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2025 TEI Canadian Commodity Tax Committee Liaison Questions for Department of Finance

1. Opportunities to reduce interprovincial trade barriers and increase Canada's competitiveness

Issue

The lack of one harmonized sales tax system throughout Canada creates significant economic inefficiencies and barriers to trade (both interprovincially and internationally). These inefficiencies hinder Canada's ability to attract investment and foster economic growth.

Harmonizing the provincial sales tax ("PST") systems with the federal goods and services tax ("GST") through the implementation of a harmonized sales tax ("HST") would address these issues and provide numerous economic benefits.

Background

British Columbia (B.C.), Saskatchewan, and Manitoba each maintain distinct PST systems. These systems, with their unique applications of the tax, result in increased capital and operational costs for business. This impacts competitiveness and the ability to attract investment not just in these provinces, but across Canada. The costs are particularly burdensome for businesses operating across Canada, as they must navigate multiple tax regimes, often with different and sometimes conflicting rules. The PST systems in these provinces are complex, with numerous exemptions and specific rules that increase compliance costs and administrative burdens. For further examples on the impacts PST systems have on provincial economy, see TEI's submission to the Government of BC on harmonizing with HST.[1]

[1] Tax Executives Institute, "TEI Recommends Replacing the BC PST with the HST": https://www.tei.org/advocacy/submissions/tei-recommends-replacing-bc-pst-hst.

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Policy Rationale for Change

Harmonizing the PSTs with the HST would be a significant reduction in interprovincial trade barriers and align with Prime Minister Mark Carney's "One Canada Initiative". Aligning the tax systems would offer the following advantages to both the public and private sectors:

1. *Enhanced Economic Competitiveness:* PST is known to increase the cost of doing business, making it less attractive for companies to invest in these provinces. By harmonizing with the GST, the provinces can reduce the marginal effective tax rate on investments, making them more competitive with other jurisdictions.

2. *Removal of Interprovincial Trade Barriers*: The current PST systems create barriers to trade between provinces. Harmonizing with the GST would eliminate these barriers, allowing for smoother interprovincial trade and fostering a more integrated national economy.

3. *Reduced Compliance Costs:* The complexity of the current PST systems imposes significant compliance costs on businesses. Transitioning to an HST would streamline tax administration, reducing the burden on businesses and allowing them to focus more resources on growth and innovation.

4. *Alignment with Federal Tax Policy*: Harmonizing with the GST would align provincial tax policies with federal tax policies, creating a more consistent and predictable tax environment for businesses operating across Canada.

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Request to Finance

(a) While TEI understands that provinces have the constitutional right to determine their own taxation, TEI wishes to echo the recommendation of other professional organizations in Canada[2] and suggest that the Government of Canada make every effort to encourage the provinces of B.C., Saskatchewan and Manitoba to harmonize their PST the federal GST through the implementation of the HST.

One such opportunity could be for the Department of Finance to consider providing B.C., Saskatchewan, and Manitoba further flexibility on point of sales rebates to encourage the provinces to harmonize their PST systems with the federal GST. This change would provide significant economic benefits, including enhanced competitiveness, reduced trade barriers, and lower compliance costs.

We recommend that the Department of Finance facilitate discussions between the federal government and the provincial governments to explore the potential benefits of HST harmonization and to develop a plan for implementation.

2. New Proposed Audit Powers

Issue

On August 15, 2025, the Department of Finance released several packages of draft legislative proposals for public comment, including updates to the proposed expansion of the Canada Revenue Agency's (CRA) audit and information-gathering powers under the *Income Tax Act* (ITA). TEI members are unclear on how the Department of Finance will extend such powers to the *Excise Tax Act* (ETA) and other statutes administered by the CRA.

Background

Budget 2024 proposed several amendments to the information gathering provisions in the ITA to enhance the efficiency and effectiveness of tax audits and facilitate the collection of tax revenues on a timelier basis. Additionally, Budget 2024 stated that amendments were intended to be also proposed to other federal statutes administered by the CRA including the ETA (e.g., GST/HST, fuel excise tax), *Air Travellers Security Charge Act*, *Excise Act, 2001* (alcohol, tobacco, cannabis, and vaping duties), the *Underused Housing Tax Act*, and the *Select Luxury Items Tax Act*.

[2] See for example: CPA Ontario, Tax Reform for Growth in Canada, October 2025, page https://www.cpaontario.ca/insights/thought-leadership/tax-reform-for-growth-in-canada; Canadian Bar Association, Recommendations to Reduce Significant Internal Trade Barriers (Sales Tax Harmonization), August 28, 2025, https://cba.org/Our-Impact/Submissions/Recommendations-to-Reduce-Significant-Internal-Trade-Barriers-Sales-Tax-Harmonization

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While the August 2025 proposals include technical and regulatory amendments to the ETA, they do not explicitly extend the enhanced audit and enforcement powers proposed under the ITA to the ETA.

Request to Finance

(a) As the 2024 Federal Budget proposed that similar provisions for the enhanced audit and enforcement powers would also be added as needed to the ETA and other referenced statutes. TEI requests clarification on the following points:

- **Timeline**: Is there an anticipated timeline for introducing legislation that would extend the enhanced audit powers to the ETA and other referenced statutes?

- **Consultation Process**: Will stakeholders be afforded a formal consultation period prior to the implementation of such provisions under the ETA and other referenced statutes, similar to the process undertaken for the ITA amendments?

- **Procedural Fairness**: Given the scope of the proposed powers—including notices of non-compliance, compliance orders, and questioning under oath—how does the Department intend to balance enforcement objectives with taxpayer rights and procedural fairness under the ETA and other referenced statutes?

