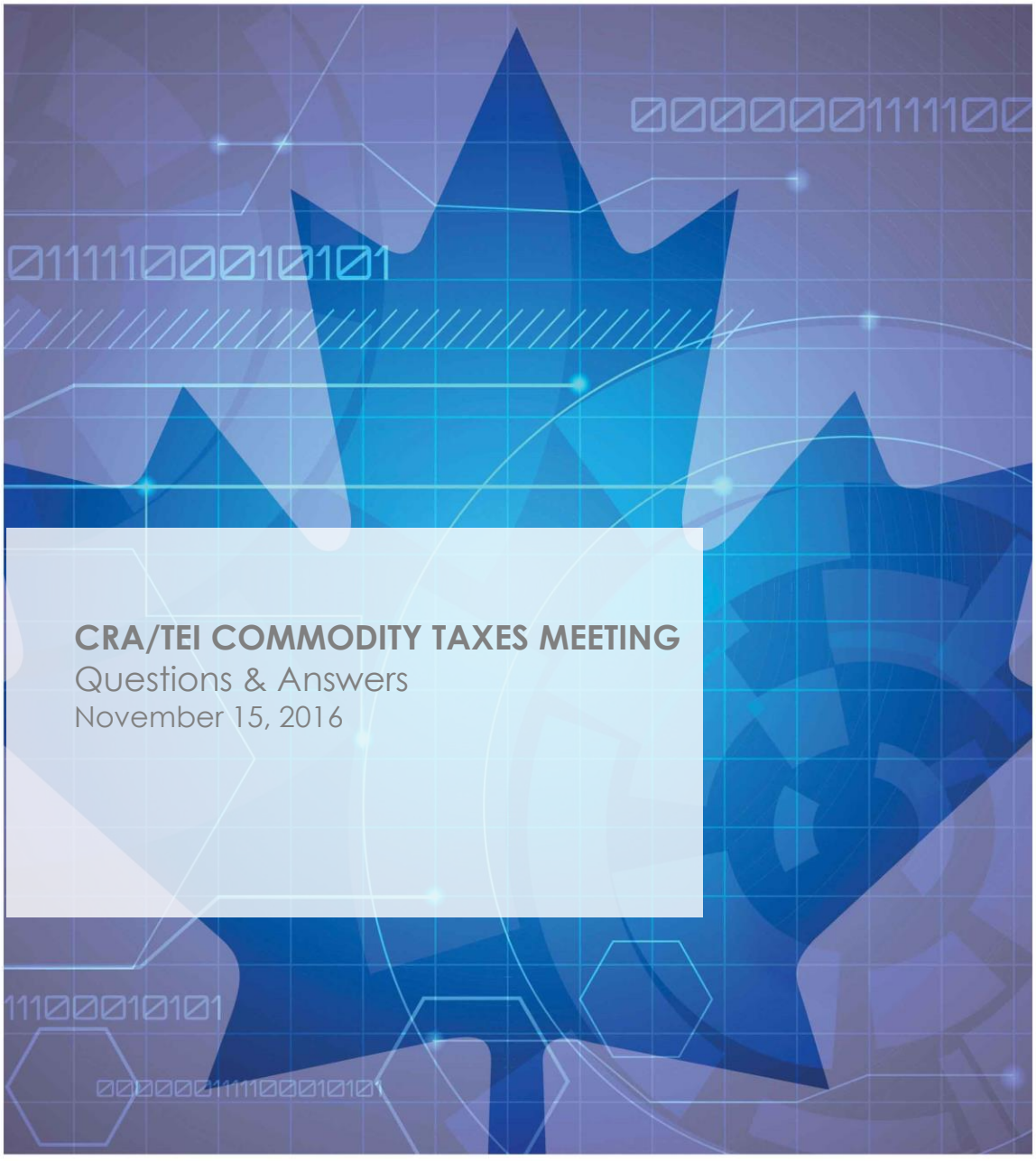
Canada Revenue Agency | Agence du revenu du Canada



CRA/TEI COMMODITY TAXES MEETING

Questions & Answers

November 15, 2016

Canada

The Canada Revenue Agency (CRA) welcomed the opportunity to discuss the following questions on commodity tax issues with representatives of the Tax Executives Institute.

The following answers to the questions posed by the TEI represent our general views with respect to the subject matter and do not replace the law found in the Excise Tax Act (the ETA) and its regulations. All references to legislative provisions in our comments are references to the ETA unless otherwise noted. These general comments are provided for your reference and do not bind the CRA with respect to a particular situation. Since our comments may not completely address a TEI member's particular situation, you may wish to refer to the ETA or appropriate regulation, or contact any CRA GST/HST Rulings Centre for additional information.

A ruling should be requested for certainty in respect of any particular GST/HST matter. For additional information, reference may be made to GST/HST Memorandum 1-4, Excise and GST/HST Rulings and Interpretations Service. To make a technical enquiry on the GST/HST by telephone, call 1-800-959-8287.

TEI members located in the province of Quebec who wish to make a technical enquiry or request a ruling related to the GST/HST, can contact Revenu Québec by calling 1-800-567-4692.

Exception: The CRA administers the GST/HST and the QST for listed financial institutions that are selected listed financial institutions (SLFIs) for GST/HST and/or QST purposes whether or not they are located in Quebec. If you wish to make a request for a ruling related to the application of GST/HST or QST to these listed financial institutions, refer to GST/HST Memorandum 1-4, Excise and GST/HST Rulings and Interpretations Service for more information. To make a technical enquiry related to these listed financial institutions by telephone, call 1-855-666-5166.

1. Cloud Storage of Books and Records

Subsection 286(1) of the Excise Tax Act (ETA) requires registrants to keep books and records in Canada or at such other place as the Minister of Finance (Minister) may allow. Canada Revenue Agency (CRA) takes the position in Paragraph 12 of GST/HST Memoranda Series 15.2 – Computerized Records that records kept outside Canada and accessed electronically from within Canada are not considered to be "in Canada" for purposes of subsection 286(1).

Subsection 230(1) of the Income Tax Act (ITA) provides a similar requirement to keep books and records in Canada or seek the Minister's permission. TEI's Canadian Income Tax Committee raised this issue with CRA in November 2014, at which time CRA reiterated its position that taxpayers must seek the Minister's permission to store books and records outside Canada.

Significant technological advancements have been made since 2005, when CRA released GST/HST Memoranda Series 15.2. Cloud computing has become increasingly common and companies, both large and small, are outsourcing their computing infrastructure to store their expanding volumes of data. Section 286 of the ETA and the CRA's administrative position have not evolved, thus requiring registrants to seek permission from the Minister to keep their books and records outside Canada if their cloud computing provider stores their records on servers located outside Canada.

CRA's position is difficult to comply with in light of these technological developments. Cloud computing agreements do not normally address

the location of servers. Thus, even registrants that outsource their computing infrastructure to Canadian companies are at risk that the provider may actually store the registrant's data on a server outside Canada without the registrant's knowledge. CRA's position thus requires most registrants that outsource their computing infrastructure to seek the Minister's permission.

