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# Explanatory Notes for the Draft Digital Services Tax Act and Related Regulations

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## **Preface**

These explanatory notes are provided to assist in an understanding of the proposed *Digital Services Tax Act* (the “Act”) and related regulations. These explanatory notes describe the proposed Act and related regulations for the assistance of Members of Parliament, taxpayers and professional advisors.

The Honourable Chrystia Freeland, P.C., M.P.  
Deputy Prime Minister and Minister of Finance

These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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## **PART 1 – EXPLANATORY NOTES RELATING TO THE DRAFT DIGITAL SERVICES TAX ACT**

### ***Overview***

These legislative proposals would implement the Digital Services Tax Act (the "DSTA" or "Act"). The Act would impose a tax of 3% on revenues derived by residents and non-residents of Canada from certain digital services they provide. The targeted revenues are generally those that arise in connection with the digital service providers' engagement with online users in Canada. These revenues include certain revenue relating to online marketplaces, online targeted advertising, social media platforms and the sale or licensing of user data. The tax is aimed at large businesses with annual revenues of €750,000,000 or more and Canadian digital services revenue (as defined in the legislation) of more than \$20,000,000.

The DSTA will come into force on a day to be fixed by order of the Governor in Council, but not earlier than January 1, 2024. The tax will apply on a calendar year basis, beginning with the year that includes the day that the DSTA comes into force. For the first year that the tax applies, tax liability will be calculated by reference to certain Canadian digital services revenue earned from January 1, 2022, up to and including that first year.

### ***Short Title***

#### **Section 1 – Short title**

Section 1 of the Act sets out its short title as the *Digital Services Tax Act*.

## **PART 1**

### ***Interpretation and Rules of Application***

Part 1 of the Act provides a number of definitions and rules of application.

#### **Section 2 – Definitions**

Section 2 of the Act sets out a number of definitions that apply for the purposes of the entire Act. Other definitions with a more limited scope appear elsewhere in the Act, closer to where they are relevant.

#### **“acceptable accounting principles”**

The definition “acceptable accounting principles” sets out the types of accounting principles that are considered acceptable for purposes of the DSTA. It essentially means International Financial Reporting Standards (“IFRS”) and other country-specific generally accepted accounting principles (for example, U.S. GAAP) that are relevant for corporations that are traded on a public securities exchange outside Canada and that require two or more entities to prepare consolidated financial statements in a manner similar to IFRS.

This definition is relevant for the definitions “consolidated group”, “constituent entity”, “total consolidated group revenue” and “ultimate parent entity”, and for the meaning of the term “revenue” as set out in section 4.

#### **“assessment”**

The definition “assessment” provides that the term refers both to an assessment and a reassessment under the Act. One implication of this is that all references to a notice of assessment include a notice of reassessment.

#### **“bankrupt”**

The definition “bankrupt” imports the meaning given to that term in section 2 of the *Bankruptcy and Insolvency Act*. This term is relevant to section 26 which establishes an agency relationship between a trustee in bankruptcy and a bankrupt and to section 64 which deals with the payment of refunds that a bankrupt may be entitled to claim.

#### **“Canadian digital services revenue”**

The definition “Canadian digital services revenue” is a pointer to indicate that it is determined in accordance with Part 3.

#### **“consolidated financial statements”**

The definition “consolidated financial statements” specifies that the term refers to financial statements in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity.

This definition is relevant for the definitions “acceptable accounting principles”, “consolidated group”, “constituent entity”, “total consolidated group revenue”, “ultimate parent entity” and for the meaning of the term “revenue” as set out in section 4.

#### **“consolidated group”**

The definition “consolidated group” provides that the term refers to two or more entities that are required, under acceptable accounting principles, to report their financial results using consolidated financial statements, or that would be required to do so if any of the entities were a public company traded on a stock exchange that requires the use of acceptable accounting principles.

This definition is relevant for a number of definitions and other provisions of the Act. It is also subject to a continuity rule, in section 6.

#### **“constituent entity”**

The definition “constituent entity” provides that the term refers to an entity of a consolidated group that is included in the consolidated financial statements of the group for financial

reporting purposes. If a group does not prepare consolidated financial statements, or prepares statements that are not in accordance with acceptable accounting principles, a “constituent entity” of the group means an entity that would be required to be included in the group’s financial statements if equity interests in any of the entities of the group were traded on a public securities exchange that requires the use of acceptable accounting principles. For example, if the ultimate parent entity of a group is a private corporation, and is not required to prepare consolidated financial statements, but would be required to do so if it were publicly traded on the Toronto Stock Exchange (or any similar exchange), members of the group that would be included in such financial statements are constituent entities for the purposes of the Act.

An entity is also a constituent entity of a consolidated group if it is excluded from the group’s consolidated financial statements solely for size or materiality reasons.

Entities that have their net income or loss included in a group’s consolidated financial statements under the equity method of accounting are not considered to be “included in the consolidated financial statements” of the group. As such, they are not “constituent entities” of the group.

#### **“digital content”**

The definition “digital content” essentially provides that the term refers to anything (other than a financial instrument) that is digitally encoded and electronically transmittable. Paragraphs (a) and (b) of this definition specify that digital content includes: a digitally encoded text, video, image or sound recording, and computer software, respectively. However, by virtue of paragraph (c), this list is non-exhaustive as digital content also includes any other digitally encoded and electronically transmittable thing.

This definition is relevant for the definitions “digital interface”, “online marketplace”, “online search engine”, “online targeted advertisement” and “social media platform”.

#### **“digital interface”**

The definition “digital interface” essentially provides that the term refers to any electronic medium through which data or digital content is collected, viewed, consumed, delivered or interacted with. A website and an application are specifically included.

This definition is key to the definitions “online marketplace”, “online search engine”, “online targeted advertisement”, “social media platform”, “user” and “user data”.

Connected web pages, or parts of an application, which together constitute one business enterprise, such as an online marketplace, social media platform or online search engine, are considered to be one digital interface. The specific inclusions of “website” and “application” are intended to express this concept. If a taxpayer engages in more than one business enterprise, it is possible for the taxpayer to have more than one digital interface. Such a taxpayer would

delineate the scope of each of its digital interfaces by grouping the components (for example web pages or parts of applications) that are relevant to each of its business enterprises, taking into account considerations such as the kinds of revenue earned, the users, and whether or not particular components can be operated, in a business sense, independently from the others.

### **“entity”**

The definition “entity” provides that any person, other than a natural person, is an “entity”. This definition is relevant for the identification of consolidated groups, members of consolidated groups, taxpayers and users. See below for commentary on the definition of the term “person”.

### **“financial instrument”**

The term “financial instrument” is defined as including the various items set out in paragraphs (a) to (k). Among other things, it includes certain securities, money, certain digital representations of value and commodities.

This definition is relevant for the definition “online marketplace”, as discussed below.

### **“first year of application”**

The definition “first year of application” is relevant for the tax payable provisions of section 10, the registration provisions of section 41 and the filing provisions of section 46. It refers to the calendar year that includes the day on which the Act comes into force and is necessary because those rules work differently in the first year than in subsequent years. See above for a discussion of the coming-into-force provisions of this Act.

### **“fiscal year”**

The definition “fiscal year” varies depending on the context within the Act. Where the Act refers to a “fiscal year of the taxpayer”, the fiscal year is an annual accounting period with respect to which the taxpayer prepares its financial statements. Where the Act refers to a fiscal year of a consolidated group”, the fiscal year is an annual accounting period with respect to which the ultimate parent entity of the consolidated group prepares its financial statements.

This definition is primarily relevant for the purposes of the €750,000,000 threshold for liability under the Act, as set out in Part 2.

### **“Minister”**

The definition “Minister” provides that the term refers to the Minister of National Revenue. The Minister of National Revenue is responsible for the administration and enforcement of this Act.

### **“online marketplace”**

The definition “online marketplace” provides that an online marketplace has three elements:

- it is a digital interface;
- it allows users to interact with other users; and
- it facilitates the supply of property or services, including digital content, between those users.

If a digital interface does not provide for interaction between buyers and sellers then it is not an online marketplace. Similarly, if a digital interface does not facilitate the supply of property or services, for example if it merely advertises items for sale without a mechanism either for the buyer to communicate with the seller or for purchasing the items, then it is not an online marketplace.

The term “facilitate” has a broad meaning. An online marketplace need not provide payment services or shipping services to “facilitate” transactions. Allowing a buyer and seller to find each other and communicate for the purposes of concluding a sale, even if the sale is concluded in person, is sufficient to constitute facilitation.

Paragraph (a) of this definition excludes a digital interface with a single supplier. For example, the website of a traditional retailer that sells its products directly to customers would have a single supplier and thus would not be an online marketplace.

Paragraph (b) of this definition excludes digital interfaces that have as their main purpose:

- the provision of payment services (by facilitating the electronic transfer of funds);
- the making of advances, granting of credit or lending of money; or
- the facilitation of supplies of financial instruments.

This would exclude, for example, credit card processors, credit providers and investment trading platforms. (See the notes above on the definition “financial instrument”.)

This definition is relevant in determining if a taxpayer has online marketplace services revenue, under Division A of Part 3, and for determining whether the taxpayer earns user data revenue, under Division D of Part 3.

*Example 1: A taxpayer owns and operates a website that allows users to post items that they are listing for sale. Other users can also access the site and purchase these items. As this website is a digital interface that allows users to interact with each other (by making direct purchases), and facilitates the supply of property between those users, it meets the definition of an “online marketplace”.*

*Example 2: A taxpayer provides website hosting services to many entrepreneurs. The taxpayer’s business model involves providing pre-made website templates which can be tailored by entrepreneurs into personalized online stores. Since the various websites provided by the taxpayer are each for an unconnected business enterprise, that is, the business of each entrepreneur, each one would be a separate digital interface. Additionally, a prospective*

*purchaser visiting the website of one such entrepreneur would not be connected to the websites of the other entrepreneurs since the websites operate independently. Each of these digital interfaces would only have one supplier; as such, they would not meet the definition of “online marketplace.”*

*Example 3: A taxpayer partners with online retail businesses and provides a “Buy Now, Pay Later” option to the customers on the businesses’ websites. Although the taxpayer’s business model operates via digital interfaces, and facilitates supplies by facilitating payments, this model would not meet the definition of “online marketplace” as its main purpose is to make advances, grant credit or lend money.*

### **“online search engine”**

The definition “online search engine” provides that the term refers to a digital interface that allows users to search the digital content of multiple unrelated websites via the World Wide Web (the Web). This definition is relevant in determining whether a taxpayer earns user data revenue, under Division D of Part 3.

For the purposes of this definition, to search unrelated websites means that the search is not limited to specific pre-selected websites. For example, a web facility that allows users to search one or a limited number of closely-related websites (e.g., the inventory of one retailer or an academic database) is not intended to be within the scope of this definition.

### **“online targeted advertisement”**

The definition “online targeted advertisement” provides that the term refers to an advertisement that

- consists of digital content;
- is placed on, or transmitted through, a digital interface; and
- is targeted at users based on any part of the user data associated with the users.

For greater certainty, it is specified that “online targeted advertisements” include any content that is prominently placed for the purpose of promotion. This would include sponsored content and preferential placements. These examples are not exhaustive. The term “advertisement” is intended to have its common meaning and would also include (but is not limited to):

- display advertisements;
- rich media advertising;
- video advertising;
- political campaign advertising;
- public notices; and
- promotions.

The word “targeted” is intended to have its common meaning within the advertising industry context. Examples of targeted advertising include (but are not limited to):

- demographic targeting: advertising based on user data that includes demographic factors, such as age, gender, income and nationality;
- geographic targeting: advertising based on user data that includes the location of the user, such as profile information, IP address, or global navigation satellite systems data;
- behavioural and interest-based targeting: advertising based on user data that includes information on the user’s behaviour or interests, such as browser history, purchase history, or search history;
- time targeting: advertising at certain times and dates based on user data that includes the history of the user’s access; and
- retargeting: advertising content that users have already seen based on user data that includes browser history, purchase history, or search history.

Contextual advertisements that are not targeted at users based on user data associated with the users, but rather are matched with content on the digital interface, would not meet the definition of “online targeted advertisement”.

This definition is relevant in determining if a taxpayer has online advertising services revenue, under Division B of Part 3.

#### **“person”**

The definition “person” provides that the term includes an individual, trust, partnership, corporation, and any other body of persons or organization of any kind.

#### **“property”**

The definition “property” provides that the term refers to any property, whether it is real or personal, movable or immovable, tangible or intangible, or corporeal or incorporeal. Also included is a right or interest of any kind, a share and a chose in action. For greater certainty, money is also considered property.

#### **“regulation”**

The definition “regulation” provides that the term refers to a regulation made by the Governor in Council under this Act. This would include the provisions of the *Digital Services Tax Regulations*, as discussed further below in these notes.

#### **“social media platform”**

The definition “social media platform” provides that the term refers to a digital interface the main purpose of which is to allow users to find and interact with other users or with digital content generated by other users.

The main purpose of a digital interface is key to determining if it meets this definition. If an incidental component of a digital interface allows users to find and interact with other users, or with digital content generated by other users, but this incidental component cannot be said to

be the main purpose of the digital interface, then the digital interface is not a social media platform. For example, many online gaming platforms with an interactive component allow users to find and interact with other users or with digital content generated by other users, but often such features of the game are incidental to the main purpose (i.e., the service of providing a gameworld). However, if the interactive component of an online game is the game's main purpose, the game would be a social media platform.

Another example of a digital interface that allows users to find and interact with other users or with digital content generated by other users, but that might have a different main purpose, is a document management system. Such a system allows users to upload files that can then be accessed by other users. If the ability to share content is incidental, and the main purpose of the system is rather to provide software tools that improve work productivity and provide cloud storage, the digital interface would not be a social media platform.

An ancestry website may or may not meet the definition of a social media platform depending on whether the main purpose of the website is genealogical research or finding and interacting with other users (potential relatives or other researchers).

This definition interacts with the definition of "user" (see commentary below). If a platform that would otherwise be a social media platform is used only by the employees of a business to interact with each other, it would not meet the definition of "social media platform". This is because the definition of "user" specifies that all employees of an entity who are acting in the course of the entity's business are a single user. Therefore, such a platform would not meet the main purpose test since there are no "other users" to interact with.

This definition is relevant in determining if a taxpayer has social media services revenue under Division C of Part 3.

### **"supply"**

The definition "supply" provides that the term refers to the provision of property or a service in any manner. This includes, but is not limited to, a sale, transfer, barter, exchange, licence, rental, lease, gift or disposition. This definition is relevant for describing transactions between users of an online marketplace.

### **"taxable Canadian digital services revenue"**

The definition "taxable Canadian digital services revenue" is a pointer to indicate that it is determined in accordance with Part 4. This term is used in Part 2 for determining a taxpayer's liability to pay digital services tax.

### **"taxpayer"**

The definition "taxpayer" provides that any entity is a "taxpayer", other than certain Crown-owned entities (including wholly-owned subsidiaries of Crown-owned entities). For the purposes of this definition, it is not relevant whether the entity is liable to pay tax under this

Act, meets the revenue thresholds in Part 2 of the Act, or earns Canadian digital services revenue.

### **“total consolidated group revenue”**

The definition “total consolidated group revenue”, of a consolidated group for a fiscal year, refers to the revenue reported in the consolidated financial statements of the group for the year.

If a consolidated group does not prepare financial statements in accordance with acceptable accounting principles, or does not prepare any consolidated financial statements, then the “total consolidated group revenue” of the group is the revenue that would be reported if the group had prepared consolidated financial statements in accordance with International Financial Reporting Standards.

Total consolidated group revenue does not, however, include the revenue of any entity that is not a taxpayer (see commentary on the definition of “taxpayer” above). This ensures that consolidated groups are not brought into scope solely due to the inclusion of revenue earned by entities that are not taxpayers under the DSTA.

This definition is relevant for the €750,000,000 threshold for tax liability set out in Part 2.

### **“ultimate parent entity”**

An “ultimate parent entity” of a consolidated group is, in general terms, the constituent entity of the group that is at the top of the group’s ownership chain such that it is the entity in respect of which consolidated financial statements are required to be prepared under acceptable accounting principles (or would be so required if equity interests in it were traded on a public securities exchange that requires the use of acceptable accounting principles).

This definition, along with sections 6 and 7, is relevant for identifying a “consolidated group” and for the definition “fiscal year” of a group (see the commentary on these terms above). These terms are primarily relevant for applying the €750,000,000 threshold for tax liability set out in Part 2.

### **“user”**

The definition “user” provides that the term generally refers to an individual or an entity that interacts, directly or indirectly in any manner whatever, with a digital interface. If an individual is acting in the course of an entity’s business then the entity, not the individual, is the user. Accordingly, a business user consists of all the business’ employees. For these purposes, it is intended that two or more employees of the same business, performing their employment activities, be considered a single user (i.e., the business).

There are certain exclusions. Specifically, the term “user” does not include the operator of a digital interface, a constituent entity in the same consolidated group as the operator of the digital interface, or an employee of either the operator or such a constituent entity.

The inclusion of “directly or indirectly in any manner whatever” is intended to ensure that the term “interacts” within this definition has a broad meaning. A user can interact with an interface directly (e.g., logging into a social media platform), indirectly (e.g., connecting to a social media platform through a third party) or by passive means, such as carrying a smartphone while allowing an interface to collect global navigation satellite systems data. Whenever an individual’s or an entity’s actions have an impact on an interface, it is intended that it constitute an interaction for the purposes of this definition.

### **“user data”**

When a user interacts, directly or indirectly in any manner whatever, with a digital interface, any representations of information or concepts generated by, or collected from, this interaction, is “user data” for the purposes of this Act. For example, it is intended that user data include:

- data that a user provides directly, such as their preferences, name, mailing address, email address, social media account login-IDs, billing data, comments, reviews and pictures; and
- behaviour-based analytics, including session duration, pages visited, and device profile (including location).

User data retains its character regardless of whether it is owned by the operator of the digital interface through which it was generated, or collected, or whether it has been acquired by an entity other than the operator of the interface.

The inclusion of “directly or indirectly in any manner whatever” is intended to ensure that the term “interaction” within this definition has a broad meaning (see the comments under the “user” definition for examples).

This definition is relevant for the definition “online targeted advertisement”, for determining the location of a user under section 11, and for determining if a taxpayer has user data revenue, under Division D of Part 3.

### **Section 3 – Negative or undefined results**

Section 3 provides that if the application of any algebraic formula under this Act results in a negative number, or if the result is mathematically undefined (i.e., where an amount is required to be divided by zero), the result is deemed to be nil.

#### **Subsection 4(1) – Determination of revenue**

Subsection 4(1) provides rules regarding the relevant principles for determining revenue. Any time an amount of revenue must be determined for the purposes of the Act, that amount of revenue must be determined in accordance with the same acceptable accounting principles that are used for preparing the financial statements of the taxpayer. If the taxpayer does not prepare financial statements (for example, if the taxpayer is a member of a consolidated group and does not prepare separate entity financial statements), or prepares financial statements without using acceptable accounting principles, revenue amounts must be determined in accordance with either the acceptable accounting principles used by the taxpayer’s group in the preparation of the consolidated financial statements of the group, if any, or International Financial Reporting Standards.

In the DSTA, “revenue” is used to refer to either the revenue reported (or that would be reported) in the financial statements or the amounts that would be included in determining such reported revenue, as the context requires. For example, Canadian digital services revenue is comprised of amounts that would be included in determining the reported revenue. For further details, refer to the published accounting standard being used.

“Acceptable accounting principles” is defined in section 2.

#### **Subsection 4(2) – Currency of revenue – Euro conversion**

Subsection 4(2) provides that for the purposes of Part 2 of the DSTA (relating to liability for tax, including the application of the €750,000,000 threshold), where total revenue or total consolidated group revenue is recorded in a currency other than Euro, it is to be converted into Euro using a rate of exchange that is acceptable to the Minister of National Revenue.

#### **Subsection 4(3) – Currency of revenue – Canadian dollar conversion**

Subsection 4(3) provides that for the purposes of Part 3 of the DSTA (relating to the computation of Canadian digital services revenue), where revenue is recorded in a currency other than Canadian dollars, it is to be converted into Canadian dollars using a rate of exchange that is acceptable to the Minister of National Revenue.

#### **Section 5 – Short fiscal year: €750 million threshold**

Section 5 provides an interpretive rule for short fiscal years. Where a fiscal year is shorter than twelve months, the €750,000,000 threshold referenced throughout the DSTA must be prorated according to the number of days in that short fiscal year.

*Example: A taxpayer has a fiscal year from March 1 to December 17, for a total of 292 days. According to the formula in Section 5, a reference to “€750,000,000”, in respect of that year, is prorated as follows:*

$$€750,000,000 \times 292/365 \text{ days} = €600,000,000$$

## **Section 6 – Continuity of consolidated group**

Section 6 provides for the continuity of a consolidated group from year to year by identifying groups based on their ultimate parent entity. For example, when a taxpayer joins a consolidated group in the current calendar year, for the purposes of applying the €750,000,000 threshold for tax liability to the fiscal year of the consolidated group that ended in the immediately preceding calendar year, the relevant consolidated group is the group with the same ultimate parent entity as the taxpayer's current group, provided that at all times between the end of that fiscal year and the time the taxpayer joins the group the parent did not change.

## **Section 7 – Mergers**

Section 7 provides rules for applying the DSTA when two or more corporations merge or combine.

Paragraph (a) specifies that for the purposes of the Act (except if paragraph (b) or (c) applies) a new corporation that forms from a merger or combination is deemed to be a separate person from each predecessor corporation. This ensures that each predecessor corporation, and the new corporation, are all separate taxpayers.

Paragraph (b) specifies that for the purposes of Part 6, which contains the administrative provisions of the Act, a new corporation that forms from a merger or combination is deemed to be the same corporation as, and a continuation of, each predecessor corporation. This ensures that the administrative obligations of the predecessor corporations become obligations of the new corporation.

Paragraph (c) provides rules for applying section 6 when a merger or combination has occurred and one or more of the predecessor corporations is an ultimate parent entity of a consolidated group. These rules ensure that consolidated groups remain identifiable following such a merger or combination. Subparagraph (i) addresses mergers and combinations where only one of the predecessor corporations is an ultimate parent entity. In this case, the new corporation is deemed to be a continuation of the ultimate parent entity. Subparagraph (ii) addresses mergers and combinations where two or more of the predecessor corporations are each an ultimate parent entity. In this case, the new corporation is deemed to be a continuation of the ultimate parent entity of the consolidated group that had the greatest amount of total consolidated group revenue for a fiscal year of the group that ended in the immediately preceding calendar year. This ensures, for example, that if any of the predecessor corporations is an ultimate parent entity of a group that meets the €750,000,000 threshold then the new corporation is likely to meet the €750,000,000 threshold as well.

### **Subsection 8(1) – Arm’s length**

Subsection 8(1) sets out two rules in respect of the meaning of “arm’s length” for the purposes of the Act. Under paragraph (a), related persons are deemed not to deal with each other at arm’s length. Paragraph (b) provides that for unrelated persons, it is a question of fact whether they are dealing with each other at arm’s length.

The “arm’s length” and “non-arm’s length” concepts are relevant for joint liability when property is transferred not at arm’s length (section 53) and for garnishment (section 113).

### **Subsection 8(2) – Related persons**

Subsection 8(2) provides that for the purposes of the DSTA, persons are related to each other if they are related persons within the meaning of subsection 6(2) of the *Excise Act, 2001* which, in turn, refers to section 251 of the *Income Tax Act* but with certain changes in respect of partnerships.

### **Section 9 – His Majesty**

Section 9 provides that the DSTA is binding on His Majesty in right of Canada or a province, which means that all the requirements of the Act, including requirements under regulations made under the Act, apply to federal, provincial, and territorial governments. This requirement is needed for various obligations in Part 6, such as compliance with garnishment orders. However, note that pursuant to the definition “taxpayer”, certain Crown-owned entities are not themselves subject to the digital services tax (DST).

## **PART 2**

### ***Liability for Tax***

Part 2 of the Act contains the main rules for computing a taxpayer’s DST liability. In particular, it specifies which taxpayers must pay DST, the rate of the tax and the tax base.

### **Subsection 10(1) – Tax payable**

Section 10 is the main charging provision of the Act, and contains two subsections. Subsection 10(1) addresses the calculation of the DST for years after the first year of application, while subsection 10(2) addresses the calculation of the DST for the first year of application. The term “first year of application” is defined in Section 2 as the calendar year that includes the day that the Act comes into force.

Subsection 10(1) provides that taxpayers that meet both a total revenue threshold of €750,000,000 and a “Canadian digital services revenue” threshold of \$20,000,000 are required

to pay a tax of 3 per cent on their “taxable Canadian digital services revenue”. “Canadian digital services revenue” is computed under Part 3. “Taxable Canadian digital services revenue” is computed under Part 4.

Paragraph 10(1)(a) sets out the conditions for a taxpayer to meet the €750,000,000 revenue threshold. A taxpayer meets this threshold if any of the following three conditions is satisfied:

- the taxpayer had at least €750,000,000 in total revenue for a fiscal year of the taxpayer that ended in the preceding calendar year (subparagraph 10(1)(a)(i));
- the taxpayer was part of a consolidated group at any time in the preceding calendar year and the group had total consolidated revenue of at least €750,000,000 during a fiscal year of the group that ended in the preceding calendar year (subparagraph 10(1)(a)(ii)); or
- the taxpayer joined a consolidated group in the current calendar year, and the group had at least €750,000,000 of total consolidated revenue during a fiscal year of the group that ended in the preceding calendar year (subparagraph 10(1)(a)(iii)).

The first two conditions, in subparagraphs 10(1)(a)(i) and (ii), relate to the situation of the taxpayer or the taxpayer’s group, respectively, in the preceding calendar year, whereas the condition in subparagraph 10(1)(a)(iii) relates to the situation of the taxpayer in the current calendar year.

It should also be noted that under section 5 the €750,000,000 threshold is prorated for short fiscal years.

Paragraph 10(1)(b) sets out the conditions for a taxpayer to meet the \$20,000,000 Canadian digital services revenue threshold. A taxpayer meets this threshold if either of the following two conditions is satisfied:

- the taxpayer has Canadian digital services revenue of over \$20,000,000 in the current calendar year (subparagraph 10(1)(b)(i)); or
- the taxpayer is a constituent entity of one or more consolidated groups at any time in the current calendar year, and, for any such group, the sum of the Canadian digital services revenues of every entity that is in the group at any time during the year is over \$20,000,000 (subparagraph 10(1)(b)(ii)).

It should be noted that the \$20,000,000 threshold in Part 2 differs from the \$20,000,000 deduction in Part 4. Although the deduction in Part 4 is a deduction of \$20,000,000 that, in some cases, is shared among members of a consolidated group, there may be situations where a taxpayer’s taxable Canadian digital services revenue is nil, such that the taxpayer is not required to pay digital services tax, even though the taxpayer meets one or more conditions in paragraph 10(1)(a) and one or both conditions in paragraph 10(1)(b). This is because the deduction takes into account the periods of time during which entities are members of the

group, and the threshold does not. Examples illustrating the computation of the deduction can be found in the commentary below in respect of Part 4 of the DSTA.