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3. Persons registered under Subdivision E of Division II of the *Excise Tax Act* (Canada) not required to register under Subdivision D of Division V

Issue

The new simplified registration requirements under Subdivision E of Division II of Part IX of the *Excise Tax Act* (Canada) ("ETA") for non-resident digital economy businesses (the "simplified regime") created a registration obligation regardless of whether a non-resident is carrying on business in Canada. This means non-resident persons registered under a simplified regime must still continuously monitor the carrying on business ("COB") administrative guidance outlined by the Canada Revenue Agency ("CRA") in GST/HST Policy Statement P-051R2 – *Carrying on business in Canada* to determine if they are required to transition their registration to a regular registration under subsection 240(1) of Subdivision D of Division V of Part IX of the ETA (the "regular regime").

P-051R2 is outdated and does not reflect modern commercial and business reality. This results in lack of clarity and certainty. This results in a requirement for businesses registered under the simplified regime to a continuously monitor the COB requirements, which is administratively burdensome for persons who are already charging, collecting, and remitting taxes under the simplified regime. The result of these dual registration requirements is that often non-residents restrict operations in Canada for fear of inadvertently crossing the ambiguous COB threshold. Certainty, clarity and commonality with global VAT principles is an important component of investment decision-making for businesses. In TEI's view, the COB registration requirement as currently drafted leads to loss of investment and revenue for Canada.

Background

Subsection 240(1) of Subdivision D of Division V of Part IX of the ETA outlines the registration requirements for the regular regime, which requires a person to register under the regular regime unless:

a. *the person is a small supplier;*

b. *the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business; or*

c. *the person is a non-resident person who does not carry on any business in Canada*. [emphasis added]

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Although the ETA was amended in 2021 to require registration by non-resident persons under the simplified regime even if they do not COB in Canada, paragraph 240(1)(c) of the ETA was not amended, and P-051R2 was last updated over 30 years ago in 2005. The result is non-residents that have registered under the simplified regime in accordance with Subdivision E of Division II of Part IX of the ETA are still required to actively monitor all their activities to determine whether they are required to convert their simplified registration into one under the regular regime.

Policy Rationale for Change

As currently drafted, whether a non-resident of Canada is COB in Canada is a definitive factor that determines if a non-resident that is registered for GST/HST under the simplified regime rules (that were specifically developed to accommodate and facilitate GST/HST collection by non-residents operating in the digital economy) must switch to registration under the regular regime.

As recognized by the Organization for Economic Cooperation and Development ("OECD") as part of the Base Erosion and Profit Shifting Project, the continual increase in the potential of digital technologies and the reduced need in many cases for extensive physical presence in order to operate in a particular jurisdiction means that domestic nexus rules (like COB) are ill-suited for the digital age. In recognition of these complexities, the simplified regime in Canada was implemented based on OECD recommendations that such regimes are the best way to address the collection of VAT/GST by non-residents operating in the digital economy to prevent tax leakage.

Non-residents looking to expand businesses are often familiar with OECD guidelines and principles and an additional COB test for Canada introduces unnecessary complexity and uncertainty which impacts the decision-making of businesses, particularly when trying to interpret P-051R2 based on modern day business practices and whether Canada makes sense as a destination for expanded or new business opportunities. Additionally, requiring a non-resident business that is already charging, collecting, and remitting taxes to switch from the simplified regime to the regular regime is unnecessary.

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Requests to Finance

(a) TEI requests the Department of Finance recommend a change to paragraph 240(1)(c) to expand the exception to persons registered under Subdivision E of Division II of Part IX of the ETA.

For example, paragraph 240(1)(c) could be modified to the following: "the person is a non-resident person who does not carry on any business in Canada, or is a non-resident person registered under Subdivision E of Division II."

TEI's recommendation:

- Gives taxpayers registered under the simplified regime the clarity they need but also does not require modifications or changes and still requires businesses who are not required to register under the simplified regime to still register under the regular regime if they are carrying on business in Canada.

- Should also be revenue neutral in result to the government of Canada, as businesses registered under the simplified regime are still obligated to collect GST/HST from customers that are not registered for GST/HST, while Canadian recipients that are registered that are not entitled to full ITCs would be required to self-assess applicable GST/HST under the imported taxable supply rules.

    - Potential to increase government revenues because:

    - Non-residents may choose to stay registered under the simplified regime (as the simplified registration is a clearer test and means not having to continuously monitor the outdated concept of COB) and relinquish the right to claim ITCs that would otherwise be available under the regular regime.

    - Non-residents that are currently restricting operations in Canada for fear of inadvertently crossing the ambiguous COB threshold would no longer have this barrier, potentially spurring growth and investment in Canada. Certainty, clarity and commonality with OECD guidelines are important elements to investment decision-making.

- The OECD recognizes that a simplified registration, without the possibility of claiming input tax credits, reduces compliance risks and concerns for tax authorities about carousel or missing trader fraud. Since non-residents would no longer be required to convert their simplified registration into a "riskier" regular regime this solution could reduce risk of fraudulent or invalid ITC claims.

- Offers the potential for more operational efficiency for CRA. By allowing more non-residents to remain registered under the simplified regime, it eliminates the need for the CRA to review purchase documentation to substantiate ITC claims during audits or desk audits.

- Does not otherwise disadvantage Canadian businesses as Canadian suppliers registered under the regular rules would continue to be at an advantage over non-residents that are not registered (or registered under the simplified regime), insofar as they would continue to have the ability to claim input tax credits.

Adopting the recommendation from TEI also means that:

- Non-residents with a permanent establishment in Canada may still be required to register by virtue of being deemed resident under subsection 132(4).

- Non-residents wishing to do so may still be able to voluntarily register under the regular regime via subsection 240(3).

- The determination of the threshold in subsection 211.2(2), unlike a COB analysis, is relatively straightforward, the proposed changes should therefore still give non-residents registered under the simplified regime the clarity they need, while ensuring that Subdivision E continues to work as intended to prevent tax leakage on supplies that prior to the coming into force of Subdivision E could have escaped taxation.

(b) Alternatively, the Department of Finance could consider recommending eliminating the COB registration threshold altogether for non-residents by deleting "*who does not carry on any business in Canada*" from paragraph 240(1)(c). With the introduction of the simplified regime and the registration requirements under Subdivision E of Division II, TEI does not believe that there would be a significant risk of revenue loss by eliminating the registration requirement for non-residents and the benefits above listed above would also apply.

