Canada Revenue Agency | Agence du revenu du Canada

Excise and GST/HST Rulings
Directorate
Place de Ville, Tower A, 15th floor
320 Queen Street
Ottawa ON K1A 0L5

Diana M. Spagnuolo
Chair, Canadian Commodity Tax Group
Tax Executive Institute

APR 21 2010

Case Number: 122236

Dear Ms. Spagnuolo:

Subject: **Tax Executive Institute HST Implementation Questions**

Thank you for your e-mail of March 5, 2010, and your questions concerning the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) and the implementation of the HST in Ontario and British Columbia.

The Government of Canada and the Government of Ontario have signed a Comprehensive Integrated Tax Coordination Agreement for the implementation of HST in Ontario. The HST will come into effect in Ontario on July 1, 2010, at a rate of 13%, consisting of a 5% federal part (equivalent to the existing GST) and an 8% provincial part.

The Government of Canada and the Government of British Columbia have signed a Comprehensive Integrated Tax Coordination Agreement for the implementation of HST in British Columbia. The HST will come into effect in British Columbia on July 1, 2010, at a rate of 12%, consisting of a 5% federal part (equivalent to the existing GST) and a 7% provincial part.

Legislation required to implement the HST in Ontario has received Royal Assent by the Parliament of Canada and the Legislative Assembly of Ontario. However, many of the rules which would apply to transactions will be contained in regulations made under the *Excise Tax Act* (ETA).

Legislation required to implement the HST in British Columbia has received Royal Assent by the Parliament of Canada. Required provincial legislation has been introduced but is still under consideration by the Legislative Assembly of British Columbia. Although the Government of Ontario and British Columbia have announced details of the rules which may eventually apply, the required regulations have not yet been made by the Government of Canada.

The following interpretations are based on General Transitional Rules for Ontario as announced in the Government of Ontario Information Notice No. 3 on October 14, 2009, General Transitional Rules for British Columbia as announced in the Government of British Columbia Notice No. 1 on October 14, 2009, the Temporary Recapture of Input Tax Credits Requirement as announced in Government of Ontario Information Notice No. 5 on February 1, 2010, Temporary Recapture of Input Tax Credits Requirement as announced in the Government of British Columbia Tax Information Notice No. 4 on February 19, 2010, Point-of-Sale rebates as announced by the Government of Ontario on November 16, 2009, and Point-of-Sale Rebates for British Columbia HST as announced in the Government of British Columbia HST Notice No 2. on November 16, 2009.

The following interpretations are also based on proposed legislative changes to the Place of Supply rules and electronic filing. This interpretation should not be taken as a statement by the Canada Revenue Agency (CRA) that these rules will be made in their current form.

Interpretation Requested #1:

a) Is it possible to confirm in the next paper release that the rebate rules and the self-assessment rules for supplies moved between provinces are not applicable to Selected Listed Financial Institutions (we will make use of the SAM formula to determine our final HST liability)?

b) On page 5, example 9 of the Finance document, the supply looks like it should be zero-rated. This example may be confusing to people if they are not aware of the potential zero-rating of the supply. Is it possible to choose an alternate example that would not be zero-rated?

c) We question whether example 53 on page 24 of the Finance document requires change in punctuation to make it clearer. It is unclear whether the goods were imported into BC by an Ontario resident, or if they were brought into BC after importation into Ontario. If the latter, we suggest a period after "...the traveller pays the Ontario component of the HST in respect of the goods" and then start a new sentence with "When the traveler imports the goods into BC, the traveler may be eligible to claim a rebate of the difference between the component of the HST...". Also, we suggest replacing "imports" with "brings" in that sentence, if that is the intention of the example.

d) From a software perspective the IPP rules appear over complicated. Would it not be easier to administer based on customer address?

e) It appears there is a typo on page 29 of the CRA document (TIB 103) in example 83. In the last sentence, the second occurrence of "Quebec" should be "Ontario".

Interpretation provided:

a) Yes, we can confirm that they are not applicable to Selected Listed Financial Institutions.

b) For purposes of illustrating the proposed place of supply rules it was assumed in the example that the supply was not a zero-rated supply. There are exclusions to the zero-rating rules for services that can apply depending on all the relevant facts.

c) The example is correct in that it addresses the circumstance where an Ontario resident imports non-commercial goods into Canada and both GST at 5% and the Ontario component of the HST at 8% are imposed on the value of the goods.

d) This is a tax policy issue that should be directed to the Department of Finance.

e) This typo will be corrected when TIB-103 is updated.

Interpretation Requested #2:

An outsourcing company location in Quebec has entered into an agreement with a company in Ontario to provide customer service/collection services. The Quebec company will call the Ontario company's customers all across Canada in order to provide this service. The Quebec company has decided to move its call centre from Quebec to the Philippines. What tax will apply, if any, on the invoice from the Quebec company to the Ontario company?

Interpretation Provided:

It appears based on the information in the question that the supply may be made outside Canada on the basis that the services appear to be wholly performed outside Canada. Additional information is required in order for the CRA to provide a definite response.