*Example 1:*

*A taxpayer had revenue of more than €750,000,000 during its fiscal year that ended in the preceding calendar year. The taxpayer has never been a member of a consolidated group. During the current calendar year, it earned \$130,000,000 of Canadian digital services revenue. The current calendar year is not the Act's "first year of application".*

*As the taxpayer meets both the €750,000,000 threshold (under 10(1)(a)(i)) and the \$20,000,000 threshold (under 10(1)(b)(i)), it is subject to tax under section 10(1) on its taxable Canadian digital services revenue, as determined under Part 4.*

*Example 2:*

*A taxpayer is a member of a consolidated group throughout the preceding and current calendar years. The group earned more than €750,000,000 in total consolidated group revenue in its fiscal year that ended in the preceding calendar year. The taxpayer is the only member of its group that earns Canadian digital services revenue. During the current calendar year, the taxpayer earned \$8,000,000 of Canadian digital services revenue. The current calendar year is not the Act's "first year of application".*

*Since the taxpayer does not meet the \$20,000,000 threshold under either subparagraphs 10(1)(b)(i) or (ii), the taxpayer is not subject to the DST for the current calendar year.*

*Example 3:*

*A consolidated group earned more than €750,000,000 in total consolidated group revenue in its fiscal year that ended in the preceding calendar year. There are two entities in the group that earn Canadian digital services revenue – Entity A and Entity B. The current calendar year is not the Act's "first year of application".*

*Entity A joined the group on May 27 of the current calendar year and was not previously a member of a consolidated group. Entity A earned total revenue of less than €750,000,000 for its fiscal year that ended in the preceding calendar year. During the period of time commencing on May 27 and ending on December 31 (Entity A's "in-scope period" as per subsection 21(2)), Entity A earned \$40,000,000 of Canadian digital services revenue. As per subsection 21(1), Entity A's Canadian digital services revenue does not include revenue earned before May 27.*

*Entity B was a member of the group throughout both the preceding and current calendar years, and earned \$5,000,000 of Canadian digital services revenue in the current calendar year.*

*Entity A meets the €750,000,000 threshold under 10(1)(a)(iii) since it was a member of the large group for part of the current calendar year. It meets the \$20,000,000 threshold under both*

*10(1)(b)(i) and (ii) since it earned over \$20,000,000 of Canadian digital services revenue during its in-scope period in the current calendar year (i.e., after it joined the large group) and the entities in its group earn more than \$20,000,000 of Canadian digital services revenue in the current calendar year (Entity A earned \$40,000,000 and Entity B earned \$5,000,000).*

*Entity B meets the €750,000,000 threshold under both 10(1)(a)(ii) and (iii) since it was a member of the large group during both the preceding and current calendar years. It also meets the \$20,000,000 threshold under 10(1)(b)(ii) since the entities in its group earn more than \$20,000,000 in Canadian digital services revenue in the current calendar year (Entity A earns \$40,000,000 and Entity B earns \$5,000,000).*

*Accordingly, both Entity A and Entity B are subject to tax under subsection 10(1) on their taxable Canadian digital services revenue, as determined in Part 4.*

*For an example that illustrates the calculation of taxable Canadian digital services revenue for these entities, see Example 3 under the commentary on Section 24.*

#### *Example 4:*

*There are two consolidated groups that each earned more than €750,000,000 in total consolidated group revenue in their fiscal years that ended in the preceding calendar year – Group 1 and Group 2. Entity A was a member of Group 1 throughout the preceding calendar year and first half of the current calendar year, and it joined Group 2 for the second half of the current calendar year. The current calendar year is not the Act’s “first year of application”.*

*Entity A earned \$37,000,000 of Canadian digital services revenue in the current calendar year, with \$19,000,000 earned while it was a member of Group 1, and \$18,000,000 earned while it was a member of Group 2.*

*Entity A meets the €750,000,000 threshold under both subparagraph 10(1)(a)(ii) and (iii) since it was part of a large group in the preceding and current calendar years. It also meets the \$20,000,000 threshold under subparagraph 10(1)(b)(i) since it earns over \$20,000,000 in Canadian digital services revenue during the calendar year. Accordingly, Entity A is subject to tax under subsection 10(1) on its taxable Canadian digital services revenue, as determined under Part 4.*

*This example illustrates that the \$20,000,000 threshold may be met by aggregating revenue earned by an entity while it is a member of different groups.*

#### *Example 5:*

*A consolidated group earned more than €750,000,000 in total consolidated group revenue in its fiscal year that ended in the preceding calendar year (Year 0) and in its fiscal year that ended in the current calendar year (Year 1). Neither of these years was the Act’s “first year of*

*application”. Entity A was a constituent entity of the consolidated group in Year 0, and left the group on February 15 of the following calendar year (Year 1). Entity A did not join another group after leaving the group. Entity A earns €100,000,000 of total revenue, and \$30,000,000 of Canadian digital services revenue, each year.*

*In Year 1, Entity A meets the revenue thresholds and is subject to tax under subsection 10(1) on its taxable Canadian digital services revenue, as determined under Part 4. It meets the €750,000,000 threshold under both subparagraphs 10(1)(a)(ii) and (iii) (since it was part of a large group in the preceding and current calendar years). Entity A also meets the \$20,000,000 threshold under subparagraph 10(1)(b)(i) since it earned \$30,000,000 of Canadian digital services revenue in the calendar year.*

*In Year 2, Entity A again meets the revenue thresholds and is subject to tax under subsection 10(1) on its taxable Canadian digital services revenue, as determined under Part 4, even though it is no longer part of a large group. It meets the €750,000,000 threshold under subparagraph 10(1)(a)(ii) since it was part of a large group for part of the preceding calendar year. Entity A also meets the \$20,000,000 threshold since it earned \$30,000,000 of Canadian digital services revenue in the calendar year.*

*In Year 3, Entity A is no longer subject to tax under subsection 10(1), as it does not meet the €750,000,000 threshold under any subparagraph of paragraph 10(1)(a).*

*For an example that illustrates the calculation of taxable Canadian digital services revenue for Entity A, see Example 4 under the commentary on Section 24.*

### **Subsection 10(2) – Tax payable for first year of application**

Subsection 10(2) sets out the method for computing a taxpayer’s DST for the “first year of application” (as defined in section 2). Since the “first year of application” can be no earlier than 2024, it provides that a taxpayer’s tax base in respect of the first year of application is calculated by aggregating the taxpayer’s taxable Canadian digital services revenue for 2022, 2023 and any other calendar year up to and including the first year of application. However, the taxable Canadian digital services revenue in respect of any one of these calendar years is only included in the tax base if the taxpayer meets the thresholds in paragraphs 10(1)(a) and (b) in respect of that year. For example, if the first year of application is 2024, and the taxpayer meets the thresholds for 2022 and 2024, but not 2023, the taxpayer will only include its taxable Canadian digital services revenue in respect of 2022 and 2024 in its tax base for 2024.

## PART 3

### *Canadian Digital Services Revenue*

Part 3 of the Act sets out the rules for determining a taxpayer's Canadian digital services revenue. It first sets out, in section 11, definitions that apply for all of Part 3 in respect of the determination of user location, the main concept for sourcing such revenue. Section 12 then specifies that Canadian digital services revenue is the total revenue associated with Canadian users from each revenue stream set out in Divisions A to D. Each such Division represents a distinct revenue stream and specifies the revenue that is within the scope of that revenue stream. A portion of such revenue is then sourced to Canada based on its association with Canadian users.

#### **Section 11 – Definitions**

The definitions in section 11 apply to Part 3 of the Act.

#### **“user located in Canada”**

The definition “user located in Canada” is based on a reasonableness test. A user is considered to be located in Canada if it is reasonable to conclude (based on data available to the taxpayer in the normal course of its business) that the user is in Canada. Such data might include any address on file for the user, telephone area code, global navigation satellite systems data or Internet Protocol address data. This list is non-exhaustive and it may be reasonable to use other data points. For example, an online marketplace could use the address of a user's financial institution as an indicator of the user's location if that is the only data point available.

Under paragraph (a), for online advertising services revenue and user data revenue based on the real-time location of users, a user's location at the precise time is sought. That is, for a user to be “located in Canada” the data should indicate that the user is, at that point in time, located in Canada (i.e., real-time location). For example, a user's smartphone may display an advertisement for a restaurant when the smartphone's global navigation satellite systems data indicates that the user is within the vicinity of the restaurant. Revenue from facilitating such an advertisement would be based on the real-time location of the user.

Under paragraph (b), for revenue other than that described in paragraph (a), a user is “located in Canada” if the user is normally located in Canada around that time, not specifically at that precise time. Different data, gathered over different periods of time, may be relevant for this determination. Thus, data such as the user's current billing address or phone number area code may be used to establish the user's normal location (which will typically be the jurisdiction where the user resides) as opposed to, for example, a location the user visits temporarily on a vacation.

### **“user located outside Canada”**

The definition “user located outside Canada” is the same as the definition “user located in Canada”, except that the references in the latter to “in Canada” are replaced with references to “outside Canada”. However, if a user could fall into both definitions, it will default to being a “user located in Canada”.

### **“user of determinable location”**

A user is a “user of determinable location” if it meets either the definition of “user located in Canada” or “user located outside Canada”. It should be noted that it is possible for a user not to be a user of determinable location, for example if the taxpayer has insufficient data to reasonably assess location.

#### *Example 1:*

*An online advertisement is shown on a website to users interested in hockey. The targeting is not based on real-time location, but rather uses an algorithm to locate users likely to be interested in hockey. One of the users who views the advertisement is a user with an IP address and device location data indicating a Canadian location. As real-time location targeting is not used, paragraph (b) of the definition of “user located in Canada” applies. Since the only available user data indicates a Canadian location, it is reasonable to conclude that this user is normally located in Canada. As such, this user would be considered both a user located in Canada and a user of determinable location.*

#### *Example 2:*

*A social media platform has a user who uses a privacy filter that prevents any personal information from being collected by the interface. Additionally, the content posted by the user on the social media platform does not indicate the user’s location. As the social media platform has no data by which to determine location, this user is not considered located in Canada or outside of Canada. As such, the user is not a user of determinable location.*

#### *Example 3:*

*An online marketplace has a user that participated in multiple transactions on the marketplace. Their shipping address is in Canada and their billing address is outside Canada. In such a case, it may be reasonable to conclude that the user is in Canada and outside Canada. Because of the default rule, such a user would be considered a user located in Canada (and a user of determinable location).*

### **Subsection 12(1) – Basic rule**

Subsection 12(1) provides that a taxpayer’s Canadian digital services revenue is the sum of the taxpayer’s:

- Canadian online marketplace services revenue, as calculated under Division A;
- Canadian online advertising services revenue, as calculated under Division B;
- Canadian social media services revenue, as calculated under Division C; and
- Canadian user data revenue, as calculated under Division D.

It should be noted that revenue cannot be included in more than one revenue stream. This is accomplished through the exclusions in paragraphs 15(2)(a), 17(2)(a) and 19(2)(a). Through these exclusions, income that could be included in multiple revenue streams is limited to a single revenue stream, with priority going first to online marketplace services revenue, then to online advertising services revenue, social media services revenue and, finally, to user data revenue.

### **Subsection 12(2) – Election**

Subsection 12(2) provides an elective simplified method for calculating Canadian digital services revenue for years prior to the “first year of application” (defined in section 2). Provided that a taxpayer elects on or before June 30 of the year following the first year of application, in the prescribed form and manner, subsection (1) will not apply to years in respect of which the election is made, and the taxpayer can instead use the simplified method for those years.

Under the simplified method, rather than calculating the actual Canadian digital services revenue for a particular year, the taxpayer can elect to approximate it using a formula. This formula divides the Canadian digital services revenue for the first year of application by total revenue for the first year of application, and then multiplies the result by total revenue for the particular year. In short, Canadian digital services revenue can be approximated for years prior to the first year of application by using the ratio of Canadian digital services revenue to total revenue for the first year of application.

#### *Example:*

*Entity A is a constituent entity of a consolidated group that earns over €750,000,000 in total consolidated revenue each fiscal year and that exceeds the \$20,000,000 threshold for Canadian digital services revenue each calendar year. In the first year of application, which for the purposes of this example is 2024, Entity A earns \$100,000,000 in total revenue and \$10,000,000 in Canadian digital services revenue. Entity A is unable to determine its actual Canadian digital services revenue for 2022 and 2023, as it did not have systems in place. Entity A makes an election under subsection 12(2) to use the simplified calculation method for 2022 and 2023. Entity A earned \$75,000,000 in total revenue in 2022, and \$90,000,000 in total revenue in 2023. Using the elective method, Entity A determines that its Canadian digital services revenue for 2022 and 2023 is:*

- *2022:  $\$10,000,000 / \$100,000,000 * \$75,000,000 = \$7,500,000$ ; and*
- *2023:  $\$10,000,000 / \$100,000,000 * \$90,000,000 = \$9,000,000$ .*

### **Subsection 12(3) – Election – restriction**

Subsection 12(3) provides a restriction on the use of the election provided in subsection (2). A taxpayer cannot elect under subsection (2) for a particular year if it could have elected under subsection (2) for a prior year (in which it met the threshold conditions) and it did not do so. In general terms, if a taxpayer had systems in place to calculate actual Canadian digital services revenue, and used those systems to calculate Canadian digital services revenue for a prior year (as reported in its return for the first year of application) the taxpayer cannot use the elective method for a subsequent year.

## **DIVISION A**

### ***Canadian Online Marketplace Services Revenue***

Division A of Part 3 sets out the rules for determining a taxpayer's online marketplace services revenue, and for sourcing a portion of that revenue to Canada.

### **Subsection 13(1) – Definition – online marketplace services revenue**

Section 13 provides the definition of “online marketplace services revenue”. This definition is relevant for determining a taxpayer's Canadian online marketplace services revenue under section 14.

If a taxpayer runs an online marketplace (or if the taxpayer is in a consolidated group and another constituent entity of the group runs an online marketplace), then any revenue earned by the taxpayer that is in respect of the online marketplace and is described in paragraphs 13(1)(a) to (d) is online marketplace services revenue. “Online marketplace” is defined in section 2 of the Act and that definition contains specific exclusions.

Paragraph 13(1)(a) includes revenue received from the provision of access to, or the use of, the online marketplace. This would include, for example, subscription fees and pay-per-use fees.

Paragraph 13(1)(b) includes revenue received from facilitating a supply between users of the online marketplace, such as transaction commissions and payment service fees. This paragraph also specifies that revenue from services ancillary to the supply are included. This ensures, for example, that if for a particular transaction there is a commission fee and a fee for the use of a payment system, the revenue included under this paragraph will not be affected by whether the fees are bundled or unbundled.

Paragraph 13(1)(c) includes revenue received from providing premium services, preferential listing services and other optional enhancements to the online marketplace service. The term “preferential listings” is intended to refer to listings for goods and services that are for sale on the online marketplace. It would not refer to advertisements that link to third party websites

(the revenue with respect to which would be online advertising services revenue). This paragraph also includes revenue from the provision of optional changes to the standard commercial terms of the services provided in respect of the online marketplace. For example, revenue from loyalty reward programs or from the provision of access to special deals would be included.

Paragraph 13(1)(d) includes revenue received from sources prescribed by regulation. Such sources would be limited, by virtue of the preamble of this subsection, to sources of revenue that are “in respect of” an online marketplace. This paragraph, and similar paragraphs in Divisions B, C and D, would allow for updates in the future, by way of regulations, in order to take into account new business models that are within the intended scope of this revenue stream. No such regulations are being proposed at the time of issuance of draft legislative proposals.

It should be noted that revenue earned by the online marketplace provider from selling its own inventory is not included. This is the case for two reasons: first, the definition of “user” in Part 1 excludes the individual or entity that operates the digital interface and, second, proceeds from the sale of inventory are not included in any of paragraphs 13(1)(a) through (d).

### **Subsection 13(2) – Definition – revenue exclusion**

Paragraphs 13(2)(a) to (c) provide exclusions for the purposes of the “online marketplace services revenue” definition in subsection 13(1).

Paragraph 13(2)(a) excludes revenue from providing storage or shipping services, to the extent that the revenue reflects a reasonable rate of remuneration for the service. For example, if a taxpayer earns \$100 for shipping a good, but the current market rate for third party shipping services of the particular kind does not exceed \$40, then only \$40 of the shipping cost will be excluded from online marketplace services revenue.

If a taxpayer earns revenue in respect of an online marketplace while it is a constituent entity of a consolidated group, and the revenue is earned from another entity of the group, paragraph 13(2)(b) excludes this revenue from online marketplace services revenue of the taxpayer.

Paragraph 13(2)(c) excludes any revenue earned from sources prescribed by regulation. No such regulations are being proposed at the time of issuance of draft legislative proposals. This exclusion is limited to those sources that would otherwise be included under subsection 13(1).

*Example 1: An entity operates a digital interface that earns revenue through multiple business models: an online marketplace that connects buyers of particular products with various sellers, an online retail business that purchases inventory and resells it at margin, and a streaming service that permits subscribers to access digital content. The entity’s revenue streams include commission fees from facilitating transactions between users, shipping fees, revenue from*

*inventory sales, and subscription fees. Subscribers receive loyalty rewards on the marketplace, and access to the streaming service.*

*To determine the taxpayer's "online marketplace services revenue", each of the taxpayer's revenue streams must be compared with the inclusions and exclusions in Section 13:*

- *Commission fees – these fees meet the description in paragraph 13(1)(b), and thus are included.*
- *Shipping fees – although these fees are "from the facilitation of a supply between users of the online marketplace", and thus meet the description in paragraph 13(1)(b), a specific exclusion is provided in paragraph 13(2)(a) for reasonable shipping fees. Accordingly, these fees will be excluded to the extent that they are reasonable.*
- *Revenue from inventory sales – revenue from selling one's own inventory is not included in any of paragraphs 13(1)(a) to (d), and thus is not included.*
- *Subscription fees – although fees in respect of loyalty rewards would be included under paragraph 13(1)(c) (as an optional enhancement), fees for a streaming service would not be included under any of paragraphs 13(1)(a) to (d). Thus, the revenue from subscription fees must be unbundled and reasonably allocated between the in-scope revenue for loyalty rewards and the out-of-scope revenue for the streaming service.*

*Example 2: An advertising technology company operates a digital interface that connects marketers with publishers of advertising content. The company receives a commission-type fee for advertisement displays facilitated by its interface. This digital interface would meet the definition of an "online marketplace", and the commission fees would be included in "online marketplace services revenue" under paragraph 13(1)(a).*

*Although the commission fees might also qualify as "online advertising services revenue", as described in Division B of Part 3, the exclusion in paragraph 15(2)(a) for revenue described in paragraphs 13(1)(a) to (d) ensures that these fees are only included in "online marketplace services revenue".*

## **Section 14 – Canadian online marketplace services revenue**

Section 14 provides the rules for calculating a taxpayer's "Canadian online marketplace services revenue". It is a sum of specific amounts of "online marketplace services revenue" (defined in section 13) that are associated with Canadian users. "Canadian online marketplace services revenue" is included in the taxpayer's Canadian digital services revenue under variable A of the formula in Section 12.

Under section 14, a taxpayer's Canadian online marketplace services revenue for a calendar year is the sum of variables A, B and C. Each of these variables contains rules for a specific type of online marketplace services revenue.

## Variable A

Variable A includes any “online marketplace services revenue” that is in respect of a supply of any of the following:

- a service that is physically performed and received in Canada (e.g. a car ride or food delivery);
- a service in respect of real property situated in Canada (e.g. short-term accommodation); or
- a service in respect of tangible personal property situated in Canada (e.g. car sharing, canoe rentals, furniture assembly services).

Any revenue earned by online marketplaces for such services (for example, if the accommodation is in Canada, the ride is in Canada or the food is delivered in Canada) is fully included in variable A.

It is intended that, for these purposes, a service would be considered physically performed and received in Canada if any part of the service is performed in Canada. For example, if a driver transports a user to or from a location in Canada, regardless of whether part of the trip took place outside Canada, the ride would be a service physically performed and received in Canada.

For revenue from services in respect of tangible personal property, the property must be normally situated in Canada and situated in Canada at the time the service is performed for the revenue to be included in variable A. This ensures that if tangible personal property is temporarily shipped to Canada for servicing, the associated revenue would not be included in variable A. For these purposes, it is not intended that the online marketplace would take into account any information that it does not have access to in the ordinary course of its business. For example, if the online marketplace has no information indicating that property was temporarily shipped to Canada, it can assume that the property is normally situated in Canada.

*Example 1: A taxpayer runs an online marketplace that specializes in connecting property owners with tourists who wish to rent the property owners’ apartments for short periods of time. The marketplace charges a commission fee to property owners for each successful connection to a renter. The marketplace earned \$100,000 in total revenue during the calendar year. Of this revenue, \$2,000 was earned in respect of properties located in Canada (regardless of the normal locations of the owners of those properties or of the renters). This taxpayer’s variable A is \$2,000.*

*Example 2: A taxpayer runs an online marketplace that specializes in connecting drivers with passengers for specific trips. The marketplace charges a \$1 fee to drivers for each successful connection to a passenger. The marketplace facilitated 1,000,000 such connections during the calendar year. Of these connections, 100,000 trips began and/or ended in Canada. This taxpayer’s variable A is \$100,000.*

## Variable B

Variable B deals with “online marketplace services revenue” in respect of a particular supply (other than revenue dealt with by variable A). Revenue in respect of a particular supply includes fees relating to specific transactions, for example, commission fees.

Variable B sets out a formula for determining the portion of the taxpayer’s revenue in respect of particular supplies that is associated with Canadian users. Variable B is the sum of all the amounts that result from the application of the formula  $D \times E/2$  (that is, an amount for every transaction with a user in Canada). D is an amount of revenue in respect of a particular supply and, assuming that a transaction has two parties, E is the number of parties to the transaction that are located in Canada (as determined in accordance with section 11) at the time of the transaction. For a particular supply, this formula will produce one of three results:

- if both the supplier and purchaser are located in Canada, then the taxpayer’s revenue in respect of this supply (variable D) is fully included in variable B (as variable E is two),
- if only one of the supplier or the purchaser is located in Canada, then half of the taxpayer’s revenue (variable D) in respect of the supply is included in variable B (as variable E is one), or
- if neither the supplier nor the purchaser is located in Canada, no revenue (variable D) in respect of the supply is included in variable B (as variable E is nil).

Since “supply” is defined (in section 2) as including a licence or lease, the terms “supplier” and “purchaser” are intended to include a licensor or lessor, and a licensee or lessee, respectively.

Certain marketplaces may allow multiple purchasers to pool their resources and purchase from a supplier in a single transaction. For the purposes of section 14, it is intended that any transaction of this type be considered multiple supplies (one for each purchaser). Revenue in respect of the overall transaction should be reasonably allocated between each supply.

*Example 3: An online marketplace facilitated three supplies during a calendar year, and earned a commission fee of \$2 from each supply. For supply 1, both the supplier and the purchaser were located outside of Canada. For supply 2, only the purchaser was located in Canada. For supply 3, both the supplier and purchaser were located in Canada. The formula  $D \times E/2$  is applied to each supply as follows:*

- *Supply 1 =  $\$2 \times 0 / 2 = \$0$*
- *Supply 2 =  $\$2 \times 1 / 2 = \$1$*
- *Supply 3 =  $\$2 \times 2 / 2 = \$2$*

*Variable B is the total of all amounts resulting from the application of  $D \times E/2$ , that is:  $\$0 + \$1 + \$2 = \$3$ .*

## Variable C

Variable C deals with “online marketplace services revenue” that is not in respect of a particular supply (i.e., not revenue described in variables A and B). Such non-transactional revenue would include, for example, subscription fees for the use of an online marketplace.

Variable C sets out a formula for determining the portion of non-transactional online marketplace services revenue that is associated with Canadian users. This formula measures the level of Canadian activity on an online marketplace. The formula is  $F \times G/H$  where F is the total amount of non-transactional revenue for a particular online marketplace, G is the number of times a user located in Canada participates in a transaction on the marketplace, and H is the number of times a user of determinable location participates in a transaction on the marketplace. The formula assumes that every transaction has two participants (relevant users): the supplier and the purchaser. Thus, if for a particular transaction both the supplier and the purchaser are located in Canada, this supply would increase G by 2. If only the supplier or only the purchaser is located in Canada, this supply would increase G by 1. Similarly, H would be increased by 2 for every transaction where both the supplier and the purchaser are of determinable location, and by 1 for every transaction where only the supplier, or only the purchaser, is of determinable location. A transaction with no Canadian participants would not increase G, and a transaction with no participants of determinable location would not increase H.

Since the calculation only includes users of determinable location, any revenue that would otherwise be associated with the participation of users that are not of determinable location is partly sourced to Canada following the same ratio as the sourcing of revenue associated with the participation of users of determinable location. This takes into account that a portion of these users that are not of determinable location are likely Canadian.

Variable C is the sum of all the amounts that result from the application of  $F \times G/H$ . The number of times  $F \times G/H$  is applied will equal the number of online marketplaces run by the taxpayer (or by another constituent entity in the same group as the taxpayer). If the taxpayer (or any relevant constituent entity) only runs one online marketplace, then  $F \times G/H$  will be applied only once.

In the case of a constituent entity that, as a result of joining a consolidated group, begins to meet the threshold in paragraph 10(1)(a), special rules in section 21 specify that revenue earned prior to the moment that the entity joined the group is not included in “online marketplace services revenue”. The term “in-scope period” of the entity, set out in subsection 21(2), can be used to identify the period of time for which revenue would be included in online marketplace services revenue, namely, the period from joining the group to December 31. The in-scope period is referenced within Variable C to ensure that revenue is allocated to Canada based only on activity that occurred during the in-scope period (if applicable).

*Example 4: A taxpayer operates a single online marketplace, alongside a streaming service. It earns \$2,000,000 in subscription fees during the calendar year. These fees are considered to be 50 per cent attributable to the streaming service, and 50 per cent attributable to loyalty rewards on the marketplace. Accordingly, \$1,000,000 is “online marketplace services revenue” under the definition in subsection 13(1).*

*The subscription fees are not associated with any specific supplies on the online marketplace, and thus produce revenue that falls under variable C of section 14. The online marketplace facilitated 10,000,000 supplies during the calendar year, for a total of 20,000,000 participants. Users located in Canada participated in a supply on the online marketplace a total of 1,000,000 times (for 500,000 transactions either the supplier or the purchaser, but not both, was located in Canada, and for 250,000 transactions both the supplier and the purchaser were located in Canada). Users not of determinable location participated in a supply on the online marketplace 100,000 times and users of determinable location participated in transactions on the online marketplace 19,900,000 times.*

- *Variable F = \$1,000,000 (the non-transactional online marketplace services revenue);*
- *Variable G = 1,000,000 (the number of times a user located in Canada participated in a supply); and*
- *Variable H = 19,900,000 (the number of times a user of determinable location participated in a supply).*

*Therefore, variable C =  $F \times G/H = \$1,000,000 \times 1,000,000 / 19,900,000 = \$50,251$ .*

## **DIVISION B**

### ***Canadian Online Advertising Services Revenue***

Division B of Part 3 sets out the rules for determining a taxpayer’s online advertising services revenue, and for sourcing a portion of that revenue to Canada.

#### **Subsection 15(1) – Definition – online advertising services revenue**

Section 15 provides the definition of “online advertising services revenue”. This definition is relevant for determining a taxpayer’s Canadian online advertising services revenue under section 16. Under section 15, the online advertising services revenue of a taxpayer is the revenue described in paragraphs 15(1)(a) to (c), subject to the exclusions in subsection 15(2).

Under paragraph 15(1)(a), revenue earned from facilitating, through a digital interface, the delivery of an online targeted advertisement is online advertising services revenue. This would include, for example, revenue earned by advertising technology intermediaries such as supply side platforms, demand side platforms, advertising exchanges and advertising servers.

Under paragraph 15(1)(b), revenue earned from providing digital space for an online targeted advertisement is online advertising services revenue. For example, the owner of a website might earn advertising revenue from allowing targeted advertisements to appear on the website.

Paragraph 15(1)(c) includes revenue earned from sources prescribed by regulation in respect of online targeted advertisements. This paragraph, and similar paragraphs in Divisions A, C and D, would allow for updates in the future, by way of regulations, in order to take into account new business models that are within the intended scope of this revenue stream. No such regulations are being proposed at the time of issuance of draft legislative proposals.

It should be noted that “online targeted advertisement” is defined in section 2 of the Act.

The revenue included in paragraphs 15(1)(a) to (c) is not limited in any way by the revenue model through which it is earned and would include, for example, pay-per-click and pay-per-performance advertising, cost-per-million revenue and flat-rate advertising fees.

#### **Subsection 15(2) – Definition – revenue exclusion**

Paragraphs 15(2)(a) to (d) provide exclusions for the purposes of the “online advertising services revenue” definition in subsection 15(1).

Paragraph 15(2)(a) excludes revenue described in any of paragraphs 13(1)(a) to (d). This exclusion ensures that if any revenue could be both online marketplace services revenue and online advertising services revenue, it will only be online marketplace services revenue for the purposes of the Act, and thus cannot be taxed twice under the Act.

Paragraph 15(2)(b) prevents taxation of the same revenue multiple times in the hands of different entities (cascading) since there may be many intermediaries between the publisher of an advertisement and the marketer. This paragraph excludes from online advertising services revenue the portion of such revenue that is paid on to another entity and would be online advertising services revenue of the other entity (i.e., the taxpayer only includes the portion of such revenue that remains with the taxpayer). For the purpose of this paragraph, online advertising services revenue of the other entity includes amounts that would otherwise be excluded by this paragraph, or by section 21. Additionally, whether the other entity meets the thresholds in paragraphs 10(1)(a) and (b), or is liable to pay DST, does not affect whether the revenue is online advertising services revenue of that other entity. This exclusion is illustrated in *Example 2* below.

If a taxpayer earns revenue in respect of online advertising while it is a constituent entity of a consolidated group, and the revenue is earned from another entity of the group, paragraph 15(2)(c) excludes this revenue from online advertising services revenue of the taxpayer.

Paragraph 15(2)(d) excludes any revenue earned from sources prescribed by regulation. No such regulations are being proposed at the time of issuance of draft legislative proposals. This exclusion is limited to those sources that would otherwise be included under subsection 15(1).

It should be noted that there is an interaction between subparagraph 15(2)(b)(ii) and paragraph 15(2)(c). If a taxpayer pays a portion of its advertising revenue onwards to another entity of the same group, the payment is not included in the recipient entity's "online advertising services revenue" due to the exclusion in paragraph 15(2)(c). As such, the amount paid to the other entity is not excluded from the taxpayer's online advertising services revenue under 15(2)(b), as it does not meet the condition in 15(2)(b)(ii). Thus, if revenue in respect of a particular online targeted advertisement is paid through multiple entities of a consolidated group, it will only be included in the "online advertising services revenue" of the first such entity to receive the revenue. However, if an entity of the group pays the revenue to a third party, paragraph 15(2)(b) applies to exclude that revenue from the "online advertising services revenue" of the entity in the group that was the first entity to receive the revenue. This ensures that the exclusion in paragraph 15(2)(c) does not limit the effectiveness of the exclusion in paragraph 15(2)(b).

