

**BILL C-13:  
AN ACT TO AMEND THE EXCISE TAX ACT**

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## LEGISLATIVE HISTORY OF BILL C-13

### HOUSE OF COMMONS

| Bill Stage | Date |
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|------------|------|

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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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COMMENTARY

Bill C-13, An Act to Amend the Excise Tax Act, was tabled in the House of Commons on 20 February 2001. Parts of this bill – including measures relating to the goods and services tax (GST) and harmonized sales tax (HST), and sales tax initiatives proposed in the 2000 budget – were originally tabled as a notice of ways and means in the House of Commons on 4 October 2000. The notice also proposed, as does Bill C-13, the creation of export distribution centres, which would be exempt from the GST/HST in certain areas, and refinements to the existing export certificates program. With the fall 2000 general election, the notice died on the *Order Paper*.

In addition to these proposed measures, this Bill also includes:

- a refinement to the existing New Housing Rebate;
- clarifications on the application of the existing excise tax on automobile air conditioners and new heavy automobiles; and
- an amendment allowing the Minister of National Revenue to waive or cancel interest or penalties under the excise tax system.

EXPORT- AND IMPORT-RELATED CHANGES

- A. Export Distribution Centre Certificates (Clauses 6, 7, 8(2), 11, 19, 30, 33)  
and Export Certificates (Clauses 7, 8(1), 9(2), 10, 11, 29, 30)

The legislation's most important sections make it easier to set up export distribution centres in Canada by creating a new type of certificate that allows firms to buy goods

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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 were already adopted or in force. These are, of course, simply proposals that are brought forward for the consideration of Parliament and will have no force or effect unless and until they are passed by both Houses of Parliament and receive Royal Assent.

*for export* without paying the GST/HST, i.e., the goods are not only zero-rated, these firms would also enjoy a cash-flow benefit not available to other exporters. Under current law, exporters first pay the sales tax and then apply for reimbursement. The certificates, which would be valid for three years, could be revoked anytime a firm violates the conditions under which they were granted.

To obtain an export distribution centre certificate (an EDC certificate), a firm must prove it will not “substantially alter” the goods that it purchases for export. This means it cannot manufacture or hire some other firm to manufacture goods destined for export. It also means there are limits to the amount of “value” that can be added to goods destined for export. The legislation spells out these limits in detail. Similar conditions apply for firms that import goods and alter them on behalf of a non-resident (i.e., the goods remain the property of the non-resident but the Canadian importer handles them on the non-resident’s behalf). Firms must also prove that at least 90% of their total revenue is derived from exports of inventory purchased in Canada or abroad.

A technical change (clause 6) assures, for re-imported goods that were originally exempt from tax, that tax is calculated on the full value of the goods and not only on the value of the processing performed outside Canada as would be the case if section 13 of the *Value of Imported Goods (GST/HST) Regulations* applied on the importation.

With respect to export certificates (ECs), some of these changes are a matter of harmonizing the rules with the rest of the Act (Clause 8) and with the rules for export distribution centres, and of inserting the appropriate cross-references. Under the proposed legislation, much like the existing Act, suppliers that sell goods to Canadian exporters do not have to collect the GST/HST provided they have reason to believe the exporter has an export certificate (EC) or an EDC certificate. This shifts the “burden of proof” from the supplier to the exporter, provided the supplier did not know or could not reasonably be expected to know that the goods were not going to be exported or that the exporter didn’t have a valid EC or EDC certificate. Exporters are fined if they fail to tax themselves (self-assess) on goods that should have been exported or if they misuse certificates. The penalty is designed to offset the cash-flow benefit obtained by the export certificate holder when it acquired the goods on a zero-rated basis. Although calculated in the same manner as an interest charge, the penalty is not considered

interest and is thus not subject to waiver or cancellation under s. 281.1. Clause 11 sets out the formulae for calculating penalties.

Subclause 8(2) ensures that the rules used to determine whether a firm pays the 7% GST or the 15% HST on inter-provincial shipments are the same regardless of whether or not the supplier or purchaser physically ships the goods. The rules say that the effective tax rate is set by the province of destination.

Another technical amendment (subclause 10(2)) requires the Minister of National Revenue to notify export-certificate holders of the expiry date of their authorization and identification number. Export-certificate holders must also provide this information to suppliers.

These clauses were deemed to come into effect 1 January 2001.