TEI notes that consequential amendments may need to be made to other provisions to preserve the integrity of the statutory scheme, especially the place of supply rules. For example, if the COB test is eliminated altogether from paragraph 240(1)(c), it may be desirable to also repeal paragraph 143(1)(a), otherwise it may make the self-assessment rules difficult to apply (a supply by a non-registered non-resident could still be considered to be made in Canada by paragraph 143(1)(a), thus making the self-assessment rules inapplicable). Even if the COB test is retained in paragraph 240(1)(c) and that paragraph is only amended to exclude entities that are registered under the simplified regime, paragraph 143(1)(a) should also be amended so that supplies made by a non-resident registered under Subdivision E of Division II continue to be deemed to be made outside Canada, again to preserve the integrity of the self-assessment rules in situations where the Canadian recipient is registered and required to self-assess tax under Division IV.

4. Claiming Input Tax Credits under Paragraph 211.23(1)(c)

Issue

The operational requirements of paragraph 211.23(1)(c) of the *Excise Tax Act* (Canada) do not reflect commercial reality. The result is that, often, no party can claim input tax credits on GST paid under Division III. This leads to embedded GST and cascading tax, which increases the price of goods and impacts the affordability of millions of goods for Canadians. It also places platforms and sellers that store goods and fulfill orders from Canada at a competitive disadvantage over sellers that ship all their goods from outside Canada. While Subdivision E of Division II of Part IX of the ETA was designed to address modern e-commerce, paragraph 211.23(1)(c) still relies on provisions of the standard rules of the ETA, which were not designed to cover these sorts of transactions.

Background

Paragraph 211.23 (1)(c) permits Distribution Platform Operators ("DPOs") registered under section 240 of the ETA to claim an input tax credit ("ITC") on applicable imported goods that are qualifying tangible personal property supplies ("QTTPS") if the seller (or importer) is not eligible to claim the ITC. In theory, this avoids unrecoverable import GST paid by non-registered, non-resident sellers who sell goods to Canadian consumers via a digital platform from being embedded in the costs of the goods. In reality, the paragraph as drafted does not work and is not commercially efficacious resulting in sellers paying import GST under Division III with no party able to claim an ITC. The unrecoverable GST paid to the Canada Border Services Agency ("CBSA") is embedded in the cost of goods and the DPO then collects GST/HST from the customer purchasing the good via their platform. This adds inflationary pressures on the cost of imported goods for Canadians, in addition to the pressures arising from the current international trade context.

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Policy Rationale for Change

Paragraph 211.23(1)(c) essentially requires the DPO to receive a copy of the seller's Customs Accounting Document that contains sensitive commercial information of an unrelated third party. While this is the documentary evidence that is required to support the importer's ability to claim ITCs paid under Division III, it is not reasonable to expect that this commercially sensitive information be shared with a third party (such as a DPO), who may also sell competing items on the same platform as the seller. For this reason, most sellers are unwilling to provide this information to DPOs which results in no party being able to claim the ITCs.

Having a DPO act as an importer of record is also not a viable solution as it requires DPO to assume risks for goods that it does not own or possess at the time of import. It would also change the commercial relationship of the parties.

Other exchanges of information between sellers and DPOs related to importations of goods are also not practical given the volume of imports. A commercially viable solution reflective of the actual workings e-commerce transactions is needed.

This issue does not arise with respect to goods that are not QTTPS because they are being shipped directly to the customer from a place outside Canada. In that case, the correct amount of tax is either collected by CBSA upon import or collected by the seller, depending on the registration status of the seller. This puts DPOs with warehouses or fulfilment centres in Canada at a disadvantage from a pricing perspective and creates a perverse disincentive to investing in distribution capacities in Canada.

Requests to Finance

(a) TEI requests the Department of Finance recommend legislative changes to provide a mechanism to achieve the policy goal that there be no double taxation on goods imported for sale via a DPO that is reflective of the e-commerce transactions that paragraph 211.23 (1)(c) was meant to capture.

One potential solution could be to deem goods imported into Canada by a non-registered, non-resident that are for sale via a DPO to be zero-rated for the purposes of Division III tax.

This would mean that no party would pay unrecoverable GST under Division III and parties will not be forced to share sensitive commercial information with third parties. We note that the interaction between Division II and Division III is increasingly problematic and should be reviewed more generally in light of the new rules given classification of goods by the CBSA and courier companies under the casual and commercial streams is often arbitrary.

Potential misuse of this change could be caught via the CBSA audit process, or additional legislative change that would require sellers importing under this mechanism to self-assess any import GST owing if there is a change in use post import (i.e. the seller does not list goods with a DPO). This could be done (and audited) easily insofar as CBSA would have exact data on all imported goods by each unregistered seller – the value for duty and value for tax of each imported good would still be reported in CARM Client Portal.

(b) Alternatively, the Department of Finance could recommend amendments to allow DPOs to use proxies for GST embedded in the price of each good (e.g., 5/105 of the price, or some other fraction to account for a small profit margin for the seller post import), instead of actual tax paid by the seller or importer. The CBSA should have the data to allow the formulation and calibration of the proxies. The policy concerns surrounding documentary requirements for ITCs (e.g., missing trader fraud, doubling of claims) do not arise where the DPO is the only registered party (if the goods qualify as QTTPS, the seller cannot be registered) and where the tax is collected by the CBSA.

5. Joint/Co Marketing for Services/Intangible Personal Property and Promotional Allowances under ETA s. 232.1

Issue

Section 232.1 of the Excise Tax Act (*Canada*) limits the application of the promotional allowance rules to the sale of tangible personal property ("TPP"). This limitation is not reflective of the nature of modern commerce, where similar promotional allowance agreements occur with respect to sales of services and sublicensing of intangible personal property ("IPP"). Limiting section 232.1 to only sales of TPP creates an unnecessary disparity and favours marketing arrangements related to TPP over other types of supplies. Such a restriction seems incongruent with the continued digitalization of the economy and positioning Canada as an attractive destination for investment.