*Example 1: A social media platform allows marketers to target advertisements at the users of the platform based on various aspects of the users' data (location, interests, gender, etc.). When a user views or clicks on an advertisement, the marketer pays the social media platform a fee. As the social media platform provides digital space for advertisements, this revenue will be included in "online advertising services revenue" under paragraph 15(1)(b).*

*Example 2: An advertising technology company known as an "advertising server" allows small website owners to install an application on their websites that shows a different targeted advertisement to each viewer (i.e., user) of a website based on data about that viewer. The inventory of the advertising server is made up of advertisements from a large number of marketers. The advertising server pulls advertisements from this inventory for placement on the websites of the small website owners. When an advertisement is displayed to a viewer, the advertising server receives a fee from the marketer. A percentage of this fee is remitted to the website owner, while the advertising server retains the remainder. The fee received by the advertising server is revenue from facilitating the placement of an online targeted advertisement via a digital interface and thus would be "online advertising services revenue" under paragraph 15(1)(a). However, due to the exclusion in paragraph 15(2)(b), only the portion of this fee that is not remitted to the website owner is included. The portion remitted to the website owner is online advertising services revenue of the website owner under paragraph 15(1)(b).*

*Because the website owners and marketers do not interact (they each interact only with the advertising server), this arrangement does not meet the definition of an "online marketplace" and the advertising server's revenue is not excluded under paragraph 15(2)(a).*

## Section 16 – Canadian online advertising services revenue

Section 16 provides the rules for calculating a taxpayer's "Canadian online advertising services revenue". It is a sum of specific amounts of "online advertising services revenue" (defined in section 15) that are associated with Canadian users. "Canadian online advertising services revenue" is included in the taxpayer's Canadian digital services revenue under variable B of the formula in section 12.

Under section 16, a taxpayer's Canadian online advertising services revenue for a calendar year is the sum of variables A and B. Each of these variables contains rules for a specific type of online advertising services revenue.

### Variable A

Variable A includes "online advertising services revenue" that is directly attributable to an instance of a display of an online targeted advertisement, or revenue directly attributable to an interaction with an online targeted advertisement, where the targeted user is located in Canada (as determined in accordance with section 11) at the time of the display or interaction. Such revenue would include, for example, click-ad revenue.

*Example 1: A search engine shows preferential listings as banner advertisements integrated into search results. Every time a particular preferential listing is shown to a user located in Toronto, the search engine is paid a \$0.001 fee. If the advertisement is displayed to 100,000 Toronto-based users, \$100 is received, and this \$100 is included in the taxpayer's variable A.*

### Variable B

Variable B deals with "online advertising services revenue" that relates to a specific online targeted advertisement where the revenue is not directly attributable to a display to, or an interaction with, a specific user (i.e., not traceable). For example, revenue earned in a lump sum for displaying an advertisement to many users (sometimes referred to as flat-rate pricing) would be addressed by variable B. It also deals with revenue that is generated by a specific user if that user is not of determinable location.

The portion of the revenue dealt with by variable B that is associated with Canadian users is determined by a formula. The formula is  $C \times D/E$  where C is the total revenue in respect of the online targeted advertisement, D is the number of times the advertisement is displayed to users located in Canada, and E is the number of times the advertisement is displayed to users of determinable location.

Since the calculation only includes users of determinable location, any revenue that would otherwise be associated with users that are not of determinable location is partly sourced to Canada following the same ratio as the sourcing of revenue associated with users of

determinable location. This takes into account that a portion of these users that are not of determinable location are likely Canadian.

Variable B is the sum of all the amounts that result from the application of  $C \times D/E$ . The number of times  $C \times D/E$  is applied will be equal to the number of online targeted advertisements that the taxpayer earns revenue from (where that revenue is not dealt with entirely by variable A).

In the case of a constituent entity that, as a result of joining a consolidated group, begins to meet the threshold in paragraph 10(1)(a), special rules in section 21 specify that revenue earned prior to the moment that the entity joined the group is not included in “online advertising services revenue”. The term “in-scope period” of the entity, set out in subsection 21(1), can be used to identify the period of time for which revenue would be included in online advertising services revenue, namely, the period from joining the group to December 31. The in-scope period is referenced within Variable B to ensure that revenue is allocated to Canada based only on activity that occurred during the in-scope period (if applicable).

*Example 2: A social media platform receives a lump sum amount of \$100,000 for an advertisement shown to 1,000,000 users. Of these users, 400,000 were users located in Canada, and 2,000 users had unknown locations. As such:*

- *Variable C = \$100,000;*
- *Variable D = 400,000; and*
- *Variable E = 1,000,000 – 2,000 = 998,000.*

*Therefore, the inclusion in variable B =  $C \times D/E = \$100,000 \times 400,000 / 998,000 = \$40,080$ .*

## **DIVISION C**

### ***Canadian Social Media Services Revenue***

Division C of Part 3 sets out the rules for determining a taxpayer’s social media services revenue, and for sourcing a portion of that revenue to Canada.

#### **Subsection 17(1) – Definition – social media services revenue**

Section 17 provides the definition of “social media services revenue”. This definition is relevant for determining a taxpayer’s Canadian social media services revenue under section 18.

If a taxpayer runs a social media platform (or if the taxpayer is in a consolidated group and another constituent entity of the group runs a social media platform), then any revenue earned by the taxpayer that is in respect of the social media platform and is described in paragraphs 17(1)(a) to (d) is social media services revenue. “Social media platform” is defined in section 2 of the Act.

Paragraph 17(1)(a) includes revenue received from the provision of access to, or the use of, the social media platform. This would include, for example, subscription fees and pay-per-use fees.

Paragraph 17(1)(b) includes revenue from the provision of premium services and other optional enhancements to the basic function of the social media service. It also includes revenue from the provision of optional changes to the standard commercial terms of the services provided in respect of the social media platform. For example, if a professional networking website provides a premium membership that allows premium members to see who has viewed their profiles, revenue from such premium memberships would be included under paragraph 17(1)(b).

Paragraph 17(1)(c) includes revenue from facilitating an interaction between users, or between users and digital content generated by other users, on a social media platform. For example, if a user has posted content that can only be accessed by other users when a fee is paid, and the platform receives a percentage of that fee, that amount would be included as social media services revenue under paragraph 17(1)(c).

Paragraph 17(1)(d) includes revenue received from sources prescribed by regulation. Such sources would be limited, by virtue of the preamble of this subsection, to sources of revenue that are “in respect of” a social media platform. This paragraph, and similar paragraphs in Divisions A, B and D, would allow for updates in the future, by way of regulations, in order to take into account new business models that are intended to be within the scope of this revenue stream. No such regulations are being proposed at the time of issuance of draft legislative proposals.

It should be noted that if a social media platform earns revenue from providing access to its own digital content (rather than user-generated content), then such revenue would not be included in social media services revenue. This is because the definition of “user” does not include the operator of a platform and because this revenue type is not described in any of paragraphs 17(1)(a) to (d).

### **Subsection 17(2) – Definition – revenue exclusion**

Paragraphs 17(2)(a) to (d) provide exclusions for the purposes of the “social media services revenue” definition in subsection 17(1).

Paragraph 17(2)(a) excludes revenue described in any of paragraphs 13(1)(a) to (d) and 15(1)(a) to (c). This exclusion ensures that if any revenue could be both online marketplace services revenue and social media services revenue, or both online advertising services revenue and social media services revenue, or all three, it will only fall into one stream and thus cannot be taxed more than once under the Act.

Paragraph 17(2)(b) excludes revenue from the provision of private communication services consisting of video calls, voice calls, emails and instant messaging, if the sole purpose of the

platform is to provide such services. This exclusion is for platforms that provide communication services without the “media” aspect. “Media” entails mass communication that is not expected to be viewed and/or read by all potential recipients.

If a taxpayer earns revenue in respect of social media services while it is a constituent entity of a consolidated group, and the revenue is earned from another entity of the group, paragraph 17(2)(c) excludes this revenue from social media services revenue of the taxpayer.

Paragraph 17(2)(d) excludes any revenue earned from sources prescribed by regulation. No such regulations are being proposed at the time of issuance of draft legislative proposals. This exclusion is limited to those sources that would otherwise be included under subsection 17(1).

*Example 1: A taxpayer operates a dating website which allows users to pay a subscription fee, create a profile, and connect with potential matches. The subscription fee revenue would be included in “social media services revenue” under paragraph 17(1)(a).*

*Example 2: A taxpayer operates a website which allows users to create profiles, search for their friends, connect with them and access content posted by them (e.g., photos, status updates, recommended links, etc.). The website allows users to pay a premium fee for an ad-free experience. This premium fee would be included in “social media services revenue” under paragraph 17(1)(b).*

*Example 3: A taxpayer operates a website which allows users to create profiles, upload videos and other user-generated content, and share this content with followers. High-profile users can create and post “exclusive content” that followers can access by paying a premium fee. While most of this revenue goes to the user, the website operator takes a percentage as a facilitation fee. This facilitation fee would be included in “social media services revenue” under paragraph 17(1)(c), provided the interface does not meet the definition of an “online marketplace”, in which case the fee would instead be included in “online marketplace services revenue”, and excluded from social media services revenue under paragraph 17(2)(a).*

## **Section 18 – Canadian social media services revenue**

Section 18 provides the rules for calculating a taxpayer’s “Canadian social media services revenue”. It is the portion of the taxpayer’s “social media services revenue” (defined in section 17) that is associated with Canadian users. “Canadian social media services revenue” is included in the taxpayer’s Canadian digital services revenue under variable C of the formula in Section 12.

Section 18 sets out a formula for determining the portion of the taxpayer’s revenue in respect of a social media platform that is associated with Canadian users. The formula measures the level of Canadian activity on a social media platform. The formula is  $A \times B/C$ , where A is the total revenue in respect of a particular social media platform, B is the number of social media accounts that are accessed by users located in Canada (as determined in accordance with

section 11), and C is the number of social media accounts accessed by users of determinable location. It is intended that an account be considered “accessed” if the account holder logs into the social media platform at least once during the calendar year. The accounts counted by the formula include both free accounts and accounts of users that pay a fee. All accounts are weighted equally.

Since the calculation only includes users of determinable location, any revenue that would otherwise be associated with the participation of users that are not of determinable location is partly sourced to Canada following the same ratio as the sourcing of revenue associated with the participation of users of determinable location. This takes into account that a portion of these users that are not of determinable location are likely Canadian.

Under section 18, the taxpayer’s Canadian social media services revenue is the sum of all the amounts that result from the application of  $A \times B/C$ . The number of times  $A \times B/C$  is applied will equal the number of social media platforms run by the taxpayer (or by another constituent entity in the same group as the taxpayer). If the taxpayer only runs one social media platform, then  $A \times B/C$  will be applied only once.

In the case of a constituent entity that, as a result of joining a consolidated group, begins to meet the threshold in paragraph 10(1)(a), special rules in section 21 specify that revenue earned prior to the moment that the entity joined the group is not included in “social media services revenue”. The term “in-scope period” of the entity, set out in subsection 21(1), can be used to identify the period of time for which revenue would be included in social media services revenue, namely, the period from joining the group to December 31. The in-scope period is referenced within this formula to ensure that revenue is allocated to Canada based only on activity that occurred during the in-scope period (if applicable).

*Example: A taxpayer operates a single social media platform that earned \$100,000 of social media services revenue during the calendar year. The platform has 1,000,000 accounts that were accessed by users during the year. Of these users, 98,000 were located in Canada, and 2,000 are users with unknown locations. As such:*

- *Variable A = \$100,000*
- *Variable B = 98,000*
- *Variable C = 1,000,000 – 2,000 = 998,000*

*Canadian social media services revenue =  $A \times B/C = \$100,000 \times 98,000/998,000 = \$9,820$*

## DIVISION D

### *Canadian User Data Revenue*

Division D of Part 3 sets out the rules for determining a taxpayer's user data revenue, and for sourcing a portion of that revenue to Canada.

#### **Subsection 19(1) – Definition – user data revenue**

Section 19 provides the definition of “user data revenue”. This definition is relevant for determining a taxpayer's Canadian user data revenue under section 20.

If a taxpayer collects user data (or if the taxpayer is in a consolidated group and another constituent entity of the group collects user data) from an online marketplace, a social media platform or an online search engine (all of which are defined in section 2 of the Act), then paragraph 19(1)(a) includes in user data revenue any revenue from the sale of the user data or the granting of access to the user data (e.g., licensing use of the data). If a taxpayer earns revenue from the sale or use of data that the taxpayer (or another group member) did not collect, the taxpayer would not be taxed on this revenue. Limiting “user data revenue” to revenue in respect of user data collected by the taxpayer or another group entity prevents cascading DST when data is sold and then resold. Revenue from services reliant on user data such as consulting or business advisory services is not included and would be segregated from revenue from any sale of the underlying data. “User data” and “user” are defined in section 2 of the Act.

Paragraph 19(1)(b) includes revenue received from sources prescribed by regulation. Such sources would be limited, by virtue of the preamble of this subsection, to sources of revenue that are “in respect of” user data collected from a user. This paragraph, and similar paragraphs in Divisions A, B and C, would allow for updates in the future, by way of regulations, in order to take into account new business models that are within the intended scope of this revenue stream. No such regulations are being proposed at the time of issuance of draft legislative proposals.

#### **Subsection 19(2) – Definition – revenue exclusion**

Paragraphs 19(2)(a) to (c) provide exclusions for the purposes of the “user data revenue” definition in subsection 19(1).

Paragraph 19(2)(a) excludes revenue described in any of paragraphs 13(1)(a) to (d), 15(1)(a) to (c) and 17(1)(a) to (d). This exclusion ensures that if any revenue could be both online marketplace services revenue and user data revenue, online advertising services revenue and user data revenue, or social media services revenue and user data revenue, or all four, it will only fall into one stream, and thus cannot be taxed more than once under the Act.

If a taxpayer earns user data revenue while it is a constituent entity of a consolidated group, and the revenue is earned from another entity of the group, paragraph 19(2)(b) excludes this revenue from user data revenue of the taxpayer.

Paragraph 19(2)(c) excludes any revenue earned from sources prescribed by regulation. No such regulations are being proposed at the time of issuance of draft legislative proposals. This exclusion is limited to those sources that would otherwise be included under subsection 19(1).

*Example 1: A taxpayer operates a social media platform. The users of the social media platform consent to their data being used by third parties for marketing purposes. The taxpayer collects data about these users, compiles it into an aggregate format, and sells it to advertising technology companies for use in targeted advertising campaigns. As the user data was collected by the taxpayer from a social media platform, and is sold to a third party, the revenue from this sale would meet the definition of “user data revenue” under paragraph 19(1)(a)(i). This revenue does not relate to any specific online targeted advertisement, and so would not meet the definition of “online advertising services revenue” under 15(1)(a). Thus, the exclusion in 19(2)(a) would not apply.*

## **Section 20 – Canadian user data revenue**

Section 20 provides the rules for calculating a taxpayer’s “Canadian user data revenue”. It is a sum of specific amounts of “user data revenue” (defined in section 19) that are associated with Canadian users. “Canadian user data revenue” is included in the taxpayer’s Canadian digital services revenue under variable D of the formula in Section 12.

Under section 20, a taxpayer’s Canadian user data revenue for a calendar year is the sum of variables A and B. Each of these variables contains rules for a specific type of user data revenue.

### Variable A

Variable A includes “user data revenue” that is in respect of the user data of a single user that is, at the time the user data is collected, a user located in Canada (as determined in accordance with section 11). If a set of user data is sold, and the value attributable to the data of each user is determinable, then the revenue relating to user data of users located in Canada is included under variable A.

### Variable B

Variable B deals with “user data revenue” that is in respect of a set of user data of multiple users where the value of specific data entries in the set is not known. That is, revenue that is not traceable to specific users’ data. It also includes revenue that can be traced to a specific user’s data where the user is not of determinable location (provided that this revenue is for a set of user data where one or more users to which the user data relates are located in Canada).

Variable B sets out a formula for determining the portion of the taxpayer's user data revenue in respect of a set of user data of multiple users that is associated with Canadian users. The formula is  $C \times D/E$ , where C is the total revenue in respect of a set of user data (other than any revenue dealt with in variable A, that is, revenue that can be traced to specific user data of users of determinable location), D is the number of users to which the user data relates that are located in Canada, and E is the number of users to which the user data relates that are of determinable location.

Since the calculation only includes users of determinable location, any revenue in respect of the set of user data that would otherwise be associated with users that are not of determinable location is partly sourced to Canada following the same ratio as the sourcing of revenue associated with users of determinable location. This takes into account that a portion of these users that are not of determinable location are likely Canadian.

Variable B is the sum of all the amounts that result from the application of  $C \times D/E$ . The number of times  $C \times D/E$  is applied will equal the number of data sets that the taxpayer sells or provides access to (other than data sets with no Canadian user data or data sets dealt with entirely by variable A, that is, where the revenue is entirely traceable to user data of users of determinable location).

*Example 1: A taxpayer sells a set of user data for a lump sum of \$100,000, and the revenue meets the definition of "user data revenue". The user data relates to 1,000,000 users and the value per user is not known. Of these users, 150,000 are users located in Canada, and 950,000 are users of determinable location. Under section 20, the amount allocated under variable B would be:  $\$100,000 \times 150,000 / 950,000 = \$15,789$ .*

*Example 2: A taxpayer sells user data of a variety of its users at a rate of \$0.10 per user. The taxpayer sells a set of user data of 100,000 users, and the revenue meets the definition of "user data revenue". Of these users, 1,500 are users located in Canada, and only 99,500 are users of determinable location. As the revenue for each user is a known quantity, the revenue associated with users located in Canada would be allocated to Canada under variable A:  $\$0.10 \times 1,500 = \$150$ . The revenue associated with users that are not of determinable location is  $\$0.10 \times 500 = \$50$ , and variable B would include  $\$50 \times 1,500/99,500 = \$1$ .*

## DIVISION E

### ***Rules Relating to the Computation of Canadian Digital Services Revenue***

Division E of Part 3 sets out rules that are relevant for computing the components of Canadian digital services revenue in Divisions A through D.

### **Subsection 21(1) – Revenue of new constituent entities**

Subsection 21(1) provides a rule for the “online marketplace services revenue”, “online advertising services revenue”, “social media services revenue” and “user data revenue” of any taxpayer that, as a result of becoming a constituent entity of a consolidated group (described in subparagraph 10(1)(a)(iii)), begins to meet the threshold in paragraph 10(1)(a). In general terms, revenue that such a taxpayer earns prior to the moment that it joins a large consolidated group is not subject to the DST. Subsection 21(1) provides that such revenue is excluded from “online marketplace services revenue”, “online advertising services revenue”, “social media services revenue” and “user data revenue”. Consequently, such revenue is not included in Canadian digital services revenue under subsection 12(1), or in taxable Canadian digital services revenue in section 24, and thus is not subject to the DST.

### **Subsection 21(2) – Definition – in-scope period**

For taxpayers described in subsection (1), subsection 21(2) provides the definition of “in-scope period.” This definition provides that the term refers to the period of time in a calendar year that begins when the taxpayer joins a large consolidated group (described in subparagraph 10(1)(a)(iii)) and ends on December 31 of the same year. This definition is relevant for certain calculations involved in determining Canadian online marketplace services revenue, Canadian online advertising services revenue and Canadian social media services revenue. It is also relevant for the definition of “relevant time” in section 23.

*Example 1: A taxpayer joins a consolidated group on June 15. The taxpayer earns €100,000,000 in total revenue per year and \$5,000,000 in Canadian digital services revenue per year (not considering section 21), \$2,000,000 of which was earned prior to June 15. The consolidated group meets the description in subparagraph 10(1)(a)(iii). As such, the taxpayer meets the threshold in 10(1)(a) as a result of joining the group, and is subject to the rules in section 21. Under subsection 21(2), the taxpayer’s in-scope period would be June 15 to December 31, and the \$2,000,000 earned prior to June 15 that would have been included, absent subsection 21, in its Canadian digital services revenue, will not be included in its Canadian digital services revenue.*

*Example 2: Entity A and Entity B were members of the same consolidated group during the current and immediately preceding calendar years. The consolidated group has consistently had more than €750,000,000 of total consolidated group revenue. During the current calendar year, Entity A and Entity B are merged to form Mergeco. Under paragraph 7(a), Mergeco is deemed to be a separate person from Entity A and Entity B, so Entity A and Entity B would only earn Canadian digital services revenue up to the date of the merger.*

*As a new entity that meets the threshold in 10(1)(a) by joining a group described in 10(1)(a)(iii), Mergeco would have an in-scope period that begins on the date of the merger and ends on December 31. Mergeco would earn Canadian digital services revenue from the date of the merger to December 31.*

## **Section 22 – Attribution of activity**

Section 21 provides that where a particular constituent entity of a consolidated group earns revenue, but that revenue is in respect of another constituent entity's provision of a service or selling or granting of access to user data, the revenue is deemed to be Canadian digital services revenue of the particular entity. This provision ensures that, for the purposes of the Act, the relevant revenue and activities are aligned.

## **PART 4**

### ***Taxable Canadian Digital Services Revenue***

Part 4 of the Act sets out the rules for computing a taxpayer's taxable Canadian digital services revenue. The only difference between "Canadian digital services revenue", as determined under Part 3, and "taxable Canadian digital services revenue", as determined under Part 4, is that the latter allows for a deduction of up to \$20,000,000. Most of the rules in Part 4 revolve around allocating the \$20,000,000 deduction among members of a consolidated group, where a taxpayer is a member of such a group.

## **Section 23 – Definitions**

The definitions in section 23 apply to Part 4 of the Act.

### **"relevant interval"**

The definition "relevant interval" is used to divide a calendar year (or in-scope period, if applicable) into segments during which a taxpayer is either (i) in a consolidated group the membership of which does not change throughout the segment, or (ii) not in any consolidated group. This segmentation is needed for the application of section 24, where the \$20,000,000 deduction is shared among taxpayers that are constituent entities of the same consolidated group.

Relevant intervals are identified by reference to "relevant times" (discussed below). A relevant interval is any period that starts at one relevant time and ends at the next relevant time. As such, relevant intervals cannot overlap.

### **"relevant time"**

The definition "relevant time" specifies particular points in time during a calendar year which are "relevant times" for the purposes of identifying a taxpayer's "relevant intervals" (discussed above). A relevant time occurs at each of the following times (as set out in paragraphs (a) through (d) of the definition):

- (a) the first moment of either January 1, or in the case of a constituent entity that has joined a consolidated group and only just then met the threshold in section 10(1)(a), the first moment of that entity's "in-scope period" as per section 21;
- (b) the last moment of December 31 of the calendar year;
- (c) any time, between the times described in paragraphs (a) and (b), at which the taxpayer becomes, or ceases to be, a constituent entity of a consolidated group, including when a taxpayer moves between groups; and
- (d) any time, between the times described in paragraphs (a) and (b), at which the taxpayer is a constituent entity of a consolidated group and any other taxpayer becomes, or ceases to be, a constituent entity of the consolidated group.

## **Section 24 – Computation – taxable Canadian digital services revenue**

Section 24 provides a formula for calculating a taxpayer's "taxable Canadian digital services revenue" for a particular calendar year. The formula is  $A - B$  where variable A is the taxpayer's "Canadian digital services revenue" for the year, as calculated in Part 3, and variable B is the taxpayer's portion of the \$20,000,000 deduction.

A taxpayer's deduction will vary depending on two factors:

- whether the taxpayer was a member of a consolidated group at any point during the year; and
- if the taxpayer was a member of a consolidated group (or different consolidated groups at different times), the amount of Canadian digital services revenue earned by entities that were members of the same group at the same time as the taxpayer.

Paragraphs (a) and (b) of Variable B specify the deduction for taxpayers in different situations with regard to these factors. The maximum possible deduction for a taxpayer is \$20,000,000.

Under paragraph (a) of Variable B, if the taxpayer is not a member of a consolidated group at any time in the calendar year, the deduction is \$20,000,000.

Under paragraph (b) of Variable B, if a taxpayer is a member of one or more consolidated groups during the calendar year, the taxpayer must calculate the deductible amount or amounts allocated to the taxpayer while it is a member of each such group. Essentially, the \$20,000,000 is prorated among group members based on how much Canadian digital services revenue they each earn. However, since entities can join or leave a group, four steps are necessary:

1. first, the year (or in-scope period, if applicable) is divided into relevant intervals;
2. second, the \$20,000,000 is prorated for the length of each relevant interval;
3. third, the portion of the \$20,000,000 corresponding to a particular relevant interval is shared with the specific entities that are in a group with the taxpayer during that

relevant interval based on how much Canadian digital services revenue each such entity earns for the year (or for its in-scope period, if applicable); and

4. fourth, the taxpayer adds up each amount computed for a relevant interval under step three to determine its deduction for the year.

To simplify compliance with this Act, it is not necessary to determine each entity's Canadian digital service revenue earned during a relevant interval. Rather, for the purposes of allocating deductible amounts, the calculations assume that the Canadian digital services revenue of an entity is earned evenly throughout the calendar year. In addition, if an entity joins a consolidated group during the year and is only subject to DST from that point on, the calculations nevertheless assume that the Canadian digital services revenue of the entity is earned evenly throughout the calendar year.

The first step, set out above, is accomplished by applying the definitions "relevant time" and "relevant interval".

The second and third steps are accomplished by applying the formula  $\$20,000,000 \times C/365 \times D/E$  to each of a taxpayer's relevant intervals.

Variable C of the formula is the number of days in the relevant interval. Thus, multiplying  $\$20,000,000$  by "C/365" prorates the annual  $\$20,000,000$  deduction for the length of the relevant interval, satisfying the second step. For example, if a taxpayer has a relevant interval that covers the first 146 days of the year, 40% of the deduction (being  $\$8,000,000$ ) would be attributable to that period of time. For the purposes of these comments, the prorated portion of the  $\$20,000,000$  is referred to as the "relevant interval's deduction".

Variable D is the taxpayer's Canadian digital services revenue for the calendar year, and variable E is the sum of all of the Canadian digital services revenues for the year of the entities that are in the same group as the taxpayer during the relevant interval. Thus, "D/E" computes the portion of the relevant interval's deduction that is allocated to the taxpayer, satisfying the third step. If the taxpayer is not a member of a consolidated group for a particular relevant interval (such as when they have not yet joined a group or have just left a group), "D/E" will be "D/D" as per subparagraph (ii) of variable E, in which case the entire amount of that relevant interval's deduction will be attributable to the taxpayer. Similarly, if the taxpayer is in a group but only the taxpayer is earning Canadian digital services revenue, then variable E will equal variable D.

If the taxpayer is in a group during a relevant interval, but does not determine the Canadian digital services revenue of each member of the group during that interval, then it would not receive any deduction amount for that interval. Variable E would be nil, which would produce a mathematically undefined result. As per section 3, this result would be deemed to be nil.

As per step four, the taxpayer's deduction is the sum of all the amounts resulting from step three.

*Example 1: A taxpayer meets the revenue thresholds in section 10 and earns \$50,000,000 in Canadian digital services revenue (as determined under Part 3) during the current calendar year. The taxpayer was not a member of a consolidated group during the current calendar year. As such, it is subject to paragraph (a) of variable B, and would receive a \$20,000,000 deduction. Its taxable Canadian digital services revenue under section 24 would be  $\$50,000,000 - \$20,000,000 = \$30,000,000$ .*

*Example 2: A consolidated group earned more than €750,000,000 of total consolidated group revenue for its fiscal year that ended in the preceding calendar year. The group contains three constituent entities that earn Canadian digital services revenue. All three entities were members of the group throughout both the preceding and current calendar years. No entities left or joined the group. The Canadian digital services revenue of each entity for the current calendar year is as follows:*

- *Entity A: \$10,000,000;*
- *Entity B: \$50,000,000; and*
- *Entity C: \$20,000,000.*

*These entities fall under paragraph (b) of variable B. First, the “relevant intervals” must be identified – in this case, as no entities entered or left the group, the only “relevant times” are January 1 (none of the entities has an in-scope period as per section 21) and December 31, for a single relevant interval that spans the entire calendar year. Therefore, only one calculation for each entity is required for paragraph (b) of variable B. The entities would receive a pro-rata share of the deduction, as follows:*

- *Entity A:  $\$20,000,000 \times 365/365 \times \$10,000,000 / \$80,000,000 = \$2,500,000$ ;*
- *Entity B:  $\$20,000,000 \times 365/365 \times \$50,000,000 / \$80,000,000 = \$12,500,000$ ; and*
- *Entity C:  $\$20,000,000 \times 365/365 \times \$20,000,000 / \$80,000,000 = \$5,000,000$ .*

*Therefore, under section 24, the taxable Canadian digital services revenue of each entity is:*

- *Entity A:  $\$10,000,000 - \$2,500,000 = \$7,500,000$ ;*
- *Entity B:  $\$50,000,000 - \$12,500,000 = \$37,500,000$ ; and*
- *Entity C:  $\$20,000,000 - \$5,000,000 = \$15,000,000$ .*

*Example 3: This example is a continuation of Example 3 in Part 2. A consolidated group earned more than €750,000,000 in total consolidated group revenue in its fiscal year that ended in the preceding calendar year. There are two entities in the group that earn Canadian digital services revenue – Entity A which joined the group on May 27 of the current calendar year, and earned \$40,000,000 of Canadian digital services revenue in the current calendar year (during its in-scope period), and Entity B which was a member throughout both the preceding and current calendar years, and earned \$5,000,000 of Canadian digital services revenue in the current calendar year.*

As noted in Example 3 in Part 2, both entities are subject to tax under section 10.

These entities fall under paragraph (b) of variable B of section 24. First, the “relevant intervals” must be identified for each taxpayer.

Entity A has only two “relevant times” – the first moment of its in-scope period on May 27, and the last moment of December 31. Entity A therefore only has one relevant interval which spans from May 27 to December 31 (219 days).

Entity B, however, has three “relevant times”:

- 1) January 1, being the first moment of the year;
- 2) May 27, being the moment when another entity became a member of the consolidated group; and
- 3) December 31, being the last moment of the year.