In *eBay Canada Ltd. v. Canada*, 2008 FCA 348, the Federal Court of Appeal addressed whether electronic information stored on servers outside Canada was located in Canada for purposes of determining whether CRA had the ability to obtain foreign-based information under the ITA. The Court held that such information was just as easily accessible as paper documents stored in the taxpayer's Canadian offices. The Court's decision highlights that the initial rationale for keeping books and records in Canada is no longer relevant in light of taxpayers' and CRA's ability to easily access to documents stored on servers outside Canada.

Question to CRA:

Would CRA consider revising its administrative position so that records easily accessible by a computer within Canada are considered kept "in Canada" for purposes of subsection 286(1)?

CRA Comments

The legislative requirements for maintaining books and records are clearly laid out in section 286 of the ETA. This provision requires certain persons (including registrants) to keep books and records in Canada or to obtain permission from the Minister to keep the books and records elsewhere.

While the CRA recognizes the impact of the advancement in technology as it relates to maintaining books and records, the requirements for maintaining books and records have not changed. As such, the CRA administrative position reflects the wording in the legislation.

- Records must be maintained at the person's place of business or residence in Canada or another place designated by the Minister, and must, upon request, be made available to the CRA auditors at all reasonable times.
- Authorization to maintain records outside Canada may be obtained by writing to the nearest CRA tax services office and may be granted, subject to such terms and conditions as the Minister may specify in writing.
- Records kept outside Canada and accessed electronically from Canada are not considered to be records kept in Canada.
- Where records are maintained electronically in a location outside Canada, the CRA may accept a copy of these records, provided the copy of the records is made available in Canada to the CRA officers in an electronically readable and useable format and contains adequate details to enable the determination of the person's tax liabilities and obligations, or the amount of any rebate or refund to which the person is entitled.

The CRA continues to monitor technological advancements and judicial decisions that may impact this issue.

2. Electronic Supporting Documentation

The use of physical documentation is decreasing and the use of recipient-generated documentation (e.g., Evaluated Receipt Settlement) is increasing with the expanded use of online software and storage (e.g., cloud computing). Information is frequently exchanged electronically and, in certain cases, suppliers no longer issue invoices but instead simply accept recipient purchase orders and goods receipts.

The *Input Tax Credit (GST/HST) Regulations* (ITC Regulations) currently list the following as acceptable documentation to support an input tax credit (ITC) claim:

- an invoice;
- a receipt;
- a credit-card receipt;
- a debit note;
- a book or ledger of account;
- a written contract or agreement;
- any record contained in a computerized or electronic retrieval or data storage system; and
- any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable.

It is our members' understanding that the information necessary to support an ITC is not required to be included in a single document and that electronic documentation and recipient-generated documentation will

suffice. However, several of our members have encountered auditors who take a contrary position.

Questions:

A. Please confirm that the necessary information to support an ITC is not required to be included in a single document (e.g., a document identified as an invoice or similar).

B. Please confirm that electronic documentation and recipient-generated documentation qualifies as acceptable forms of ITC support.

CRA Comments

We can confirm that the necessary information to support an ITC is not required to be included in a single document. This is clearly indicated in paragraph 33 of GST/HST Memoranda Series 8.4, Documentary Requirements for Claiming Input Tax Credits to claim an ITC. Please note that the inability on the part of registrants to meet the ITC documentary requirement continues to be an issue that we see in Audit. Books and records must be in an appropriate form and contain sufficient information to determine a person's liabilities and obligations or the amount of the rebate or refund to which the person is entitled.

We can confirm that electronic documentation may qualify as acceptable forms of ITC support provided it meets the requirements set out in paragraphs 48 to 52 of GST/HST Memoranda Series 8.4, Documentary Requirements for Claiming Input Tax Credits to claim an ITC. We will accept documentation prepared by the recipient of the supply

(i.e., reverse invoicing) if there is agreement between the supplier and the recipient and there is sufficient information to verify the accuracy of the documentation.

3. Foreign-Based E-Commerce Vendors (Finance Only)

4. Technical Information Bulletin B-090: GST/HST and Electronic Commerce

Technical Information Bulletin B-090: GST/HST and Electronic Commerce was issued in 2002 and explains CRA's interpretation of key provisions of the ETA relevant to electronic commerce. It also outlines how CRA's administrative policies apply to transactions made by electronic means.

Question:

When will CRA update the 2002 GST/HST Technical Information Bulletin B-090, in light of a growing digital economy and the difficult and complex issues that arise in the application of sales tax rules?

CRA Comments

Further to the release of Technical Information Bulletin B-90 *GST/HST and Electronic Commerce*, and to reflect significant developments and issues in the digital economy, the CRA has, and will continue, to update specific publications that relate to relevant GST/HST issues that were identified in B-90, such as GST/HST Technical Information Bulletin B-103 *Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province*, GST/HST Policy Statement P-051R2 *Carrying on business in Canada*, and GST/HST Policy Statement P-208R *Meaning of "permanent*

establishment". The CRA also updates publications, or develops new publications, to reflect legislative amendments that relate to the digital economy, such as GST/HST Info Sheet GI-034 *Exports of Intangible Personal Property*.

5. Operating and Trading Names of Registrants

CRA allows a business to register an operating or trade name on a request for a business number using Form RC1 – "Request for a Business Number." Some registrants may have completed the RC1 with only the registrant's legal name and subsequently wish to add an operating/trade name to its file. CRA provides some general information on its website (http://www.cra-arc.gc.ca/tx/bsnss/tpcs/lf-vnts/chngprtngnm-eng.html) regarding how businesses may change their operating name in CRA's records.

The Input Tax Credit Information (GST/HST) Regulations provide that the "name under which the [supplier]…does business" is an acceptable alternative to the name of the supplier when satisfying documentary requirements. Additional information on CRA's position on operating/trade names would be beneficial for registrants.

Questions:

A. A registrant may do business under a number of different operating/trade names for different aspects of its business, all under the same legal entity. Please confirm whether a businesses can register multiple operating/trade names with CRA. Further, is there a

limit to the number of trade names a registrant may register with CRA?

B. CRA's website does not specify what, if any, documentation is required to substantiate that a registrant is doing business under a particular operating/trade name. Further, CRA's website implies no business documentation is necessary to make changes to an operating/trade name. Please confirm that a registrant only needs request that an operating/trade name be changed or added to its file, and that no further business documentation is required.

C. The GST/HST Registry is used by registrants to confirm the validity of GST/HST registration numbers for suppliers when meeting the documentary requirements for claiming ITCs. Please confirm that all of the operating/trade names provided by a registrant are included in the GST/HST Registry so that registrants may confirm the validity of a GST/HST registration number by using the legal name or any of the operating/trade names of a supplier.

CRA Comments

A. Yes a registrant can have multiple operating/trade names, the limit is 9,999

B. CRA does not require the registrant to provide any documentation in order to change an existing operating/trade name, or add a new operating/trade name.