Background

ETA 232.1 provides that when a registrant who acquires particular TPP by way of sale and receives a promotional allowance from another registrant that made a taxable supply of the particular property to the registrant or another person, the allowance is deemed not to be a supply from the other registrant to the registrant. Section 232.1 is limited to the sale of TPP.

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Policy Rationale for Change

Marketing allowances often occur in the context of the sale of services or sublicensing of intangible personal property, where a wholesaler of the services/licensor of IPP may pay a marketing allowance to a reseller/sub licensor of those services/IPP (either to encourage the reseller to promote the services/IPP or to reimburse the reseller for marketing incurred in promoting the resold services/IPP). These can often take the form of joint or co-marketing agreements where both the wholesaler and reseller/sub-licensor agree to spend $X each with the reseller being the party incurring the advertising expenses from the advertiser.

While these same marketing allowances would be deemed to be a reduction in consideration payable if it was in relation to TPP, the same does not apply if the subject of the promotion is a service or IPP.

Having section 232.1 only apply to TPP creates additional unnecessary complexity and administrative burden to parties involved in promotional/co-marketing agreements when the promotion relates to services or IPP.

Request to Finance

(a) TEI requests the Department of Finance consider recommending that section 232.1 be amended to also apply to the resale of services and sublicensing of IPP.

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6. Information sharing in respect of Excise Tax on Insurance under Part I of the *Excise Tax Act* (Canada)

Issue

Information provided by third party insurer/brokers on Form B-241 is sometimes erroneous, and there are several examples from TEI members where the B-241 names a taxpayer who had not even acquired insurance from that particular broker/insurer. Despite being named on Form B-241, taxpayers are unable to obtain much information from the CRA with respect to the information provided by third parties on the basis that there are confidentiality requirements under the ETA. Because of the inability of CRA to disclose information to the taxpayer, it is challenging for taxpayers to resolve matters when erroneous information is provided to the CRA by the insurer/broker on Form B-241. Often, taxpayers that have not acquired any insurance to which the federal excise tax applies are left spending a significant amount of time between the CRA, insurer and broker attempting to remedy such errors.

Background

During both the 2021 (see CRA Q8) and 2024 (see CRA Q6) Liaison meetings[3], TEI has raised concerns with the CRA regarding the challenges that many TEI members face in response CRA's communications regarding insurance policies that are believed to have been acquired from non-resident insurers. Such initial queries often lead to taxpayers seeking further information from the Excise Division of the CRA to determine whether there are federal excise tax obligations in respect of insurance.

Policy Rationale for Change

In 2024, the CRA committed to providing additional direction to CRA agents on what information can be shared with taxpayers who are identified on Form B-241, however the CRA also cautioned that there were limits to what can be shared based on its confidentiality requirements under the ETA. If the CRA was allowed to fully share information with taxpayers from Form B-241 with respect to such taxpayer named in such form by insurers/brokers, it would allow taxpayers, insurers/broker and the CRA to correct any errors made by insurers/brokers in Form B-241 in a more expedient manner.

Request to Finance

(a) TEI requests the Department of Finance recommend amendments to the information and confidentiality provisions which apply to Part I of the ETA to allow the CRA to share, at minimum, the information in Form B-241 with respect to a taxpayer named in such form by insurers/brokers.

[3] See Appendix A for a list of all prior year questions referenced in this document

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7. Improvements to the CRA's GST/HST Registry; Follow up on 2024 Q10.

Issue

TEI members continue to be frustrated that no improvements have been made to address the inadequate functionality of the GST/HST Registry.

Background

At several prior liaison meetings, TEI had raised challenges with the user friendliness of the Canada Revenue Agency's GST/HST Registry Search tool with both the Canada Revenue Agency and the Department of Finance. Previously, Department of Finance officials had responded that the issue was within CRA's power to address, however the CRA took the position that such changes could not be accomplished without legislative amendments to the privacy or confidentiality provisions of the ETA.

At the 2024 liaison meetings, TEI requested that the Department of Finance and the CRA work together to overcome the disconnect and determine a path forward for addressing the deficiencies with the GST/HST Registry. Additionally, at the 2024 liaison meetings, TEI suggested that the Department of Finance and the CRA seek an opinion from the Department of Justice to resolve the issue of whether privacy and confidentiality provisions required amendment before any improvements were made to the GST/HST registry.[4]

The GST/HST Registry continues to not serve taxpayers with the functionality required to assist taxpayers in meeting various requirements under the ETA and associated administrative policies.

Requests to Finance

(a) TEI requests the Department of Finance provide an update to the progress that the Department and the Canada Revenue Agency have made in furthering this issue.

(b) TEI requests the Department of Finance provide an update on whether the Department of Finance has sought an opinion from the Department of Justice to address the privacy and confidentiality concerns.

[4] See Appendix A for the 2024 submission on this issue

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8. Update on Question 8 from 2024 Liaison Meeting: Ability for Digital Platform Operators to collect and remit GST/HST on supplies made by persons registered under Subdivision D of Division V of Part IX of the Excise Tax Act (Canada)

Issue

During the 2024 liaison meetings, TEI made a number of requests to make the digital platform operational rules more efficient and easier to administer.[5] Specifically, TEI requested the Department of Finance:

> *[…] recommend amendments to the relevant sections of Subdivision E of the ETA to give DPOs the option to collect and remit GST/HST on sales made through the digital platform, regardless of the registration status of the seller under Subdivision D. This reduces risks taken on by DPOs and also reduces the risk that a seller who may have provided a false statement to a DPO collects amounts on account of GST/HST and does not remit it to the CRA.*

The response from Department of Finance officials to this request (and related requests) was that the design of the legislation and operation of Subdivision E was based on the explicit direction and decision of the prior government's leadership and as a result, the Department had no appetite to consider changes at the time.

Opportunities to improve both the efficiency and effectiveness of the Platform Operator rules, as previously raised by TEI, remain.