Entity B therefore has two “relevant intervals”, one interval from January 1 to May 26 (146 days) during which it was the sole Canadian digital services revenue-earning member of the group, and a second interval from May 27 to December 31 (219 days) for which it must share a pro-rated portion of the \$20,000,000 deduction with Entity A. The amount deductible must be calculated for each interval, and totaled.

Under the formula for variable B, entities A and B will receive a pro-rated deduction, as follows:

- Entity A:  $\$20,000,000 \times 219/365 \times \$40,000,000 / \$45,000,000 = \$10,666,667$
- Entity B:
  - Relevant Interval 1:  $\$20,000,000 \times 146/365 \times \$5,000,000 / \$5,000,000 = \$8,000,000$
  - Relevant Interval 2:  $\$20,000,000 \times 219/365 \times \$5,000,000 / \$45,000,000 = \$1,333,333$
  - Total:  $\$8,000,000 + \$1,333,333 = \$9,333,333$

Therefore, under section 24, the taxable Canadian digital services revenue of each entity is:

- Entity A:  $\$40,000,000 - \$10,666,667 = \$29,333,333$
- Entity B:  $\$5,000,000 - \$9,333,333 = \text{deemed nil by section 3.}$

Example 4: This example is a continuation of Example 5 in Part 2. A consolidated group earned more than €750,000,000 in total consolidated group revenue in its fiscal year that ended in the preceding calendar year (Year 0). Entity A was a constituent entity of the consolidated group in Year 0, and left the group on February 15 of the following calendar year (Year 1). Entity A did not join another group after leaving the group. Entity A earns \$100,000,000 of total revenue, and \$30,000,000 of Canadian digital services revenue, each year.

*As noted in Example 5 of Part 2, Entity A is subject to tax in Year 1 and Year 2, but not Year 3.*

*In Year 1, Entity A would need to identify its relevant intervals. There would be at least two, one for the period of time when it was part of the group, and one when it was not, plus any additional intervals that might be created by other entities entering or exiting the group before February 15. For Year 1, it would receive a pro-rated deduction for the interval or intervals where it was part of the group depending on the amount of Canadian digital services revenue earned by other members of the group. For the interval from February 15 until December 31 (320 days), it would receive a deduction of  $\$20,000,000 \times 320/365 = \$17,534,246$ .*

*In Year 2, Entity A would fall under paragraph (a) of variable B, since it was at no time during the year a constituent entity of a consolidated group, and its deduction would be  $\$20,000,000$ .*

## **PART 5**

### ***Miscellaneous***

Part 5 of the Act contains rules in Division A for taxpayers that become bankrupt or whose businesses or assets go into receivership, rules in Division B relating to the partners of partnerships and a general anti-avoidance rule in Division C.

## **DIVISION A**

### ***Trustees and Receivers***

Division A of Part 5 sets out rules relating to bankruptcy and receiverships. If a taxpayer becomes bankrupt, or its business or assets become subject to a receivership order, special rules apply with respect to tax liability, filing requirements and the obligations of trustees and receivers.

A taxpayer's obligations to determine tax liability, pay tax and file returns under this Act are generally established in respect of a calendar year. However, bankruptcy and receiverships require taxpayers to calculate their tax liability for periods of time determined by the relevant insolvency proceedings (which generally do not correspond to calendar years). Accordingly, this Division defines certain time periods that may arise if a taxpayer becomes bankrupt or its business or assets become subject to a receivership order. This Division also sets out special rules for determining tax liability, paying tax and filing returns for those periods.

### **Section 25 – Definitions**

Section 25 sets out a number of definitions that apply for the purposes of Division A of Part 5.

### **“bankruptcy day”**

The definition “bankruptcy day” of a taxpayer specifies that the term refers to a day on which a trustee becomes the trustee in bankruptcy of the taxpayer. On that day, the taxpayer and the trustee become subject to this Division’s special rules for determining tax liability (section 27), paying tax (section 28) and filing returns (section 28). The ordinary calculation, payment and filing rules otherwise applicable under this Act do not apply following the bankruptcy.

This definition is relevant to the definitions “bankruptcy period”, “bankrupt year”, “pre-bankruptcy period” and “pre-discharge period”. Each of these periods are in respect of a bankruptcy day.

### **“bankruptcy period”**

The definition “bankruptcy period” provides that the term refers to the period that begins on the day immediately after the bankruptcy day and ends either when the taxpayer’s bankruptcy ends or at the end of the calendar year in which the bankruptcy day occurs, whichever is earlier. A bankruptcy period can only occur in a calendar year if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (i.e., the conditions that refer to the taxpayer’s situation in the preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year. Since the thresholds apply on a year-by-year basis, a bankruptcy period cannot extend beyond the end of a calendar year. If the taxpayer remains bankrupt following the end of a calendar year and continues to meet the thresholds, then either a pre-discharge period or a bankrupt year begins.

If a taxpayer becomes bankrupt in a calendar year and the trustee is discharged in the same year, the bankruptcy period will be from the day immediately after the bankruptcy day to the day on which the trustee is discharged and the bankruptcy ends.

If, however, a taxpayer becomes bankrupt in a given calendar year and its trustee has not been discharged by the end of that year, then its bankruptcy period will be from its bankruptcy day to December 31 of that year.

This definition is relevant for determining the tax payable under section 27, for determining a trustee’s filing and payment obligations under section 28 and for calculating a taxpayer’s revenue for non-calendar year periods under section 31.

### **“bankrupt year”**

The definition “bankrupt year” of a taxpayer essentially provides that the term refers to an entire calendar year during which a taxpayer is bankrupt. That is, the taxpayer goes bankrupt before the year starts, and the discharge of the trustee occurs after the year ends. A calendar year can only be a bankrupt year if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (i.e., the conditions that refer to the taxpayer’s situation in the

preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year.

This definition is relevant for determining the tax payable under section 27 and for determining a trustee's filing and payment obligations under section 28.

### **“business”**

The definition “business” expands the ordinary meaning of the term business to include a part thereof. It is relevant for the definitions of “receiver”, “receivership day” and “relevant assets”. It is also relevant for section 26 and subsection 28(2).

### **“pre-bankruptcy period”**

A taxpayer's bankruptcy effectively divides the ongoing calendar year for the purposes of calculating its tax liability and determining filing and payment obligations. The definition “pre-bankruptcy period” provides that the term refers to the portion of the calendar year before the bankruptcy; that is, the period beginning on January 1 of the calendar year and ending on the bankruptcy day. A pre-bankruptcy period can only occur in a calendar year if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (i.e., the conditions that refer to the taxpayer's situation in the preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year.

This definition is relevant for determining the tax payable under section 27, for determining a trustee's filing and payment obligations under section 28 and for calculating a taxpayer's revenue for non-calendar year periods under section 31.

### **“pre-cease period”**

If a taxpayer is in receivership during two or more consecutive calendar years, it will have a “pre-cease period”. The definition “pre-cease period” provides that the term refers to the period that begins on January 1 of the last calendar year during which the taxpayer is in receivership and ends on the date on which the receivership ends. A pre-cease period can only occur in a calendar year if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (i.e., the conditions that refer to the taxpayer's situation in the preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year.

This definition is relevant for determining the tax payable under section 29, for determining a receiver's filing and payment obligations under section 30 and for calculating a taxpayer's revenue for non-calendar year periods under section 31.

### **“pre-discharge period”**

If a taxpayer is bankrupt during two or more consecutive calendar years, it will have a “pre-discharge period”. The definition “pre-discharge period” provides that the term refers to the period that begins on January 1 of the last calendar year during which the taxpayer is bankrupt and ends on the date on which the trustee is discharged and the bankruptcy ends. A pre-discharge period can only occur in a calendar year if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (i.e., the conditions that refer to the taxpayer’s situation in the preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year.

This definition is relevant for determining the tax payable under section 27, for determining a trustee’s filing and payment obligations under section 28 and for calculating a taxpayer’s revenue for non-calendar year periods under section 31.

### **“pre-receivership period”**

A taxpayer’s “pre-receivership period” is the period beginning on January 1 of the calendar year in which the receivership day occurs and ending on a taxpayer’s receivership day. A pre-receivership period can only occur in a calendar year if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (i.e., the conditions that refer to the taxpayer’s situation in the preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year.

The definition “pre-receivership period” is only relevant where the receiver is a receiver-manager (and therefore has control of all or substantially all of the taxpayer’s business). In that case, the definition is relevant for determining the tax payable under section 29, the receiver-manager’s filing and payment obligations under section 30 and the rules for calculating a taxpayer’s revenue for non-calendar year periods under section 31.

### **“receiver”**

The definition “receiver” provides that the term refers to a person that is appointed, either through a court order, Act of Parliament, by a trustee, by a bank, or as a liquidator, to manage a business or property of another person. The definition “receiver” is relevant to all provisions in Division A of Part 5 that establish special rules for taxpayers whose businesses or assets are in receivership.

The rules for determining tax liability if a taxpayer is in receivership (section 29), paying tax (section 30) and filing returns (section 30) apply differently depending on whether the receiver is a receiver-manager (see commentary on those sections).

### **“receivership day”**

The definition “receivership day” of a taxpayer specifies that the term refers to a day on which a receiver is vested with authority to manage the taxpayer’s business or assets and is in possession of or controls and manages the taxpayer’s affairs and assets. On that day, the taxpayer and the receiver become subject to this Division’s special rules for determining tax liability (section 29), paying tax (section 30) and filing returns (section 30).

This definition is relevant to the definitions “receivership period”, “year in receivership”, “pre-receivership period” and “pre-cease period” since each of these periods are in respect of a particular receivership day.

### **“receivership period”**

The definition “receivership period” of a taxpayer provides that the term refers to the period that begins on the day immediately after the receivership day and ends either when the taxpayer’s receivership ends or at the end of that calendar year in which the receivership day occurs, whichever is earlier. A receivership period can only occur in a calendar year if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (that is, the conditions that refer to the taxpayer’s situation in the preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year. Since the thresholds apply on a year-by-year basis, a receivership period cannot extend beyond the end of a calendar year. If the business or assets of the taxpayer remain in receivership following the end of a calendar year, and the taxpayer continues to meet the thresholds, then either a pre-cease period or a year in receivership begins.

If a taxpayer’s business or assets become subject to a receivership in a calendar year and the receivership ends in the same year, its receivership period will be from the day immediately after its receivership day to the day on which the receivership ends.

If, however, a receivership day occurs in a given calendar year and the receivership does not end before the end of that year, then the taxpayer’s receivership period will be from its receivership day to December 31 of that year.

This definition is relevant for determining the tax payable under section 29, for determining a receiver’s filing and payment obligations under section 30 and for calculating a taxpayer’s revenue for non-calendar year periods under section 31.

### **“relevant assets”**

The definition “relevant assets” of a receiver provides that the term refers to the properties, businesses, affairs or assets of the taxpayer that are within the receiver’s authority. This definition is used in subparagraph 29(b)(i) to circumscribe a receiver’s liabilities in relation to the affairs of the taxpayer in receivership.

The term “relevant assets” is only relevant for determining the liabilities of a receiver that is not a receiver-manager.

### **“year in receivership”**

The definition “year in receivership” of a taxpayer essentially provides that the term refers to an entire calendar year during which a taxpayer’s business or assets are in receivership. That is, the receiver begins to act as receiver before the year starts, and ceases to act as receiver after the year ends. A calendar year can only be a year in receivership if the taxpayer meets the €750,000,000 threshold under either subparagraph 10(1)(a)(i) or (ii) (that is, the conditions that refer to the taxpayer’s situation in the preceding calendar year) and the \$20,000,000 threshold in paragraph 10(1)(b) for that calendar year.

This definition is relevant for determining the tax payable under section 29 and for determining a receiver’s filing and payment obligations under section 30.

### **Section 26 – Trustee as agent**

Section 26 deems a trustee in bankruptcy of a taxpayer to be the agent of the taxpayer for the purposes of the Act. Any revenue earned by the trustee from carrying on the taxpayer’s business during bankruptcy is revenue of the taxpayer and not of the trustee.

### **Subsection 27(1) – Tax payable for bankruptcy**

If a taxpayer has a bankruptcy day (as defined in section 25), subsection 27(1) sets out the rules for determining tax liability for the periods, defined in section 25, during which the taxpayer is bankrupt, and for the period immediately preceding the bankruptcy.

Paragraph 27(1)(a) provides that the ordinary rules for calculating tax liability, found in section 10, do not apply if a taxpayer becomes bankrupt. However, the revenue thresholds found in that section (other than the condition described in subparagraph 10(1)(a)(iii)) are still relevant for bankrupt taxpayers since those thresholds are applied, through the definitions in section 25, to the periods referenced in paragraphs 27(1)(b), (c) and (d).

A bankruptcy effectively divides a taxpayer’s ongoing calendar year for the purposes of calculating tax liability. Paragraph 27(1)(b) sets out the DST liability for the portion of a calendar year before bankruptcy. A taxpayer must pay a 3% tax on its taxable Canadian digital services revenue in respect of this “pre-bankruptcy period”. Since the pre-bankruptcy period is a non-calendar year period, taxable Canadian digital services revenue for this period is calculated according to the special rules in section 31. Although it is the taxpayer’s responsibility to pay tax in respect of the pre-bankruptcy period, the trustee has the obligation to file a return in respect of that period under paragraph 28(1)(c).

Once a bankruptcy occurs, a taxpayer begins a “bankruptcy period” (as defined in section 25) in respect of which, under paragraph 27(1)(c), the trustee must pay a 3% tax on the taxpayer’s taxable Canadian digital services revenue.

If a taxpayer’s bankruptcy spans two or more calendar years, it will have a “pre-discharge period” (as defined in section 25) from January 1 of the final calendar year during which it is bankrupt up to the end of the bankruptcy. Under paragraph 27(1)(c), the trustee must pay a 3% tax on the taxpayer’s taxable Canadian digital services revenue in respect of this period. Since both the bankruptcy period and pre-discharge period are non-calendar year periods, taxable Canadian digital services revenue for these periods is calculated according to the special rules in section 31.

If a taxpayer is bankrupt for an entire calendar year, it will have a “bankrupt year” (as defined in section 25). Under paragraph 27(1)(d), the trustee must pay a 3% tax on the taxpayer’s taxable Canadian digital services revenue for that year. Since a bankrupt year spans an entire calendar year, a taxpayer’s taxable Canadian digital services revenue for a bankrupt year is calculated according to the ordinary rules under the Act and not the special rules for non-calendar year periods in section 31.

Under the definitions in section 25, a period or bankrupt year referred to in paragraphs (b), (c) or (d) only exists if the taxpayer meets the €750,000,000 and \$20,000,000 thresholds for the year containing that period or for that year (other than under subparagraph 10(1)(a)(iii)). As such, neither the taxpayer nor the trustee will have DST liability for a period for which the taxpayer does not meet the thresholds.

### **Subsection 27(2) – Trustee – exception**

A taxpayer could be bankrupt and have a business or assets in receivership at the same time. Subsection 27(2) prevents overlapping payment obligations in such a case by clarifying that a trustee is not liable to pay any amount that a receiver is liable to pay under section 29.

### **Subsection 28(1) – Filing and payment**

Subsection 28(1) sets out a trustee’s filing and payment obligations in respect of a bankrupt taxpayer.

Under paragraph 28(1)(a), the ordinary timelines for filing (section 46) and payment of tax (section 50) no longer apply if a taxpayer has a bankruptcy day. Instead, the rules in paragraphs 28(1)(b) and (c) apply.

Under paragraph 28(1)(b), if a trustee is liable to pay tax greater than nil during a bankruptcy period, a bankrupt year, or a pre-discharge period, the trustee must file all returns and pay the tax no later than 90 days after the end of that period or year.

Under paragraph 28(1)(c), a trustee must file the taxpayer's outstanding returns, if any, from the calendar year immediately preceding the year in which a bankruptcy day occurs as well as for the pre-bankruptcy period. The trustee must file these returns no later than 90 days after the bankruptcy day. The Minister may waive this requirement in writing.

### **Subsection 28(2) – Trustee - exception**

A taxpayer could be bankrupt and have a business or assets in receivership at the same time. Subsection 28(2) prevents overlapping filing obligations in such a case by clarifying that a trustee is not required to include any information in a return that a receiver is required to include in a return.

### **Section 29 – Tax payable for receivership**

If a taxpayer has a receivership day (as defined in section 25), subsection 29 sets out the rules for determining tax liability for the periods, defined in section 25, during which the taxpayer's business or assets are in receivership.

Paragraph 29(a) sets out rules for receivers who are receiver-managers. This Act uses the common law definition of a receiver-manager. A receiver that controls all or substantially all of a taxpayer's business or assets will generally be a receiver-manager. A receiver-manager's obligations under the DSTA are similar to those of a trustee in bankruptcy.

Subparagraph 29(a)(i) provides that the ordinary rules for calculating tax liability, found in section 10, do not apply during receivership under a receiver-manager. However, the revenue thresholds found in that section (other than the condition described in subparagraph 10(1)(a)(iii)) are still relevant since those thresholds are applied, through the definitions in section 25, to the periods referenced in subparagraphs 29(a)(ii), (iii) and (iv).

If the receiver is a receiver-manager, a receivership day effectively divides a taxpayer's ongoing calendar year for the purposes of calculating tax liability. Subparagraph 29(a)(ii) sets out the DST liability for the portion of a calendar year before receivership. A taxpayer must pay a 3% tax on its taxable Canadian digital services revenue in respect of this "pre-receivership period". Since the pre-receivership period is a non-calendar year period, taxable Canadian digital services revenue for this period is calculated according to the special rules in section 31. Although it is the taxpayer's responsibility to pay tax in respect of the pre-receivership period, the receiver-manager has the obligation to file a return in respect of that period under subparagraph 30(a)(iii).

Following a receivership day, a taxpayer begins a "receivership period" (as defined in section 25) in respect of which, under subparagraph 29(a)(iii), the receiver-manager must pay a 3% tax on the taxpayer's taxable Canadian digital services revenue.

If a taxpayer's receivership spans two or more calendar years, it will have a "pre-cess period" (as defined in section 25) from January 1 of the final calendar year of the receivership to the end of the receivership. Under subparagraph 29(a)(iii), a receiver-manager must pay a 3% tax on the taxpayer's taxable Canadian digital services revenue in respect of this period. Since both the receivership period and pre-cess period are non-calendar year periods, taxable Canadian digital services revenue for these periods is calculated according to the special rules in section 31.

If a receivership lasts for an entire calendar year, the taxpayer will have a "year in receivership" (as defined in section 25). Under subparagraph 29(a)(iv), the receiver-manager must pay a 3% tax on the taxpayer's taxable Canadian digital services revenue for that year. Since a year in receivership spans an entire calendar year, a taxpayer's taxable Canadian digital services revenue for a year in receivership is calculated according to the ordinary rules under the Act and not the special rules for non-calendar year periods in section 31.

The rules for calculating the tax liability of receivers that are not receiver-managers are set out in paragraph 29(b). Unlike receiver-managers, these receivers are only liable to pay tax in respect of Canadian digital services revenue relating to the relevant assets (as defined in section 25) of the receiver. However, it should be noted that this tax is not on taxable Canadian digital services revenue calculated under Part 4 of the Act. Rather, it is on Canadian digital services revenue calculated under Part 3 of the Act. Accordingly, receivers that are not receiver-managers cannot claim any portion of the \$20,000,000 deduction otherwise available under section 24.

Under clause 29(b)(i)(A), receivers (that are not receiver-managers) must pay a 3% tax on the taxpayer's Canadian digital services revenue, that reasonably relates to the relevant assets of the receiver, for the receivership period and any pre-cess period (both as calculated under section 31).

Under clause 29(b)(i)(B), receivers (that are not receiver-managers) must pay a 3% tax on the taxpayer's Canadian digital services revenue, that reasonably relates to the relevant assets of the receiver, for any year in receivership.

For the purposes of clauses 29(b)(i)(A) and (B), a taxpayer's Canadian digital services revenue for a period is its online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue for that period that relates to the relevant assets of the receiver.

To avoid double-counting revenue, subparagraph 29(b)(ii) provides that any revenue that is taxed in the hands of the receiver under clauses 29(b)(i)(A) and (B) is not counted for the purposes of calculating a taxpayer's taxable Canadian digital services revenue for a calendar year in which a receivership day, a year in receivership or a pre-cess period occurs.

Under the definitions in section 25, a period or year in receivership referred to in subparagraphs 29(a)(ii), (iii) or (iv) or 29(b)(i) only exists if the taxpayer meets the €750,000,000 and \$20,000,000 thresholds for the year containing that period or for that year (other than under subparagraph 10(1)(a)(iii)). As such, neither the taxpayer nor the receiver will have DST liability for a period for which the taxpayer does not meet the thresholds.

### **Section 30 – Filing and payment**

Section 30 sets out a receiver's filing and payment obligations in respect of a taxpayer the business or assets of which are in receivership.

Paragraph 30(a) sets out filing and payment obligations for receiver-managers. A receiver-manager's obligations under the DSTA are similar to those of a trustee in bankruptcy. Under subparagraph 30(a)(i), if the receiver is a receiver-manager, the ordinary timelines for filing (section 46) and payment of tax (section 50) no longer apply. Instead, the rules in subparagraphs 30(a)(ii) and (iii) apply.

Under subparagraph 30(a)(ii), if a receiver-manager is liable to pay tax greater than nil during a receivership period, a year in receivership, or a pre-cessate period, the receiver-manager must file all returns and pay the tax no later than 90 days after the end of that period or year.

Under paragraph 30(a)(iii), a receiver-manager must file the taxpayer's outstanding returns, if any, from the calendar year immediately preceding the year in which a receivership day occurs as well as for the pre-receivership period. The receiver-manager must file these returns no later than 90 days after the receivership day. The Minister may waive this requirement in writing.

Paragraph 30(b) sets out filing and payment obligations for receivers that are not receiver-managers. If such a receiver is liable to pay any DST for a receivership period, a year in receivership or a pre-cessate period, the receiver must file a return for any such year or period and pay the tax no later than 90 days after the end of that year or period.

### **Section 31 – Non-calendar year periods**

Section 31 sets out special rules for calculating a taxpayer's taxable Canadian digital services revenue or Canadian digital services revenue for the non-calendar year periods that relate to bankruptcy and receiverships. These periods include any pre-bankruptcy period, bankruptcy period, pre-discharge period, pre-receivership period, receivership period or pre-cessate period.

In order to calculate taxable Canadian digital services revenue or Canadian digital services revenue for non-calendar year periods, Parts 3 and 4 of the DSTA are applied with certain modifications as set out in paragraphs 31(a) to (d).

Paragraphs 31(a) to (c) provide that references throughout the Act to calendar years be replaced by references to the relevant non-calendar year period. However, variables D and E in

section 24 are not modified since these variables relate to the sharing of the \$20,000,000 deduction, which, since other entities of a group would not calculate Canadian digital services revenue for non-calendar year periods, must be shared based on Canadian digital services revenue for a calendar year. If at the time of determining the tax liability of a taxpayer, trustee or receiver-manager for a non-calendar year period it is not possible to determine variable E (for example, if the bankruptcy or receivership happens early in a calendar year), then subparagraph (i) in variable E would cause variable E to be nil where the taxpayer is a member of a consolidated group during the relevant interval (as defined in section 23), section 3 would cause D/E to be nil, and no deduction would be available. If the taxpayer is not a member of a consolidated group during the relevant interval then even though it may not be possible to determine D, E would be equal to D, D/E would be one, and the deduction would be available.

Paragraph 31(d) provides that a taxpayer that was not a member of a consolidated group during the relevant non-calendar year period is not entitled to the full \$20,000,000 deduction under paragraph (a) of variable B of section 24 for the period. Instead, such a taxpayer's deduction for the period is calculated under paragraph (b) of variable B in section 24 to ensure that the deduction is appropriately prorated according to the number of days in the period.

Paragraph 31(e) provides that taxpayers cannot make the election otherwise available under paragraph 12(2) in respect of non-calendar year periods.

#### **Subsection 32(1) – Certificates for receivers**

Subsection 32(1) provides that a receiver may not distribute property until they have received a certificate from the Minister confirming that all amounts payable or expected to become payable under the DSTA for the current and previous calendar years or periods have been paid, or that security has been provided.

#### **Subsection 32(2) – Liability for failure to obtain certificate**

Subsection 32(2) provides that a receiver who distributes property without obtaining a certificate is personally liable, to the extent of the value of the property distributed, for the payment of any amount referred to in subsection 32(1).

## **DIVISION B**

### ***Partnerships***

Division B of Part 5 sets out rules relating to the partners of partnerships. These rules address the consequences of treating partnerships as separate entities from their partners under this Act.

### **Subsection 33(1) – Partnerships**

Subsection 33(1) provides that where a person engages in an activity as a member of a partnership, that activity is treated as an activity of the partnership rather than of the person. As a result, obligations under this Act apply at the partnership level.

### **Subsection 33(2) – Joint and several or solidary liability**

Subsection 33(2) specifies the extent of joint and several, or solidary, liability imposed on a person that is a partner or former partner (other than a limited partner who is not a general partner). Such a liability exists for all amounts that become payable by the partnership before or during the period in which the person is a member of the partnership. Where the person was a member at the time of the dissolution of the partnership, the joint and several, or solidary, liability also extends to amounts that become payable after the dissolution. The liability of a person for amounts that became payable before the person became a partner is limited to the property of the partnership. Also, in all cases, the joint and several, or solidary, liability is discharged to the extent of the amount that the partnership or any partner pays in respect of the liability.

Such partners and former partners are also jointly and severally, or solidarily, liable with the partnership for all other obligations for which the partnership is liable, such as filing returns.

## **DIVISION C**

### ***Anti-avoidance***

Division C of Part 5 introduces a general anti-avoidance rule which, like its counterparts in section 245 of the *Income Tax Act* and section 274 of the *Excise Tax Act*, is intended to prevent abusive tax avoidance transactions or arrangements, without interfering with legitimate commercial transactions.

### **Subsection 34(1) – Definitions – general anti-avoidance rule**

The definitions in subsection 34(1) apply to Division C of Part 5 of the DSTA.

#### **"tax benefit"**

The definition "tax benefit" provides that the term refers to a reduction, avoidance or deferral of tax or other amount payable under the DSTA, or an increase in a refund of tax or other amount under the DSTA.

## **"tax consequences"**

The "tax consequences" to a person are defined as being the amount of tax or other amount payable by, or refundable to, the person under the DSTA, or any other amount that is relevant for the purposes of computing that amount.

## **"transaction"**

The definition "transaction" specifies that the term includes an arrangement or event.

### **Subsection 34(2) – General anti-avoidance rule**

Subsection 34(2) sets out the main operative provision of the DSTA's general anti-avoidance rule. It provides that if a transaction is an avoidance transaction, the tax consequences to a person are to be determined as is reasonable in the circumstances in order to deny a tax benefit that, in the absence of section 34, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction. For these purposes, it is necessary to take into account the rule in section 35 in respect of the concept of a "series of transactions".

### **Subsection 34(3) – Avoidance transaction**

Subsection 34(3) defines "avoidance transaction" for the purposes of the operative rule in subsection 34(2).

Paragraph 34(3)(a) provides that an avoidance transaction includes a transaction that would, in the absence of section 34, result directly or indirectly in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

Paragraph 34(3)(b) provides that an avoidance transaction also includes a transaction that is part of a series of transactions if the series would, in the absence of section 34, result directly or indirectly in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

### **Subsection 34(4) – Application of subsection (2)**

Subsection 34(4) is a limitation on the operative rule in subsection 34(2). It provides that subsection 34(2) applies to a transaction only if it may reasonably be considered that the transaction:

(a) would result directly or indirectly in a misuse of the provisions of any one or more of the DSTA, the *Digital Services Tax Regulations* or any other relevant enactment, or

(b) would result directly or indirectly in an abuse having regard to those provisions read as a whole.

### **Subsection 34(5) – Determination of tax consequences**

Subsection 34(5) provides guidance in respect of the “reasonable tax consequences” determination that is mandated by subsection 34(2). It provides the following examples of possible consequences:

- any deduction, exemption or exclusion in computing Canadian digital services revenue, taxable Canadian digital services revenue or tax payable or any part thereof may be allowed or disallowed in whole or in part;
- any such deduction, exemption or exclusion, any revenue or other amount or part thereof may be allocated to any person;
- the nature of any payment or other amount may be recharacterized; and
- the tax effects that would otherwise result from the application of other provisions of the DSTA may be ignored.

### **Subsection 34(6) – Request for adjustments**

Where the general anti-avoidance rule in subsection 34(2) applies with respect to a transaction and a person has received a notice of assessment to that effect, subsection 34(6) provides that any other person is entitled to request an assessment applying subsection 34(2) in respect of the same transaction. The request must be made in writing within 180 days after the day of sending of the notice of assessment.

### **Subsection 34(7) – Exception**

Subsection 34(7) provides that the tax consequences to any person, following the application of section 34, are only to be determined through a notice of assessment involving the application of section 34.

### **Subsection 34(8) – Duties of Minister**

Subsection 34(8) provides that, on receipt of a request by a person under subsection 34(6), the Minister of National Revenue must, without delay, consider the request and, notwithstanding subsection 71(1) (the seven-year limitation period for assessments), assess the person. However, such an assessment may be made only to the extent it may reasonably be regarded as relating to the transaction referred to in subsection 34(6).