Interpretation Requested #3:

Will vendors be required or allowed to identify HST charged by province on their invoices? What leniency can be provided in this respect? This could facilitate general customers in determining their recaptured input tax credits. Selected Listed Financial Institutions are also under the impression that they will be required to report HST paid by province as part of their SAM calculation, which can only be undertaken if vendors are required to identify HST charged by province on their invoices?

Interpretation provided:

With the imposition of the Harmonized Sales Tax (HST) on July 1, 2010 in Ontario and British Columbia, every supplier who is a GST/HST registrant will be required to comply with the

requirements of subsection 223(1) of the Excise Tax Act (ETA). A registrant who makes a taxable supply, other than a zero-rated supply, is required to indicate to the recipient the consideration paid or payable by the recipient for the supply and the amount of tax payable in respect of the supply. Where the amount paid or payable by the recipient includes the tax, the registrant should also indicate that clearly on the invoice. The registrant will also have to indicate the total amount of the HST payable or the total HST rate.

With respect to Selected Listed Financial Institutions and the Special Attribution Method under HST in Ontario and British Columbia, details will be released at a later date.

Interpretation Requested #4:

How will Selected Listed Financial Institutions determine their recaptured input tax credits (RITCs)?

Interpretation Provided:

Further information on the RITCs requirements for Selected Listed Financial Institutions will be forthcoming at a later date.

Interpretation Requested # 5:

As internet access is not considered subject to the recaptured input tax credit rules, will CRA be releasing an information bulletin/guidance outlining what types of telcom charges meet the definition of "internet access".

Interpretation Provided:

CRA's interpretation of "internet access" has not changed. GST/HST Technical Information Bulletin B-090, *GST/HST and Electronic Commerce*, includes a definition of internet access. Internet access is provided by an internet service provider (ISP) for a fee. Common methods of internet access include dial-up, landline (over coaxial cable, fiber optic or copper wires), T- lines, Wi-Fi, satellite and cell phones. To access the internet, a user "calls" the ISP to log on (if not already connected) and the user's request for a particular web site is routed to the server hosting the desired data. The predominant purpose of the service is to provide the consumer with a connection, allowing the transmission and reception of data over the internet.

Interpretation Requested #6:

If your main business is printing but the only manufacturing done in Canada/Ontario is chemicals, would the 70% proxy apply or the 96% proxy for chemicals (which is very close to actuals)?

Interpretation Provided:

The determination of which proxy rate may be used by a large business when reporting RITCs on energy used in production is based on the large business's most significant business activity and whether this production activity is listed under one of the three proxy percentages. The applicable proxy percentage for the most significant business activity, if any, is applied at the entity level.

The large business in Ontario who is engaged in production would be entitled to use one of the three proxy percentages where its most significant business activity is contained in the list of production activities enumerated in the Ontario Ministry of Revenue's, Information Notice No. 5, *Temporary Recapture of Input Tax Credits Requirement.* In order to use a production proxy in Ontario, the large business must be carrying on its production activities primarily (i.e., more than 50%) in Ontario.

The large business in British Columbia who is engaged in production would be entitled to use one of the three proxy percentages where its most significant business activity is contained in the list of production activities enumerated in the British Columbia Ministry of Finance, Tax Information Notice No. 4, *Temporary Recapture of Input Tax Credits*. British Columbia has not yet issued information as to what extent a large business must be carrying on its production activities in British Columbia.

If printing is the most significant business activity of the large business and its production is carried on primarily in Ontario, it would qualify to elect to use the 70 per cent proxy rate for the purposes of determining RITCs on energy used in production.

Interpretation Requested #7:

A large company may have multiple divisions with different NAICS codes. Assuming that none of their divisions is dominant in terms of revenue and profit and they have different proxy rates, what rate will be applied? Do the proxy % rates apply to all company sites regardless as to whether manufacturing and processes is present in some sites?

Interpretation Provided:

The determination of which proxy rate may be used by a large business when reporting RITCs on energy used in production is based on the large business's most significant business activity and whether this production activity is listed under one of the three proxy percentages. The applicable proxy percentage for the most significant business activity, if any, is applied at the entity level. Therefore, the production proxy would apply to energy for all company sites in that province.

In order to use a production proxy in Ontario, the large business must be carrying on its production activities primarily in Ontario. The Government of British Columbia has not yet issued information as to what extent a large business must be carrying on its production activities in British Columbia.

Interpretation Requested # 8:

In Ontario, "...a large business producing tangible personal property for sale (and carrying on such production activities primarily in Ontario) would generally be able to elect to use a production proxy..."

In BC, "...a large business producing tangible personal property for sale (and carrying on production activities in British Columbia) would generally be able to elect to use a production proxy...".

Does this mean that a registrant whose most significant business activity is petroleum manufacturing with 40% of such production activities taking place in Ontario and 10% in BC, would be allowed to use the 96% production proxy in BC but not Ontario, since the activities do not take place primarily in Ontario?

Interpretation Provided:

The determination of which proxy rate may be used by a large business when reporting RITCs on energy used in production is based on the large business's most significant business activity and whether this production activity is listed under one of the three proxy percentages. The applicable proxy percentage for the most significant business activity, if any, is applied at the entity level.