Request to Finance

(a) Given there is a new government, TEI requests that the Department of Finance re-consider TEI's recommendations to improve the Distribution Platform Operating rules as submitted at the 2024 liaison meetings.

[5] See Appendix A for the 2024 submissions on this issue

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9. Update on Question 9 from 2024 Liaison Meeting: Sales of intangible personal property by non-resident persons registered under Subdivision D of the ETA, to non-resident, non-registrant recipients

Issue

During the 2024 liaison meeting, Department of Finance officials confirmed they were aware of the issues created by the current wording of section 10.1 of Part VI of Schedule VI of the *Excise Tax Act (Canada)* and officials confirmed they were reviewing and open to recommending changes to section 10.1.[6]

Request to Finance

(a) This issue continues to pose significant challenges for taxpayers. TEI requests the Department of Finance provide an update on this issue and a potential timeline to address this issue. As previously stated, TEI would appreciate the opportunity to provide comments on any proposals or draft legislation to ensure any changes correct the current issues faced by members, and do not result in any unintended consequences.

[6] See Appendix A for the 2024 submission on this issue

10. Joint Venture Election Update

Issue

In the 2023 Fall Economic Statement, the Government proposed new rules for joint venture elections under the *Excise Tax Act* (Canada) along with draft legislative proposals on these measures for views and comments by stakeholders. TEI and other industry stakeholders continue to await updates from the Department of Finance on the status of the proposed rules following meetings and consultations with the Department of Finance in 2023 and 2024.

Requests to Finance

(a) TEI requests the Department of Finance provide an update on the status of the proposed new rules for joint ventures following consultations with TEI and other industry stakeholders. TEI continues to be engaged in assisting the Department of Finance in moving this measure forward and would appreciate any guidance from the Department of Finance on how TEI can assist in publishing amended draft legislation.

(b) Alternatively, if the new rules announced in the 2023 Fall Economic Statement are not proceeding, TEI requests the Department of Finance comment on whether it is open to consider recommending additional prescribed activities under subsection 3 (1) of the *Joint Venture (GST/HST) Regulations* from other sectors.

11. Update of 2023 Q7 and 2024 Q6 on Partnership Dissolutions under *Income Tax Act* s. 98(3)

Issue

There continues to be a disconnect between subsection 98(3) of the *Income Tax Act* (Canada) ("ITA") and the partnership provisions of the *Excise Tax Act* (Canada) ("ETA"). This disconnect means taxpayers that have taxable assets are unable to utilize subsection 98(3) of ITA for partnership dissolutions, without incurring unrecoverable GST/HST. This seemingly legislative oversight within the ETA creates unnecessary complexity and administrative hassle to taxpayers as they must find alternative, less efficient strategies to achieve the same outcome.

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Background

At the 2023 liaison meetings, TEI raised the disconnect between dissolutions of partnerships under subsection 98(3) of the ITA and the partnership provisions of ITA with both the Canada Revenue Agency and Department of Finance.[7] Further, TEI noted the issue surrounding the ineligibility for input tax credits was addressed in a GST/HST Interpretation 11585-13D (August 11, 2000).

While the CRA mentioned it would review the GST/HST Interpretation letter, it generally confirmed its agreement that input tax credits would not be available, though did mention it could depend on the specific facts inviting a ruling to be submitted. In both 2023 and 2024, the Department of Finance mentioned that it was waiting for the CRA to respond to a ruling before looking into the matter further.

Policy Rationale for Change

Respectfully, this is a known legislative gap and prevents taxpayers with taxable assets from using subsection 98(3) of the ITA for partnership dissolutions [see for example, D'Arcy Schieman, "Accessing Trapped ITCs and Avoiding GST Traps", *2011 Commodity Tax Symposium* (Canadian Institute of Chartered Accountants)]. A new ruling should not be required to correct this issue. GST/HST Interpretation 11585-13D (August 11, 2000) remains valid given the CRA has not revoked such ruling (despite TEI raising this issue in 2023 and CPA Alberta also previously raising the issues around this ruling at its 2015 CPAA-CRA Roundtable [see Q8 https://www.cpaalberta.ca/-/media/Files/Members/Advisories/2015-CRA-Tax-Roundtable.pdf?la=en&hash=845AADCE9F4696E089B78038BF3CD1F01E353DA3]

Section 98(3) of the ITA and the partnership provisions of the ETA should work harmoniously, and taxpayers should not have to find alternative methods to execute common forms of reorganizations involving partnership dissolutions.

Request to Finance

(a) After reviewing GST/HST Interpretation 11585-13D (August 11, 2000), TEI requests that Department of Finance recommends an amendment to section 272.1 or section 156 to allow transfers of partnership property to partners that are part of a closely related group without the tax being unrecoverable – either by allowing an input tax credit or deeming the transfers to not be a supply under section 156.

[7] See Appendix A

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12. Open Discussion of Industry Experience on Implementation of Tax Changes

Issue

At the 2024 liaison meetings, Department of Finance officials mentioned that it would be helpful for officials to learn about TEI members' experiences in implementing tax changes including efforts, costs and timelines to implement such changes. Such information would be helpful considerations as Department of Finance officials present tax policy options to the government.

TEI is happy to provide an overview of members' experiences with several recent tax rate and tax treatment changes.

Request to Finance

(a) TEI proposes to have an open discussion at the liaison meeting to discuss various topics including:

(1) Lead Times and Considerations

(2) Common Industry System Limitations

(3) GST Holiday Learnings

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Appendix A – Previously submitted questions to Finance referenced in this submission

Question 6: Information sharing in respect of Excise Tax on Insurance under Part I of the *Excise Tax Act* (Canada)

Previous question submitted to the CRA during TEI's 2021 liaison meeting

8. CRA administrative practice for Excise Tax on Insurance

Part I of the ETA imposes excise tax on Canadian residents that purchase insurance from an insurer that is not licensed to do business in Canada or through a broker or agent outside of Canada. Insurers and brokers are required to file returns with the CRA under section 5 of the ETA reporting insurance purchased by Canadian residents that may be subject to excise tax.