### **Section 35 – Series of transactions**

Section 35 is an interpretive rule that deems, for the purposes of Division C of Part 5 of the DSTA, a series of transactions to include any related transactions completed in contemplation of the series.

## PART 6

### *General Provisions, Administration and Enforcement*

Part 6 of the Act sets out rules related to the administration and enforcement of the DSTA. It first sets out, in subsection 36(1), definitions that apply for all of Part 6. (Note, however, that the definitions in section 2 are also applicable.) Subsection 36(2) then provides a rule regarding residence, and subsection 36(3) clarifies the meaning of “administration or enforcement”. The remainder of Part 6 is divided into seventeen divisions, Divisions A to Q, which each provide rules relating to an area of administration or enforcement. For example, there are divisions for registration, filing of returns, payment of tax, assessments, appeals and penalties, among others.

#### **Subsection 36(1) – Definitions**

The definitions in subsection 36(1) apply for the purposes of Part 6 of the DSTA.

#### **“Agency”**

The definition “Agency” provides that the term refers to the Canada Revenue Agency, which was continued as a body corporate from the Canada Customs and Revenue Agency by subsection 4(1) of the *Canada Revenue Agency Act*.

#### **“bank”**

The definition “bank” provides that the term refers to a bank as defined in section 2 of the *Bank Act* or an authorized foreign bank, as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of the *Bank Act*.

#### **“Commissioner”**

The definition “Commissioner” provides that the term refers to the Commissioner of Revenue, as appointed under section 25 of the *Canada Revenue Agency Act*, except for in certain specified provisions in which that term is used in a different context.

#### **“judge”**

The definition “judge” provides that the term refers to, in respect of any matter, a judge of a superior court having jurisdiction in the province in which the matter arises, or a judge of the Federal Court.

#### **“official”**

The definition “official” provides that the term refers to a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or

on behalf of, His Majesty in right of Canada or a province, or a person who was previously in any such role. This definition is referenced in several provisions that delegate powers to the Agency to administer the Act (e.g., inspections).

### **“record”**

The definition “record” is relevant for Division H of Part 6, which provides that taxpayers have obligations to keep records to show compliance with the Act. “Record” is defined as any material on which representations, in any form, of information or concepts are recorded or marked and that is capable of being read or understood by an individual or a computer system or other device. This includes both physical and electronic records.

### **Subsection 36(2) – Person resident in Canada**

Subsection 36(2) provides rules relating to residence in Canada for the purposes of the administrative provisions of the Act. A person’s residence status for Canadian tax purposes ordinarily depends on criteria established by case law. However, this subsection provides that, in certain circumstances, a person is deemed to be resident in Canada whether or not that person would be considered as such under the default common law rules.

Paragraph 36(2)(a) deems a corporation to be resident in Canada if it is incorporated in Canada (and not continued elsewhere) or continued in Canada. Under paragraph 36(2)(b), a partnership (or other unincorporated body as listed in the paragraph) is deemed to be resident in Canada if a majority of its members having management and control of it are resident in Canada. Under paragraph 36(2)(c), a labour union carrying on union activities in Canada and having a local union or branch in Canada is deemed to be resident in Canada. Finally, paragraph 36(2)(d) provides that individuals who are deemed to be resident in Canada under any of paragraphs 250(1)(a) to (f) of the *Income Tax Act* are also deemed to be resident in Canada for the purposes of Part 6 of the DSTA. This includes “sojourners” who spend a total of 183 days or more in Canada over the course of a year.

Residence in Canada is relevant for requirements to provide foreign-based information under subsection 104(2) and for subsection 109(9) which provides for various extensions to the limitation period for the collection of a tax debt.

### **Subsection 36(3) – Administration or enforcement**

Subsection 36(3) clarifies that, for greater certainty, a reference in Part 6 to “administration or enforcement” of this Act includes the collection of any amount payable under this Act. This ensures that certain actions that may be taken in the course of “administration or enforcement” may be taken in the course of collection.

## **DIVISION A**

### ***Duties of Minister***

Division A of Part 6 sets out rules regarding the duties of the Minister of National Revenue in administering the Act.

#### **Section 37 – Minister’s duty**

Section 37 specifies that the Minister is responsible for the administration and enforcement of the Act and that the Commissioner may exercise the powers and perform the duties of the Minister under the Act.

#### **Subsection 38(1) – Staff**

Subsection 38(1) provides for the appointment or employment of persons necessary for administering and enforcing the Act.

#### **Subsection 38(2) – Delegation of powers**

Subsection 38(2) provides that the Minister may authorize certain persons to exercise the powers and perform the duties of the Minister under the Act, including judicial or quasi-judicial powers or duties.

#### **Section 39 – Administration of oaths**

Section 39 provides that the Minister can designate persons to administer oaths and take and receive affidavits, declarations and affirmations for the purposes of (or incidental to) the administration or enforcement of the Act. Any such person would have, for those purposes, the powers of a commissioner for administering oaths or taking affidavits.

#### **Section 40 – Waiving the filing of documents**

Section 40 provides that the Minister may waive a requirement for a person to file a form or other document (other than a return or an election) or to provide information, where that form, document or information is prescribed by the Minister. This section preserves the right of the Minister to require a taxpayer, whose requirement was waived under this section, to file the form or document or provide the information at a later date.

## DIVISION B

### *Registration*

Division B of Part 6 sets out the rules for registration under the DSTA.

#### **Subsection 41(1) – Requirement to register**

Subsection 41(1) specifies the circumstances in which taxpayers are required to apply to register under the DSTA.

The general rule (contained in paragraph 41(1)(b)) is that a taxpayer is required to apply to register under the DSTA by January 31<sup>st</sup> of the year that follows the first calendar year in respect of which:

- it earns Canadian digital services revenue;
- it meets the €750,000,000 threshold set out in paragraph 10(1)(a) of Part 2; and
- it earns more than \$10,000,000 of Canadian digital services revenue or, if it is a constituent entity of one or more consolidated groups, for any such consolidated group, the sum of the Canadian digital services revenues of every entity that is in this group at any time during the year is over \$10,000,000 (i.e., paragraph 10(1)(b) with references to \$20,000,000 read as references to \$10,000,000).

A taxpayer that applies to register and that is registered under subsection 42(2) will continue to be registered for subsequent years and is not required to re-apply for registration for each year that the registration conditions are met.

Since the \$10,000,000 threshold for registration is lower than the \$20,000,000 threshold for taxation under Part 2 of the Act, some taxpayers that would not have a DST liability for a calendar year would be required to apply to register following that calendar year. This lower threshold enables the Minister to identify taxpayers that are close to the threshold for liability under the DSTA.

Paragraph 41(1)(a) contains a transitional rule for the first year of application of the DSTA. It provides that a taxpayer is required to apply to register by January 31<sup>st</sup> of the year following the first year of application (defined in section 2 as the calendar year that includes the day the DSTA comes into force) if there is at least one calendar year from 2022 up to and including the first year of application in respect of which the taxpayer meets the three conditions discussed above under the general rule; that is, it earns Canadian digital services revenue, and for that same calendar year, it meets the €750,000,000 threshold and the \$10,000,000 threshold described above.

Where both paragraphs 41(1)(a) and (b) apply to a taxpayer, the taxpayer is required to apply to register on or before the earliest date determined by one of those paragraphs.

*Example 1:*

*A taxpayer is a member of a consolidated group in 2030. The group consistently earns more than €750,000,000 in total consolidated group revenue. For each year before 2030, the taxpayer did not earn over \$10,000,000 of Canadian digital services revenue, but for 2030, the taxpayer earned \$15,000,000 of Canadian digital services revenue. The taxpayer is the only member of its consolidated group that earns Canadian digital services revenue.*

*The Act comes into force on January 1, 2024, such that the first year of application is 2024.*

*The taxpayer meets the conditions in paragraph 41(1)(b) in respect of 2030 since it meets the €750,000,000 threshold and it earns Canadian digital services revenue of over \$10,000,000. Accordingly, under paragraph 41(1)(b), the taxpayer is required to apply to register by January 31, 2031. However, it will not be subject to DST under Part 2 for 2030 since its Canadian digital services revenue is below the \$20,000,000 threshold in paragraph 10(1)(b).*

*Example 2:*

*Entity A and Entity B are members of a consolidated group that consistently earns more than €750,000,000 in total consolidated group revenue. In 2022, Entity A and Entity B each earn \$1,000 of Canadian digital services revenue and the sum of the Canadian digital services revenues of all entities of the consolidated group is \$15,000,000. In each of 2023 and 2024, Entity A does not earn Canadian digital services revenue, Entity B earns \$1,000 of Canadian digital services revenue and the sum of the Canadian digital services revenues of all entities of the consolidated group is \$5,000,000 .*

*The Act comes into force on January 1, 2024, such that the first year of application is 2024.*

*Both Entity A and Entity B meet the conditions for registration in paragraph 41(1)(a) since they meet the conditions in 41(1)(a)(i) and (ii) in respect of 2022. They have Canadian digital services revenue for that year, they meet the €750,000,000 threshold, and the entities in the group earn more than \$10,000,000 in Canadian digital services revenue for that year. Even though the condition in 41(1)(a)(ii) is not met in respect of 2023 or 2024 (since the entities in the group do not earn more than \$10,000,000 in Canadian digital services revenue for those years), Entity A and Entity B are required to apply to register by January 31, 2025.*

*Example 3:*

*Entity A, Entity B and Entity C are members of a consolidated group that consistently earns more than €750,000,000 in total consolidated group revenue. They are the only group members that earn Canadian digital services revenue. In 2022, Entity A, Entity B and Entity C each earn \$3,000,000 of Canadian digital services revenue. In 2023, Entity A and Entity B still earn \$3,000,000 of Canadian digital services revenue, but Entity C's Canadian digital services revenue increases to \$5,000,000.*

*The Act comes into force on December 1, 2024, such that the first year of application is 2024.*

*Although the entities do not meet the conditions for registration in subparagraphs 41(1)(a)(i) and (ii) in respect of 2022 (since their aggregate Canadian digital services revenue is under \$10,000,000), they do meet the conditions in respect of 2023. For 2023, they have Canadian digital services revenue, they meet the €750,000,000 threshold, and the entities in the group earn \$11,000,000 in Canadian digital services revenue.*

*As such, each of Entity A, Entity B and Entity C are required to apply to register by January 31, 2025.*

*Example 4:*

*On January 1, 2026, Entity A, Entity B and Entity C are formed and join a consolidated group that consistently earns more than €750,000,000 in total consolidated group revenue.*

*The Act comes into force on January 1, 2024, such that the first year of application is 2024.*

*During 2026, Entity A earns \$10,000,000 of Canadian digital services revenue, Entity B earns \$100 of Canadian digital services revenue and Entity C does not earn any Canadian digital services revenue. No other member of the group earns Canadian digital services revenue.*

*Under paragraph 41(1)(b), Entity A would be required to apply to register on January 31, 2027 since it meets the conditions for registration in paragraph 41(1)(b) in respect of 2026. For 2026, it had Canadian digital services revenue greater than nil, it was part of a group that met the €750,000,000 threshold, and the entities in the group earned more than \$10,000,000 in Canadian digital services revenue.*

*Under paragraph 41(1)(b), Entity B would also be required to apply to register on January 31, 2027 for the same reasons as Entity A.*

*Unlike Entity A and Entity B, Entity C does not have Canadian digital services revenue greater than nil for 2026. As such, Entity C would not be required to apply to register on January 31, 2027.*

### **Subsection 41(2) – Waiving requirement under subsection (1)**

Subsection 41(2) allows the Minister to waive the requirement to apply to register. Such a waiver would not affect a taxpayer's tax liability under Part 2, if any.

This subsection also preserves the right of the Minister to require a taxpayer whose obligation to register was waived under this subsection to apply to register at a later date.

### **Subsection 42(1) – Application to register**

Subsection 42(1) provides that an application for registration is to be made in the form prescribed by the Minister, contain the information prescribed by the Minister and be filed with the Minister in the manner prescribed by the Minister.

### **Subsection 42(2) – Notification**

Subsection 42(2) allows the Minister to register a taxpayer that has applied for registration. It also specifies that when the Minister registers a taxpayer, the Minister must issue a registration number to the taxpayer and notify the taxpayer of the effective date of the registration.

### **Subsection 43(1) – De-registration**

Under subsection 43(1), a taxpayer that no longer meets the thresholds for registration in subsection 41(1) can apply to the Minister for de-registration, and the Minister may de-register the taxpayer if the Minister is satisfied that the taxpayer did not meet those thresholds for any of the three immediately preceding years.

### **Subsection 43(2) – Consequences of de-registration**

After de-registration, subsection 43(2) deems the taxpayer to not have applied for registration or met the conditions for registration prior to de-registration, such that the taxpayer will again be required to apply to register under subsection 41(1) if the taxpayer meets the conditions for registration in the future.

### **Subsection 43(3) – Notification**

Subsection 43(3) provides that if the Minister de-registers a taxpayer, then the Minister must notify the taxpayer of the de-registration and the effective date of the de-registration.

### **Section 44 – Security**

Section 44 provides that a taxpayer that applies for registration (or that must apply for registration) may be required to post and maintain security in an amount and form satisfactory to the Minister.

### **Subsection 45(1) – Notice of intent**

Subsection 45(1) provides that where the Minister has reason to believe that a taxpayer is not registered when the taxpayer should be registered, the Minister may send a notice informing that taxpayer that the Minister proposes to register the taxpayer.

### **Subsection 45(2) – Notice of intent – requirement to register**

Subsection 45(2) provides that where a taxpayer receives a notice under subsection 45(1), the taxpayer must either apply to register, or establish to the satisfaction of the Minister that it is not required to apply to register.

### **Subsection 45(3) – Notice of intent – notification of registration**

Subsection 45(3) provides that if a taxpayer does not register, or establish to the Minister's satisfaction that it is not required to register, within 60 days of the sending of a notice under subsection 45(1), the Minister may register the taxpayer, and must then notify the taxpayer of its registration number and the effective date of the registration.

## **DIVISION C**

### ***Returns***

Division C of Part 6 sets out rules regarding when and how a taxpayer must file a digital services tax return, including how to make an election so that a constituent entity of a consolidated group can file on behalf of other entities in its group.

### **Section 46 – Requirement to file a return**

Section 46 sets out the rule requiring certain taxpayers (generally those with a DST liability) to file a return, specifies that the return must be in the form and manner, and containing the information, prescribed by the Minister, and establishes the due date for filing.

Paragraph (a) addresses the requirement to file a return for the Act's first year of application. As DST liability for the first year of application is calculated by reference to Canadian digital services revenues that were earned in the years 2022, 2023 and up to, and including, that first year, the requirement to file a return for the first year of application is based on whether, for at least one of those years, the taxpayer had Canadian digital services revenue greater than nil and met the conditions described in paragraphs 10(1)(a) and (b). Where these conditions are met, the taxpayer must file a return for the first year of application no later than June 30 of the calendar year following the first year of application.

Paragraph (b) addresses the requirement to file a return for any year after the first year of application. A taxpayer that has Canadian digital services revenue greater than nil for a calendar year, and that meets the threshold conditions in paragraphs 10(1)(a) and (b) for that year, must file a return for that year. The return must be filed on or before June 30 of the following calendar year.

As noted in the commentary above on subsection 10(1), since the \$20,000,000 threshold in paragraph 10(1)(b) differs from the \$20,000,000 deduction in Part 4, there may be situations where a taxpayer is not required to pay digital services tax for a year, even though the taxpayer meets one or more conditions in paragraph 10(1)(a) and one or both conditions in paragraph 10(1)(b). If such a taxpayer has Canadian digital services revenue greater than nil, it would be required to file a return even though its DST liability would be nil.

### **Subsection 47(1) – Election – designated entity**

Under subsection 47(1), a taxpayer that is a constituent entity of a consolidated group at any time in a particular calendar year may, along with one or more other constituent entities of the same group, jointly elect one such entity to be the “designated entity” for that calendar year. This election must be made on or before June 30 of the following year, and must be in the form and manner, and contain the information, prescribed by the Minister. There can be more than one designated entity in a consolidated group; however, each constituent entity of the consolidated group can only participate in the election of one designated entity.

If a taxpayer is a constituent entity of more than one consolidated group during a calendar year, it cannot elect a designated entity for that year.

### **Subsection 47(2) – Election – consequences**

If a taxpayer elects a “designated entity” for a calendar year, then under subsection 47(2) there are three consequences. First, the designated entity must act on behalf of the taxpayer to fulfill the requirements in Part 6 in respect of that year. This would include, for example, filing the taxpayer’s return and paying the taxpayer’s DST liability. Second, any action taken by the designated entity will be deemed to have been performed by the taxpayer thus enabling the designated entity to fulfill the taxpayer’s obligations under Part 6. Third, any communication by the Minister, for the purposes of applying Part 6 in respect of the taxpayer, must be directed at both the designated entity and the taxpayer.

Under this provision, the designated entity becomes an agent of the taxpayer for the purposes of Part 6. This does not remove the requirement for the taxpayer to meet its obligations under this Part, nor does it alter the taxpayer’s liability for tax, interest, or penalties. For example, if a designated entity is elected by ten constituent entities, and the designated entity fails to file returns for those entities, each of the ten entities would be liable for a “failure to file” penalty under section 85, while the designated entity would not be liable under that section (assuming it did not fail to file its own return). However, the designated entity could be made joint and severally liable for the penalties under section 52 at the Minister’s discretion.

### **Subsection 47(3) – Application for registration – designated entity**

Subsection 47(3) provides that if a designated entity is not already registered for the purposes of this Act, then the designated entity must apply to register at the time of the election.

### **Subsection 48(1) – Extension of time**

Subsection 48(1) provides that the Minister may extend the time for filing a return, form or other document, for providing information, or for making an election. Such an extension would not, however, affect any other due dates such as the due date for payment.

### **Subsection 48(2) – Effect of extension**

If the due date for a return, form, other document, information or election has been extended under subsection 48(1), subsection 48(2) provides that the return, form or other document must be filed, the information provided, or the election made, within the extended time. It also provides that where a late-filing penalty under section 85 applies in respect of a return, the penalty must be calculated as though the return were required to be filed on the day on which the extended time expires.

### **Section 49 – Demand for return**

Section 49 provides that the Minister may require, by way of a demand, any taxpayer to file a return for any calendar year. The demand may stipulate a reasonable time for the filing.

## **DIVISION D**

### ***Payments***

Division D of Part 6 sets out rules regarding the payment of tax and joint liability.

### **Section 50 – Payments**

Section 50 sets out the due date for DST payments. The tax payable under the DSTA in respect of a calendar year must be paid on or before June 30 of the following year. This deadline cannot be extended.

It should be noted that for tax payable in respect of the first year of application, the payment due date would be June 30 of the year following the first year of application, although the tax in respect of that year may be calculated by reference to Canadian digital services revenue earned in prior years.

### **Section 51 – Manner and form of payments**

Section 51 provides that payments under the DSTA must be made to the account of the Receiver General of Canada in the manner and form prescribed by the Minister.

### **Subsection 52(1) – Assessment of another constituent entity**

Subsection 52(1) allows the Minister to assess any constituent entity of a consolidated group for any amount owed, under the DSTA, by any other constituent entity of the group. Upon such an assessment the assessed constituent entity becomes jointly and severally, or solidarily, liable with the other constituent entity to pay the amount assessed, and the administrative provisions of the Act (for example, the Appeals and Objections Divisions) apply to the assessed constituent entity with any modifications that the circumstances require.

### **Subsection 52(2) – Limitation**

Subsection 52(2) clarifies that subsection 52(1) does not limit the liability of the other constituent entity in any way. Even though the assessed constituent entity may be made jointly and severally, or solidarily, liable for the other constituent entity's debts, the other constituent entity would remain liable for those same debts (as well as any other debts it might have under the Act). Additionally, subsection 52(2) clarifies that subsection 52(1) does not limit the interest that may be payable by the assessed constituent entity in respect of the amount that it is made jointly liable for.

### **Subsection 52(3) – Rules applicable**

Where a constituent entity is assessed under subsection 52(1) in respect of an amount owed by another constituent entity, subsection 52(3) clarifies the effect of a payment made by either the assessed constituent entity or the other constituent entity on account of the debt. Under paragraph (a), where the assessed constituent entity makes a payment, it discharges the joint liability to the extent of the payment. Under paragraph (b), where the other constituent entity makes a payment, the payment only discharges the joint liability to the extent that the payment reduces the liability to an amount below that which the assessed constituent entity was made liable for under subsection 52(1).

### **Subsection 53(1) – Meaning of transaction**

Subsection 53(1) provides that for the purposes of sections 53 and 88, "transaction" includes an arrangement or event.

### **Subsection 53(2) – Tax liability — property transferred not at arm's length**

Subsection 53(2) facilitates collection. It applies in situations where:

- there has been a non-arm's length transfer of property at less than fair market value, and
- the transferor had a pre-existing liability under the DSTA, or DST liability in respect of the calendar year in which the transfer occurred.

If these conditions are met, subsection 53(2) provides that the transferee is jointly and severally, or solidarily, liable in respect of amounts owed by the transferor under the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given by the transferee for the property at the time of the transfer. The calculation also takes into account any amounts assessed under similar joint liability provisions in other Acts, and any payments made by the transferor to reduce those liabilities.

Subsection 53(5) provides for assessment of the liability under subsection 53(2).

### **Subsection 53(3) – Limitation**

Subsection 53(3) clarifies that subsection 53(2) does not limit the liability of the transferor in any way. Even though the transferee may be made jointly and severally, or solidarily, liable for the transferor's debts, the transferor would remain liable for those same debts (as well as any other debts it might have under the Act). Additionally, subsection 53(3) clarifies that subsection 53(2) does not limit the interest that may be payable by the transferee in respect of the amount that it is made jointly liable for.

### **Subsection 53(4) – Fair market value of undivided interest or right**

Subsection 53(4) specifies that where the property transferred includes an undivided interest or right in a property, and that interest or right is expressed as a proportionate interest or right, the fair market value of that interest or right is deemed to be equal to the same proportion of the fair market value of that property. For example, if the transferred property included a 50% interest in a real estate property, the fair market value of that interest would be 50% of the fair market value of the full property.

### **Subsection 53(5) – Assessment**

Subsection 53(5) allows the Minister to assess a transferee who is liable for an amount under subsection 53(2) and clarifies that the administrative provisions of the Act (for example, the Appeals and Objections Divisions) apply to the transferee with any modifications that the circumstances require. Such an assessment may be made at any time without regard to the general seven-year limitation period for assessments.

### **Subsection 53(6) – Rules applicable**

Where a transferee is assessed under subsection 53(5), subsection 53(6) clarifies the effect of a payment made by either the transferee or the transferor on account of the debt. Under paragraph (a), where the transferee makes a payment, it discharges the joint liability to the extent of the payment. Under paragraph (b), where the transferor makes a payment, the payment only discharges the joint liability to the extent that the payment reduces the liability to an amount below that which the transferee was made liable for under subsection 53(2).

## **Subsection 53(7) – Anti-avoidance rules**

Subsection 53(7) contains anti-avoidance rules to address planning which seeks to circumvent the application of section 53.

Paragraph (a) addresses planning that attempts to circumvent the application of section 53 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 53, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary, liability of the transferee and transferor for an amount payable under the Act.

Paragraph (b) addresses planning that attempts to circumvent the application of section 53 by avoiding the requirement that the transferor have a pre-existing liability under the DSTA, or DST liability in respect of the calendar year in which the property is transferred. This paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 53, regardless of whether the Minister has made an assessment under subsection 53(5) for that amount) is deemed to have become payable in the calendar year in which the property was transferred, if it is reasonable to conclude that one of the purposes of the transfer of property is to avoid the payment of a future debt under the DSTA by the transferor or transferee.

Paragraph (c) addresses planning that attempts to effectively avoid section 53 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 53, element A of the formula in paragraph 53(2)(a) is intended to limit the joint and several, or solidary, liability in respect of any tax liability of the transferor for the year in which the transfer took place, or any preceding year. Element A limits the joint and several, or solidary, nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

Paragraph (c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary, liability applies under section 53, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (c) deems the amount determined under element A in paragraph 53(2)(a) to be the greater of

- the amount otherwise determined for element A without reference to this anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds either
  - the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, or
  - if the consideration is in a form that is cancelled or extinguished during the above-noted period, subclause (B)(I) provides a continuity rule that applies in cases where there is substituted property and subclause (B)(II) provides that in other cases the amount determined for B is nil.

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph 53(7)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary, liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

#### **Subsection 54(1) – Payment in Canadian dollars**

Subsection 54(1) specifies that persons are required to make their payments under the DSTA to the Receiver General in Canadian dollars.

#### **Subsection 54(2) – Exception**

Subsection 54(2) allows the Minister to waive the requirement under subsection (1) and receive payment in other currencies. Where such a waiver is granted, the amount is to be converted from Canadian dollars to that other currency using a rate of exchange that is acceptable to the Minister.

#### **Subsection 55(1) – Meaning of electronic payment**

Subsection 55(1) provides that the term "electronic payment" means any payment to the Receiver General of Canada that is made through electronic services offered by a financial

institution, as described by paragraphs 55(2)(a) to (d), or by any electronic means specified by the Minister.

#### **Subsection 55(2) – Electronic payment**

Subsection 55(2) imposes a requirement to make payments to the Receiver General of Canada through electronic means where the amount of the payment exceeds \$10,000, unless the payor cannot reasonably pay the amount in that manner.

#### **Subsection 56(1) – Small amounts owing by a person**

Subsection 56(1) provides that if the total amount payable by a person under the DSTA does not exceed \$2.00, then the amount is deemed to be nil and the person is not required to pay the amount.

#### **Subsection 56(2) – Small amounts payable to a person**

Subsection 56(2) provides that the Minister can deduct small amounts under \$2.00 payable to a person from any amount payable by that person. If there are no amounts payable by the person available to apply the small amount against, then the small amount is deemed to be nil, and the Minister is not required to pay it.

### **DIVISION E**

#### ***Interest***

Division E of Part 6 sets out rules related to interest on unpaid amounts.

#### **Subsection 57(1) – Compound interest**

Subsection 57(1) provides that if a person fails to pay an amount to the Receiver General as and when required under the DSTA, the person must pay interest on the amount. This interest will be compounded daily and charged for the period of time beginning on the day following the day on which the amount was required to be paid and ending on the day on which the amount is paid. The applicable interest rate can be found in the *Digital Services Tax Regulations*.

#### **Subsection 57(2) – Payment of interest that is compounded**

Subsection 57(2) provides that where interest compounded on a particular day remains unpaid at the end of the following day, the unpaid interest will be added, at the end of the particular day, to the total amount unpaid. Interest will then be charged for the following day on the total amount that was unpaid at the end of the particular day, including the unpaid interest.

### **Subsection 57(3) – Period when interest not payable**

Subsection 57(3) provides that if the Minister serves a demand that a person pay all amounts owing under the DSTA, and the person pays by the date specified in the demand, the Minister must waive any interest on the amounts between the date of the demand and the day of payment.

### **Subsection 57(4) – Interest and penalty amounts of \$25 or less**

Subsection 57(4) allows the Minister to cancel interest and penalty amounts of \$25 or less in respect of a calendar year where the person who owes the interest or penalty has otherwise paid off all amounts owing under the DSTA in respect of the year.

### **Subsection 58(1) – Waiving or cancelling interest**

Subsection 58(1) allows the Minister to waive or cancel interest payable by a person. However, interest on an amount payable in respect of a calendar year cannot be waived or cancelled after 10 years have passed since the end of that calendar year. Any assessment that is necessary to take into account the waiver, cancellation or reduction of the interest may be made, regardless of the general seven-year limitation period for assessments.

It should be noted that the Minister has full discretion over the use of this waiver. The Minister need not waive or cancel interest unless the Minister considers it appropriate to do so.

### **Subsection 58(2) – Interest where amounts waived or cancelled**

Subsection 58(2) provides that where the Minister has waived or cancelled an interest amount under subsection 58(1), and the person has already paid the interest, the Minister must refund that interest amount. It also provides that the Minister must pay interest on the refund if that refund is not made within 30 days of receipt of the person's request to waive or cancel the interest amount (or, if there is no such request, if that refund is not made on the day the Minister waived, cancelled or reduced the interest amount). The relevant interest rate is prescribed and can be found in the *Digital Services Tax Regulations*.

## **DIVISION F**

### ***Administrative Charge under the Financial Administration Act***

Division F of Part 6 sets out a rule relating to administrative fees.

## **Section 59 – Dishonoured instruments**

Section 59 incorporates the fee structure currently imposed under the *Financial Administration Act* (FAA) when a financial instrument (e.g., a cheque) becomes dishonoured.

This section deems a charge that becomes payable under the FAA in respect of an instrument used to pay or settle an amount payable under this Act, to also be an amount payable under this Act. Further, the interest and collection provisions under the FAA will not apply to the charge and the debt established by the FAA in respect of the charge is deemed to be extinguished once the charge and applicable interest is paid under this Act. By deeming a charge for a dishonoured instrument to be an amount payable under this Act, the charge becomes subject to the interest and collection provisions under this Act in Divisions E and P of Part 6.

## **DIVISION G**

### ***Refunds***

Division G of Part 6 sets out various rules regarding refunds including rules relating to payments made in error, set-offs, the effect of unfulfilled filing requirements and overpayments of refunds by the Minister. Refunds resulting from assessments are further addressed in Division I.

