Vaping Prescribed Person*, July 2022.

94 Ibid.

95. *Excise Act, 2001*, S.C. 2002, c. 22.

96. *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

97. *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*, SOR/2003-288.

98. As defined in s. 2 of the *Excise Act, 2001*.

99. As defined in s. 2 of the *Excise Act, 2001*, which refers to s. 2(1) of the *Customs Act*.

100. As defined in s. 2 of the *Excise Act, 2001*.

101. The government indicated that it is "working collaboratively with provinces and territories interested in a coordinated framework to taxing vaping products. [However,] no provinces or territories [to date] have entered into an agreement to join a coordinated framework." Government of Canada, "Additional vaping duty," *Excise Duty Notice EDN78, General Information – Vaping Products*, July 2022. Note that, in December 2023, the Department of Finance published the *Draft Regulations Making the Excise Duties on Vaping Products Regulations and Amending Various Regulations Relating to Excise Duties*, which identified Ontario, Quebec, the Northwest Territories and Nunavut as "specified vaping provinces" for the purposes of the *Excise Act, 2001*.

102. *Returning Persons Exemption Regulations*, SOR/98-61.

103. As defined in s. 2 of the *Excise Act, 2001*.

104. Department of Finance Canada, *Explanatory Notes Relating to the Goods and Services Tax/Harmonized Sales Tax and Excise Levies*, 1 December 2023, p. 32.

105. *Regulations Respecting Excise Licences and Registrations*, DORS/2003-115.

106. Department of Finance Canada, *Explanatory Notes Relating to the Goods and Services Tax/Harmonized Sales Tax and Excise Levies*, 1 December 2023, p. 35.

107. *Budget Implementation Act, 2018, No. 1*, S.C. 2018, c. 12.

108. *Trust and Loan Companies Act*, S.C. 1991, c. 45.

109. *Bank Act*, S.C. 1991, c. 46.

110. *Insurance Companies Act*, S.C. 1991, c. 47.

111. *Canada Labour Code*, R.S.C. 1985, c. L-2.

112. Prime Minister of Canada, Justin Trudeau, *Minister of Labour Mandate Letter*, 16 December 2021.

113. Government of Canada, *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.

114. Government of Canada, *2023 Fall Economic Statement*.

115. See *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 167; and Government of Canada, *List of federally regulated industries and workplaces*. Part III of the *Canada Labour Code* does not apply to the federally regulated public sector: the rights and responsibilities of federal public servants and parliamentary employees regarding certain labour standards are subject to collective agreements established in accordance with federal legislation. See *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2; and *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c. 33 (2nd Supp.).

116. An Interpretation, Policy and Guideline (IPG) document on the application of maternity leave provisions under the *Canada Labour Code* discusses the definition of "confinement" (and "accouchement" in the French text): "The usual medical meaning of 'accouchement' is the end of a pregnancy during the third trimester. This is regardless of whether it is a live birth or stillbirth. The term 'confinement' is less precise, but generally encompasses the concepts of delivery or childbirth." More specifically:

> The Labour Program's policy is to consider any end of a pregnancy after the 19th week of pregnancy to be a confinement. …
>
> This period is selected for 2 reasons:
>
> - it reflects women's actual experience that any termination after 19 weeks generally amounts to the same process as childbirth at term. She thus incurs the same health-related needs, and
> - it is consistent with the eligibility period for maternity benefits under the *Employment Insurance Act*
>
> Note (1): For any earlier end of pregnancy, she may take advantage of the Medical Leave provisions under Division XIII.

117. *Canada Labour Standards Regulations*, C.R.C., c. 986, s. 33(1).

118. *An Act to amend the Criminal Code and the Canada Labour Code*, S.C. 2021, c. 27; formerly Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code, 44th Parliament, 1st session. See also Eleni Kachulis, Isabelle Lafontaine-Émond and Julia Nicol, *Legislative Summary of Bill C-3: An Act to amend the Criminal Code and the Canada Labour Code*, Publication no. 44-1-C3-E, Library of Parliament, 22 December 2021.

119. The first three days of the leave are paid if the employee has completed three consecutive months of continuous employment with the employer: *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 210(2).