Based on the experience of one of our members, it appears the CRA's practice is to automatically register any Canadian business listed in those insurer and broker returns for an excise tax account and then request the taxpayer file excise tax returns. In the situation at issue, our member had not purchased any insurance to which excise tax applied, but the insurer made an error on their return by incorrectly attaching the member's name to insurance purchased by a similarly named company.

Despite this, the taxpayer was required to spend a significant amount of time dealing with an insurer and broker from which it did not purchase insurance to attempt to rectify the situation while CRA continued to send notices to the taxpayer to file an excise tax return. Fortunately, the CRA did not attempt to net off amounts for excise tax against the taxpayers' other tax accounts in the interim.

Question to CRA

Could the CRA re-consider its practice of automatically registering businesses based on insurer/broker returns before providing such businesses with the opportunity to dispute information in the insurer/broker returns?

CRA Comments

Due to the nature of Part I of the *Excise Tax Act*, the CRA is not aware of persons who have purchased a contract of insurance and become liable for the tax until such time as the B241 Excise Tax Return - Broker (hereafter, "the form") has been filed with the CRA. The CRA's practice is to automatically register taxpayers based on the information provided on the form. The CRA does not assess the validity of this information. The form has a certification box where the insurer/broker must sign to certify that the information provided is correct and complete. This certification puts the onus on the insurer/broker to review the information on the form before submitting it to the CRA. Consequently, once the insurer/broker has signed the certification on the form and submits it, the CRA can rely on the information provided by the insurer/broker as they have certified that the information provided is accurate. This is similar to information reporting requirements performed by third parties for other CRA programs. Based on the information received, the CRA will send the B243 Excise Tax Return - Insured (hereafter, "B243 return") to the taxpayer with instructions on how to remit amounts owing or to claim an exemption if warranted.

The CRA acknowledges that insurers/brokers may sometimes incorrectly report on the form. When this occurs, the person whose name has been added to the form should contact the reporting insurer/broker despite not having entered a contract of insurance with that insurer/broker. In the event that an error has been made and the CRA receives confirmation from the insurer/broker, the CRA will then remove the name of the person whose information was wrongly added to the form, thus removing the requirement for the person to file a B243 return.

The CRA aims to provide a people-first service and we are assessing how we could improve the form and the process for correcting reporting errors while meeting our legislative requirements.

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Previous question submitted to the CRA during TEI's 2024 Liaison meeting:

6. Canada Revenue Agency inquiries regarding Excise Tax for imported insurance

TEI members are receiving inquiries from the Excise Tax division of the Canada Revenue Agency regarding insurance policies that are believed to have been acquired from non-resident insurers. The non-resident insurers have declared specific policy numbers in a filing with CRA that is suggestive that the federal excise tax ("FET") has not been paid in respect of such policies. The inquiries from CRA are extremely vague, do not reference policy numbers, nor the value of premiums. CRA agents have noted it would be a breach of confidentiality if additional information were to be disclosed. The lack of information is making it very difficult and time consuming for TEI members to seek confirmation from the local placing brokerages as to whether FET is applicable or had already been paid by another insurer or brokerage in the supply chain.

Question for CRA

Is the CRA able to provide clear communication with specificity going forward so that these matters can be addressed more expediently?

CRA response

Due to the nature of Part I of the *Excise Tax Act* (the Act), the CRA does not become aware of persons who have purchased a contract of insurance and who are liable for the tax until such time as the insurer/ broker return has been filed with the CRA.

Under subsections 5(2) and 5(3) of the Act, the insurer/broker must file a return with the CRA and provide this information:

- the name and address of each person resident in Canada with whom or on whose behalf the contract was entered into or renewed;
- the net premiums paid or payable during the immediately preceding calendar year; and
- the name and address of the broker or agent outside Canada through whom the contract was entered into or renewed.

The CRA relies on the information submitted by the insurer/broker in determining the taxes owing and the persons liable for the tax. The onus is on the insurer/broker to ensure the accuracy of the information that it reports on the insurer/ broker return before submitting it to the CRA. The CRA is aware that an insurer/broker may make errors in its reporting and understands that there have been barriers for identified taxpayers to seek assistance from the CRA to verify the veracity of the information reported by an insurer/broker due to the confidential nature of that information.

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A similar question was raised at the 2021 TEI, with regards to erroneous information provided by an insurer/broker on the Form B241, Excise Tax Return - Broker, and the CRA has since updated its procedure to direct CRA agents to provide certain information to the identified taxpayer such as the name, the address, the phone number of the insurer/broker.

During the September 2024 TEI, concerns were raised regarding the difficulty to get information such as the policy number or the amount owed. Since then, the CRA has explored possible resolutions while meeting our obligations to protect taxpayer information.

While CRA agents can already provide information to the identified taxpayer such as the name, the address, the phone number of the insurer/broker, the CRA has updated its procedure to direct CRA agents to provide additional information such as the policy number and amount owing to the identified taxpayer provided that they are an authorized representative with the CRA. In the case where the insurer/broker is an individual, the CRA will require the individual's consent prior to releasing information relating to the identified taxpayer.

This information will allow the identified taxpayer to contact the insurer/broker to clarify the information it reported on the broker return. While the CRA has no authority over any communication between the insurer/broker and the identified taxpayer, in the event that an error has been made and the CRA receives confirmation from the insurer/broker, the CRA will amend the return promptly.

Please note that the development of tax policy is under the purview of the Department of Finance.

Question 7: Improvements to the CRA's GST/HST Registry; Follow up on 2024 Q10.