C. When a user of the GST/HST registry provides the business name, it's validated against the legal name for that business and any operating/trade names that CRA has on record.

6. Place of Supply Rules – Services for Tangible Personal Property

Paragraph 142(1)(g) of the ETA provides that supplies of services are deemed to be in Canada if the services are performed in whole or in part in Canada.

Section 13(1) of the New Harmonized Value-Added Tax System Regulations (part 1, division 3) provides a general rule for the place of supply of services and specifies that if a supplier of services only obtains one address of the recipient, the services are made in the province within which the address is located.

Sections 15 and 16 of those regulations provide that services performed in relation to tangible personal property (TPP) are made in the province in which the TPP is located.

Section 29 of those regulations provides that if the supplier receives particular TPP for the purpose of supplying the services of repairing, maintaining, cleaning, adjusting, or altering such TPP, the services will be deemed to take place in the province to which the supplier delivers the TPP after the services are complete.

Hypothetical:

A registrant provides maintenance services to TPP for a flat fee. Substantially all of the services are performed outside Canada but a small portion of the services are performed in Ontario. Upon completion of the maintenance services, the TPP is delivered to Quebec.

Questions:

A. Does the place of supply occur in Ontario, where the services are performed, or in Quebec, where the TPP is delivered? Why?

B. Does the response in (A) above change if the consideration for the services is calculated on a per unit basis rather than for a flat fee?

Draft GST/HST Technical Information Bulletin B-103 explains place of supply rules to determine whether a supply is made in a harmonized province. Examples 105 and 111 relate to furniture and appliance repair services and illustrate the application of Section 15 of Division 3 of Part 1 of the Regulations concerning TPP.

C. Why would the services identified in Examples 105 and 111 not be subject to section 29 of Part 1 of the Regulations relating specifically to services of repairing, maintaining, cleaning, adjusting or altering TPP delivered into a province?

D. Please indicate if the fact that repairs are undertaken at the locations where the TPP is situated is determinative?

Example 106 of *Draft GST/HST Technical Information Bulletin B-103* concerns anodizing services and illustrates the application of Section 15 of Division 3 of Part 1 of the Regulations concerning TPP remaining in the same province while the service is performed.

E. Why would the services identified in Example 106 not be subject to section 29 of Part 1 of the Regulations, which relates to the services of repairing, maintaining, cleaning, adjusting or altering TPP delivered into a province?

F. When will the GST/HST Technical Information Bulletin B-103 – "Place of supply rules for determining whether a supply is made in a province" be finalized?

CRA Comments

A. There are insufficient facts in the question for the CRA to conclusively determine the place of supply of the service in the example provided. However, generally, where it is determined that the supplier is providing a single supply of maintenance services, has received the TPP for the purpose of supplying those services and the supplier delivers the serviced TPP to the recipient in Quebec, it would appear based on the information provided, that the supply of the services would be considered to be made in in Canada and Quebec pursuant to paragraph 142(1)(g) and section 29 of the New Harmonized Value-Added Tax System Regulations.

Additional information, such as the terms of the arrangement between the parties would be necessary for the CRA to make a conclusive place of supply determination.

B. Without the additional information noted in the response to Part A, we are unable to provide a definite conclusion regarding whether a single supply or multiple supplies are being made. Where the facts support a determination that a single supply of maintenance services is being made, the response would likely not change. Where multiple supplies of maintenance services are being made, it may be the case that many of the supplies of services are considered to be made outside Canada under paragraph 142(2)(g) and therefore not subject to GST/HST. Where multiple supplies are being made, it would appear that the maintenance services supplied in Canada would be considered to be made in Quebec pursuant to section 29 of the New Harmonized Value-Added Tax System Regulations.

C. Section 29 of the New Harmonized Value-Added Tax System Regulations only applies to determine the place of supply of a service where all the conditions in the provision are met. Of particular relevance in the context of the examples referred to, is that for section 29 to apply, the supplier must receive the particular TPP for the purpose of supplying certain specified services as enumerated in the section and must deliver the particular TPP to the recipient of the supply in a province after the service is completed. Where the conditions are not met and the services are services in relation to TPP, either section 15 or 16 of the New Harmonized Value-Added Tax System Regulations may be determinative. In Examples 105 and 111 the supplier performs the services at the owners' premises where the TPP is situated. The supplier would not be considered to have received the TPP for the purposes described in section 29 and to have delivered the particular TPP to the recipient in a province after the

service is completed. Therefore, as indicated in the examples the place of supply was determined pursuant to section 15.

D. As noted in the response to Part C, for section 29 to be determinative of the place of supply of a service, among the other requirements of the provision, the supplier would have to receive the TPP for the purposes described in section 29 and to have delivered the particular TPP to the recipient in a province after the service is completed. Therefore, the location where the TPP is situated can impact whether section 29 applies.

E. As noted in the question, for section 29 to apply to determine the place of supply of a service, provided all the other conditions in the provision are met, the supplier must receive particular TPP for the purpose of supplying a service of "repairing, maintaining, cleaning, adjusting or altering the property…" The CRA has provided administrative guidance regarding the meaning of these terms for GST/HST purposes in GST/HST Technical Information Bulletin B-103, Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province.

A service of repairing a good generally means a service of restoring a good to its original operating condition after damage or wear including the fixing or replacement of parts of the good.

A service of maintaining a good generally means a service that preserves or provides for the preservation of the good in good condition.

A service of cleaning a good generally means a service of making a good free of dirt, marks, stains or unwanted matter including by washing, brushing or wiping the good.

A service of adjusting a good generally means a corrective action to bring a good into a proper state or condition to conform to a standard.

A service of altering a good generally means a service that changes a good without changing its essential character. It excludes a service that destroys the essential character of a good or results in the creation of a new or commercially different good with different essential characteristics. It excludes a service of manufacturing or producing a good.

An anodizing service in respect of particular TPP would not be considered to be a service of repairing, maintaining, cleaning or adjusting the particular TPP. Furthermore, since anodizing changes the essential character of a good or results in the creation of a new or commercially different good with different essential characteristics, the service of anodizing TPP would not be considered altering the TPP and therefore section 29 does not apply.

F. We anticipate completing our review and updating GST/HST Technical Information Bulletin B-103 *Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province* for release in Spring 2017.

7. Place of Supply - Services Related to Tangible Personal Property for a Flat Fee

Hypothetical:

Client's sole business address is located in Sarnia, Ontario. Client pays third-party logistics supplier ("3PL") a flat monthly fee to pick, pack and ship, warehouse, and distribute tangible goods located in Edmonton, Alberta.

Questions:

A. Does the place of supply occur in Ontario, where the client is located, or in Alberta, where the TPP is located?

B. Does the response in (A) above change if the consideration for the services is calculated on each component of the service (a fee for pick, pack, and ship; a fee for warehousing; a fee for distribution/transportation) rather than as a flat monthly fee?