In order to use a production proxy in Ontario, the large business must be carrying on its production activities primarily in Ontario. Since the production carried on in Ontario is 40% and does not meet the primarily rule, the large business would not be entitled to use the proxy method in Ontario for the purposes of determining the ITC on energy used in production. The Government of British Columbia has not yet issued information as to what extent a large business must be carrying on production activities in British Columbia.

Interpretation Requested # 9:

a) Under the current RST exemption, qualifying food and beverages must be sold at an "eating establishment" in order to qualify for exemption, but that does not appear to be the case with the POS rebate. Please confirm.

b) Please confirm the tax rate(s) applicable to the following purchases of food and beverages (total in all cases is $4 or less):

1. Cup of coffee and granola bar
2. Single serving bottle of water and granola bar
3. Single serving bottle of water, cup of coffee and granola bar
4. Single serving of unflavoured milk and prepackaged muffin
5. Single serving of unflavoured milk and non-prepackaged muffin
6. Single serving of unflavoured milk, sandwich and prepackaged muffin
7. Cup of coffee and prepackaged muffin

c) Under a points reward program, a customer may redeem points at a registrant franchisee's establishment for a free cup of coffee. The retailer is reimbursed for the coffee by the registrant franchisor that runs the program. Will the reimbursement be subject to HST at 13% or 5%? Is this deemed to be HST included or tax-extra?

Interpretation Provided:

a) In order to simplify compliance for vendors with the HST in Ontario, the Government of Ontario has stated that the point-of-sale rebate will be available on qualifying prepared food and beverages sold in Ontario that are ready for immediate consumption. The total price, including HST, must not be more than $4 for all qualifying prepared food and beverages sold. The rebate will be available regardless of whether the qualifying prepared food and beverages are consumed on or off the premises of the establishment where sold.

However, the GST/HST legislation for basic groceries also uses the term establishment. Under paragraph 1(q) of Part III of Schedule VI to the *Excise Tax Act* (ETA), supplies of certain food or beverages are subject to GST/HST where all or substantially all (90% or more) of the goods supplied by the establishment are taxable at 5%/13%. This provision subjects some otherwise zero-rated basic groceries or beverages to tax and thus the food or beverage will be a qualifying food or beverage for purposes of the point-of-sale rebate. For example, a bagel purchased at a grocery store would be a zero-rated basic grocery. However, if that same bagel was bought at a restaurant, it would be subject to GST/HST.

b) The tax rate(s) applicable to the following purchases of food and beverages for $4 or less are as follows:

1. <u>Cup of coffee and granola bar</u>

Coffee heated for consumption is a qualifying beverage for purposes of the point-of-sale rebate. Therefore, if the coffee is heated, it will qualify for the point-of-sale rebate. The supplier will collect only the 5% federal part of the HST and will pay or credit the rebate of the 8% provincial part to the purchaser at the point of sale.

The granola bar is a snack food and will only qualify for the point-of-sale rebate when sold with a qualifying food item. As coffee is a qualifying beverage and not a qualifying food item, the supplier must collect the full 13% HST on the sale of the granola bar and cannot pay or credit the 8% provincial part of the HST to the purchaser.

2. Single serving bottle of water and granola bar

Water is not specifically mentioned as a qualifying beverage for purposes of the point-of-sale rebate. However, single serving size of beverages (i.e., less than 600 ml in volume) qualify for the rebate only when sold with a qualifying food item. A single serving of bottled water will thus qualify for the point-of-sale rebate only when sold with a qualifying food item.

A granola bar is not a qualifying food item, rather a snack food which must also be sold with a qualifying food item to be eligible for the rebate.

Thus, a single serving (less than 600 ml in volume) bottle of water sold with a granola bar will not be qualifying food or beverages for purposes of the rebate and the supplier must collect the full 13% HST on the sale and cannot pay or credit a rebate amount to the purchaser.

3. Single serving bottle of water, cup of coffee and granola bar.

As provided in the response for 2 above, the single serving bottle of water and the granola bar will only qualify for the point-of-sale rebate when sold with a qualifying food item. The coffee, if heated for consumption is a qualifying beverage. Thus, the coffee will qualify for the point-of-sale rebate and will only be subject to the 5% federal part of the HST. The bottle of water and granola bar, as they are not sold with a qualifying food item, will be subject to HST at 13%.

4. Single serving of unflavoured milk and prepackaged muffin

Unflavoured (white) milk in a single serving size container is considered to be a basic grocery for GST/HST purposes and hence is zero-rated. However, white milk when packaged in single servings is subject to GST/HST at 5%/13% when sold under the following conditions: through a catering service; through a vending machine; when dispensed at the place where it is sold; and when sold at an establishment where 90% or more of the goods supplied by the establishment are taxable at 5/13%.