## **Section 60 – Statutory recovery rights**

Section 60 limits a person's recovery rights when they seek to recover money paid to His Majesty in right of Canada as an amount payable under the DSTA. A person cannot recover such an amount, except where specifically provided by this Act or by the *Financial Administration Act*.

### **Subsection 61(1) – Refund — payment in error**

Section 61 provides rules regarding the refund of amounts that were paid to His Majesty in Right of Canada in error. Subsection 61(1) sets out the requirement for His Majesty to refund an amount paid by a person by mistake if that amount has been taken into account by His Majesty as taxes, penalties, interest or other amount under this Act, provided that the person applies for the refund within 2 years of the date they paid the amount. If a refund is not pursued within 2 years, the amount will be the property of the Crown and cannot be recovered by the person.

This section solely applies to amounts that were paid to the Minister in error, and does not apply to overpayments of amounts payable under the Act. For example, if a person were to pay an amount to the incorrect tax account, or in respect of a year that has already been assessed and paid in full, or were to pay DST despite not being required to register or pay tax under this Act, this section allows the person to recover the amount (provided that the person does not

otherwise owe amounts to the Crown or have unfulfilled filing requirements, see commentary on sections 62 and 63).

The refund rules that apply to the overpayment of tax can be found throughout the Act:

- refund of overpayment on assessment or reassessment: Section 70;
- refund of overpayment after successful objection: Subsection 73(11); and
- refund of overpayment after successful appeal: Section 83.

### **Subsection 61(2) – Form and contents of application**

Subsection 61(2) specifies that an application for refund under subsection 61(1) must be made in the form and manner, and containing the information, prescribed by the Minister.

### **Subsection 61(3) – Determination**

Subsection 61(3) provides that when the Minister receives an application for a refund under subsection 61(1) of an amount paid in error, the Minister must consider the application without delay, and determine the amount of the refund, if any, payable to the applicant.

### **Subsection 61(4) – Minister not bound**

Subsection 61(4) provides that when the Minister is considering an application in order to make a determination under subsection 61(3), the Minister is not bound by any application or information supplied by or on behalf of any person.

### **Subsection 61(5) – Notice and payment**

Subsection 61(5) sets out the actions the Minister must take after making a determination under subsection 61(3). The Minister must send to the applicant a “notice of determination”, and if any refund is payable, must pay the refund.

### **Subsection 61(6) – Objections and appeals**

Subsection 61(6) provides that the rules for objections and appeals following assessments also apply to determinations of refunds under subsection 61(3) by deeming such determinations to be assessments for the purposes of those rules and for certain other subsections. This allows a taxpayer to object to or appeal from a determination of a refund.

### **Subsection 61(7) – Interest on payment**

If the Minister is required to pay a refund to an applicant under subsection 61(5), subsection 61(7) provides that the Minister might also be required to pay interest on the refund. Interest would accrue during the period, if any, from the day that is 30 days after the day the application was received to the day the refund is paid to the applicant.

### **Subsection 61(8) – Determination valid and binding**

Subsection 61(8) provides that a determination of a refund under subsection 61(3) is deemed to be valid and binding (subject to being varied or vacated on an objection or appeal) despite any irregularity, informality, error, defect or omission in the notice of the determination or in any proceeding under the DSTA relating to the determination.

### **Section 62 – Restriction — application to other debts**

Section 62 allows the Minister to apply a refund against another amount owing by a person, rather than paying the refund to the person. The refund can be applied against any liability that the person owes to His Majesty in right of Canada or a province. It should be noted that this includes liabilities under other Acts, such as the *Excise Tax Act*. This section is not limited to refunds of amounts paid in error; rather, it applies to all refunds under the DSTA.

### **Section 63 – Restriction — unfulfilled filing requirements**

Section 63 sets out a restriction on refunds. An amount cannot be refunded by the Minister until the person to which the refund is owed has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under the DSTA, the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act*, the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act*, and the *Select Luxury Items Tax Act*. This section is not limited to refunds of amounts paid in error; rather, it applies to all refunds under the DSTA.

### **Section 64 – Restriction — trustees**

Section 64 provides a rule that applies if a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt. In that case, a refund that the bankrupt was entitled to claim before the appointment of the trustee cannot be paid after the appointment unless the conditions of this section are met. The first condition is that all returns required under this Act to be filed before the appointment have been filed. The second condition is that all amounts required under this Act to be paid by the bankrupt have been paid.

### **Section 65 – Overpayment of refund or interest**

Section 65 addresses a scenario where a person received an amount of refund or interest that they were not entitled to. This section requires the person to repay the amount to the Receiver General. The Minister may assess them for the amount, and such an assessment is not subject to the general seven-year limitation period for assessments and can be made at any time. The repayment is due on the date the amount was paid to the person and the compound interest provisions will apply to the repayment.

## DIVISION H

### *Records and Information*

Division H of Part 6 sets out rules regarding the keeping of records relating to the DST.

#### **Subsection 66(1) – Keeping records**

Subsection 66(1) provides that persons must keep all records that are necessary to determine whether they have complied with this Act. If a person is a constituent entity of a consolidated group, it must also keep any of its records that are necessary to determine whether other entities of the group have complied with this Act.

This section does not require each entity in a group to obtain and keep all the records of all other entities in the group. Rather, entities must keep records that they possess, in the ordinary course of their business, that are pertinent to those other group members. In determining whether a person's records are "necessary to determine whether other entities of the group have complied with this Act" the following factors should be considered:

- whether the record is relevant to the calculation of any component of Canadian digital services revenue or taxable Canadian digital services revenue of any entity in the consolidated group; and
- whether the record is relevant to compliance by any entity in the consolidated group with its administrative obligations under the Act, such as payment and filing.

*Example 1: Entity A is a member of a consolidated group, and earns a small amount of Canadian digital services revenue that is reduced to nil by its share of the \$20,000,000 deduction under Part 4. Although Entity A is not liable for tax, it must keep records sufficient to establish its compliance with the DSTA. Additionally, it must keep any records that it has regarding other group members' compliance with the DSTA.*

*Example 2: ParentCo is the parent of a consolidated group, and is a "designated entity" for several entities of the group. ParentCo does not earn any Canadian digital services revenue, but it fulfills all the reporting and payment obligations of the entities that it acts for. ParentCo must keep all records that are relevant to those entities' compliance with the DSTA. This could include records of calculations, forms, payment records, and other records that ParentCo keeps on behalf of the other entities.*

*Example 3: Entity B provides certain digital services, but due to an underlying intellectual property agreement, the revenue related to these services is recorded as earned by Entity C, another constituent entity in the same consolidated group. Due to Section 22, Entity C would be subject to DST and Entity B would not. However, Entity B is required to keep all records that are necessary for the calculation of Entity C's Canadian digital services revenue.*

This subsection is not intended to require taxpayers to keep detailed transaction-by-transaction data. In certain contexts, the quantity of this data would be burdensome and impractical to keep, and would go beyond what is “necessary” to determine whether the person has complied with this Act. Rather, it is expected that taxpayers would have systems to generate sufficiently detailed summarized data to support their calculations of Canadian digital services revenue, and would maintain sufficient controls over the recording of this summarized data to ensure that it accurately represents the underlying individual transactions.

#### **Subsection 66(2) – Minister may specify information**

Subsection 66(2) allows the Minister to specify the form that a record is to take and any information that the record must contain.

#### **Subsection 66(3) – Electronic records**

Subsection 66(3) specifies that where a record that a person must keep is stored in an electronic format, the person must also keep any equipment and software that is necessary to make the record intelligible. This equipment and software must be available for the same period of time that the record must be kept.

#### **Subsection 66(4) – General period for retention**

Subsection 66(4) sets the general record retention period under the DSTA as 8 years after the end of the calendar year to which the records relate. Exceptions to this general retention period may be prescribed by regulation; however, no such regulations are being proposed at the time of issuance of draft legislative proposals.

#### **Subsection 66(5) – Exception – general period for retention**

Subsection 66(5) sets out an exception to the general retention period. Where a person does not file a DST return for a calendar year as and when required, and later files the return, the records relating to that year must be retained for 8 years from the date the return is filed, rather than from the end of the year.

#### **Subsection 66(6) – Inadequate records**

Subsection 66(6) allows the Minister to require a person to keep any records that the Minister specifies if the person has failed to keep adequate records.

#### **Subsection 66(7) – Objection or appeal**

Subsection 66(7) sets out a rule that, in some circumstances, would extend the general retention period. Where a person required to keep records serves a notice of objection, or is a party to an appeal or a reference (that is, a reference to Tax Court under section 81), they must retain the records that relate to the objection, appeal or reference until it is completed. This

may result in a retention period longer than 8 years, but will not result in a retention period shorter than 8 years, even if the matter is resolved before the expiry of the 8-year period.

#### **Subsection 66(8) – Demand by Minister**

Subsection 66(8) allows the Minister to serve a demand on any person to require that person to keep records and retain them for any period specified in the demand. Such a demand may be served where Minister is of the opinion that is necessary for the administration or enforcement of this Act. This demand must be served personally, sent by confirmed delivery service (e.g., registered mail) or sent electronically.

#### **Subsection 66(9) – Permission for earlier disposal**

Subsection 66(9) allows a person to dispose of records prior to the expiry of the general 8-year retention period if permission for their disposal was obtained from the Minister.

#### **Subsection 67(1) – Requirement to provide information or records**

Subsection 67(1) allows the Minister to require any person to provide information or records to the Minister by serving a notice on the person. This notice must be served personally, sent by confirmed delivery service (e.g., registered mail) or sent electronically. The Minister may serve such a notice for any purpose related to the administration and enforcement of this Act.

#### **Subsection 67(2) – Unnamed persons**

While the Minister may require any information or record to be provided under subsection 67(1), subsection 67(2) requires that court authorization be obtained under subsection 67(3) if the information or records sought pertain to one or more unnamed persons.

#### **Subsection 67(3) – Judicial authorization**

Subsection 67(3) provides that a judge may grant the authorization required under subsection 67(2), and in granting the authorization, the judge may impose any conditions the judge considers appropriate.

#### **Subsection 67(4) – Time period not to count**

Subsection 67(4) extends the general seven-year limitation period for assessments in certain circumstances. If a person is served a notice of requirement under subsection 67(1), and applies for judicial review of that requirement, the period of time from the day of the application for judicial review to the day on which the application is finally disposed of will not be counted for the purposes of the seven-year limitation period.

## **DIVISION I**

### ***Assessments***

Division I of Part 6 sets out rules relating to the assessment of DST.

#### **Subsection 68(1) – Assessment**

Subsection 68(1) authorizes the Minister to assess a person for its liability under the DSTA. It also allows the Minister to vary an assessment, reassess a person, or make any additional assessments that might be required, regardless of any previous assessment of the same matter. Assessments can be issued by the Minister for all amounts that might be payable under the DSTA, including tax, interest, penalties, refund overpayments and amounts that a person is jointly liable for because of sections 52 or 53.

#### **Subsection 68(2) – Liability not affected**

Subsection 68(2) provides that the liability of a person to pay an amount under this Act is not affected by an incorrect or incomplete assessment or by a lack of an assessment.

#### **Subsection 68(3) – Minister not bound**

Subsection 68(3) provides that the Minister is not bound by any return, application, or information provided by or on behalf of any person. The Minister may make an assessment despite any return, application or information provided, or even in cases where no return, application or information is provided. In the latter case, the Minister can assess based on any information the Minister may have.

#### **Subsection 68(4) – Determination of refunds**

If, during an assessment, the Minister determines that a person has paid an amount in error, subsection 68(4) allows the Minister to consider whether a section 61 refund is payable to the person even if the person has not made an application under section 61. If the Minister determines that a section 61 refund is payable, the Minister is deemed to have received such an application from the person on the date of the notice of assessment. Additionally, the requirement for the application to be made within two years is deemed to have been met.

#### **Subsection 68(5) – Irregularities**

Subsection 68(5) specifies that no assessment can be vacated or varied on an appeal solely because of an irregularity, informality, error, defect or omission by any person in the observance of any directory provision of the DSTA.

### **Subsection 69(1) – Notice of assessment**

Subsection 69(1) requires the Minister to send a notice of assessment to any person that has been assessed under this Act.

### **Subsection 69(2) – Payment of remainder**

Subsection 69(2) provides that an amount that remains unpaid at the time of assessment is due as of the date of the notice of assessment. This date is relevant for the calculation of interest on the unpaid amount.

### **Section 70 – Payment by Minister on assessment**

Section 70 sets out rules relating to refunds resulting from assessments. Such a refund might be payable, for example, when a person has overpaid tax, or when the assessment is a reassessment and the tax payable on reassessment is determined to be lower than that of the original assessment. Where such a refund is payable, the Minister is required to pay the refund. The Minister must also pay interest on the refund for the period of time beginning on the later of July 30 of the calendar year following the year in respect of which the assessment is made and the day the overpayment was made, and ending on the day the refund is paid to the person. The applicable interest rate is prescribed by regulation and can be found in the *Digital Services Tax Regulations*.

### **Subsection 71(1) – Limitation period on assessment**

Subsection 71(1) sets out a seven-year limitation period for assessing tax or other amounts payable under the DSTA. In general, an assessment must not be made by the Minister more than 7 years after the day on which the return (to which the amount payable relates) was filed.

### **Subsection 71(2) – Exception – objection or appeal**

Subsection 71(2) contains certain exceptions to the general limitation period for assessments. It provides that the Minister can assess a person at any time if:

- an assessment is needed to give effect to a decision on an objection or appeal;
- an appellant provides written consent to dispose of an appeal (e.g., by entering into a settlement with the Minister); or
- an assessment is needed to give effect to an alternative basis or argument advanced by the Minister under subsection 71(5).

### **Subsection 71(3) – Exception – neglect or fraud**

Where a person has made a misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed fraud in filing a return or an application for a refund or in supplying information under the DSTA (either on their own behalf or on behalf of another

person), subsection 71(3) provides that the general seven-year limitation period for assessments does not apply. In these cases, the Minister may make an assessment at any time.

#### **Subsection 71(4) – Exception – other period**

If the Minister determines on assessment that an amount paid in respect of one calendar year was in fact payable in respect of another calendar year, subsection 71(4) allows the Minister to make an assessment for that other year, even if, for that other year, the general seven-year limitation period for assessments has passed.

This subsection prevents the issuance of excessive refunds where, for example, the Minister determines that a refund is owed in respect of a particular calendar year because the amount paid is actually attributable to tax owing in respect of an earlier calendar year that may otherwise be barred from reassessment. In such a case, the Minister could, under this subsection, issue a reassessment of tax owing in respect of that earlier year beyond the normal reassessment period while also issuing a refund for the later year.

#### **Subsection 71(5) – Alternative basis or argument**

Subsection 71(5) provides that after the general seven-year limitation period for assessments has expired the Minister may, subject to certain limitations, advance alternative arguments in support of an assessment.

#### **Subsection 71(6) – Limitation – alternative basis or argument**

Subsection 71(6) provides that a reassessment under subsection 71(5), to give effect to an alternative basis or argument advanced by the Minister, cannot be for an amount greater than the total amount of the original assessment. This would allow, for example, reduced liability in relation to one source included in the computation of an assessment to be offset by an increased liability in relation to another source. It should be noted that this limitation only applies to reassessments made after the normal reassessment period. If the Minister reassesses a person to give effect to an alternative basis or argument and that reassessment is made within the normal reassessment period, the Minister may reassess the person for an amount greater than the total amount of the original assessment.

#### **Subsection 71(7) – Exception – alternative basis or argument**

Subsection 71(7) sets out an exception to the limitation in subsection 71(6). It provides that subsection 71(6) does not limit the Minister's ability to reassess any portion of an amount determined on reassessment to be payable that the Minister would, if this Act were read without reference to subsection 71(5), be entitled to reassess after the normal reassessment period.

### **Subsection 71(8) – Filing waiver**

Subsection 71(8) provides that a person may waive the general seven-year limitation period for assessments by filing a waiver in the form and manner prescribed by the Minister. The waiver must specify the matter to which it relates, and the period of time for which it is to apply.

### **Subsection 71(9) – Revoking waiver**

Subsection 71(9) specifies how a waiver under subsection 71(8) may be revoked. A person that has filed a waiver may revoke it by filing a notice of revocation in the form and manner prescribed by the Minister. The waiver remains in effect for 180 days after the notice of revocation is filed.

### **Subsection 71(10) – Exception – waiver**

Subsection 71(10) contains an exception to the general seven-year limitation period for assessments where a person has filed a waiver under subsection 71(8). The Minister can issue an assessment in respect of the matter covered in a waiver at any time while the waiver is in effect. If a waiver is revoked under subsection (9), the waiver will remain in effect for 180 days following the revocation, and the Minister may make an assessment during that time.

### **Section 72 – Assessment deemed valid and binding**

Section 72 provides that an assessment made by the Minister is deemed to be valid and binding (subject to being varied or vacated on an objection or appeal) despite any irregularity, informality, error, defect or omission in the assessment or in any proceeding under the DSTA relating to the assessment.

## **DIVISION J**

### ***Objections to Assessment***

Division J of Part 6 sets out rules regarding how and when a person can make an objection to an assessment made by the Minister.

### **Subsection 73(1) – Objections to assessment**

Subsection 73(1) provides that a person can object to an assessment by filing a notice of objection in the form and manner prescribed by the Minister. This notice must be filed within 90 days after the date of the notice of assessment, and must set out the reasons for the objection and all relevant facts.

### **Subsection 73(2) – Issue to be decided**

Subsection 73(2) specifies that a notice of objection must meet three criteria set out in paragraphs (a) through (c). It must (a) reasonably describe each issue to be decided, (b) specify the relief sought in respect of each issue and (c) provide the facts and reasons relied on by the person making the objection.

### **Subsection 73(3) – Late compliance**

If a notice of objection does not include the information required under paragraphs 73(2)(b) or (c), subsection 73(3) allows the Minister to request the missing information. If the person provides the requested information within 60 days from the day the Minister makes the request, the person is deemed to have complied with subsection 73(2). It should be noted that this exception only applies to paragraphs (b) and (c) of subsection (2). If a person fails to comply with paragraph (a), and does not reasonably describe each issue to be decided, the notice of objection will be invalid.

### **Subsection 73(4) – Limitation on objections**

If the Minister issues a particular assessment following a notice of objection to an earlier assessment, subsection 73(4) sets out the conditions under which a person may object to an issue in the particular assessment. The person may file a notice of objection in respect of the issue if:

- in the notice of objection to the earlier assessment, the person complied with the requirements in subsection 73(2) with respect to that issue; and
- the person is objecting only with respect to the relief sought for that issue as specified in the original notice of objection.

### **Subsection 73(5) – Application of limitations**

If the Minister issues a particular assessment following a notice of objection to an earlier assessment, subsection 73(5) provides that subsection 73(4) does not limit a person's right to object to an issue in the particular assessment if that issue was not part of the earlier assessment.

### **Subsection 73(6) – Limitation on objections**

Subsection 73(6) provides that where a person has waived the right of objection in respect of an issue, the person cannot make an objection in respect of that issue.

### **Subsection 73(7) – Acceptance of objection**

Subsection 73(7) allows the Minister to accept a notice of objection even if the notice was not filed in the form and manner prescribed by the Minister.

### **Subsection 73(8) – Consideration of objection**

When the Minister receives a notice of objection to an assessment, subsection 73(8) requires the Minister to, without delay, reconsider the assessment and either vacate, confirm or vary it or make a reassessment.

### **Subsection 73(9) – Waiving reconsideration**

Subsection 73(9) provides that if a person wishes to appeal directly to the Tax Court of Canada, and requests that the Minister not reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

### **Subsection 73(10) – Notice of decision**

After the Minister reconsiders an assessment under subsection 73(8), or confirms it under subsection 73(9), subsection 73(10) requires the Minister to, in writing, notify the person objecting to the assessment of the Minister's decision.

### **Subsection 73(11) – Payment by Minister on objection**

Subsection 73(11) sets out rules relating to refunds resulting from variations of assessments following objections. If the variation of an assessment following an objection establishes that a person has paid an amount in excess of the amount determined by that varied assessment to be payable, the Minister must pay the person a refund. The Minister must also pay interest on the refund for the period of time beginning on the later of July 30 of the calendar year following the year to which the assessment relates and the day the excess was paid, and ending on the day the refund is paid to the person. The applicable interest rate is prescribed by regulation and can be found in the *Digital Services Tax Regulations*.

### **Subsection 74(1) – Extension of time by Minister**

Subsection 74(1) provides that if a person does not file an objection within the 90-day time limit set out in subsection 73(1), the person may apply to the Minister to extend the time for filing a notice of objection. This subsection also allows the Minister to grant that application.

### **Subsection 74(2) – Contents of application**

Subsection 74(2) provides that an application to extend the time limit for objecting must set out the reasons for which the notice of objection was not filed on time.

### **Subsection 74(3) – How application made**

Subsection 74(3) specifies how an application to extend the time limit for objecting can be made. Such an application must be made to the Assistant Commissioner of the Appeals Branch

of the Canada Revenue Agency. The application must be made in the form and manner prescribed by the Minister and must be accompanied by a copy of the notice of objection.

#### **Subsection 74(4) – Defect in application**

Subsection 74(4) allows the Minister to accept an application to extend the time limit for objecting even where the application was not made in accordance with subsection 74(3).

#### **Subsection 74(5) – Duties of Minister**

Subsection 74(5) provides that when the Minister receives an application to extend the time limit for objecting, the Minister must, without delay, consider the application. The Minister must then either grant or refuse it, and, in writing, notify the person of the decision.

#### **Subsection 74(6) – Date of objection if application granted**

Subsection 74(6) specifies that where an application to extend the time limit for objecting is granted, the notice of objection is deemed to have been filed on the day of the decision of the Minister.

#### **Subsection 74(7) – Conditions for grant of application**

Subsection 74(7) provides that an application to extend the time limit for objecting cannot be granted if certain conditions are not met. The application must be made within one year of the expiration of the time for objecting and as soon as circumstances permit. The person applying must demonstrate that within the 90-day time limit for objecting, the person was unable to act or give a mandate to act in their name or had a *bona fide* intention to object to the assessment. The person must also give the reasons why it would be just and equitable to grant the application.

## **DIVISION K**

### ***Appeal***

Division K of Part 6 sets out rules regarding how and when a person can apply to the Tax Court of Canada to extend the time limit for objecting to an assessment, how and when a person can appeal an assessment made by the Minister, the potential consequences of an appeal and the process for referring questions that arise under the DSTA to the Tax Court for determination.

#### **Subsection 75(1) – Extension of time by Tax Court of Canada**

Subsection 75(1) specifies that if a person has made an application under section 74 to extend the time limit for objecting, and the Minister has either refused the application or 90 days have

passed and the Minister has not yet notified the person of a decision, the person can apply to the Tax Court of Canada to have the application granted.

### **Subsection 75(2) – When application may not be made**

Subsection 75(2) provides a time limit for applying to the Tax Court of Canada under subsection 75(1) to extend the time limit for objecting. The application must be made within 30 days from the day the Minister's decision under subsection 74(5) is sent to the person.

### **Subsection 75(3) – How application made**

Subsection 75(3) specifies how an application to the Tax Court of Canada under subsection 75(1) can be made. Such an application must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, the documents referred to in subsection 74(3) and the notification, if any, referred to in subsection 74(5).

### **Subsection 75(4) – Copy to the Commissioner**

Subsection 75(4) provides that the Tax Court of Canada must send a copy of the application received under subsection 75(3) to the Commissioner.

### **Subsection 75(5) – Powers of Tax Court of Canada**

Subsection 75(5) provides that the Tax Court of Canada may either dismiss or grant an application received under subsection 75(3). If the application is granted, the Court is permitted to impose any terms that it considers just or to order that the notice of objection be deemed to be a valid objection as of the date of the order.

### **Subsection 75(6) – When application to be granted**

Subsection 75(6) provides that an application to extend the time limit for objecting cannot be granted if certain conditions are not met. The original application to the Minister under subsection 74(1) must have been made within one year after the expiration of the time for objecting and as soon as circumstances permitted. The person applying must demonstrate that within the 90-day time limit for objecting, the person was unable to act or give a mandate to act in their name or had a *bona fide* intention to object to the assessment. The person must also give the reasons why it would be just and equitable to grant the application.

### **Subsection 76(1) – Appeal to Tax Court of Canada**

Subsection 76(1) permits a person to appeal an assessment to the Tax Court of Canada. In order to do so, the person must have already filed a notice of objection to the assessment and either had the assessment confirmed or reassessed by the Minister, or received no decision from the Minister within 180 days of filing the notice.

### **Subsection 76(2) – No appeal**

Subsection 76(2) provides that an appeal under subsection 76(1) of an assessment must be made within 90 days of the sending of the notice that the Minister has reassessed or confirmed the assessment.

### **Subsection 76(3) – Amendment of appeal**

Subsection 76(3) allows the Tax Court to authorize an appellant to amend an appeal to include any further relevant assessment.

### **Subsection 77(1) – Extension of time to appeal**

Subsection 77(1) provides that if a person does not make an appeal under section 76 within the 90-day time limit set out in subsection 76(2), the person may apply to the Tax Court to extend the time limit for appealing. This subsection also allows the Tax Court of Canada to accept that application and extend the time for appealing, imposing any terms that it considers just.

### **Subsection 77(2) – Contents of application**

Subsection 77(2) provides that an application to extend the time limit for appealing must set out the reasons why the appeal was not instituted on time.

### **Subsection 77(3) – How application made**

Subsection 77(3) specifies how an application to extend the time limit for appealing can be made. Such an application must be made by filing in the Registry of the Tax Court of Canada the application and the notice of appeal, in accordance with the *Tax Court of Canada Act*.

### **Subsection 77(4) – Copy to Deputy Attorney General of Canada**

Subsection 77(4) requires the Tax Court of Canada to send a copy of an application to extend the time limit for appealing to the office of the Deputy Attorney General of Canada.

### **Subsection 77(5) – When order to be made**

Subsection 77(5) provides that an application to extend the time limit for appealing cannot be granted if certain conditions are not met. The application under subsection 77(1) must be made within one year of the expiration of the time for appealing, and as soon as circumstances permit. The person applying must demonstrate that within the 90-day time limit for appealing, the person was unable to act or give a mandate to act in their name or had a *bona fide* intention to appeal. The person must also give the reasons why it would be just and equitable to grant the application. Lastly, there must be reasonable grounds for the appeal.

### **Subsection 78(1) – Limitation on appeals to the Tax Court of Canada**

Subsection 78(1) provides that an appeal to the Tax Court of Canada may only pertain to an issue specified in the notice of objection to an assessment, as required under subsection 73(2), and the relief sought in the notice with respect to the issue. However, these restrictions do not apply if the issue was raised for the first time in the Minister's reconsideration of the assessment.

### **Subsection 78(2) – No appeal if waiver**

Subsection 78(2) provides that a person cannot appeal in respect of an issue for which the right of objection or appeal has been waived by the person.

### **Section 79 – Institution of appeals**

Section 79 provides that appeals to the Tax Court of Canada are to be instituted in accordance with the *Tax Court of Canada Act*.

### **Subsection 80(1) – Disposition of appeal**

Subsection 80(1) allows the Tax Court to dispose of an appeal by either dismissing the appeal or allowing the appeal and either vacating the assessment, varying the assessment or referring the assessment back to the Minister for reconsideration and reassessment.

### **Subsection 80(2) – Partial disposition of appeal**

Subsection 80(2) allows the Tax Court to dispose of a particular issue in an appeal without disposing of the entire appeal (where the appeal raises more than one issue). The Tax Court may dispose of a particular issue by either dismissing the appeal with respect to that issue, or allowing it and either varying the assessment or referring the assessment back to the Minister for reconsideration and reassessment.

### **Subsection 80(3) – Disposal of remaining issues**

Subsection 80(3) clarifies that where a particular issue in an appeal has been disposed of under subsection 80(2), the remainder of the appeal may continue.

### **Subsection 80(4) – Appeal to Federal Court of Appeal**

Subsection 80(4) permits an appeal to the Federal Court of Appeal in respect of an issue that has been disposed of in a partial disposition under subsection 80(2). Such a disposition can be appealed to the Federal Court as if it were a final judgment of the Tax Court.

### **Subsection 81(1) – References to Tax Court of Canada**

Subsection 81(1) allows the Minister and another person to agree to have a question relating to an assessment or proposed assessment determined by the Tax Court of Canada.

### **Subsection 81(2) – Time during consideration not to count**

Subsection 81(2) provides that the period of time during which a question is being determined under subsection 81(1) is not counted for the purposes of computing the limitation periods for issuing assessments, filing notices of objection and instituting appeals.

### **Subsection 82(1) – Reference of common questions to Tax Court**

Subsection 82(1) provides that the Minister may apply to the Tax Court of Canada to determine a question concerning transactions or occurrences that are common to assessments or proposed assessments of two or more persons. Unlike section 81, this application does not require the agreement of those persons.

### **Subsection 82(2) – Contents of application**

Subsection 82(2) requires an application for a determination of a common question to set out certain information. This information includes the question in respect of which the Minister is requesting a determination, the names of the persons that would be bound by the determination and the facts and reasons on which the Minister relies and on which the Minister intends to base the assessments.

### **Subsection 82(3) – Service**

Subsection 82(3) requires a copy of the application for a determination of a common question to be served by the Minister on each person named in the application, as well as on any person that, in the opinion of the Tax Court, is likely to be affected by the determination of the question.

