CRA/TEI
Commodity Taxes
Liaison Meeting
November 18, 2014
Questions and Answers

Canada Revenue Agency | Agence du revenu du Canada

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, at TEI's liaison meeting on November 18, 2014.

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. 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, the member 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; 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: Since January 1, 2013, the CRA has been administering 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 GST/HST or QST and these types of listed financial institutions in respect of any particular matter; reference may be made to GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service.* To make a technical enquiry related to these types of listed financial institutions by telephone, call 1-855-666-5166.

QUESTION # 1: Phasing Out of Recaptured Input Tax Credits

As a temporary measure beginning July 1, 2010, and effective through June 30, 2018, large businesses must recapture input tax credits for the provincial portion of the HST paid or payable on "specified property and services" in Ontario (commonly referred to as "recaptured input tax credits" or "RITCs"). For the first five years, the rate of recapture was 100-percent. Beginning July 1, 2015, the rate of recapture will decrease by 25-percent per year until reaching 0-percent for all supplies made on or after July 1, 2018. (Similar rules came into force in Prince Edward Island on April 1, 2013, where the phase out will begin on April 1, 2018 and end on March 31, 2021.)

Large businesses devoted considerable resources modifying their systems to properly account for these RITCs. For example, several companies engaged specialty consulting firms or devoted significant internal resources to acquire the information technology support necessary to identify and report supplies of hydro and electrical purchases consumed in manufacturing and research processes. Even with systems improvements the process for identifying, tracking, and reporting RITCs involves intensive analytical work and requires substantial manual intervention.

With the phase out of RITCs in Ontario scheduled to begin July 1, 2015, businesses must start planning for the requisite changes to their IT systems. Please provide an update on the timetable for releasing guidance, including transitional rules, on how the phase out will be reported on GST/HST returns and those issues with the phase out causing concern.

CRA Comments

The CRA understands that the gradual phase out of recaptured input tax credits (RITCs) in Ontario will have a transitional impact for certain businesses.

An example of a situation that demonstrates when a large business may be required to report RITCs in a GST/HST return for one reporting period using different recapture rates would be where a large business in Ontario has a reporting period that straddles July 1, 2015. Generally, in this case, RITCs for the provincial part of the HST that first became payable, or was paid without having become payable before July 1, 2015, will be reported at the 100% recapture rate; those RITCs for the provincial part of the HST that first became payable, or was paid without having become payable on or after that date would be reported at the 75% rate.

To assist large businesses in meeting their RITC reporting requirements, the CRA has nearly completed work on amending Schedule B, *Calculation of Input Tax Credits,* to the GST/HST return, (the Schedule). For reporting periods that include the date the recapture rate decreases

(such as July 1, 2015, for the province of Ontario), and for subsequent reporting periods, multiple recapture rates will be shown on the Schedule to incorporate the requirement to report RITCs using the applicable recapture rates. The Schedule will also have a new Line 1403, *RITC adjustment in respect of a qualifying motor vehicle,* to report the deduction amount related to the sale of a qualifying motor vehicle or its removal from a specified province, as the case may be.

Furthermore, Technical Information Bulletin B-104, *Harmonized Sales Tax – Temporary Recapture of Input Tax Credits in Ontario and British Columbia*, is being updated, and will incorporate information on the requirement to report RITCs using the applicable recapture rates. Additionally, we will be issuing a GST/HST Info Sheet giving various examples on how to report RITCs on the Schedule using the required recapture rates. These publications are expected to be released in early 2015. As GST/HST guides and websites are updated, we will also include information on these rules.

Supplemental Information:

The following is provided as supplemental detailed information regarding this issue. It includes various situations that demonstrate when a large business may be required to report RITCs in a GST/HST return for one reporting period using different recapture rates.

Under section 236.01 of the *Excise Tax Act* (the ETA) and the *New Harmonized Value-added Tax System Regulations, No. 2* (the Regulations), a large business is required to account for specified provincial input tax credits (hereafter referred to as recaptured input tax credits or (RITCs)) for the provincial part of the HST paid or payable on specified property or services. Section 30 of the Regulations sets out the prescribed times to report RITCs in respect of specified property or services, and section 31 sets out the prescribed manner to calculate the amounts to recapture. These amounts are determined under the various rules in section 31, and all amounts are calculated using the recapture rate applicable at the "specified time", as defined in section 26, in respect of the RITCs. The specified time is generally the date the HST first became payable, or was paid without having become payable.