Milk, like water, is not specifically mentioned as a qualifying beverage for purposes of the point-of-sale rebate. Under the rebate provisions, a single sized serving of unflavoured milk will be a qualifying beverage when it is purchased under either of the two following conditions:

- when dispensed at the place where it is sold, or
- when sold with a qualifying food item if the container in which the milk is sold contains a quantity that is a single serving size (i.e., less than 600 ml).

Therefore, a single serving size of milk (i.e., less than 600 ml in volume) will qualify for the rebate only when sold with a qualifying food item or when dispensed at the place where it is sold. When sold under such conditions, the milk will be a qualifying beverage and as such only the 5% federal part of the HST will be collected on the sale.

In this part of the question, the purchase included the milk, as well as a prepackaged muffin. Under the point-of-sale rebate provisions, prepackaged muffins, where they are prepackaged for sale to consumers in quantities of less than six items each of which is a single serving (i.e., each weighing less than 230 grams), will qualify for the rebate only when sold with a qualifying food item.

As milk is not a qualifying food item, the sale of muffin will not qualify for the point-of-sale rebate and will thus be subject to HST at 13%.

5. Single serving of unflavoured milk and a non-prepackaged muffin.

Cakes, muffins, pies, tarts, cookies, doughnuts, brownies, croissants with sweetened filling or coating, or similar products where they are not prepackaged for sale to consumers and are sold as single servings in quantities of less than six, are qualifying food items for purposes of the point-of-sale rebate. Therefore, the purchase of one muffin that is not prepackaged will be the purchase a qualifying food item and the point-of-sale rebate will apply to the sale.

As provided in the response for 4, a single serving size of milk (i.e., less than 600 ml in volume) will qualify for the rebate when sold with a qualifying food item. As the milk in this question is sold with a qualifying food item (the muffin that is not prepackaged), the point-of-sale rebate will apply to the purchase of the milk (if taxable) and the muffin. The supplier will collect only the 5% federal part of the HST on the sale of the muffin and milk and will credit the rebate amount of the 8% provincial part of the HST.

6. Single serving of unflavoured milk, sandwich and prepackaged muffin

Sandwiches not canned or vacuum sealed are qualifying prepared foods for purposes of the point-of-sale rebate. Prepackaged muffins, where they are prepackaged for sale to consumers in quantities of less than six items each of which is a single serving, are qualifying foods when sold with a qualifying food item. A single serving size of milk (i.e., a beverage of less than 600 ml in volume) will also qualify for the rebate when sold with a qualifying food item. As the prepackaged muffin and milk are sold with a qualifying food item (sandwich), the point-of-sale rebate will apply to the purchase of the sandwich, muffin and milk.

The supplier will collect only the 5% federal part of the HST on the sale of the sandwich, muffin and the milk (if the milk is subject to HST) and will credit the rebate of the 8% provincial part of the HST to the purchaser.

7. Cup of coffee and a prepackaged muffin.

Coffee heated for consumption is a qualifying beverage for purposes of the point-of-sale rebate.

As provided in the response for 4 above, prepackaged muffins are only qualifying foods when sold with a qualifying food item. As a cup of coffee is not a qualifying food item, the purchase of the muffin is not eligible for the point-of-sale rebate.

The supplier will credit the point-of-sale rebate on the purchase of the coffee and charge only the 5% federal part of the HST. As the purchase of the muffin is not eligible for the rebate, the supplier must collect the full 13% HST on this sale.

c) The definition of "coupon" in subsection 181(1) includes a voucher, receipt, ticket or other device. CRA has stated that the redemption of points is viewed as the redemption of a coupon.

The reimbursement of price reductions or discounts in respect of coupons accepted by a vendor is deemed not to be consideration for a supply pursuant to paragraph 181(5)(a) of the ETA.

Note that where a specific number of points may be exchanged for a specific product with no cash required to be tendered, it is CRA's position that subsection 181(4) will apply. In the situation presented, the tax implications are as follows:

- GST/HST is collectible on the reduced value of consideration (in this case, zero);
- no input tax credit is available under subsection 181(5); and
- the reimbursement is not consideration for a supply.

Interpretation Requested # 10:

It is assumed that in the Energy restriction area, the only restriction is on the commodity of energy, not on delivery charges, handling, storage cost, low usage penalty charges, pipeline costs, etc. Please confirm that this is correct or if not, what is actually to be included in the restriction.

Interpretation provided:

As stated in the Ontario Ministry of Revenue's, Information Notice No. 5, *Temporary Recapture of Input Tax Credits Requirement* and the British Columbia Ministry of Finance, Tax Information Notice No. 4, *Temporary Recapture of Input Tax Credits*, the answer to this question

would depend on whether or not these other charges or costs constitute incidental parts of a single supply of energy in which case the entire amount would be subject to the recapture requirement. If they are separate supplies unto themselves, that are not incidental to the energy supply, they will not be part of the supply of energy for the purposes of the RITC requirement.

Interpretation Requested # 11:

On many energy billings there are usage adjustments made. These are based on contracts where the manufacturer guarantees to purchase X amount of steam, electricity, etc from the energy provider. However, due to low production needs, they do not actually use the amount of energy agreed upon, and must pay the provider for the guaranteed amount even though it is never actually used at all. Would these adjustments be subject to the restrictions? Or are they 100% ITC recoverable?