Previous question submitted to Department of Finance during TEI's 2024 Liaison meeting:

> **10. Improvements to the CRA's GST/HST Registry search**
> **[Companion question also raised to CRA]**
>
> TEI, along with other representative bodies, has for many years been requesting improvements be made to the Canada Revenue Agency's GST/HST Registry search (the "Registry") to make the tool more usable and fit for purpose. These requests have included (1) changes to allow for the use of Application Programming Interface ("API") so that GST/HST numbers validated simply by searching by the GST/HST number provided; (2) that the Registry does not return a valid result if the business number entered is tied to a GST/HST registration under Subdivision E; and (3) the API allow for bulk searches.
>
> At the time of TEI's last request on this matter during the 2022 liaison meetings, the Department of Finance communicated that this issue was the domain of the CRA. However, when presented with the same request, the CRA responded that it was unable to make such changes without legislative amendments to the privacy or confidentiality provisions of the ETA
>
> *Question for Finance*
>
> (a) TEI requests the CRA and Department of Finance work together to overcome this disconnect so that Canadians have a usable GST/HST Registry search tool similar to what is commonplace and standard throughout many other VAT-regime jurisdictions including Quebec with the objective of meeting the government's goal of tax compliance (i.e. avoiding fraud on collection of GST/HST, detecting carousel schemes, etc.).
>
> (b) Notwithstanding the foregoing, TEI requests both the Department of Finance and CRA, in of itself or collectively, seek an opinion from the Department of Justice whether the disclosure of a particular GST/HST registrant's name and registration status on a specific date, would result in the contravention of the confidentiality provisions of the ETA.

Question 8: Update on Question 8 from 2024 Liaison Meeting: Ability for Digital Platform Operators to collect and remit GST/HST on supplies made by persons registered under Subdivision D of Division V of Part IX of the Excise Tax Act (Canada)

Previous question submitted to Department of Finance during TEI's 2024 Liaison meeting:

8. Ability for Digital Platform Operators to collect and remit GST/HST on supplies made by persons registered under Subdivision D of Division V of Part IX of the Excise Tax Act (Canada)
[Companion question also raised to CRA]

The requirement that sellers registered for GST/HST under Subdivision D of Division V of Part IX of the *Excise Tax Act* (Canada) ("ETA") ("Subdivision D") who make sales of qualifying tangible personal property supplies or specified supplies (collectively, "supplies") through a digital platform remain responsible for tax collection and remittance on those supplies continues to pose challenges for marketplace sellers, digital platform operators ("DPOs"), and Canada Revenue Agency ("CRA") auditors alike.

There are insufficient resources provided to DPOs to assist in correctly determining the registration status of sellers. This has meant DPOs have had to invest considerable amounts of their own resources in an attempt to make a determination of the registration status of sellers in an effort to comply with the current requirements of Subdivision E of Division II of Part IX of the ETA ("Subdivision E"), and then to build a tax system that can apply tax differently to a transaction depending on whether the DPO is deemed to be the supplier, or whether the seller remains the suppler. Some DPOs determined that implementing such a system would have required too many resources and would have resulted in too much risk to the DPO given the lack of tools available to them to be able to determine the accuracy of a GST/HST number provided by a seller. An alternative was to require all sellers registered under Subdivision D to elect that DPO collect and remit tax on behalf of the seller pursuant to subsection 177(1.1) of the ETA.

Based on the current documentary requirements imposed by the CRA, leveraging subsection 177 (1.1) of the ETA is neither a practical nor reasonable solution for many DPOs who may have thousands of sellers registered under Subdivision D selling on their digital platform.

Questions for Finance

(a) TEI requests the Department of Finance recommend amendments to the relevant sections of Subdivision E of the ETA to give DPOs the option to collect and remit GST/HST on sales made through the digital platform, regardless of the registration status of the seller under Subdivision D. This reduces risks taken on by DPOs and also reduces the risk that a seller who may have provided a false statement to a DPO collects amounts on account of GST/HST and does not remit it to the CRA.

TEI understands the Department of Finance has a concern around adopting an approach that would allow DPOs to collect and remit taxes on all taxable supplies regardless of registration status of seller as such an approach could result in sellers registered under Subdivision D to be perpetually in a refund position. Respectfully, TEI members do not believe this is a compelling argument to prevent Canada's digital platform operator rules from conforming to global best-practices – which provide for DPOs to be able to collect and remit the applicable taxes on taxable transactions through their digital platform. Many sellers have other sales channels (such as their own website or bricks and mortar locations) and therefore simply because a DPO may remit taxes on their behalf, this does not mean that all taxes collected on the sellers' sales will be remitted by a DPO. Second, some DPOs already require sellers to enter into elections pursuant to 177(1.1) and therefore DPOs are already remitting taxes on behalf of the seller in these cases. Finally, the ability for DPOs to collect and remit taxes on sellers registered under Subdivision D should be optional and therefore not all DPOs may choose to do this.

(b) TEI also requests that DPOs are able to avail themselves of the protections under paragraphs 211.23(2)(c) and 211.13(5)(c), as applicable, for all sales made via their digital platform, including those where the seller is registered under Subdivision D. Information sharing between sellers and DPOs is necessary for both sellers and DPOs to understand their tax obligations for sales made via digital platforms. Allowing DPOs to be able to rely on 211.23(2)(c) and/or 211.13(5)(c) is important since DPOs are dependent on sellers, including sellers who are registered under Subsection D, to provide accurate information about their supplies in order to determine the rate at which GST/HST applies.

Question 10: Update on Question 9 from 2024 Liaison Meeting: Sales of intangible personal property by non-resident persons registered under Subdivision D of the ETA, to non-resident, non-registrant recipients

Previous question submitted to Department of Finance during TEI's 2024 Liaison meeting:

> **9. Sales of intangible personal property by non-resident persons registered under Subdivision D of the ETA, to non-resident, non-registrant recipients [Companion question also raised to CRA]**
>
> Supplies of intangible personal property ("IPP") to non-resident, non-registrant recipients are zero-rated provided the conditions outlined in section 10.1 of Part VI of Schedule VI of the *Excise Tax Act* (Canada) ("10.1") are met.
>
> Pursuant to GST/HST Memorandum 4.5.3, suppliers are required to collect, verify, and maintain evidence to support the zero-rating in 10.1 such as:
>
> 1. Online self-declaration by non-resident recipients that they are not registered for GST/HST under Division V.
> 2. Online self-declaration by recipients that they are non-residents of Canada along with comparing the declaration to a complete home address and the billing address or address of financial institution attached to credit card; or geo-location software
> 3. Verification that the purchaser is not in Canada at the time of purchase by the use of geo-location software.
>
> As there is no distinction between non-resident suppliers and resident suppliers, the zero-rating evidence requirements equally apply to non-resident suppliers who are registered under Subdivision D of Division V and supply IPP to customers globally, including those in Canada.
>
> Consider the following example:
>
> 1. A non-resident supplier who resides outside Canada supplies digital content to customers around the world.
> 2. The digital content is IPP (that is not intellectual property) and includes world-wide rights (including Canada)
> 3. Customers in Canada are able purchase and access the digital content.
> 4. The digital content is for non-commercial use.
> 5. Given the nature of these supplies of digital content and the manner in which the global economy operates today, the supplier may have many millions of customers throughout the world purchasing this content each year, or even each month.