CRA Comments

A. There are insufficient facts in the question for the CRA to conclusively determine the characterization and the place of supply for the services described. Additional information such as the terms of the arrangement between the parties would be necessary for us to make these determinations.

Where, after careful consideration of the relevant facts, it is determined that the services provided are services in relation to TPP and not freight transportation services, the place of supply of the service would likely be

determined to be Alberta under either section 15 or 16 of the New Harmonized Value-Added Tax System Regulations.

B. As noted in the response to Part A, we are not able to provide a definite conclusion without additional information. Although it would not be determinative, the fact that separate consideration is identified for different services may impact the determination as to whether the agreement between the parties gives rise to a single supply or multiple supplies. Where multiple supplies are being made, a further review would need to be conducted to determine the characterization and place of supply of each supply.

8. Place of Supply - Supply Chain Solution Services (CRA Only)

Hypothetical

A third-party supply chain management provider ("3PSCM") is contracted to design and implement a supply chain solution for goods located in New Brunswick for a client whose sole business address is in Ontario. The same contract also establishes that the 3PSCM will provide pick, pack and ship, warehousing and distribution services as required by the supply chain solution and that all such activities will occur entirely in New Brunswick. The contract does not establish a separate fee for the design and implementation of the supply chain solution; rather, that cost has been contemplated when the parties negotiated the per-unit fee or the entire suite of the supply chain services.

Questions:

A. Does the place of supply occur in Ontario, where the client is located, or in New Brunswick, where the TPP is located? Why?

B. Does the response in (A) above change if a separate fee was established for the design and implementation of the supply chain solution?

CRA Comments

A. As in Question 7, there are insufficient facts in the question for the CRA to conclusively determine the characterization and the place of supply for the services described.

Additional information such as the terms of the arrangement between the parties would be necessary for us to make these determinations. Furthermore, a further analysis of the agreement is necessary in order to determine whether the terms of the agreement give rise to a separate supply of a service of designing and implementing a supply chain solution.

B. As in the response to Part A, there are insufficient facts in the question to make this determination. Whether the agreement gives rise to a single supply or multiple supplies is a determination that requires careful consideration of all the relevant facts including the agreements between the parties. Although, the fact that a separate fee is established for the design and implementation of the supply chain solution may be an indicated that a separate supply is being made, the existence of a separate fee is not in itself determinative that multiple supplies are being made.

9. Place of Supply – Minimum Billings for Supplies of Services Related to TPP

Hypothetical

A supplier provides a service for a client located in British Columbia on TPP located in Ontario. The agreement between the supplier and the client provides that the consideration for the services will be calculated on a per unit basis, with a guaranteed minimum billing per month if the volume of services is less than projected.

For the month of September 2016, the volume of services was more than projected; therefore, the supplier charges the client on a per unit basis.

For the month of October 2016, the volume of the services rendered did not reach the minimum guaranteed monthly revenue; therefore, the supplier charges the client the minimum guarantee fee.

For the month of November 2016, no services were required or rendered; therefore, the supplier charges the client the minimum guarantee fee.

Questions:

A. For the month of September, is the place of supply in BC, where the client is located, or in Ontario, where there TPP is located? Why?

B. For the month of October, is the place of supply in BC, where the client is located, or in Ontario, where there TPP is located? Why?

C. For the month of November is the place of supply in BC, where the client is located, or in Ontario, where there TPP is located? Why?

CRA Comments

A. There are insufficient facts in the question for the CRA to conclusively determine the characterization and place of supply for the services described. Additional information such as the terms of the arrangement between the supplier and the client would be necessary for us to make these determinations.

Furthermore, a thorough review of all relevant facts is required to determine whether the arrangement gives rise to a single supply, multiple supplies, or whether the ongoing services rule in subsection 136.1(2) of the Excise Tax Act would apply to deem separate supplies to be made for each "billing period".

Where it is determined based on a complete set of facts that a single supply of a service in relation to TPP is being made for each billing period, it appears that the place of supply of the service for each billing period would be Ontario, where the TPP to which the service relates is situated.

B. See the response for Part A.

C. See the response for Part A.

10. Compensation for Out-of-Stock Occurrences

Hypothetical:

Manufacturer A enters into an agreement (Agreement) with Wholesaler B for the sale of taxable goods, at the standard price rates, to be delivered in Canada. Manufacturer A and Wholesaler B are resident in Canada and registered for GST/HST. The Agreement provides that if Manufacturer A cannot fill the purchase orders submitted by Wholesaler B, Wholesaler B will be permitted to acquire comparable goods from another manufacturer and will be entitled to receive compensation from Manufacturer A for this out-of-stock occurrence.

Questions:

A. Is Wholesaler B required to charge GST/HST on the out-of-stock compensation received from Manufacturer A?

B. Does the answer in (A) above change if the Agreement specifies that the out-of-stock compensation is meant to reimburse Wholesaler B for the administrative costs that will be incurred by Wholesaler B if Manufacturer A cannot fill the purchase order?

C. Does the answer in (A) above change if supply of the goods, by Manufacturer A, are zero-rated supplies?

D. Does the answer in (A) above change if the Agreement establishes that Manufacturer A's payment to Wholesaler B is a penalty?

CRA Comments

A. Generally, a reparations payment made by a supplier to a recipient as described in the question is not considered to be consideration for a supply since, based on the information provided in the question, it appears to be compensatory or punitive in nature, and not given in exchange for a supply of property or services. Accordingly, the payment from Manufacturer A would generally not be subject to GST/HST.

B. Where the payment is made otherwise than to compensate the wholesaler in the original transaction, but is rather, made as consideration for the provision of property or a service supplied by the wholesaler, then if the supply is taxable (not zero-rated), GST/HST will generally apply. An examination of the particular contract would be necessary to confirm the tax status of such a payment.

C. The answer in (A) above would not depend on the tax status of the supply of goods made by Manufacturer A.

D. The answer in (A) does not depend on whether the amount is characterized as a payment for liquidated damages, or whether it is characterized as a penalty payment. What matters is whether the payment is consideration for a taxable supply.

11. Compensation for Late Delivery

Hypothetical:

Manufacturer C enters into an agreement (Agreement) with Wholesaler D for the sale of taxable goods, at the standard price rates, to be delivered in Canada. Manufacturer C and Wholesaler D are resident in Canada and registered for GST/HST. The Agreement provides that if Manufacturer C cannot deliver the goods on time, Wholesaler D will be entitled to receive compensation from Manufacturer C for the late delivery.

Questions:

A. Is Wholesaler D required to charge GST/HST on the late delivery compensation received from Manufacturer C?

B. Does the answer in (A) above change if the Agreement specifies that the compensation is meant to reimburse Wholesaler D for its costs incurred because Manufacturer C could not deliver on time?

C. Does the answer in (A) above change if supply of the goods by Manufacturer C are zero-rated supplies?

D. Does the answer in (A) above change if the Agreement establishes that Manufacturer C's payment to Wholesaler D is a penalty?

E. Does the answer in (A) above change if the Agreement establishes that the compensation to Wholesaler D is reduced consideration for the goods?