#### B. Import Certificates (Clauses 5, 6, 32)

Under the proposed legislation, firms that import goods on behalf of a non-resident with the intent of subsequently exporting them are eligible for an “import certificate” which exempts the imports from the GST/HST. The imported goods can be stored, processed, or distributed while in Canada provided they are ultimately exported either whole or as part of some other good. They cannot be consumed (used) while in Canada. The goods must also remain the property of a non-resident. However, the importer can sell the right to “store, process or distribute” the goods to another Canadian person or firm. A technical change (clause 6) further assures, for imported goods that are exempt from tax and subsequently exported, that tax is calculated on the full value of the goods when they are re-imported (i.e., imported a second time) and not only on the value of the processing performed outside Canada as would be the case if section 13 of the *Value of Imported Goods (GST/HST) Regulations* applied on the importation.

These clauses were deemed to come into effect 1 March 1992, except for goods imported only for providing storage and distribution services, in which case they were deemed to come into effect after 28 February 2000.

#### C. Imported and Exported Goods (Drop Shipments) (Clause 4)

Under the proposed legislation, storage services for goods owned by non-residents (“drop shipments”) are exempted from the GST/HST. Clause 4 also eliminates the

GST/HST on railway rolling stock (train engines and cars) in cases where it is used to transport goods while it is itself being exported for sale. This clause was deemed to come into effect after 28 February 2000.

D. Goods Imported for Repair or Replacement under Warranty (Clause 31)

Under the proposed legislation, firms that honour warranties by supplying a replacement to foreign customers for defective merchandise no longer have to pay the GST/HST. Currently, warranty work is exempted from sales taxes only when a foreign customer returns the good and the manufacturer repairs and exports the exact same good. This clause was deemed to come into effect after 28 February 2000.

## HOUSING-RELATED AMENDMENTS

A. New Housing Rebate (Clauses 12-15, 18)

The proposed legislation redefines “single-unit residential complex” to include a home used primarily as a place of residence by the owner but also as short-term accommodation to the public, such as a boarding house or bed-and-breakfast. This expands access to the partial rebate of sales tax paid on new or self-built homes.

Clause 18 also changes a reference to a share in a cooperative housing corporation to a share in the capital stock of such a corporation, making it consistent with other parts of the Act. These clauses were deemed to come into effect 1 June 1997.

B. New Residential Rental Property Rebate (Clauses 16-17)

The proposed legislation creates a new 36% rebate (or 2.5 percentage points of sales tax) for the GST paid on new or substantially renovated residential rental properties. This effectively reduces the GST rate to 4.5% from 7%, matching the rate reduction under the New Housing Rebate for purchases of new homes. The new rebate also applies to situations where an owner adds units (i.e., apartments) to an existing multiple-unit residential building and when land is leased or converted for use as a residential property.

More generally, the law requires that new residential buildings or additions satisfy certain conditions before they can be eligible for the rebate. Eligibility is determined on a unit-by-unit basis except in the case of large multiple-unit residential complexes, where for simplicity's sake, only "substantially all" the units must qualify. A "qualifying residential unit" must be or include a "self-contained residence," as defined by the legislation, and must be a primary place of residence. In certain cases, such as the sale of a building to a person who leases the land on which the building is located, or where land and a building are sold to a cooperative housing corporation (except where a residence is first occupied by a renter), the amount of the rebate is reduced by the amount of the New Housing Rebate to which the purchaser is entitled.

In most cases, the rebate is phased out for residential units valued between \$350,000 and \$450,000, with a maximum rebate of \$8,750 for a residential unit valued at \$350,000. The rebate generally cannot be combined with any other kind of sales tax refund such as the GST input tax credit, the Public Service Body Rebate or the New Housing Rebate. Similarly, a trust run by a multiple-employer pension plan cannot include any of the sales tax it might have paid for a residential property if a portion of that sales tax can be recouped (rebated) under the New Residential Rental Property Rebate (clause 17).

These clauses were deemed to come into effect after 27 February 2000.

#### C. Sale of Residential Complex by Person Other than Builder (Clauses 9(1), 21, 22)

The proposed legislation allows a person who bought a residential property or real property (the purchaser) and paid tax on that property, to recover that tax if the property was returned to the original vendor within a year and in accordance with the original sales contract. In practical terms, this means the purchaser (with the vendor's permission) charges tax on the resale of the property back to the vendor. The purchaser is then entitled to a fully offsetting input tax credit or rebate, as is the vendor. The policy intent is to make this kind of transaction similar to one where a person returns newly purchased goods to a seller and receives a rebate for the GST/HST paid when they first made the purchase.