Interpretation provided:

The RITCs requirement would apply to specified energy that is acquired or brought into Ontario or British Columbia for use in the province by a large business. Usage adjustments based on contracts with the energy provider constitute part of the supply of energy. Any such adjustments would be subject to the recapture requirement because they would ultimately constitute consideration for a supply of energy that is acquired for use by the large business in the province.

Interpretation Requested # 12:

This question pertains to energy bills specific to a location. For example, Bluewater Power invoices by location. If it is known that a location is 100% administrative or non-productive related i.e., shipping warehouse, administrative building, firehall, landfill building, etc. Would the proxy apply or would 100% recapture of those energy billings be correct to claim? Please confirm how the proxy is to be applied? - i.e., only for mixed manufacturing and non-manufacturing where the energy may be used for both or all energy billings?

Interpretation Provided:

The applicable production proxy percentage for the most significant business activity, if any, is applied at the entity level. For the purposes of determining the RITCs on energy used in production, where the large business has filed the election to use the production method, there is no need to separate energy billings between production and non-production activities. The applicable proxy percentage would apply to all of energy billings of the large business.

In order to use a production proxy in Ontario, the large business must be carrying on its production activities primarily in Ontario. The Government of British Columbia has not yet issued information as to what extent a large business must be carrying on production activities in British Columbia.

Interpretation Requested # 13:

Operational costs for a Cogen plant, where payments are made for labour, - regular, overtime labour, management support, and other costs such as personal protective equipment, training, tools and equipment rentals, or contractors/materials that are incurred. There are no charges on these invoices for energy just overhead costs and they are billed monthly. Please confirm that these are not RITCs.

Interpretation Provided:

During the eight year transitional period of the RITCs in Ontario and British Columbia, it is proposed that large businesses be required to recapture ITCs attributable to the provincial component of the HST in respect of specified property and services acquired or brought into Ontario or British Columbia for use in these provinces. Specified property or services generally means a specified road vehicle, fuel (other than diesel fuel) used in a specified road vehicle in Ontario, energy, a telecommunication service, or a meal and entertainment expense that is acquired for use by a large business in these provinces.

Operational costs for a Cogen plant that are not specified property or services, or that are not related to the specified property or services mentioned above, are not subject to the RITCs requirement. If there are no charges on the invoices for energy that would mean that the business is not acquiring a supply of energy, and that those costs would not be subject to the RITCs requirement.

If there are specific invoices for supply of specified energy (electricity, gas, fuel, other than fuel used in a propulsion engine, steam), for use in these provinces by a large business, the RITCs requirement will apply to that supply and to other costs that are incidental to that supply of energy. RITCs will not be required when the specified energy is used directly in the production of tangible personal property for sale by a large business.

Interpretation # 14:

Will businesses be required to self-assess and recapture the provincial component of the HST on own energy consumption? If so, how is this to be reported on the GST/HST return?

Interpretation Provided:

Where a large business produces its own energy and uses the energy in its business activities, there is no requirement to self-assess or to report RITCs.

Interpretation Requested # 15:

Will a business be required to self-assess HST for gas that is flared and/or vented within BC?

Interpretation Provided:

A large business will not be required to self-assess on flared or vented gas within BC.

Interpretation Requested# 16:

For purposes of the Recaptured Input Tax Credit for specified energy used for production could you clarify the following:

1) When heating, air conditioning and ventilation is a requirement for the production process to maintain a certain temperature and humidity (related equipment would have been purchased exempt of RST) is the energy used to provide such heating, air conditioning and ventilation considered to be used for production purposes and thus such energy allowed to be a part of the recoverable portion?

2) When using the production proxy percentage based on the NAICS categories, does this percentage apply to all energy purchased within the province of Ontario across all the various facilities in the province for the particular business regardless of the use of each individual facility?

Interpretation Provided:

1) When heating, air conditioning and ventilation are required in the production process to maintain a certain temperature/humidity level, the energy consumed is considered to be used directly in the production process and, as such, are not subject to the recapture rules.

2) The determination of which proxy rate may be used by a large business when reporting RITCs on energy used in production is based on the large business's most significant business activity and whether this production activity is listed under one of the three proxy percentages. The applicable proxy percentage for the most significant business activity, if any, is applied at the entity level, and therefore the proxy percentage is applied to all energy acquired by the registrant. The presence of manufacturing or production is not required in all sites.

   In order to use a production proxy in Ontario, the large business must be carrying on its production activities primarily in Ontario. The Government of British Columbia has not yet issued information as to what extent a large business must be carrying on its production activities in British Columbia.

Interpretation Requested # 17:

The reporting system can handle configuration changes 40 – 60 to 50 -50 and various rates of tax, however the reporting requirements issued by Ontario that require reporting of 100% of the provincial portion of the claw back then claw back 100%, but continuing to only claim 50%

under GST and real HST rule is not possible. The only way that this can be done is manually whereby no provincial portion is made through the system and manually calculate 8% of month to date costs of food and entertainment using 8/108th calculation because the tax will be buried in the costs and report as an ITC (debit) and then the same amount as payable (credit). Would this manual calculation be acceptable in audit? If not would the government consider prescribing the use of a factor that can be used to report this restriction?