### **Subsection 82(4) – Determination of question by Tax Court**

Subsection 82(4) provides that the Tax Court may determine a common question if the Tax Court is satisfied that the question will affect assessments of two or more persons. The Tax Court may make an order naming the persons in respect of whom the question will be determined. If no person named in the order has appealed, the Tax Court may determine the question in any manner that it considers appropriate. However, if one or more of the persons named in the order have appealed, the Tax Court may, before determining the question, make any order or orders that it considers appropriate joining a party or parties to the appeals.

### **Subsection 82(5) – Determination final and conclusive**

Subsection 82(5) provides that a determination by the Tax Court of a common question is final and conclusive for the purposes of any assessments of the persons named in the order made by the Tax Court under subsection 82(4).

### **Subsection 82(6) – Appeal**

Subsection 82(6) provides that where a question has been determined by the Tax Court of Canada, the determination may be appealed to the Federal Court of Appeal.

### **Subsection 82(7) – Parties to appeal**

Subsection 82(7) provides that any parties bound by a determination by the Tax Court under subsection 82(4) are parties to any appeal from that determination.

### **Subsection 82(8) – Time during consideration not counted**

Subsection 82(8) provides that certain periods of time (described in subsection 82(9)) during which a common question is being determined by the Tax Court are not counted for the purposes of computing limitation periods for issuing assessments, filing notices of objection and instituting appeals.

### **Subsection 82(9) – Excluded periods**

Subsection 82(9) sets out the periods of time that are not counted in computing the limitation periods described in subsection 82(8). In the case of a person named in an order of the Tax Court, the period of time starts on the day the application is served on the person and ends on the day on which the determination becomes final and conclusive and is not subject to any appeal. In the case of any other person, the period of time starts on the day the application is served on the person and ends on the day the person is served with a notice that the person has not been named in an order of the Tax Court.

### **Subsection 83(1) – Payment by the Minister on appeal**

Where a court disposes of an appeal by referring an assessment back to the Minister for reconsideration and reassessment, or by varying or vacating an assessment, subsection 83(1) requires the Minister to, without delay, make a reassessment in accordance with the Court's decision (unless otherwise directed not to by the person involved). The Minister must also refund any overpayment resulting from the variation, vacation or reassessment. This subsection also clarifies that the Minister is allowed to appeal a decision of the Tax Court or the Federal Court of Appeal; however, the Minister must make the reassessment and refund any overpayment whether or not an appeal has been instituted.

The Minister may also repay any tax, interest, or penalties or surrender any security.

### **Subsection 83(2) – Interest on refund**

Subsection 83(2) provides that where the Minister pays a refund following the disposition of an appeal, the Minister must also pay interest for the period of time beginning on the later of July 30 of the calendar year following the year to which the assessment under appeal relates and the day on which the overpayment was made, and ending on the day on which the refund is paid. The applicable interest rate is prescribed by regulation and can be found in the *Digital Services Tax Regulations*.

## **DIVISION L**

### ***Penalties***

Division L of Part 6 sets out the rules regarding penalties under the DSTA.

### **Section 84 – Failure to register when required**

Section 84 sets out a penalty that applies if a taxpayer fails to apply to register as and when required by this Act. The penalty varies based on the number of years that the application to register is delayed. When the application is not filed on time in a particular calendar year, a penalty of \$20,000 applies. For each subsequent calendar year up to and including the year during which the application is filed, the penalty increases by \$20,000.

### **Subsection 85(1) – Failure to file a return when required**

Subsection 85(1) sets out a penalty that applies if a taxpayer fails to file a return for a calendar year as and when required by this Act. The amount of the penalty is based on the tax for that calendar year that was unpaid when the return was required to be filed and on the number of months that the return remains outstanding. Specifically, the penalty will first be calculated by taking 5% of the taxpayer's unpaid tax in respect of the calendar year. An additional amount will be added equal to 1% of that unpaid tax multiplied by the number of complete months (not exceeding 12) that the return remains outstanding.

A person is liable to pay this penalty if the person misses a due date for filing a return required under this Act. The Minister is not required to first send a demand for the return.

### **Subsection 85(2) – Repeated failure to file – conditions**

Subsection 85(2) provides three conditions to determine whether a taxpayer is subject to a repeated failure to file penalty (calculated under subsection 85(3)). This penalty will apply if:

- the taxpayer failed to file a return in respect of the calendar year,
- the taxpayer failed to comply with a demand sent by the Minister to file the return, and

- the taxpayer was previously liable to pay a failure to file penalty under subsections 85(1) in respect of any of the three preceding calendar years.

### **Subsection 85(3) – Repeated failure to file – penalty**

Subsection 85(3) sets out the rules for calculating a repeated failure to file penalty. If a taxpayer meets the conditions in subsection 85(2), the penalty is 10% of the taxpayer's tax in respect of the calendar year that was unpaid when a return was required to be filed for the year, plus an additional 2% of that unpaid tax multiplied by the number of complete months, not exceeding 20, that the return remains outstanding.

### **Subsection 85(4) – False statements or omissions**

Subsection 85(4) sets out a penalty that applies if a person knowingly, or under circumstances amounting to gross negligence, is involved in making a false statement or omission in a return or other document. The penalty is equal to the greater of \$5,000 and 25% of the amount by which any amount payable under this Act was reduced, or by which any payment that may be obtained under this Act was increased, as a result of the false statement or omission.

### **Section 86 – Failure to provide information**

Section 86 sets out a penalty that applies where a person fails to provide any information or record as and when required under this Act or as prescribed by regulation. The penalty is equal to \$2,500 for each such failure, in addition to any other penalty payable by the person.

If the information required to be provided is in respect of another person due to a requirement to provide foreign-based information (section 104) or a general requirement to provide records or information (subsection 67(1)), the penalty will not apply if a reasonable effort was made to obtain the information. It should be noted that this exception does not apply if the person is required to keep the information in respect of another person under subsection 66(1) (that is, if the information is the person's records relating to another constituent entity of its group). Similarly, the exception does not apply if a designated entity is required to provide information in respect of the entities that it represents since it is acting on behalf of those entities with respect to the requirement.

### **Section 87 – Unreasonable appeal**

Section 87 sets out a penalty that may apply if the Tax Court of Canada determines that there were no reasonable grounds for an appeal and that one of the main purposes of the appeal was to defer the payment of any amount payable under this Act. This penalty can only apply on application by the Minister. Where it applies, the amount of the penalty is set by the Court and cannot exceed 10% of the amount that was in controversy and for which the Court found that there were no reasonable grounds for the appeal. This penalty can apply regardless of whether the Court awards costs.

## **Subsection 88(1) – Section 53 avoidance planning**

Section 88 sets out a penalty for section 53 avoidance planning. Subsection (1) provides definitions that apply for the purposes of section 88.

### **“planning activity”**

The definition “planning activity” provides that the term generally includes organizing or creating an arrangement, entity, plan, or scheme. It also includes participating (directly or indirectly) in the selling of an interest in, or the promotion of, an arrangement, entity, plan, property or scheme.

### **“section 53 avoidance planning”**

The definition “section 53 avoidance planning” provides that the term refers to “planning activity” (see commentary above) by a transferor or transferee that consists of a “section 53 avoidance transaction” (see commentary below) that has as one of its purposes the reduction of a transferee’s joint and several, or solidary, liability for tax payable under this Act by a transferor. This is planning activity that involves the removal of property of a taxpayer with the intention of rendering all or a portion of a current or future tax liability uncollectible, while attempting to circumvent the application of section 53.

### **“section 53 avoidance transaction”**

The definition “section 53 avoidance transaction” is relevant for the definition “section 53 avoidance planning”. A section 53 avoidance transaction is a transaction or series of transactions in respect of which the conditions in paragraph (a) or (b) of the definition are met.

Paragraph (a) refers to conditions in paragraphs 53(7)(a) and (b). For more information, see the commentary on those paragraphs. Paragraph (b) is relevant where subsection 53(7) applied to the transaction. In that case, it looks to whether the amount determined under subparagraph 53(7)(c)(ii) exceeds the amount determined under subparagraph 53(7)(c)(i).

### **“transferee”**

The definition “transferee” provides that the term refers to “transferee” as used in subsections 53(2) and (7).

### **“transferor”**

The definition “transferor” provides that the term refers to “transferor” as used in subsections 53(2) and (7).

### **Subsection 88(2) – Section 53 avoidance penalty**

Subsection 88(2) provides for a penalty for a transferor or transferee who engages in, participates in, assents to or acquiesces in a planning activity that the transferor or transferee, as the case may be, knows is “section 53 avoidance planning” (discussed above), or would reasonably be expected to know is section 53 avoidance planning but for circumstances amounting to gross negligence. The penalty is equal to the lesser of

- 50% of the joint and several, or solidary, liability payable under this Act (determined without reference to this subsection), which was sought to be avoided through the planning; and
- \$100,000.

### **Section 89 – General penalty**

Section 89 imposes a \$2,500 penalty where a person fails to comply with any provision of this Act (or its regulations) for which no other penalty is specified.

### **Section 90 – Payment of penalties**

Section 90 specifies the due dates for penalties under the DSTA. The due dates are:

- in the case of a penalty for a failure to apply to register (section 84), the day on which the taxpayer was required to apply to register;
- in the case of a penalty for a failure to file a return (section 85), the day on which the taxpayer was required to file the return; and
- in any other case, the day on which the notice of the original assessment of the penalty was sent.

These due dates are relevant for the calculation of interest.

### **Subsection 91(1) – Waiving or canceling penalties**

Subsection 91(1) allows the Minister, at the Minister’s discretion, to waive or cancel penalties payable by a person. However, penalties cannot be waived more than ten years after the end of the calendar year in which the penalty became payable.

This subsection also allows the Minister to make assessments outside of the general seven-year limitation period for assessments in order to give effect to the waiver or cancellation of the penalty.

### **Subsection 91(2) – Refund of amount waived or cancelled**

Subsection 91(2) provides that where the Minister waives or cancels a penalty that a person has already paid, the Minister must refund the penalty. Additionally, the Minister must pay interest

on the refund if that refund is not made within 30 days of receipt of the person's request to waive the penalty (or, if there is no such request, if that refund is not made on the day the Minister waives or cancels the penalty). The relevant interest rate is prescribed and can be found in the *Digital Services Tax Regulations*.

## **DIVISION M**

### ***Offences and Punishment***

Division M of Part 6 sets out rules relating to offences and punishment.

#### **Subsection 92(1) – Failure to file or comply**

Subsection 92(1) makes it an offence to fail to:

- file a return as and when required under this Act;
- comply with an obligation under certain provisions relating to keeping books and records (subsection 66(6) or (8)) and requests for information by the Minister (section 67); or
- comply with a compliance order (section 97).

A person who is found guilty of an offence under this provision is liable on summary conviction to a fine of between \$2,000 and \$40,000.

#### **Subsection 92(2) – Saving**

Subsection 92(2) provides that where a person is convicted of an offence under subsection 92(1) for a particular failure the person will not also be liable to pay a penalty for that failure, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

#### **Subsection 93(1) – Offences for false or deceptive statement**

Subsection 93(1) provides that the following activities constitute offences:

- making false or deceptive statements in a return or other record;
- seeking to evade paying any amount payable under this Act, or seeking to obtain an improper refund, by destroying or altering records or making a false or deceptive entry or omission in a record;
- intentionally evading or attempting to evade compliance with this Act or payment of an amount payable under this Act;
- intentionally obtaining or attempting to obtain a refund to which the person is not entitled; or

- conspiring with any other person to commit an offence listed in the first four points.

### **Subsection 93(2) – Punishment**

Subsection 93(2) provides that a person convicted with an offence under subsection 93(1) is liable to a fine of not less than 50% and not more than 200% of the amount the person sought to evade or obtain (or, if the amount sought to be evaded cannot be ascertained, a fine of not less than \$2,000 and not more than \$40,000). This fine would apply in addition to any penalty otherwise provided for under the DSTA.

### **Subsection 93(3) – Prosecution on indictment**

Subsection 93(3) provides that a person charged with an offence under subsection 93(1) may, on election by the Attorney General of Canada, be prosecuted on indictment. If convicted, the person would be liable to a fine of not less than 100% and not more than 200% of the amount the person sought to evade or obtain (or, if the amount sought to be evaded cannot be ascertained, a fine of not less than \$5,000 and not more than \$100,000). This fine would apply in addition to any penalty otherwise provided for under the DSTA.

### **Subsection 93(4) – Penalty on conviction**

Subsection 93(4) provides that where a person is convicted of an offence under subsection 93(1) for a particular evasion or attempt they will not also be liable to a penalty for that evasion or attempt, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

### **Subsection 93(5) – Stay of appeal**

Subsection 93(5) allows the Minister to file a stay of proceedings for an appeal under this Act where there is an ongoing prosecution under this section with substantially the same facts at issue. The proceedings before the Tax Court will be stayed until a final determination of the outcome of the prosecution is reached.

### **Section 94 – Failure to pay tax**

Section 94 makes it an offence for a person to intentionally fail to pay tax as and when required under this Act. A person found guilty of this offence is liable to a fine not exceeding 20% of the amount of the tax that should have been paid, in addition to any penalty or interest otherwise provided for under the DSTA.

### **Subsection 95(1) – Offence – confidential information**

Subsection 95(1) makes it an offence to contravene subsection 108(2), which disallows officials from disclosing or using confidential information except in certain circumstances, or to knowingly contravene an order made under subsection 108(7), which allows certain orders to

protect confidentiality to be made during legal proceedings. A person found guilty is liable, on summary conviction, to a fine of up to \$5,000.

### **Subsection 95(2) – Offence – confidential information**

Where information that is authorized to be disclosed for a particular purpose under subsection 108(6) is disclosed or used inappropriately, subsection 95(2) makes the inappropriate disclosure or use an offence. A person found guilty is liable, on summary conviction, to a fine of up to \$5,000.

### **Subsection 95(3) – Definitions**

Subsection 95(3) provides that in subsection 95(2), the term “confidential information” has the same meaning as in subsection 108(1).

### **Section 96 – General offence**

Section 96 provides that every person that contravenes a provision of this Act, the contravention of which is not specified elsewhere in this Act to be an offence, is guilty of an offence. A person found guilty is liable, on summary conviction, to a fine of up to \$100,000.

### **Section 97 – Compliance orders**

If a person has been convicted for non-compliance with a provision of this Act, section 97 provides that the court has the authority to make any order to enforce compliance with the provision.

### **Section 98 – Officers of corporations, etc.**

Section 98 provides that where an entity is convicted of an offence under this Act, every officer, director and representative of that entity who assented to or participated in the commission of the offence is also guilty of the offence and liable to the punishment provided for the offence.

### **Section 99 – Power to decrease punishment**

Section 99 provides that the court has no authority, in respect of any prosecution or proceeding under this Act, to impose less than the minimum fine specified for an offence under this Act.

### **Subsection 100(1) – Information or complaint**

Subsection 100(1) allows any official of the Canada Revenue Agency, member of the Royal Canadian Mounted Police or person authorized by the Minister to make an information or complaint concerning an offence under this Act. This subsection also provides that only the Minister or a person acting for the Minister or for His Majesty in right of Canada can call into question the authority of the person making an information or complaint.

### **Subsection 100(2) – Two or more offences**

Subsection 100(2) provides that an information or complaint in respect of an offence under this Act may be for one or more offences.

### **Subsection 100(3) – Territorial jurisdiction**

Subsection 100(3) provides that an information or complaint in respect of an offence under this Act may be heard, tried or determined by any court having territorial jurisdiction where the accused is resident, carrying on a commercial activity, found, apprehended or in custody regardless of where the matter of the information or complaint arose.

### **Subsection 100(4) – Limitation of prosecutions**

Subsection 100(4) sets out a limitation on instituting a proceeding by way of summary conviction. No such proceeding may be instituted more than eight years after the day on which the subject matter of the proceeding arose. This limitation period can only be extended if the prosecutor and the defendant agree to extend it.

## **DIVISION N**

### ***Inspections***

Division N of Part 6 sets out rules regarding inspections, compliance orders, search warrants, requirements to provide foreign-based information and inquiries.

### **Subsection 101(1) – Authorized person**

Subsection 101(1) provides that a person authorized by the Minister to do so may, for the purposes of the administration or enforcement of this Act, inspect, audit or examine records, processes, property or premises in order to determine whether a person is in compliance with this Act.

### **Subsection 101(2) – Powers of authorized person**

Subsection 101(2) specifies that a person authorized under subsection 101(1) may, at all reasonable times,

- enter any place where it can be reasonably expected that records would be kept or where activities relevant to this Act would be carried on;
- require any person to provide reasonable assistance and to answer all proper questions orally either in-person or by video-conference or other form of electronic communication, or in writing; and

- require any person to provide reasonable assistance with anything the authorized person is authorized to do under this Act.

### **Subsection 101(3) – Prior authorization**

Subsection 101(3) provides an exception to subsection 101(2). Where the place is a dwelling-house, the authorized person cannot enter without the consent of the occupant or a warrant issued by a judge.

### **Subsection 101(4) – Warrant to enter dwelling-house**

Subsection 101(4) provides that a judge may issue a warrant authorizing a person to enter a dwelling-house, on *ex parte* application by the Minister. To issue the warrant, the judge must be satisfied that the dwelling-house is a place where records are kept or activities to which this Act applies are performed, that entry is necessary for any purpose relating to administering or enforcing this Act and that there are reasonable grounds to believe that entry will be refused.

### **Subsection 101(5) – Orders if entry not authorized**

Subsection 101(5) provides that if a judge is not satisfied that entering a dwelling-house is necessary for administering or enforcing this Act, but that a relevant record or property is likely kept in the dwelling-house, the judge may order the occupant to provide reasonable access to the record or property or make any other order that is appropriate in the circumstances.

### **Subsection 101(6) – Definition of dwelling-house**

Subsection 101(6) provides the definition of the term “dwelling-house” for the purposes of section 101. In general, a dwelling-house is a structure, whether fixed or mobile, that is a permanent or temporary residence.

### **Subsection 102(1) – Compliance order**

Subsection 102(1) provides that on application by the Minister, a judge may order a person to provide any access, assistance, information or records sought by the Minister under section 67 (requirement to provide records or information) or 101 (inspections). The judge must be satisfied that the person was required to provide the access, assistance, information or records, and did not do so.

### **Subsection 102(2) – Notice required**

Subsection 102(2) provides that five clear days must pass from service of a notice of application under subsection 102(1) before the application is heard.

### **Subsection 102(3) – Judge may impose conditions**

Subsection 102(3) provides that the judge may to impose any conditions to the compliance order under subsection 102(1) that the judge considers appropriate.

### **Subsection 102(4) – Contempt of court**

Subsection 102(4) allows a judge to find that a person that fails or refuses to comply with an order under subsection 102(1) is in contempt of court. The processes and punishments of the court to which the judge is appointed would then apply.

### **Subsection 102(5) – Appeal**

Subsection 102(5) provides that a compliance order under subsection 102(1) may be appealed to a higher court. However, an appeal would not suspend the execution of the order unless such a suspension is ordered by a judge of the appellate court.

### **Subsection 102(6) – Time period not to count**

Subsection 102(6) extends the general seven-year limitation period for assessments in certain circumstances. If the Minister makes an application for a compliance order under subsection 102(1), and the person to which the order would apply files a notice of appearance, or otherwise opposes the application, the period of time from the day of filing of a notice of appearance or otherwise opposing the application to the day on which the application is finally disposed of will not be counted for the purposes of the seven-year limitation period.

### **Subsection 103(1) – Search warrants**

Subsection 103(1) provides that a judge may, on *ex parte* application by the Minister, issue a warrant authorizing a person to enter and search any building, receptacle or place, seize any record or thing that may afford evidence of the commission of an offence under the DSTA and bring that record or thing before the judge, or another judge of the same court, as soon as is practicable.

### **Subsection 103(2) – Evidence on oath**

Subsection 103(2) provides that an application by the Minister for a search warrant must be supported by information on oath establishing the facts on which the application is based.

### **Subsection 103(3) – Issue of warrants**

Subsection 103(3) provides that a judge may issue a search warrant if the judge is satisfied that there are reasonable grounds to believe that an offence under the DSTA has been committed and that evidence of the offence is likely to be found in the building, receptacle or place specified in the Minister's application.

### **Subsection 103(4) – Contents of warrant**

Subsection 103(4) specifies that a search warrant issued under subsection 103(1) must:

- refer to the offence for which it is issued,
- identify the place to be searched and the person alleged to have committed the offence, and
- be reasonably specific as to any record or thing that is to be searched for and seized.

### **Subsection 103(5) – Seizure**

Subsection 103(5) provides that a person who is executing a warrant under subsection 103(1) may also seize records or things other than those specified in the warrant if those items afford evidence of a commission of an offence under this Act. The person must bring the other records or things before the judge who issued the warrant, or another judge of the same court, as soon as is practicable.

### **Subsection 103(6) – Retention**

Subsection 103(6) requires a judge to order the Minister to retain any record or thing seized under subsection 103(1) or (5), unless the Minister has waived retention. When so ordered, the Minister must take reasonable care to ensure the record or thing is preserved until the conclusion of the investigation or until it is required to be produced for the purposes of a criminal proceeding.

### **Subsection 103(7) – Return of records or things seized**

Subsection 103(7) provides that a judge may order the Minister to return any record or thing seized under subsection 103(1) or (5) if the judge is satisfied that the item will not be required for an investigation or a criminal proceeding, or is satisfied that the item was not seized in accordance with the warrant or this section. Such an order can be initiated either on the judge's own motion or on application by a person with an interest in the record or thing.

### **Subsection 103(8) – Access and copies**

Subsection 103(8) specifies that the person from which any record or thing is seized has the right to inspect the record or thing, or if it is a document, obtain one copy of the record. This right is subject to any reasonable conditions imposed by the Minister. Copies are to be produced at the expense of the Minister.

### **Subsection 104(1) – Definition of foreign-based information or record**

Subsection 104(1) provides the definition of the term “foreign-based information or record” for the purposes of this section. In general, the term refers to any relevant information or record that is available or located outside Canada.

### **Subsection 104(2) – Requirement to provide foreign-based information**

Subsection 104(2) provides that the Minister may, by notice, require a person resident in Canada, or a non-resident carrying on business in Canada, to provide any foreign-based information or record.

### **Subsection 104(3) – Content of notice**

Subsection 104(3) provides that a notice from the Minister under subsection 104(2) requiring the production of foreign-based information or records must set out a reasonable deadline by which the information or record must be provided (which cannot be less than 90 days), a description of the information or record being sought and the consequences of failing to provide the information by the deadline. The consequences are set out in subsection 104(8).

### **Subsection 104(4) – Review by judge**

Subsection 104(4) permits a person who was served or sent a notice of a requirement under subsection 104(2) to, within 90 days of the service or sending, apply to a judge for a review of the requirement.

### **Subsection 104(5) – Powers on review**

Subsection 104(5) provides that a judge who receives an application under subsection 104(4) for review of a requirement may either confirm the requirement, vary the requirement, or set aside the requirement if it is unreasonable.

### **Subsection 104(6) – Related person**

Subsection 104(6) clarifies that a requirement under subsection 104(2) will not be considered unreasonable because the information or record is under the control of, or available to, a non-resident person that is not controlled by, but that is related to, the person who was served or sent the notice of the requirement. The term “related” is defined in subsection 8(2).

### **Subsection 104(7) – Time during consideration not to count**

Subsection 104(7) specifies that where a person has made an application to a judge under subsection 104(4) for a review of a requirement, the period of time from when the application is made to the day the review is decided is not counted for the purposes of the time limit in the notice of requirement or for the general seven-year limitation period for assessments.

### **Subsection 104(8) – Consequence of failure**

Subsection 104(8) provides that a person who fails to comply substantially with a notice of requirement (or any constituent entity in the person’s consolidated group) will be prohibited

from introducing any information covered by the notice as evidence in any civil proceeding under this Act.

#### **Subsection 105(1) – Inquiry**

Subsection 105(1) provides that the Minister may authorize any person to make any inquiry relating to the administration or enforcement of the DSTA.

#### **Subsection 105(2) – Appointment of hearing officers**

Subsection 105(2) provides that where a person is authorized to make an inquiry under subsection 105(1), the Minister will apply to the Tax Court of Canada for the appointment of a hearing officer.

#### **Subsection 105(3) – Powers of hearing officer**

Subsection 105(3) provides that a hearing officer appointed under subsection 105(2) has the powers of a commissioner under sections 4, 5 and 11 of the *Inquiries Act*.

#### **Subsection 105(4) – When powers to be exercised**

Subsection 105(4) provides that a hearing officer must exercise the powers conferred on a commissioner under section 4 of the *Inquiries Act*. However, the hearing officer may not punish any person unless certified to do so on application to a judge. The person who would be punished must be given 24 hours notice of the hearing of the application, or any shorter notice that the judge considers reasonable.

#### **Subsection 105(5) – Rights of witnesses**

Subsection 105(5) specifies the rights of witnesses during an inquiry. Witnesses are entitled to be represented by counsel and to receive a transcript of any testimony or other evidence they provide.

#### **Subsection 105(6) – Rights of person investigated**

Subsection 105(6) specifies that persons being investigated in an inquiry are entitled to be present and represented by counsel throughout the inquiry unless the hearing officer orders otherwise on application by the Minister or a witness. A hearing officer can only make such an order if they find that the presence of the person and their counsel, or either of them, would negatively impact the effectiveness of the inquiry.

#### **Section 106 – Copies**

Section 106 provides that copies may be made of records seized, inspected, audited, examined or provided under sections 67, 101 to 103 and 105. This includes records obtained from a

requirement to provide records or information, inspections, compliance orders, search warrants and inquiries.

### **Section 107 – Compliance**

Section 107 makes it an offence to interfere with, hinder or molest an official who is carrying out the official's duties or functions under this Act. This section also requires a person to do everything required to be done under sections 67, 101 to 104 and 106 unless the person is unable to do so. This includes providing records or information, complying with inspections, compliance orders and search warrants, providing foreign-based information and providing copies of records.

## **DIVISION O**

### ***Confidentiality of Information***

Division O of Part 6 sets out rules to protect the confidentiality of information obtained in the course of the administration or enforcement of the DSTA. It also sets out the circumstances under which such information can be disclosed and who it can be disclosed to.

### **Subsection 108(1) – Definitions**

Subsection 108(1) provides definitions that apply for the purposes of section 108, which addresses the confidentiality of information.

#### **“authorized person”**

The definition “authorized person” essentially provides that the term refers to government employees, and former government employees, that carry out the provisions of the DSTA. This would include employees of the Canada Revenue Agency.

#### **“confidential information”**

The term “confidential information” is defined as any information that

- relates to one or more persons and reveals, directly or indirectly, the identity of at least one of those persons, and
- is obtained by or on behalf of the Minister for the purposes of this Act, or is prepared from such information.

## **“court of appeal”**

The term “court of appeal” is defined as having the same meaning as in section 2 of the *Criminal Code*.

### **Subsection 108(2) – Provision of confidential information**

Subsection 108(2) provides that an official must not provide, allow access to or use (other than in enforcing or administering the DSTA) confidential information except where specifically authorized under one or more of the exceptions contained in this section.

### **Subsection 108(3) – Confidential information evidence not compellable**

Subsection 108(3) provides that no official is required to give or produce evidence relating to any confidential information in connection with any legal proceeding. However, certain exceptions to this provision are outlined in subsection 108(4).

### **Subsection 108(4) – Communications – proceedings**

Subsection 108(4) sets out exceptions to the restrictions in subsections 108(2) and (3). Under subsection 108(4), officials may disclose, or may be required to disclose, confidential information in respect of

- criminal proceedings,
- legal proceedings relating to the administration of this Act, the *Canada Pension Plan*, the *Employment Insurance Act*, or any other Canadian Act involving taxes or duties, or
- legal proceedings under international trade agreements.

### **Subsection 108(5) – Authorized provision of confidential information**

Subsection 108(5) sets out another exception where the Minister may disclose confidential information. Confidential information may be disclosed to appropriate persons if the information is regarded as necessary solely for a purpose relating to the life, health and safety of an individual.

### **Subsection 108(6) – Disclosure of confidential information**

Subsection 108(6) specifies a number of limited exceptions where officials are permitted to provide, allow access to or use confidential information.

Under paragraph (a), confidential information may be disclosed for administering or enforcing this Act or for determining a person’s liability or entitlement to a refund under this Act.

Under paragraph (b), confidential information may be provided to or inspected by any person that the Minister may authorize, subject to any conditions the Minister may specify. It may also

be provided to or inspected by a person that is legally entitled to the information because of an Act of Parliament, but only for the purposes for which that person is entitled to the information.

Under paragraph (c), confidential information may also be disclosed for the purposes of research, analysis and the formulation of fiscal policy and for negotiating, administering or enforcing various specified agreements and Acts.

Under paragraph (d), confidential information may be provided to officials of foreign governments, or international organizations established by governments, if it is provided

- in accordance with an international agreement relating to trade, and
- only for the purposes set out in the agreement.

Under paragraph (e), confidential information may be disclosed for the purposes of a provision in a tax treaty or a listed international agreement (as defined in subsection 248(1) of the *Income Tax Act*).

Under paragraph (f), confidential information may be provided for the purposes of sections 23 to 25 of the *Financial Administration Act*.

Under paragraph (g), confidential information may be compiled into a form that does not reveal the identity of the person to whom the information relates. This permits the use of aggregate data for research and analysis.

Under paragraph (h), confidential information may be disclosed for a purpose relating to supervising, evaluating or disciplining an authorized person in respect of a period of time when the person was employed to assist in the administration or enforcement of this Act.