120. Environment and Climate Change Canada, *Toward the Creation of a Canada Water Agency: Discussion Paper*, p. 8.

121. *Canada Water Act*, R.S.C. 1985, c. C-11.

122. *Department of the Environment Act*, R.S.C. 1985, c. E-10, s. 4(1)(c).

123. Environment and Climate Change Canada, *Toward the Creation of a Canada Water Agency: Discussion Paper*, p. 14.

124. Justin Trudeau, Prime Minister of Canada, ARCHIVED – Minister of Environment and Climate Change Mandate Letter, 13 December 2019.

125. Government of Canada, *A Recovery Plan for Jobs, Growth and Resilience*, Budget 2021, p. 186; Government of Canada, *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022,, p. 101; and Government of Canada, *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023, pp. 134–135.

126. Government of Canada, *Canada Water Agency*.

127. *Department of the Environment Act*, R.S.C. 1985, c. E-10.

128. *Canada Water Act*, R.S.C. 1985, c. C-11. The *Canada Water Act* provides a framework for collaboration among the federal and provincial/territorial governments on water management, including through agreements and programs.

129. Government of Canada, *Departmental overview for the Minister of Environment and Climate Change: chapter 1*.

130. *Access to Information Act*, R.S.C. 1985, c. A-1.

131. *Financial Administration Act*, R.S.C. 1985, c. F-11.

132. *Privacy Act*, R.S.C. 1985, c. P-21.

133. *Public Service Superannuation Act*, R.S.C. 1985, c. P-36.

134. *Tobacco and Vaping Products Act*, S.C. 1997, c. 13.

135. Department of Finance Canada, *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023, p. 194; and Department of Finance Canada, *2023 Fall Economic Statement*, p. 106.

136. The purpose of the *Tobacco and Vaping Products Act*, as stated in section 4, is to, among other things, "provide a legislative response to a national public health problem of substantial and pressing concern and to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases."

137. *Canadian Payments Act*, R.S.C. 1985, c. C-21.

138. Government of Canada, "Annex 3: Legislative Measures," *2023 Fall Economic Statement: Building a strong economy that works for everyone*.

139. A *Report on the Review of the Canadian Payments Act* was published in 2019.

140. Department of Finance Canada, *2023 Fall Economic Statement*, p. 105.

141. *Competition Act*, R.S.C. 1985, c. C-34.

142. *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.).

143. Department of Finance Canada, *2023 Fall Economic Statement*, pp. 36–37.

144. The Government of Canada defines drip pricing as a practice that "involves offering a product or service at a price that is unattainable because consumers must also pay additional charges or fees to buy the product or service." See: Innovation, Science and Economic Development Canada, *Drip pricing*.

145. Innovation, Science and Economic Development Canada, *Environmental claims and greenwashing*, 2 December 2021.

146. Department of Finance Canada, *Budget 2023*, p. 38.

147. Department of Finance Canada, *2023 Fall Economic Statement*, p. 37.

148. Innovation, Science and Economic Development Canada, *Competition and Compliance Framework*.

149. Robin Spillette, Anthony F. Baldanza and Chris Margison, "Significant Competition Act Amendments on the Horizon," *Fasken*, 1 December 2023.

150. Department of Finance Canada, *2023 Fall Economic Statement*, p. 36.

151. *Canada (Commissioner of Competition) v. Rogers Communications Inc and Shaw Communications Inc*, 2023 Comp Trib 03.

152. *Bankruptcy and Insolvency Act* (BIA), R.S.C. 1985, c. B-3.

153. *Companies' Creditors Arrangement Act* (CCAA), R.S.C. 1985, c. C-36.

154. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

155. *Payment Card Networks Act*, S.C. 2010, c. 12, s. 1834.

156. *Bank Act*, S.C. 1991, c. 46.

157. *Cooperative Credit Associations Act*, S.C. 1991, c. 48.

158. *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

159. *Budget Implementation Act, 2023, No. 1*, S.C. 2023, c. 26.

160. *Seized Property Management Act*, S.C. 1993, c. 37.

161. *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, SOR/2001-317.