CRA Comments

A. Generally, a reparations payment made by a supplier to a recipient as described in the question is not considered to be consideration for a supply since, based on the information provided in the question it appears to be compensatory or punitive in nature, and not given in exchange for a supply of property or services. Accordingly, the payment from the manufacturer would generally not be subject to GST/HST.

B. A payment made pursuant to an agreement that can be linked directly to the supply of property or a service by the wholesaler may be subject to the GST/HST. An examination of the particular contract would be necessary to confirm the tax status of such a payment.

C. The answer in (A) above would not depend on the tax status of the underlying supply of goods made by Manufacturer C.

D. The answer in (A) does not depend on whether the amount is characterized as a payment for liquidated damages, or whether it is characterized as a penalty payment. What matters is whether the payment is in substance consideration for a taxable supply.

E. A review of the facts and the terms of the agreement would be required to determine whether such a payment would be considered to be a reduction of consideration for the goods.

12. Proposed Amendments to the Drop Shipment Rules (Finance Only)

13. Input Tax Credits for Services in Relation to Shares or Indebtedness of Related Corporations (Finance Only)

14. Revenue Calculations for De Minimis Financial Institutions (Finance Only)

15. Input Tax Credits for Partnerships that Continue to Exist Under Subsection 272.1(6) of the ETA

Subsection 272.1(6) of the ETA deems a partnership that has ceased to exist to continue to exist for the purposes of Part IX of the ETA until the GST/HST registration of the partnership is cancelled.

Hypothetical:

Partnership A is engaged in commercial activity. Corporation B and Corporation C each hold 50% of the partnership units of Partnership A. Corporation B acquires all of Corporation C's partnership units on December 31, 2016; as a result, Partnership A ceases to exist at law.

Corporation B is not eligible to claim ITCs of Partnership A for supplies prior to January 1, 2017. Therefore, Partnership A continues to be registered for GST/HST after January 1, 2017 in order to account for tax and ITCs for periods prior to January 1, 2017.

In April 2017, Supplier D retroactively invoices Partnership A for GST/HST applicable on services provided to Partnership A during 2016.

Questions:

A. Recipients are generally allowed to claim ITCs under subsection 225(4) of the ETA within four years (two years for a specified person) from the day on which the return for the reporting period in which the ITC arose is due. Please confirm that CRA would not seek the cancellation of Partnership A's GST/HST registration under section 242 of the ETA until such time as Partnership A requests such cancellation.

B. In light of the extension of time to claim an ITC provided in paragraph 225(4)(c) of the ETA and CRA's position in GST/HST Policy Statement P-116 that a supplier may meet the disclosure requirements for section 224 after the fact, please comment on whether CRA would allow Partnership A to re-register for the purpose of claiming ITCs if Supplier D had instead invoiced Partnership A in April 2019 (for supplies provided in 2016), after Partnership A had been deregistered.

C. If the response to (B) is that Partnership A would not be allowed to re-register, assume Corporation B paid the tax on behalf of Partnership A. Please confirm Partnership A would be allowed to claim the ITC on a non-personalized return.

CRA Comments

A. When cancelling a GST/HST registration the Minister must notify the person in writing and state the effective date of the cancellation. Generally, the effective date is established in consultation with the registrant or its representative. Subsection 242(1) of the Excise Tax Act provides that the Minister may, after having given reasonable written

notice, cancel a person's registration if the Minister is satisfied that registration is not required.

B. Subsection 272.1(6) of the ETA provides that a partnership that has ceased to exist is deemed not to have ceased to exist for GST/HST purposes until the GST/HST registration of the partnership is cancelled.

Subsequent to the cancellation of the registration of Partnership A, subsection 272.1(6) no longer applies to deem Partnership A to continue to exist. Since Partnership A has ceased to exist it would not be considered to be a person engaged in a commercial activity in Canada, and as such it is not entitled to register under section 240 of the ETA.

Therefore, notwithstanding the fact that Supplier D does not invoice Partnership A until April 2019 for the tax payable in respect of supplies provided in 2016, there are no provisions in the ETA to (re)register Partnership A.

C. Once Partnership A's registration is cancelled, Partnership A cannot file a GST/HST return to report any unclaimed ITCs as Partnership A is no longer a person for GST/HST purposes and would not be considered to be a non-registrant

16. Rejection of GST Forms

TEI members report that a number of GST forms are being rejected because CRA does not have the authorization on file for the person signing an election on such forms.

A. Are agents processing the forms expected to contact the "Contact Person" listed on the forms if they have issues processing an election rather sending a form rejection letter to the company?

B. What is acceptable proof to CRA that a person executing the forms is authorized to sign an election?

C. Would CRA consider contacting the taxpayer prior to rejecting the above form?

CRA Comments

A. An agent may call the contact person listed on the election if they have an issue processing the election. However, the contact person must be an authorized representative or a delegated authority. If a contact person does not have authority on the GST/HST account, we cannot interact with them.

If an election is not signed by a person who is on file with the CRA as an owner or authorized representative, the form is not valid. The election must be resubmitted signed by a person who is authorized.

B. To be authorized to sign an election, the person must be an owner or an authorized representative. There are three options for authorizing a representative:

- The representative submits an authorization request online though Represent a Client
- Authorize the representative online through My Business Account

- Submit written authorization to CRA by completing Form RC59, Business Consent

C. The CRA is always looking for ways to improve service. We value feedback; and will pursue opportunities while ensuring we adhere to authorization protocols to protect businesses.

17. Supplies of Exempt Health Care Services

We would like to determine if we have properly applied the guidance in CRA RITS cases 92711 and 34306 to a similar fact scenario.

Hypothetical

A private practice health clinic in Ontario provides nursing services to clients. The Ontario provincial health authority requires that the clinic has a medical doctor on call to deal with any adverse reactions that may occur as the nurses treat the patients. The medical doctor is not required to be on site. The medical doctor charges the clinic a flat fee for the block time or "shift" the doctor was on call. If the doctor is contacted while on-call to provide guidance on adverse reactions, the doctor bills the clinic an additional amount, beyond the flat fee for the shift, for his or her intervention.

Our review of the ETA and CRA RITS cases 92711 and 34606 suggests that the supply of the on-call coverage to the clinic, where the doctor was not contacted during the shift, does not qualify as an exempt supply of a

health care service; however, if the doctor was contacted while on-call, the supply would qualify as an exempt supply of a health care services.

Questions:

A. Please confirm the supply of the on-call coverage to the clinic, where the doctor was not contacted during the shift, billed as a flat fee, does not qualify as an exempt supply of a health care service.

B. Please confirm the on-call coverage to the clinic, where the doctor was contacted during the shift, billed as a flat fee, qualifies as an exempt supply of a health care service.

C. Please confirm the additional charge for the doctor's intervention qualifies as an exempt supply of a health care service.