Under paragraph (i), the Librarian and Archivist of Canada is permitted to access records of confidential information solely for the purposes of section 12 of the *Library and Archives of Canada Act*.

Under paragraph (j), confidential information about a person can be used to provide information to that person.

Under paragraph (k), confidential information may be provided to a police officer solely for the purpose of investigating whether an offence, with respect to an official, has been committed under the *Criminal Code* (or for the laying of an information or the preferring of an indictment). However, certain criteria must be met. First, the information must be relevant for ascertaining the circumstances of the offence or the identity of the person who may have committed the offence. Second, the official with respect to which the offence was committed must be or have been engaged in the administration or enforcement of this Act. Lastly, the offence must be related to the administration or enforcement of the Act by that official.

Under paragraph (l), confidential information may be provided to a law enforcement officer of an appropriate police organization in the circumstances described in subsection 211(6.4) of the *Excise Act, 2001*. In general, subsection 211(6.4) of that Act permits confidential information to be provided to law enforcement if the information will afford evidence of an offence listed in the subsection. This provision does not provide the Canada Revenue Agency with a mandate to use the information-collection authorities in the Act to conduct, or assist in the conduct of, criminal investigations.

#### **Subsection 108(7) – Measures to prevent unauthorized use or disclosure**

Subsection 108(7) provides that when legal proceedings deal with the supervision, evaluation or discipline of an authorized person, the person presiding over the proceeding may order any measures necessary to protect confidential information. Such measures could include: holding a hearing *in camera*, banning publication of the information, concealing the identity of a person or sealing the records of the proceeding. This list is non-exhaustive; other measures may be reasonable.

#### **Subsection 108(8) – Disclosure to person or on consent**

Subsection 108(8) provides that confidential information may be released to the person to whom it relates and to other persons with that person's consent.

#### **Subsection 108(9) – Appeal from order or direction**

Subsection 108(9) provides that an order or direction made in connection with the production of confidential information in any legal proceedings may be appealed by the Minister or the person against whom the order or direction is made.

#### **Subsection 108(10) – Disposition of appeal**

When an order or direction is appealed under subsection 108(9), subsection 108(10) allows the court to either allow the appeal and quash the order or direction or dismiss the appeal.

#### **Subsection 108(11) – Stay**

Subsection 108(11) provides that when an order or direction is appealed under subsection 108(9), the order or direction is stayed pending the determination of the appeal.

### **DIVISION P**

#### ***Collection***

Division P of Part 6 sets out rules regarding the collection of amounts owing under this Act.

### **Subsection 109(1) – Definitions**

Subsection 109(1) provides definitions that apply for the purposes of section 109, which sets out rules relating to the commencement of collection procedures.

#### **“action”**

The term “action” is defined as any action to collect a tax debt of a person. This includes court proceedings, as well as anything done by the Minister under any of sections 112 to 117. These sections include certifying amounts as payable, garnishment, recovery by deduction or set-off, acquisition of debtor’s property and seizure of property.

#### **“legal representative”**

The term “legal representative” of a person is defined as someone who administers, winds ups, controls or otherwise deals in a representative or fiduciary capacity with any property, business, commercial activities or estate or succession of the person. This includes a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee or any other like person.

#### **“tax debt”**

The definition “tax debt” provides that the term refers to any amount payable by a person under the DSTA. This includes not only DST, but also amounts payable for penalties and interest.

### **Subsection 109(2) – Debts to His Majesty**

Subsection 109(2) provides that a tax debt is a debt due to His Majesty in right of Canada and may be recovered through the court process.

### **Subsection 109(3) – Court proceedings**

Subsection 109(3) provides that a proceeding in court to recover a tax debt of a person may only be commenced if the person has been assessed for that amount under the DSTA.

### **Subsection 109(4) – No actions after limitation period**

Subsection 109(4) provides that collection actions cannot be commenced after the end of the limitation period for collection. This limitation period is set out in subsection 109(5).

### **Subsection 109(5) – Limitation period**

Subsection 109(5) specifies the period of time during which collection actions generally commence. This period typically begins 90 days after the day on which the last notice of assessment was sent, and ends ten years later.

### **Subsection 109(6) – Limitation period restarted**

Subsection 109(6) provides that the limitation period in subsection 109(5) will restart in the following circumstances:

- the person acknowledges the tax debt,
- the tax debt is reduced by the application of a refund,
- a collection action commences, or
- another person is assessed in respect of the tax debt.

Once the limitation period restarts, collection actions may be commenced for a further 10 years.

### **Subsection 109(7) – Acknowledgement of tax debts**

Subsection 109(7) sets out the actions that constitute acknowledging a tax debt (which would restart the limitation period under subsection 109(6)). A person acknowledges a tax debt if the person promises, in writing, to pay the tax debt, makes a written acknowledgement of the tax debt or makes a payment on account of the tax debt.

### **Subsection 109(8) – Agent or mandatary or legal representative**

Subsection 109(8) provides that where an acknowledgement is made by a person's agent or mandatary or legal representative, that acknowledgement has the same effect, for the purposes of this section, as if the person had made it themselves.

### **Subsection 109(9) – Extension of limitation period**

Subsection 109(9) extends the limitation period for collection by the number of days during which the following circumstances exist:

- the collection action has been postponed;
- the Minister has accepted and holds security in lieu of payment;
- the debtor was a resident when assessed for the debt and is currently a non-resident;
- the Minister may not take collection actions due to certain restrictions set out in sections 110(2) to (5); or
- the Minister may not take collection actions due to provisions under various bankruptcy protection Acts.

### **Subsection 109(10) – Assessment before collection**

Subsection 109(10) generally provides that the Minister must assess an amount payable before taking collection actions for it. An exception to this is interest, as interest is calculated on a compound basis and continual assessment would be impractical.

The inclusion of “or may be assessed” is intended to address amounts covered by authorizations to proceed without delay under section 119.

### **Subsection 109(11) – Minister may postpone collection**

Subsection 109(11) allows the Minister to postpone the collection of an amount in dispute. Such a postponement may be subject to any terms and conditions that the Minister may stipulate.

### **Subsection 109(12) – Interest on judgments**

Subsection 109(12) provides that interest applies to judgement debts, and the interest is recoverable in the same manner as the judgment debt.

### **Subsection 109(13) – Litigation costs**

Subsection 109(13) provides that where a person is required to pay litigation costs following litigation relating to a matter to which the DSTA applies, the collection provisions in sections 112 to 118 apply to the litigation costs.

### **Subsection 110(1) – Collection restrictions**

Subsection 110(1) restricts the actions the Minister may take to collect an amount from a person until 90 days have passed from the date of a notice of assessment in respect of the amount. During the 90 days, the Minister may not:

- commence legal proceedings;
- certify the amount (section 112);
- require payment (subsections 113(1) and (2));
- require money seized from the person, restorable to the person, to be turned over to the Receiver General (subsection 116(1)); or
- take action towards the seizure and sale of the person’s things (subsection 117(1)).

### **Subsection 110(2) – No action after service of notice of objection**

Subsection 110(2) provides that the collection actions restricted in subsection 110(1) are also restricted if a person has served a notice of objection. In that case, these collection actions cannot be taken in respect of the amount in controversy until after 90 days from the date of the notice of the Minister’s decision regarding the objection.

### **Subsection 110(3) – No action after appealing to Tax Court of Canada**

Subsection 110(3) provides that the collection actions restricted in subsection 110(1) are also restricted if a person has appealed to the Tax Court from an assessment. In that case, these collection actions cannot be taken in respect of the amount in controversy until either the Tax Court's decision has been mailed or the appeal has been discontinued.

### **Subsection 110(4) – No action pending determination by Tax Court**

Subsection 110(4) provides that the collection actions restricted in subsection 110(1) are also restricted if the amount to be collected could be affected by the determination of a question by the Tax Court. In that case, these collection actions cannot be taken until the question is determined by the Court.

### **Subsection 110(5) – Action after judgement**

Subsection 110(5) provides that the collection actions restricted in subsection 110(1) are also restricted if there is a written agreement to delay proceedings, on an objection or appeal, until the decision in a similar action has been given. In that case, these collection actions cannot be taken until the Minister has notified the person of the judgment in the similar action.

### **Subsection 110(6) – Collection of large amounts**

Subsection 110(6) provides an exception to the restrictions in subsections 110(1) through (5). This exception applies if at any time the total of all unpaid amounts that a person has been assessed under this Act exceeds \$1 million. In this case, the Minister may collect up to 50% of the total, regardless of the collection restrictions that would otherwise apply.

### **Subsection 111(1) – Security**

Subsection 111(1) provides that the Minister may accept security for the payment of any amount that is, or that may become, payable under the DSTA. The security must be in an amount and form satisfactory to the Minister.

### **Subsection 111(2) – Surrender of excess security**

Subsection 111(2) provides that where the amount of security exceeds the amount payable for which the security was furnished, then, on request, the Minister must surrender the excess security.

### **Subsection 111(3) – Additional security**

Subsection 111(3) provides that the Minister determines whether security is adequate. If the Minister determines, at any time, that the security is no longer adequate, the Minister may require additional security.

### **Subsection 112(1) – Certificates**

Subsection 112(1) allows the Minister to certify amounts payable under this Act.

### **Subsection 112(2) – Registration in court**

Subsection 112(2) provides that on production to the Federal Court, a certificate under subsection 112(1) is to be registered in the Court. Upon registration, proceedings may be taken to collect the amount certified as if the certificate were a judgment of the Court.

### **Subsection 112(3) – Costs**

Subsection 112(3) sets out that any reasonable costs and charges for registering a certificate, or in respect of proceedings to collect the amount certified, are recoverable as if they had been included in the amount certified.

### **Subsection 112(4) – Charge on property**

Under subsection 112(4), the Court may issue a memorial (evidencing a registered certificate) that may be recorded in a province to create a charge, lien or priority on, or binding interest in (or for civil law, a right in) property of the debtor. Such a memorial is to be filed, registered, or otherwise recorded in the same manner as a document evidencing a judgment of the superior court or a debt owing to the province.

### **Subsection 112(5) – Creation of charge**

Subsection 112(5) provides that a memorial filed under subsection 112(4) creates a charge, lien or priority on, or binding interest in (or for civil law, a right in) the property held by the debtor in the same manner as if the memorial were a document evidencing a judgment or a debt owing to the province.

### **Subsection 112(6) – Proceedings in respect of memorial**

Subsection 112(6) provides that proceedings may be taken in the province in respect of a memorial filed under subsection 112(4) including proceedings:

- to enforce payment,
- to renew the memorial,
- to cancel or withdraw the memorial, or
- to postpone the effectiveness of the memorial in favour of another right, charge, lien or priority in respect of any property, interest or rights affected by the memorial.

### **Subsection 112(7) – Presentation of documents**

Subsection 112(7) requires a memorial to be accepted for filing, registration or other recording in a registry system of the province in the same manner as if the memorial were a document evidencing a judgment by a superior court or a debt owing to the province.

### **Subsection 112(8) – Prohibition – sale, etc., without consent**

Under subsection 112(8), steps may not be taken towards the sale or disposal of any property affected by the registration of a certificate or memorial without the written consent of the Minister.

### **Subsection 112(9) – Completion of notices, etc.**

Subsection 112(9) deems sheriffs and other persons to have complied with certain rules regarding documents where they were not initially able to comply due to subsection 112(8). Such deemed compliance would occur in situations where a sheriff or other person must set out information in a minute, notice or document, but cannot do so without getting consent from the Minister. In such a case, the sheriff or other person must complete the information to the extent possible, and then, when consent is given by the Minister, complete the minute, notice or document a second time.

### **Subsection 112(10) – Application for order**

Subsection 112(10) provides that, on *ex parte* application by the Minister, a sheriff or other person who is unable, because of subsection 112(8) or (9), to comply with a law or rule of court is bound by any order made by a judge of the Federal Court for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

### **Subsection 112(11) – Deemed security**

Subsection 112(11) deems a charge, lien, priority or binding interest created by recording a memorial under subsection 112(4) to be a secured claim under the *Bankruptcy and Insolvency Act* if the memorial is registered in accordance with subsection 87(1) of that Act.

### **Subsection 112(12) – Details in certificates and memorials**

Subsection 112(12) provides that it is sufficient for a certificate or memorial to set out the total amount payable by the debtor without setting out separate amounts making up the total and to refer to the rate of interest as the rate prescribed by regulation, without indicating the specific rates of interest that will be charged.

### **Subsection 113(1) – Garnishment**

Subsection 113(1) authorizes the collection of any amount payable under the DSTA by way of garnishment. In general, garnishment may be used in respect of amounts owing to a debtor. Where the Minister has knowledge or suspects that a particular person is or will become, within one year, liable to make a payment to a debtor, the Minister may, by notice in writing, require the payment to be made to the Receiver General on account of the liability of the debtor.

### **Subsection 113(2) – Garnishment of loans or advances**

Subsection 113(2) allows the Minister, by notice in writing, to garnish certain amounts that are expected to be loaned or advanced to, or paid on behalf of, the debtor within 90 days.

### **Subsection 113(3) – Effect of receipt**

Subsection 113(3) provides that if the Minister issues a receipt for an amount that has been garnished, that receipt is good and sufficient discharge of the original liability to the extent of the amount. That is, the person otherwise liable to make a payment to the debtor, who instead makes a payment to the Minister in accordance with a garnishment notice, is no longer liable to pay the debtor that amount.

### **Subsection 113(4) – Effect of requirement**

Subsection 113(4) provides that where the amount being garnished is interest, rent, remuneration, a dividend, an annuity or another periodic payment, the Minister may, under one garnishment notice, garnish any amount of each such periodic payment until the liability under this Act is satisfied.

### **Subsection 113(5) – Failure to comply**

Subsection 113(5) provides that every person who fails to comply with a garnishment notice is liable for the amount that was required to be paid.

### **Subsection 113(6) – Other failures to comply**

Subsection 113(6) provides that an institution or person that fails to comply with a garnishment notice under subsection 113(2) is liable for the lesser of the total amount loaned, advanced, or paid, and the amount that they were required, under the garnishment notice, to pay to the Receiver General.

### **Subsection 113(7) – Assessment**

Under subsection 113(7), the Minister may assess any person for an amount payable in respect of a garnishment. If the Minister sends a notice of assessment, sections 56 (small amounts

owing) and 68 to 83 (assessments, objections and appeals) apply with any modifications that the circumstances require.

#### **Subsection 113(8) – Time limit**

Subsection 113(8) specifies that an assessment under subsection 113(7) in respect of a garnishment notice must be made within four years of receipt of the notice.

#### **Subsection 113(9) – Effect of payment as required**

Subsection 113(9) sets out that amounts paid in respect of a garnishment notice are deemed, for all purposes, to have been advanced, loaned or paid to or on behalf of the debtor, as they otherwise would have been absent the garnishment requirement.

#### **Section 114 – Recovery by deduction or set-off**

Section 114 provides that if a person is indebted to His Majesty in right of Canada under the DSTA, the Minister may require the retention, by way of deduction or set-off, of any amount payable to such person by His Majesty in right of Canada.

#### **Section 115 – Acquisition of debtor’s property**

Section 115 authorizes the Minister to acquire and dispose of any interest in property of a person indebted under the DSTA for the purpose of collecting the debt, provided that the Minister is given a right, in legal proceedings or under a court order, to acquire the interest, or the interest is offered for sale or redemption.

#### **Subsection 116(1) – Money seized from debtor**

Subsection 116(1) provides a collection option if:

- a person is holding money seized in the administration or enforcement of the criminal law of Canada,
- the money was seized from a debtor under the DSTA, and
- the money would otherwise be restorable to the debtor.

In this case, the Minister may, in writing, require the money to be turned over to the Receiver General on account of the debtor’s indebtedness under the DSTA.

#### **Subsection 116(2) – Receipt of Minister**

Subsection 116(2) provides that if the Minister issues a receipt for money turned over, as required under this section, the receipt is good and sufficient discharge of the requirement to restore the money to the debtor.

### **Subsection 117(1) – Seizure if failure to pay**

Subsection 117(1) provides that if a person fails to pay an amount as required under the DSTA, the Minister is authorized to give 30 days written notice that the person's property will be seized. If payment is not made within the 30 days, the Minister may issue a certificate of failure and direct that the person's property be seized. The type of property that may be seized is limited to goods and chattels, or movable property.

### **Subsection 117(2) – Disposition**

Subsection 117(2) provides that seized property is to be held for 10 days at the person's expense. If payment is not made within the 10 days, the property may be disposed of as the Minister considers appropriate and the proceeds applied to the amount owing and all expenses.

### **Subsection 117(3) – Proceeds of disposition**

Subsection 117(3) provides that when seized property is disposed of, if there is any surplus after deducting the amount owing and all expenses, that surplus must be returned to the owner of the property seized.

### **Subsection 117(4) – Exemptions from seizure**

Subsection 117(4) provides that if particular goods and chattels, or movable property, would be exempt from seizure under applicable provincial laws, that property is exempt from seizure under this section.

### **Subsection 118(1) – Person leaving Canada**

If the Minister suspects that a person has left or is about to leave Canada in advance of the due date for payment of an amount under this Act, subsection 118(1) provides that the Minister may, by notice, demand that the person pay without delay all amounts for which they are liable or will be liable under this Act. Such a notice must either be served personally or sent by confirmed delivery service to their latest known address.

### **Subsection 118(2) – Seizure**

Subsection 118(2) provides that if the person fails to pay an amount demanded under subsection 118(1), the Minister is authorized to seize and dispose of the person's property, and subsections 117(2) to (4) apply with any modifications that the circumstances require.

### **Subsection 119(1) – Authorization to proceed without delay**

Subsection 119(1) sets out an exception to the general requirement, under section 110, that the Minister wait until 90 days have passed from the date of a notice of assessment to

commence collection actions. Under this exception, the Minister may obtain judicial authorization, by *ex parte* application, to immediately take any of the collection actions set out in sections 112 to 117 if there are reasonable grounds to believe that the collection of an amount assessed would be jeopardized if there were a delay in its collection.

#### **Subsection 119(2) – Notice of assessment not sent**

Subsection 119(2) provides that a judge may grant an authorization under subsection 119(1) where no notice of assessment has been sent if the judge is satisfied that the receipt of a notice of assessment would further jeopardize the collection of the amount. The amount in respect of which such an authorization is granted is deemed to be an amount payable under the DSTA for the purposes of the sections relating to collection: section 109 (general collection), 112 (certificates), 113 (garnishment), 114 (deduction or set-off), 116 (money seized from debtor) and 117 (seizure).

#### **Subsection 119(3) – Affidavits**

Subsection 119(3) provides that an affidavit filed in the context of an application to proceed without delay may contain statements based on belief. However, the affidavit must include the grounds for the belief.

#### **Subsection 119(4) – Service of authorization and notice of assessment**

Where an authorization to proceed without delay has been granted, subsection 119(4) provides that the Minister must serve the authorization on the affected person within 72 hours of it being granted (unless the judge orders otherwise). Where a notice of assessment has not been sent to the person before the time of the application to proceed without delay, a notice of assessment must be served with the authorization.

#### **Subsection 119(5) – How service effected**

Subsection 119(5) provides that service of an authorization under subsection 119(4) must be effected by either personal service or service in accordance with the directions, if any, of a judge.

#### **Subsection 119(6) – Application to judge for direction**

Subsection 119(6) provides that if service cannot be reasonably effected as required under subsection 119(5), the Minister may apply to a judge for further direction.

#### **Subsection 119(7) – Review of authorization**

Where an authorization to proceed without delay has been granted, subsection 119(7) provides that the affected person may apply to a judge of the court to review that authorization. Before

making such an application the person must notify the Deputy Attorney General of Canada, and the application must be made at least seven days after the notification.

#### **Subsection 119(8) – Limitation period for review application**

Subsection 119(8) provides that an application under subsection 119(7) must be made within 30 days after the day on which the authorization was served, or within any further time that a judge may allow (provided that the judge is satisfied that the application was made as soon as practicable).

#### **Subsection 119(9) – Hearing in camera**

Subsection 119(9) provides that an application under subsection 119(7) may be heard *in camera*, provided that the judge is satisfied that the circumstances of the case justify *in camera* proceedings.

#### **Subsection 119(10) – Disposition of application**

Subsection 119(10) provides that a judge must dispose of an application under subsection 119(7) by determining the question summarily, and either confirming, varying or setting aside the authorization. The judge may also make any other order that the judge considers appropriate.

#### **Subsection 119(11) – Directions**

Subsection 119(11) allows a judge to give any direction with regard to the course to be followed in respect of this section where this section does not otherwise provide for relevant direction.

#### **Subsection 119(12) – No appeal from review order**

Subsection 119(12) provides that an order of a judge under subsection 119(10) (that is, disposing of an application to review an authorization to proceed without delay) cannot be appealed.

## **DIVISION Q**

### ***Evidence and Procedure***

Division Q of Part 6 sets out rules relating to evidence and procedures.

### **Subsection 120(1) – Service**

Subsection 120(1) sets out rules relating to which name a notice or document served, issued or sent by the Minister may be addressed to in certain situations. If a notice or other document is served on or sent to a partnership, it may be addressed to the name of the partnership, if served on or sent to a union it may be addressed to the name of the union, if served on another body it may be addressed to the name of the body and if served or sent to a business not carried on in the person's name, it may be sent to the name under which the business is carried on.

### **Subsection 120(2) – Personal service**

Subsection 120(2) sets out rules relating to who a notice or document served, issued or sent by the Minister may be served on in certain situations. In general, a notice is validly served on a person if it is left with an adult person employed at the place of business of the person. Additionally, if the person is a partnership, it may be served on one of the partners.

### **Subsection 121(1) – Timing of receipt**

Subsection 121(1) provides that anything sent by first class mail or confirmed delivery service is deemed to have been received on the day it was mailed or sent.

### **Subsection 121(2) – Timing of payment**

Subsection 121(2) sets out an exception to subsection 121(1). It provides that an amount payable under this Act to the Receiver General is only considered to have been paid when it is actually received, regardless of the day it was mailed or sent.

### **Subsection 122(1) – Proof of sending or service by mail**

Subsection 122(1) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that a request, notice or demand was sent by confirmed delivery service to a named person on a stated day.

### **Subsection 122(2) – Proof of personal service**

Subsection 122(2) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that a request, notice, or demand was personally served on a named person on a stated day.

### **Subsection 122(3) – Proof of electronic delivery**

Subsection 122(3) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that a notice was sent electronically to a named person on a stated day.

#### **Subsection 122(4) – Proof of failure to comply**

Subsection 122(4) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that a named person has not filed a return, or made an application, a statement, an answer or a certificate. The affidavit must set out that the official has charge of the appropriate records and that after a careful search, the return, application, statement, answer or certificate could not be found.

#### **Subsection 122(5) – Proof of time of compliance**

Subsection 122(5) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that a named person filed a return, or made an application, statement, answer or certificate on a stated day. The affidavit must set out that the official has charge of the appropriate records and that a careful examination has indicated that the return, application, statement, answer or certificate was filed or made on that stated day.

#### **Subsection 122(6) – Proof of documents**

Subsection 122(6) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that the nature and contents of an attached document or copy are as they appear to be. In addition to verifying the document or copy, the affidavit must set out that the official has charge of the appropriate records.

#### **Subsection 122(7) – Proof of no appeal**

Subsection 122(7) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that no notice of objection or appeal from an assessment was received within the time allowed. The affidavit must set out that the official has charge of the appropriate records, the official has knowledge of Agency practices, an examination of records shows that a notice of assessment was sent and a careful search has not indicated that a notice of objection or appeal was received within the time allowed.

#### **Subsection 122(8) – Presumption**

Subsection 122(8) specifies that if evidence is offered under section 122 by way of an affidavit of an official of the Canada Revenue Agency, it is not necessary to prove the signatures or the official characters of the official or of the person before whom the affidavit was sworn.

#### **Subsection 122(9) – Proof of documents**

Subsection 122(9) deems every document executed over the name in writing of the Minister, the Commissioner or an official authorized to exercise the powers or perform the duties of the Minister to be a document signed, made and issued by the Minister, Commissioner or official. Only the Minister, a person acting for the Minister or His Majesty in right of Canada may call into question whether the document has been executed as purported.

### **Subsection 122(10) – Mailing or sending date**

Subsection 122(10) provides that if the Minister mails, or sends electronically, a notice or demand, the date of mailing or electronic sending is presumed to be the date of the notice or demand.

### **Subsection 122(11) – Date electronic notice sent**

Subsection 122(11) specifies the date that a notice or other communication made available electronically (such as on the CRA My Account website) is presumed to be sent to and received by a person. The date that an electronic message is sent to the electronic address most recently provided by the person informing them that the notice or other communication is available in the person's secure electronic account is presumed to be the date of sending and receipt.

A notice or other document is considered to have been made available if it has been posted on the person's secure account, the person has authorized that notices be made available in that manner and the person has not revoked that authorization.

This section does not apply to notices or communications that refer to the business number of a person (see instead the commentary on subsection 122(12)).

### **Subsection 122(12) – Date electronic notice sent – business account**

Subsection 122(12) specifies the date that a notice or other communication (which refers to a business number) made available electronically is presumed to be sent to and received by a person. The date that the notice or other communication is posted by the Minister in the person's CRA My Business Account is presumed to be the date of sending and receipt. However, if the person has requested, at least 30 days prior, for such notices or communications to be sent by mail, the normal rule for receipt of mail in section 122(10) applies.

### **Subsection 122(13) – Date of assessment**

Subsection 122(13) deems an assessment to have been made on the day of sending of the notice of assessment.

### **Subsection 122(14) – Proof of return – prosecutions**

Subsection 122(14) provides that, in a prosecution for an offence under this Act, if a return, application, certificate, statement or answer is purported to have been filed, delivered, made or signed by or on behalf of a person, the production of this document is evidence that this filing, delivery, making or signing occurred.

### **Subsection 122(15) – Proof of return – production of returns, etc.**

Subsection 122(15) provides that, in a proceeding under this Act, if a return, application, certificate, statement or answer is purported to have been filed, delivered, made or signed by or on behalf of a person, the production of this document is evidence that this filing, delivery, making or signing occurred.

### **Subsection 122(16) – Evidence**

Subsection 122(16) describes how officials of the Canada Revenue Agency may use duly sworn affidavits as evidence that an amount required to be paid has not been received by the Receiver General. The affidavit must set out that the official has charge of the appropriate records, and that an examination of the records shows that the amount has not been received.

## **PART 7**

### ***Regulations***

Part 7 of the Act sets out rules regarding the making of regulations under the Act.

### **Subsection 123(1) – Regulations**

Subsection 123(1) provides the Governor in Council with the authority to make regulations as described in the paragraphs. Under paragraphs (a) to (d) of this subsection, the Governor in Council may make regulations that:

- prescribe anything that, under the DSTA, is to be prescribed, determined or regulated by regulation;
- prescribe the evidence required to establish facts relevant to assessments;
- require classes of persons to make information returns; and
- generally carry out the purposes and provisions of the Act.

### **Subsection 123(2) – Effect**

Subsection 123(2) specifies when a regulation made by the Governor in Council will have effect. Generally, a regulation will have effect from the date it is published in the *Canada Gazette* or at some later time as specified in the regulation. A regulation can only take effect at a time prior to publishing if the regulation provides otherwise, and the regulation:

- has a relieving effect only;
- corrects an ambiguous or deficient enactment;
- is consequential to an amendment to this Act and the amendment was applicable prior to the date the regulation is published; or

- gives effect to a budgetary or other public announcement, in which case the effective date cannot be earlier than the date of that announcement.

## **PART 2 – EXPLANATORY NOTES RELATING TO THE DRAFT DIGITAL SERVICES TAX REGULATIONS**

### ***Overview***

These proposals would implement the *Digital Services Tax Regulations* which include provisions that prescribe rates of interest for the purposes of the DSTA. The *Digital Services Tax Regulations* will come into force at the same time that the DSTA comes into force.

### ***Interpretation***

#### **Section 1 – Definitions**

Section 1 of the Regulations sets out certain definitions that apply for the purposes of the Regulations.

#### **“Act”**

The definition “Act” provides that the term refers to the DSTA.

#### **“quarter”**

The definition “quarter” provides that the term refers to any period from January 1 to March 31, April 1 to June 30, July 1 to September 30, or October 1 to December 31 of a calendar year.

### ***Prescribed Rates of Interest***

#### **Subsection 2(1) – Interest to be paid to the Receiver General**

Where the DSTA requires interest to be paid to the Receiver General, subsection 2(1) sets out the method for calculating the prescribed rate for that interest. The prescribed rate must be calculated for each calendar quarter (as defined in section 1). Essentially, the interest rate in effect in each quarter is the total of 4% and the average annual yield of all 3-month Government of Canada Treasury Bills that were sold during the first month of the preceding quarter.

These interest rates are in line with those charged under other Acts administered by the Canada Revenue Agency. Guidance from the Agency should be consulted for exact rates in any given quarter.

### **Subsection 2(2) – Interest to be paid by the Minister**

Where the DSTA requires interest to be paid by the Minister to a person, subsection 2(2) sets out the method for calculating the prescribed rate for that interest. The prescribed rate must be calculated for each calendar quarter (as defined in section 1). Essentially, the interest rate in effect in each quarter is the average annual yield of all 3-month Government of Canada Treasury Bills that were sold during the first month of the preceding quarter.

These interest rates are in line with those required under other Acts administered by the Canada Revenue Agency. Guidance from the Agency should be consulted for exact rates in any given quarter.