6. Under the simplified GST regime (Subdivision E of Division II), the supplier needs only to consider application of GST/HST to customers who are determined to be located in Canada, pursuant to the applicable rules under Subdivision E.
7. Under the standard regime (Subdivision D of Division V), however, the non-resident supplier would be required to ask every customer worldwide to declare that they are not registered for GST/HST under Division D; that they are non-residents of Canada; and conduct the address and location verification checks or risk a large assessment by the CRA, otherwise the supplier would be required to charge GST/HST.

The impracticality of the evidentiary requirements needed to support the zero-rating conditions of 10.1 does not align with the reality of global e-commerce today and the manner in which some digital content may also closely resemble a service. Having unnecessarily complex zero-rating provisions specific to IPP disincentivizes and acts as a barrier to non-resident suppliers who may want to expand operations to Canada. Likewise, it also acts as a barrier to Canadian companies who wish to expand their supplies globally. Lastly, arguments could be made that the application of GST/HST to supplies of IPP by non-residents to non-residents should simply be outside the scope of the ETA.

Questions for Finance

(a) TEI requests that the Department of Finance recommend amendments to deem supplies of IPP by non-residents (even when the supplier is registered under Subdivision D) to other non-residents to be supplies made outside Canada. Doing so removes the compliance burden of maintaining evidence to the recipient's registration status.

(b) Second, since it can be a grey area to distinguish between what may be a supply of a service versus a supply of IPP, TEI also requests that supplies of IPP be zero-rated in the same manner as services under section 7 of Part V of Schedule VI. This would alleviate the large administrative burden on suppliers and bring Canada's rules around this more in line with global VAT standards.

These requests should not result in any lost GST/HST revenue as any recipient who was purchasing the IPP for use in Canada would fall under the "imported taxable supplies" rules under Division IV pursuant to paragraph (c.1) of the definition and accordingly be subject to self-assessment under section 218 if the supply is not used exclusively in commercial activities.

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Question 11: Update of 2023 Q7 and 2024 Q6 on Partnership Dissolutions under *Income Tax Act* s. 98(3)

Previous question submitted to Department of Finance during TEI's 2023 Liaison meeting:

7. Partnership Dissolutions under Income Tax Act s. 98(3)

It is common to dissolve a partnership on a tax-deferred basis under subsection 98(3) of the Income Tax Act (Canada) ("ITA") by transferring an undivided interest in the partnership property to the partners in proportion to their partnership interest. The tax deferral under ITA s. 98(3) applies even when the partners are not closely related entities. When a partnership dissolution under ITA s. 98(3) is contemplated as part of a reorganization of a closely related corporate group, a disconnect with partnership provisions of the Excise Tax Act (Canada) ("ETA") is highlighted. Subsection 272.1(4) of the ETA deems a transfer of partnership property from a partnership to a partner to occur at fair market value. Given each partner is 8 receiving an undivided interest in the property, an election under ETA s. 167 is not available to mitigate the tax on the partnership dissolution.

Additionally, it would appear that any GST/HST that would be applicable under ETA s. 272.1(4) cannot be mitigated either by a 156 election nor input tax credits, creating unrecoverable tax on such a transfer. GST/HST Interpretation 11585-13D (August 11, 2000) confirms that if an amalgamation of the partners is undertaken after the partnership dissolution, the partners would not be eligible for ITCs on the ETA s. 272.1(4) transfer of the partnership property as the partners would not be receiving the property for use in their commercial activity (as ETA s. 271(c) deems property transferred on amalgamation to not be a supply).

Further, the GST/HST on such a transfer of partnership property would be not allowed to be mitigated under a 156 election as paragraph 156(2.1)(b) of the ETA excludes transfers where the recipient (i.e. partner) is not receiving the property for use exclusively in its commercial activities (since the subsequent amalgamation is not a supply of the property as above).

As a result, if a partnership dissolution occurs under ITA s. 98(3), any taxable property transferred to the partners appears to be subject to GST/HST on the fair market value of the property and such GST/HST would be unrecoverable, even if the partners were engaged exclusively in commercial activity.

Question to Finance:

Could the Department of Finance consider recommending an amendment to section 272.1 or section 156 to allow transfers of partnership property to partners that are part of a closely related group without the tax being unrecoverable – either by allowing an input tax credit or deeming the transfers to not be a supply under section 156?

Previous question submitted to Department of Finance during TEI's 2024 Liaison meeting:

6. Update of 2023 Question on Partnership Dissolutions under *Income Tax Act* s. 98(3)
At the 2023 liaison meetings, TEI raised some concerns around the interplay between the *Income Tax Act* (Canada) ("ITA") and the *Excise Tax Act* (Canada) for partnership dissolutions under subsection 98(3) of the ITA that could create unrecoverable GST/HST, particularly for closely related groups.

The Department of Finance had indicated that they were interested in the Canada Revenue Agency's position on this scenario before commenting on whether they would consider recommending an amendment to either section 272.1 or section 156 to allow transfers of partnership property to partners of a closely related group without the tax being unrecoverable.

Question for Finance

Could the Department of Finance provide an update on whether any subsequent discussions with the Canada Revenue Agency have informed a response to the 2023 question?