CRA Comments

Without reviewing the agreement between the private practice health clinic providing nursing services (the clinic) and the medical doctor (medical practitioner), we are unable to fully characterize the nature of the supply or supplies being made. As such, it is not possible to confirm the tax status of the on-call coverage and the additional intervention. However, we can provide the following general guidance:

Sections 1.1, 1.2 and 5 of Part II of Schedule V of the Excise Tax Act (ETA) function to exempt a supply of a consultative, diagnostic, treatment or

other health care service that is rendered by a medical practitioner to an individual, where the service is a qualifying health care supply that is not performed for cosmetic purposes. A qualifying health care supply is specifically defined in section 1 of Part II of Schedule V to mean a supply of property or a service that is made for the purpose of:

- maintaining health;
- preventing disease;
- treating, relieving or remediating an injury, illness, disorder or disability;
- assisting (other than financially) an individual in coping with an injury, illness, disorder or disability; or
- providing palliative health care.

Read together, the provisions provide that the exemption is dependent upon the nature of what is supplied. For the exemption of section 5 of Part II of Schedule V to apply, the supply has to be a supply of a service described in that section rendered by a medical practitioner to an individual. It is not sufficient that the supplier be a medical practitioner or that the medical practitioner remains available to render a service during a given period of time.

Based on our understanding of the hypothetical scenario presented, at the time the clinic and the medical practitioner enter into an arrangement, the medical practitioner supplies the clinic with the right to call upon him or her to render health care services to their patients during a given block of time. We consider this to be a supply of a right by the medical practitioner that allows the clinic to meet an operational

requirement. At the time the arrangement is entered into, it is not known whether the medical practitioner will be called upon to render health care services to the clinic's patients. The consideration for the supply of the right to call upon the medical practitioner is independent of any health care services that may be rendered by him or her, during a given block of time. Consideration for the supply of any health care services rendered by the medical practitioner to clinic's patients is subsequently charged on a per-service basis.

In our view, the supply of such a right to be called upon is generally a distinct supply of intangible personal property that is separate from any health care services that may be rendered by the medical practitioner to the clinic's patients. By remaining available to intervene if need be, the medical practitioner fulfills his or her obligation under the agreement. The nature of the supply is not dependent upon, altered, or extinguished, by a future rendering of health care services by the medical practitioner to the clinic's patients. Therefore, the supply of such a right to be called upon may not qualify as an exempt health care service or part of an exempt health care service under section 5 of Part II of Schedule V, as the supply of a right is not exempt under that section. However, if the consideration for the supply of the right is payable or reimbursed by a plan that meets the requirements set out in section 9 of Part II of Schedule V (e.g. OHIP for the province of Ontario), the supply of the right could be an exempt supply of property under that section.

Accordingly, based on our understating of the hypothetical scenario:

A. On-call coverage to the clinic, where the medical practitioner is not contacted during the shift, would be a taxable supply as it would not qualify as an exempt supply of a health care service listed in Part II of Schedule V. As mentioned above, without reviewing the agreement, we are unable to fully characterize the nature of the supply. However, we are of the view that on-call coverage is generally a distinct supply of intangible personal property that is separate from the supply of any health care services that may be rendered to the clinic's patients.

B. On-call coverage to the clinic, where the medical practitioner is contacted during the shift, would remain a taxable supply. The nature of right to be called upon, which the medical practitioner has supplied to the clinic, is not altered when he or she is in fact called upon by the clinic to intervene in patient care. After being contacted once, the right is not extinguished and the medical practitioner remains available to be called upon again and again until the end of his or her shift. As such, our view that on-call coverage is generally a distinct supply of intangible personal property is not altered by the rendering of health care services to the clinic's patients.

C. As to the additional charge for the medical practitioner's intervention, we would consider the medical intervention to be a distinct supply from the supply of on-call coverage. Therefore, we would generally qualify the supply of medical intervention as an exempt supply of a health care service under section 5 of Part II of Schedule V, provided the service is in fact a consultative, diagnostic, treatment or other health care service rendered by a medical practitioner to an individual, it is not a cosmetic

service supply and it is a qualifying health care supply. This supply could also be exempt under section 9 of Part II of Schedule V to the extent that the consideration for the supply is payable or reimbursed by the government of a province under a plan established under an Act of the legislature of the province to provide for health care services for all insured persons of the province.

18. Transitional Rules for Provincial Rate Increases

A. Please confirm whether the transitional rules relating to the recent New Brunswick, Newfoundland and Labrador, and Prince Edward Island rate increases are the final version of such rules and will be applied to future changes? (Finance Only)

B. Please confirm that on allowances paid to employees, the administrative formula for the deemed HST paid in New Brunswick and Newfoundland and Labrador, has increased from 12/112 to 14/114 on eligible expenses effective July 1, 2016.

C. Please confirm that the rate mentioned above has increased from 13/113 to 14/114 on eligible expenses effective October 1, 2016, when Prince Edward Island increased its HST to 15%.

CRA Comments

B. The administrative factors for calculating the deemed GST/HST paid apply to reimbursements, and not allowances.

Under the legislative amendments for the HST rate changes for Newfoundland and Labrador and New Brunswick, the 15% rate is used to

determine the GST/HST that is deemed to have been paid or collected, on or after July 1, 2016. Whether the increased rates of tax apply to allowances and reimbursements depend on the date the allowance or reimbursement is paid.

Reimbursements – the factor method

The amount of input tax credit or rebate in respect of a reimbursement that can be claimed may be based on the deemed tax paid, as calculated under section 175 of the Excise Tax Act (ETA), or using a factor of deemed tax paid. The factor method is an administrative factor that may be used for calculating the tax deemed paid on reimbursements, instead of calculating the exact amount of tax reimbursed. The factor method and the criteria for using this method are described in GST/HST Memoranda Series 9.4, Reimbursements (GST/HST Memorandum 9.4).

Similar to the administrative policy for the previous GST rate reductions, the HST rate increase in Nova Scotia and the implementation of the HST, a person will be allowed to use a factor of 14/114 of the total amount reimbursed on or after July 1, 2016, to calculate the deemed tax paid on taxable supplies incurred in Newfoundland and Labrador or New Brunswick. The chart of administrative factors in the Appendix to GST/HST Memoranda 9.4 will be updated to include this new administrative factor for Newfoundland and Labrador and New Brunswick.

Allowances

Generally, under section 174 of the ETA and Part 2 of the New Harmonized Value-added Tax System Regulations No. 2, the fraction for calculating

the amount of tax deemed paid on a motor vehicle allowance for travel in a province or an allowance for taxable supplies made in that province is based on the tax rate for that province at the time the allowance was paid. Therefore, for allowances paid on or after July 1, 2016, for travel or taxable supplies made in Newfoundland and Labrador or New Brunswick, the tax fraction of 15/115 would be used to calculate the deemed tax paid on these allowances.