Interpretation Provided:

Please see the response to question 18 below.

Interpretation Requested # 18:

Under section 236(1.1)(c) of the Excise Tax Act, a corporation filing GST/HST returns on a monthly basis is required to add back 50% of the input tax credit deducted on certain food, beverage and entertainment expenses during its fiscal year on the GST/HST return for the month immediately following the end of the fiscal year.

(A) Ontario Information Notice No. 5, Temporary Recapture of Input Tax Credits Requirement, on page 10 under the caption WHEN TO ACCOUNT FOR RECAPTURED ITCS, notes that a large business would generally be required to account for RITCs in its GST/HST return for the reporting period when the ITCs first became available. It then states "However, if a large business is currently required under the ETA to repay ITCs in respect of a particular specified property or service in a reporting period other than the reporting period in which the ITCs first become available, the large business would generally be required, under the RITCs requirement, to recapture ITCs in respect of that same specified property or service in that same reporting period."

Would CRA please confirm that the above statement means that the 100% recapture of the provincial component of the HST on specified meals and entertainment for the whole fiscal year would not be required to be made by the corporation until the GST/HST return for the first month following the end of it fiscal year?

(B) If the answer to question (A) is Yes, would CRA explain the phrase "to recapture the remaining portion of the provincial component of those ITCs" in Example 6 at the top of page 11 of the same Information Notice.

Interpretation Provided:

A) If a large business is currently repaying ITCs on food, beverages and entertainment under the existing requirement in section 236 of the ETA, there will be a recapture of 100% of the provincial part of the HST when the recapture is done in the first reporting period after the end of the large business's fiscal year.

B) Given that section 236 relates to the repayment of a portion of the ITC previously claimed, the remaining portion referred to in Example 6 on page 11 of the subject Notice pertains to the remaining portion of the ITC not already recaptured by section 236. This would result in a total RITC of 100% of the provincial part of the HST.

Interpretation Requested # 19:

Please provide clarity with respect to M & E recapture requirements where an employee files an expense statement three months after the expense was originally incurred. (In this instance, the business would not be able to account for the RITC in its GST/HST return for the reporting period when the ITC first became payable).

Interpretation Provided:

Under section 175 of the ETA a large business that reimburses an employee is deemed to have received a supply of the property or service for which reimbursement is being made, the consumption or use by the employee is deemed to be the consumption or use of the large business and the large business is deemed to have paid at the time of the reimbursement tax in respect of the supply. The large business is eligible to claim an ITC when the reimbursement is made. In the example provided, the large business once having reimbursed the employee would be eligible to claim an ITC and would be subject to the RITCs rules based on the categories of expenses for which the reimbursement was made.

Interpretation Requested # 20:

Will CRA be announcing prescribed factors for use in ON and BC? What are they? When can we expect them? Will there be a single mathematical factor on employees' expense reports for expenses incurred in Ontario and British Columbia that would mimic the 4.1 % ratio under the QST administrative policy?

Interpretation Provided:

The CRA will be updating policy P-184, *Credit Card Expenses and the Registrant's Use of Factors for Claiming Input Tax Credits.* It is expected to be published by mid May. The revised policy will reflect the rates applicable to HST in Ontario and British Columbia and were determined using the same methodology used for the rates currently published in the policy.

Interpretation Requested # 21:

"Specified meals and entertainment" expenses, that are currently subject to an ITC repayment requirement under the ETA (generally at a 50% rate), are one of the "specified property and services" that fall under the recapture of the input tax credits (RITCs) requirement.

GST registrants who are engaged 100% in commercial activities provide their employees with "joint and severally liable" credit cards. These employees can incur meals and entertainment expenses (M&EE) that the employees pay for by using these employer-provided credit cards. Other expense like car rentals, hotel accommodations, gasoline for rental cars, parking, etc. are also paid for by using the same employer-provided credit card. The employee then processes an employee expense account to which these expenses (including the M&EE) are eligible, to some degree, for a GST input tax credit. Some businesses use the CRA approved factor method and have the option when to account for the 50% recapture GST portion.

In other cases, some M&EE are billed directly from the M&E supplier and are not paid for by way of employee credit card but are paid for through an accounts payable routine (e.g. Blue Jays tickets). As well, some gasoline may be purchased directly from a gasoline supplier to be delivered to a registrant's site in Ontario and stored in a bulk tank and subsequently used by company vehicles for on-road deliveries.

1) Please confirm that the 8% related to the Ontario portion of the HST for the Blue Jays tickets, and the 8% related to the Ontario portion of the HST for the gasoline purchased for the bulk tank are considered to qualify as a RITC and need to be included in the RITCs reportable number for Ontario.

2) Please also advise if the 8% related to the Ontario portion of the HST in relation to the M&EE and gasoline purchases incurred by the employee who used the employer-provided credit card, and where these expenses qualify for a input tax credit currently, will need to be included in the RITCs reportable number for Ontario?