162. Department of Finance Canada, *Fall Economic Statement 2023*, p. 68.

163. *Criminal Code*, R.S.C. 1985, c. C-46.

164. The recklessness element was added in 2019 when assent was granted to the *Budget Implementation Act, 2019, No. 1*, 42nd Parliament, 1st Session (S.C. 2019, c. 29, s. 103), to make it easier to prosecute third-party money launderers, who were evading the offence by distancing themselves from the criminal origin of the funds. This amendment was further to the recommendations in the House of Commons Standing Committee on Finance report *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, Twenty-fourth report, November 2018; see, for example, recommendation 20; this report was prepared for its five-year parliamentary review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17. Recklessness differs from wilful blindness, which the courts already considered sufficient to establish one of the two components of *mens rea* for the offence of laundering proceeds of crime (the second being an intent to conceal or convert the property). See in this regard *R. v. Noseworthy*, 2022 NLSC 7 (CanLII), paras. 99–106.

165. *Criminal Code*, R.S.C. 1985, c. C-46, s. 462.31(1). The essential elements of the offence were recently reiterated in *R. v. Barna,* 2018 ONCA 1034 (CanLII), para. 12 (application for leave to appeal to the Supreme Court of Canada dismissed: *Daniel Barna v. Her Majesty the Queen*, 2019 CanLII 53414 (SCC). See also *R. v. Daoust*, 2004 SCC 6 (CanLII). This key Supreme Court decision also explains the two components of *mens rea*, namely, the intent to conceal or convert the property or proceeds of property and the mental element of knowledge or belief, at paragraph 56.

166. *Drouin c. R*., 2020 QCCA 1378 (CanLII), para. 107 (application for leave to appeal to the Supreme Court of Canada dismissed: *Louis-Pierre Lafortune v. Her Majesty the Queen*, 2021 CanLII 37629 (SCC)); *R. v. Noseworthy*, 2022 NLSC 7 (CanLII), paras. 106–107; and *R. v. Tejani,*1999 CanLII 3765 (ON CA), para. 36.

167. Department of Finance Canada, *Fall Economic Statement 2023*, p. 68. The government stated that stakeholders called for changing the required link between the predicate offence and the laundering: Department of Finance Canada, *Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, 6 June 2023, pp. 22–23. Regarding the challenges of investigating and prosecuting laundering of proceeds of crime, see also Department of Finance Canada, *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime: Report on Performance Measurement Framework*, March 2023, pp. 25–39.

168. *Commission of Inquiry into Money Laundering in British Columbia*, Final report, June 2022, pp. 1538–1552.

169. *Seized Property Management Act*, S.C. 1993, c. 37.

170. *Forfeited Property Sharing Regulations*, SOR/95-76.

171. Department of Finance Canada, *Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, 6 June 2023, p. 30.

172. Department of Finance Canada, *Fall Economic Statement 2023*, p. 68.

173. Department of Finance Canada, *Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, 6 June 2023, p. 29.

174. *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

175. *Public Sector Pension Investment Board Act*, S.C. 1999, c. 34.

176. The housing portfolio is currently distributed across several federal organizations; for example, Canada Mortgage and Housing Corporation supports the National Housing Strategy and provides related programming, Office of Infrastructure of Canada addresses homelessness, and the Indigenous Services Canada delivers First Nations housing funds. In August 2023, an Order in Council designated the Minister of Infrastructure and Communities as the Minister responsible for the *National Housing Strategy Act*.

177. *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313.

178. *Employment Insurance Act* , S.C. 1996, c. 23.

179. *Canada Labour Code* , R.S.C. 1985, c. L-2.

180. *Employment Insurance Act*, s. 6(1).

181. For example, Quebec offers maternity, paternity, parental and adoption benefits to Quebec residents through the Quebec Parental Insurance Plan. Government of Quebec, *Québec Parental Insurance Plan*. See also Government of Canada, *Quebec Parental Insurance Plan*.

182. *Employment Insurance Regulations*, SOR/96-332. Section 41.6 sets out the rules for the division of existing parental benefits.
183. *Canada Labour Code*, s. 206.1(1).
184. *Canada Labour Code*, s. 206.1(3).