C. The information contained in the response to (B) above, would also apply to reimbursements and allowances paid on or after October 1, 2016, for taxable supplies made in Prince Edward Island, or for travel in Prince Edward Island. The chart of administrative factors in the Appendix to GST/HST Memorandum 9.4 will be updated to also include the new administrative factor for Prince Edward Island

19. Update Regarding Rules for Recovery of GST/HST on Out-of-Pocket Costs

CRA sought input and TEI provided feedback for CRA to develop a publication regarding the rules for recovery of GST/HST on out-of-pocket costs. Please provide an update regarding the status of this publication.

CRA Comments

An Info Sheet regarding this issue has been drafted and we expect to share it with the TEI for your comments in the next few weeks. The Info Sheet reflects the input that the TEI has provided to us with respect to this issue and will address the specific situations that were identified as areas of concern with respect to the application of GST/HST. We appreciate

the valuable input that the TEI has provided to us with respect to this issue since it greatly assists us in developing relevant and useful GST/HST publications.

20. Input Tax Credits for Property and Services for Use in Relation to Shares of Capital Stock or Indebtedness of Related Corporations

Section 186 of the ETA provides that where a corporation resident in Canada acquires property or services for use "in relation to" shares of the capital stock or indebtedness of a corporation related to the parent, the parent will be deemed to have acquired such property or services for use in the parent's commercial activities for the purposes of determining the parent's ITC.

In Perfection Dairy [2008] G.S.T.C. 124(TCC) and Stantec Inc. [2009] G.S.T.C. 143(FCA), the courts took a broader view of the phrase "in relation to" and the court allowed the parents' ITCs. The Stantec Decision provides that section 186(1) "is not intended to limit or otherwise restrict the ability of a holding company to claim input tax credits where the subsidiary would clearly be entitled to claim them."

Similarly, the court in Miedzi Copper [2015] G.S.T.C. 15, interpreted the phrase "in relation to" broadly and allowed ITCs relating to services associated with shares or indebtedness, including legal fees for corporate reporting and filing services, fees for advice relating to HST issue in this appeal, fees for advice concerning a shareholder agreement, fees relating to a stock option plan and related amendments to articles,

accounting fees incurred for the preparation of Canadian tax returns, fees in connection with the audit of financial statements, miscellaneous cell phone, parking, meal & courier charges, and fees for web domain name registration.

CRA nonetheless maintains a more restrictive interpretation of section 186 and has required a direct linkage between (i) the taxable inputs acquired or imported, and (ii) the shares or indebtedness of a related corporation in order to claim an ITCs.

Question:

Will CRA undertake a review of its current administrative policy and align with a broader application of "in relation to" in light of these three court cases interpreting section 186 more broadly?

CRA Comments

We are continuing our review of our interpretation of subsection 186(1) of the Excise Tax Act.

It is a question of fact whether subsection 186(1) would apply in a particular situation. We will apply the Court's decisions where the situations have the same facts.

If you have a question about the application of subsection 186(1) to a particular situation, please provide the relevant facts and documents and we will review the request and provide our views.

21. Proposed National Carbon Tax Policy (Finance Only)

22. Update Regarding Changes to Joint Venture Election (Finance Only)

23. Approval and Review Process for Financial Institution Input Tax Credit Methodology

In the early 2000s, Finance questioned the allocation methods used by financial institutions to determine their entitlement to ITCs. Finance thereafter amended the ETA to provide greater clarity and direction to financial institutions. The amendments provided more detailed ITC allocation rules for financial institutions, particularly in the case of banks, insurers, and securities dealers, and required such institutions to use a prescribed percentage or obtain pre-approval from CRA to use their own ITC allocation method.

It takes more than six months, on average, for CRA to issue a letter approving an ITC allocation methodology. The volume and the extent of administrative requests is onerous, in part, because financial institutions must request approval even if they have not changed their method from the prior year.

For example, each year, financial institutions must provide a complete worked example of the most recent return. Even if the methodology remains the same, CRA must audit and substantiate the numbers if the ITC rates have changed from the prior year. Each ITC rate has underlying drivers so it is unclear why numbers must be audited if the drivers remain the same.

TEI members have also observed an increase in the amount of detail requested. The approval process appears very similar to the audit of a

return rather than a review of a methodology. For example, CRA sometimes requests copies of invoices to demonstrate the type of expenses incurred and copies of agreements to determine nature of supplies. It is unclear why such information is necessary for the purposes of approving a proposed methodology.

Questions for Finance:

A. Please explain the purpose of the ITC methodology approval process, including the reason the process must be completed on an annual basis.

B. If CRA has approved a methodology and no changes have been made to the methodology or the inputs, please address whether Finance would consider waiving the annual approval process.

C. Please address whether Finance would consider establishing a dispute resolution process to address instances where CRA and a financial institution have material concerns or disagreements relating to a particular proposed methodology.

Questions for CRA:

D. Form RC7216, "Application, Renewal, or Revocation of the Authorization for a Qualifying Institution that is a [Selected Listed Financial Institution] to Use Particular Input Tax Credit Allocation Methods" has boxes allowing financial institutions to certify that they are not proposing changes to their current method. Financial institutions are nonetheless subjected to an "audit" of their methodology even if they certify that no changes are proposed.

Please explain the rationale behind the exhaustive review process involved in approving a methodology.

Recommendations:

E. TEI recommends that the methodology review and approval process be streamlined, with a focus on the overarching principles and methodology rather than delving into underlying return details. To this end, CRA could require financial institutions to provide a written description of inputs and the proposed methodology. This would enable CRA to approve the methodology without necessitating an in-depth understanding of a particular financial institution's worksheet calculations.

F. TEI recommends that CRA provide more detail in letters disapproving a proposed methodology, particularly if the methodology was approved in prior years. Such information would aid financial institutions in understanding the basis for the disapproval and assist them in amending the methodology if required.

CRA Comments

The provisions in section 141.02 permit a qualifying institution to apply to the Minister for pre-approval to use their methods to allocate their inputs for purposes of claiming ITCs and the Minister will consider the application and either authorize or deny the use of the methods specified by the applicant in the application. Although the prescribed application forms, the GST116 and RC7216, permit the applicant to certify that they are not proposing changes to their current method, nothing in the legislation at

this time, permits the Minister to authorize an application for more than the one fiscal year. An application must be submitted for each fiscal year.

We acknowledge that the reviews for pre-approved methods can be complicated and lengthy for the applicants and for our auditors, however, it is important that prior to authorization the auditor fully understand the methods being used by the applicant. The auditors are also aware of the need to be consistent and prudent in requesting information from qualifying institution to qualifying institution in support of the method being applied for.

In reviewing the methods, auditors are encouraged not to audit the numbers but to review the methodology to determine if the method can be authorized. The auditor must have an appreciation and understanding of the method and this may require a comprehensive review of a worked example and other information to ensure that they fully understand the method. Auditors are encouraged to use their professional judgment when determining what information they require that enables them to fully understand the method being applied for. At times there may be a fine line in distinguishing the review from an audit.

There have been ongoing discussions within the GST/HST Large Business Audit section to find ways to make the pre-approval process more efficient and effective and we'll gladly take your recommendations into consideration during this review.