3) If the employee made a long distance call from the hotel room and that call was charged on the hotel's bill for the room, and the employee paid for that call on its employer-provided credit card, please advise if the 8% related to the Ontario portion of the HST in relation to that telephone call will need to be included in the RITCs reportable number for Ontario?

4) Is CRA planning to announce specific factors, similar to the 4/104 factor for GST recovery and the 12/112 factor for the recovery in the existing HST provinces, for expenses incurred by an employee using an employer-provided credit card in both the provinces of BC and Ontario for purposes of reclaiming the federal portion and / or the provincial portion of the applicable BC HST or Ontario HST?

Interpretation Provided:

1) Yes, the 8% provincial part of the HST charged on Blue Jays tickets and gasoline purchased for the bulk tank would be subject to the RITCs rules in Ontario.

2) Yes, as explained in the response to question 19, the provincial part of the HST which is incurred by employees using the joint and severally liable credit cards for which the employee is reimbursed by the large business, will be subject to the RITCs rules.

3) Yes, the provincial part of the HST on a long distance phone call incurred by an employee using the joint and severally liable credit card for which the employee is reimbursed, will be subject to the RITCs rules.

4) As explained in the response to question 20, the CRA will be updating P-184, *Credit Card Expenses and the Registrant's Use of Factors for Claiming Input Tax Credits*, and it is expected to be published by mid May. The revised policy will reflect the rates applicable to HST in Ontario and British Columbia.

Interpretation Requested # 22:

On some construction contract billings, engineering certification is a condition precedent to payment. Currently, the liability for GST/HST does not arise until the certified amount is paid or is due under the terms of the contract, whichever is the earlier. This is because the progress claim is NOT an invoice within the meaning of the Excise Tax Act but merely a request for certification.

What are the special transitional rules where a progress amount that relates to work performed prior to July 1, 2010 but not paid or certified (or due) until after June 30, 2010? Would it be subject to HST? not GST in Ontario and BC? What about the holdback? Is the holdback also subject to HST (i.e. the same allocation under the progress payment rule as the progress payment itself), or GST since it relates to work performed?

Interpretation Provided:

In Ontario or British Columbia, the HST would generally apply to progress payments made under contracts for the construction, renovation, alteration or repair of real property where the progress payment becomes due after October 14, 2009 to the extent that the payment can reasonably be attributed to property delivered or services performed on or after July 1, 2010. To the extent that the progress payment can reasonably be attributed to property delivered or services performed before July 2010, the payment would not be subject to the provincial part of the HST.

The provincial part of the HST would not apply to a progress payment that becomes due or is paid without having become due after June 30, 2010, to the extent that the progress payment relates to property delivered or services performed before July 2010.

A request or application for payment issued by a contractor in accordance with a written construction agreement that triggers the certification of the value of the work completed and the materials delivered up to the time of the request or application in order to approve a specific

payment amount is not considered to be an invoice for GST/HST purposes. The transitional rule for progress payments applies based on earlier of the date that the progress payment becomes due under the written agreement or the date it is paid without having become due. If the written agreement provides that a progress payment is payable 5 days after a certificate is issued, the transitional rule will be based on that date provided that the amount is not paid before that date, or that the supplier has not issued an invoice (i.e., a document that is not simply a request or application for payment) for the amount before that date.

If, in accordance with federal or provincial law or a written agreement for the construction, renovation, alteration or repair of real property, a purchaser keeps a part of a progress payment as a holdback pending satisfactory completion of the work, the HST would generally apply to the holdback to the extent that the progress payment can reasonably be attributed to property delivered or services performed on or after July 1, 2010, provided that the progress payment becomes due or is paid without having become due after October 14, 2009. The GST/HST on the amount of the holdback, or any part thereof, becomes payable on the earlier of the day the purchaser pays the holdback and the day the holdback period expires. The GST/HST is collectible by the supplier on the earlier of the above dates even if the supplier already issued an invoice for the holdback and charged the GST/HST on this amount. The provincial part of the HST would not apply to a holdback that is withheld from a progress payment that is attributable to property delivered and services performed before July 2010 even if the holdback is paid on or after July 1, 2010.

Interpretation Requested # 23:

Under the RST legislations of the various provinces, RST on costs associated with rolling stock i.e., lease payments are generally calculated by the lessee on a self-assessment basis as the applicable RST is based on the physical travel of the rolling stock throughout the various provinces. With the implementation of the HST in Ontario and British Columbia, how will the HST on lease payments regarding rolling stock be calculated?

On leases already in existence on July 1/10 (i.e., the place of supply would have been determined at the start of the lease potentially many years ago) and new leases ?

In both cases, please consider that rolling stock travels both within Canada and North America. Therefore prior to the implementation of the HST, the railroads would have self-assessed RST in the provinces of British Columbia, Saskatchewan, Manitoba, Ontario and Prince Edward Island based on mileage for each car travelled in the jurisdiction. Please also keep in mind that because the railroads have historically self-assessed the RST, lessors may not have the applicable billing systems/tracking available to them to charge any tax other than possible GST on the entire leases payment.