Under subclause 22(1), sales of real property used in a business are no longer exempt from the GST/HST if the seller was previously leasing it to other persons on a taxable



basis and was therefore entitled to recover any tax paid on the purchase of the property or improvements to it. These clauses were deemed to come into effect after 4 October 2000.

## MISCELLANEOUS

### A. New Motor Vehicles and Automobile Air Conditioners, and Ministerial Powers (Clauses 2, 3)

This proposed legislation contains several clarifications regarding excise taxes on imported new motor vehicles or their chassis, specifically, automobile air conditioners and heavy automobiles. It more explicitly states that the exemption for excise tax applies only at the time when an automobile is delivered to a licensed manufacturer, and not to subsequent transactions (clause 2). In other words, the bill states clearly that the excise tax must be paid when the vehicle is delivered to the automobile dealer. The wording change was made after some manufacturers claimed that the existing law could be used to permanently exempt air conditioners in imported vehicles and heavy vehicles from the excise tax, contrary to the policy intent of the *Excise Tax Act*. This clause was deemed to come into effect 1 January 1994.

The legislation also gives the Minister of National Revenue the power to waive or cancel interest and penalties, a power already available under the sales and income tax system (clause 3). This clause was deemed to come into effect 4 October 2000.

### B. Electronic Filing of Returns (Clause 20)

The proposed legislation allows people who meet certain criteria to file their GST/HST tax returns electronically *without* first seeking approval from the Minister of National Revenue, as is currently the case. The criteria are spelled out in the GST/HST Memoranda Series, Chapter 7.5: *Electronic Filing and Remitting*. This clause was deemed to come into effect 4 October 2000.

### C. Speech Therapy Services (Clauses 23, 24)

The proposed legislation extends the GST/HST tax exemption for speech therapy services until the end of 2001. The exemption was set to end 1 January 2001, because speech

therapy services failed the key tax-exemption test for health-care services, namely that at least five provinces must cover the service under provincial health-care plans. However, recent events suggest that a fifth province is about to regulate speech therapy services thereby restoring speech therapy's tax-free status. These clauses were deemed to come into effect 1 January 2001.

#### D. Vocational Training (Clause 25)

This clause ensures that similar vocational training across the country is provided the same treatment concerning tax exemptions regardless of how vocational schools are regulated in each province. It does so by repealing the conditions set on this tax break. The legislation also extends the tax exemption on vocational training to training supplied by a government entity or agency; and allows suppliers of vocational training to elect to treat that training as taxable where it is provided to registrants that are able to recover the tax by using input tax credits.

This clause was deemed to come into effect after 4 October 2000.

#### E. Supplies by a Charity (Clause 26)

The proposed legislation clarifies the language in the *Excise Tax Act* to ensure that goods and services provided by charities through leases, licences or "similar arrangements" (such as the lease by a charity of a conference room or audio-visual equipment) are tax-exempt. This change was made to simplify the rules for charities. The wording change is retroactive to all leases or licences beginning 1 April 1997.

#### F. Deemed Supplies by Public Institutions and Public Service Bodies (Clauses 27 and 28)

The proposed legislation clarifies the language of the *Excise Tax Act* to ensure that goods and services provided by public institutions (for example, municipalities, schools, universities, public colleges and hospitals) through a lease or license (or similar arrangement) are tax-exempt. The wording change is retroactive to all leases or licences beginning 1 April 1997.

## DISCUSSION

The most important changes in Bill C-13 from a macro-economic perspective are those that make it easier for firms to set up export operations in Canada. Among other things, these changes allow export-oriented non-manufacturing businesses to purchase or import inventory, certain inputs and customers' goods on a GST/HST-free basis (i.e., zero-rated), rather than having to pay the tax and then claim a refund, as is sometimes the case now. By addressing this cash-flow issue, the government is attempting to attract distribution centres to Canada or at least ensure that Canada does not suffer a competitive disadvantage relative to its NAFTA partners.

The other major change in the legislation is the creation of a partial rebate of the GST on new or renovated long-term residential properties. This measure could encourage the construction of new residential properties. Other noteworthy changes to the *Excise Tax Act* include extending the New Housing Rebate to bed-and-breakfasts and boarding houses, extending the tax-free status of tuition to government-run programs, assuring some kind of national standard in the tax treatment of vocational programs, and extending the tax-free status for speech therapy to the end of 2001.