24. Input Tax Credits for Predecessor and Successor Companies

Predecessor Company, wholly engaged in commercial activities, sells all of its assets and liabilities on June 1 to a Successor Company. All contracts between vendors and Predecessor Company are formally re-assigned to Successor Company:

Hypothetical One:

Predecessor Company acquired goods from a vendor on May 15 that were subsequently sold to Successor Company in the reorganization. Predecessor Company is invoiced for these goods by the vendor on May 31. The invoice is paid by Successor Company on July 1.

A. Please confirm whether Predecessor Company or Successor Company is eligible to claim the ITCs on the original supply from the vendor?

B. If Predecessor Company must claim the ITCs, will CRA need to ensure it is booked to a G/L that no longer exists? Will a listing of invoices that were paid directly by the Successor Company be sufficient to satisfy CRA's ITC requirements?

C. Will Predecessor Company be required to maintain a separate G/L until all of the ITCs are cleared?

CRA Comments

A. Whether or not a particular registrant is entitled to claim an ITC on property or services the registrant acquired or imported is a question of fact. As there was limited information provided, we are basing our

comments on the assumption that both the Predecessor Company and the Successor Company are corporations, the ITC eligibility requirements under subsection 169(1) of the Excise Tax Act (the "ETA") have been met, and section 272 of the ETA applies.

Where a particular corporation (the Predecessor Company) is wound up and not less than 90% of the issued shares of each class of the capital stock of the particular corporation were, immediately before that time, owned by another corporation (the Successor Company), paragraph 272(a) of the ETA states, in part, that for the purposes of applying the provisions of Part IX of the ETA in respect of property or a service acquired or imported by the other corporation as a consequence of the winding-up, the other corporation is deemed to be the same corporation as, and a continuation of, the particular corporation. As a result, where the Predecessor Company was eligible to claim ITCs as determined under section 169 and related provisions with respect to property or services it acquired, but did not claim those ITCs prior to winding-up into the Successor Company, paragraph 272(a) of the ETA would permit the parent corporation to claim those ITCs. Thus, either corporation may claim the ITC depending upon on their reporting periods.

B. Whether or not supporting documentation will meet the requirements set out in The Input Tax Credit (GST/HST) Regulations (the Regulations) is a question of fact. Books and records must be in an appropriate form and contain sufficient information to determine a person's liabilities and obligations or the amount of the rebate or refund to which the person is entitled. In this particular situation, Audit must be able to ensure that only

one of the two companies claimed the ITC. It may be feasible for Audit to accept alternative documentation to support the ITC. The Regulations do provide for invoices to be made out in trading names or the names of the recipient's duly authorized agent or representative. The Regulations also set out the possibility to use as supporting documentation "any other document validly issued or signed by a registrant in respect of a supply made by the registrant on which GST/HST is paid or payable".

C. See our response to B.

Hypothetical Two

Predecessor Company acquired goods from a vendor on May 15 that were subsequently transferred to Successor Company in the reorganization. Predecessor Company was invoiced for these goods by the vendor on June 15 and Successor Company paid the invoice on July 1.

D. Do the above answers change?

CRA Comments

D. In this case, given that the tax became payable and was paid after the wind-up date, it would be appropriate for the Successor Company to claim the ITC.

Hypothetical Three

Predecessor Company acquired goods from a vendor prior to the reorganization and was invoiced on May 15. Predecessor Company was not charged GST/HST at that time. On December 1, the vendor issued an

invoice for only the taxes that were due in relation to the supplies made on May 15.

E. Please confirm whether Predecessor Company or Successor Company are eligible to claim the ITCs.

CRA Comments

E. In this case, it would be appropriate for the Successor Company to claim the ITC given the application of subsection 272(a) of the ETA.

25. Update Regarding Proposed Amendments to Pension Plan Legislation

TEI would like to thank Finance for proposing amendments to the ETA that address double-taxation that currently occurs for employee pension plan structures that use master trusts.

Currently, pension plan structures with master trusts run the risk of being double-taxed when the employer contracts with an investment manager, trustee, or others to provide services and arranges for the trustee of the master trust to pay the fees directly from the master trust. This practice allows for a simple distribution of the fees to the trust units, reducing unit values. The employer is required to calculate and remit tax on the actual supply. The employer is also deemed to have made a supply of these services to the master trust and is liable to collect tax from the master trust on that deemed supply. However, the master trust would not able to recover such tax.

Other pension plan sponsors who contract for identical services but arranged for pension plans to pay for these fees directly, after allocations have been determined and trust units redeemed, do not face duplicate taxation. However, this method is neither efficient nor the industry norm. As a result, employers who utilize master trusts in the aforementioned manner for many years bearing a disproportionate tax burden versus the other employers, some of which may be industry competitors.

The proposed amendments prevent double-taxation on a going forward basis by amending the deemed supply rules under section 172.1 of the ETA to account for supplies made by an employer to a master pension entity with respect to pension activities. The amendments are applicable to fiscal years commencing on or after 22 July 2016. Thus, pension plan structures with a master trust will be double-taxed prior to that date if the master trust was subject to tax on the actual supply and deemed supply, as no rebate would be available on actual supplies for years prior to announcement date.

Questions for Finance:

A. Please confirm how the pension plan structures with a master trust would be taxed prior to the announcement date?

B. Why were the amendments not applied retroactively so that companies that have been or will be assessed for prior periods are eligible for relief easily rather than having to apply for refunds?

C. Should the definition of "employer resources" in section 172.1 of the ETA be interpreted to include the fees discussed above to ensure full elimination of double-taxation for applicable refunds of assessments?

D. Does section 172.2(2) restrict the "designated entity" to a single entity?

E. The Master Pension Factor of 90% may effectively eliminate the use of the section 157 election because that election is not available to related party company structures. Pension trusts are often used because of related party structures. Is finance aware of this result and was this result intentional?

F. Is Finance aware that the amended definition of "excluded activity" in subsection 172.1(1) will essentially exclude from the deemed supply rules certain activities undertaken "exclusively" in relation to a part of a hybrid plan that is a defined contribution plan?

Questions for CRA:

G. Please explain what CRA's audit policy will be for years prior to the amendment.

CRA Comments

G. Generally, the proposed changes to the pension plan rules for master trusts will apply to fiscal years starting after July 22, 2016. However, the proposed changes to subsection 172.1(7) will apply for fiscal years that begin on or after September 23, 2009 but before the Announcement Date (July 22, 2016). Subsection 172.1(7) is proposed to be amended to

exclude, retroactively, employer resources consumed or used in respect of pension activities of a pension plan that are the establishment, management or administration of a master trust of the plan or the administration of assets in respect of the pension plan held by a master trust of the plan.

It is a well-established CRA's audit policy that the CRA does not reassess a registrant to deny a benefit solely based on proposed legislation not being enacted. Therefore, in the case of the application of the proposed change to subsection 172.1(7), the CRA will take into account these retroactive provisions when determining whether an employer has met its obligations under the ETA.