Will the CRA consider any measures to simplify the taxation of lease payments in regards to rolling stock?

Interpretation Provided:

No change is proposed to the specific place of supply rule that currently applies to a supply of railway rolling stock otherwise than by way of sale. A supply of railway rolling stock otherwise than by way of sale is made in a province if the supplier delivers the rolling stock or makes it available to the recipient of the supply in that province. This place of supply rule overrides the previously explained place of supply rule that applies to supplies of tangible personal property other than by way of sale for a period of more than three months which is based on the ordinary location of the property.

The application of this place of supply rule is generally based on the province in which legal delivery of the rolling stock to the recipient occurs. However, for purposes of the rule, the rolling stock is also deemed to be delivered in a particular province, and not in any other province, if the supplier ships the rolling stock to a destination in the province that is specified in the contract for carriage of the rolling stock or transfers possession of the rolling stock to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the rolling stock to such a destination.

The province in which the supply of the rolling stock is determined to be made for the first lease interval is the province in which all supplies of the rolling stock for subsequent lease intervals are deemed to be made. If continuous possession or use of railway rolling stock is given by a supplier to a recipient throughout a period under two or more successive leases, licenses or similar arrangements entered into between the supplier and the recipient (i.e. where the arrangement is renewed), the rolling stock is deemed to have been delivered or made available to the recipient under each of those arrangements at the location at which it is delivered or made available to the recipient under the first of those arrangements.

Although the place of supply rule for a supply of railway rolling stock as explained above will remain the same, a special transitional rule is proposed to be added to address a transitional issue that applies in relation to Ontario or British Columbia. If a supply of railway rolling stock is made under a lease in effect on July 1, 2010, the provincial component of the HST will not apply to the extent that the rolling stock is delivered or made available in Ontario or British Columbia. The supplier will be required to keep track of whether the rolling stock is delivered or made available to the recipient under the next renewal agreement with the same recipient. If that delivery occurs in Ontario, Nova Scotia, New Brunswick, British Columbia or Newfoundland and Labrador, the supply under that renewal agreement will be subject to the HST.

Interpretation Requested # 24:

For the purposes of accounting for RITCs, it is assumed that the taxpayer has not elected to use the Estimation/Installment Approach Method and reference is made to Ontario Information Notice No. 5 *Temporary Recapture of Input Tax Credits Requirement* issued on February 1, 2010 notes under the section HOW TO ACCOUNT FOR RECAPTURED ITCS on page 11 that

"Generally, if a registrant fails to report recaptured ITCs in the appropriate reporting period, any subsequent reporting of the recaptured ITCs would be done through an amended return for that period."

Where a taxpayer has incorrectly calculated the RITC amount resulting in an under-reported amount of RITCs in a particular period, would CRA advise the circumstances where a correction in the following reporting period to the under-reported amount would be permitted rather than having to file an amended return for the particular period?

Interpretation Provided:

A large business that has incorrectly reported RITCs in a return for a particular reporting period will be required to request an amendment to that return by writing the Tax Centre assigned to the large business. An adjustment to a subsequent return is not permitted.

Interpretation Requested # 25:

Will there be any interest payable or refundable on the discrepancy between the estimated RITCs and the actual, at year end?

Interpretation Provided:

The details of this aspect of the RITCs requirement will be forthcoming at a later date.

Interpretation Requested # 26:

Please confirm RITCs are deductible for Income Tax.

Interpretation Provided:

If the transaction that gave rise to the RITCs were made or incurred by the taxpayer for the purpose of gaining or producing income from a business, the RITCs would be deductible for income tax purposes. If the transaction pertaining to the RITCs is on account of capital, the amount of the RITCs would have to be capitalized to the relevant asset.

Interpretation Requested # 27:

How will NETFILE work? Will NETFILE be structured to take into consideration the GST offset under ss 228(7) of the ETA?

Interpretation Provided:

The CRA has recently released a video on filing and paying your GST/HST return electronically. It can be viewed at http://www.cra-rc.gc.ca/gncy/hrmnztn/wbcsts/menu-eng.html. In addition,

information on GST/HST NETFILE is available at http://www.cra-arc.gc.ca/esrvc-srvce/tx/bsnss/gsthst-tpstch-ntfl/menu-eng.html.

Offsets of refunds or rebates will continue under GST/HST NETFILE where members of a closely related group have filed form GST303, *Application to Offset Taxes by Refunds or Rebates*, pursuant to subsection 228(7) of the ETA. Registrants wishing to start using the offset provision must send the application to their tax centre. The general information pages of GST/HST NETFILE will provide instructions to registrants.

The foregoing comments represent our general views with respect to the subject matter of your request. These comments are not rulings and, in accordance with the guidelines set out in GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service*, do not bind the Canada Revenue Agency with respect to a particular situation. Future changes to the ETA, regulations, or our interpretative policy could affect this interpretation.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at (613) 952-0301.

Yours truly,

Owen W. Newell, CGA
Manager
General Operations Unit
Excise and GST/HST Rulings Directorate