In certain circumstances, large businesses that are monthly and quarterly filers may have their requirement to report RITCs deferred to future reporting periods. Such deferrals may result in reporting RITCs in a GST/HST return for a reporting period in which differing recapture rates would apply. Furthermore, where a large business is required to report RITCs in a GST/HST return for a reporting period that straddles a date on which the recapture rate is reduced, the large business will be required to report the RITCs using more than one recapture rate. Those filing monthly, quarterly and annual GST/HST returns may find that a reporting period contains

recapture periods with differing recapture rates. This will occur with Ontario recapture amounts when a reporting period begins:

- prior to July 1, 2015, and ends on or after that date,
- prior to July 1, 2016 and ends on or after that date, and
- prior to July 1, 2017 and ends on or after that date.

This will occur with Prince Edward Island recapture amounts when a reporting period begins:

- prior to April 1, 2018 and ends on or after that date,
- prior to April 1, 2019 and ends on or after that date, and
- prior to April 1, 2020 and ends on or after that date.

The following situations demonstrate when a large business may be required to report RITCs in a GST/HST return for one reporting period using different recapture rates:

- A large business in Ontario has a reporting period that straddles July 1, 2015. RITCs for the provincial part of the HST that first became payable, or was paid without having become payable, before July 1, 2015, will be reported at the 100% recapture rate; those RITCs for the provincial part of the HST that first became payable, or was paid without having become payable, on or after that date would be reported at the 75% rate.

- Large businesses that are monthly and quarterly GST/HST filers, in certain circumstances, have an additional reporting period to account for their RITCs. For example, if a large business has quarterly reporting periods, and the earlier of the day that the HST became payable, or was paid without having become payable, is in the last fiscal month of a fiscal quarter, where the input tax credit for the HST paid or payable has not been claimed, or the corresponding RITC has not otherwise been reported in the GST/HST return for that reporting period, the large business is able to report the RITC in the return for the following reporting period.

  Example: For the fiscal quarter ending June 30, 2015, any RITCs for the tax that first became payable, or was paid without having become payable, during the month of June 2015 which were deferred under this rule, are to be reported in the GST/HST return for the July 1, 2015 to September 30, 2015, reporting period at the 100% recapture rate. The large business would generally be required to report the other RITCs in the GST/HST return for that reporting period for the tax that became paid or payable in July, August, or September, using the 75% recapture rate.

- For qualifying motor vehicles acquired by lease, where there is a requirement for the large business to add an amount to net tax for a reporting period under subsection 235(1) of the ETA, the RITCs in relation to that qualifying motor vehicle are to be reported on the last day of the appropriate reporting period as determined under subsection 235(2). However, the applicable recapture rate(s) will apply to the calculation of each of the RITCs in respect of the lease payments.

  Example: A large business is a monthly filer with a December 31, 2015 year end. During the 2015 fiscal year, it makes monthly lease payments on a qualifying motor vehicle, and under section 235 of the ETA, is required to add an amount to its net tax, in relation to this vehicle, in the GST/HST return for the January 2016 reporting period. It will also be required to report the RITCs in relation to this vehicle in this same GST/HST return. However, in this GST/HST return, the large business will be required to report the RITCs on these lease payments, at the 100% recapture rate for the tax that first became payable, or was paid without becoming payable, January 1, 2015 to June 30, 2015, and at the 75% recapture rate for the tax that first became payable, or was paid without becoming payable July 1, 2015 to December 31, 2015.

- Similarly, if the specified property or service is food, beverages or entertainment and the large business is required under subsection 236(1) of the ETA to add an amount in determining the net tax for a reporting period, the prescribed time to report the RITC is the last day of the appropriate reporting period determined under subsection 236(1.1). However, in the GST/HST return for that reporting period, the applicable recapture rate(s) will apply to the calculation of each of the RITCs in respect of the provincial part of the HST paid or payable on these expenses.

  (It should be noted that, as per the CRA's administrative policy, a large business may choose to report RITCs for meals and entertainment expenses, or vehicle lease payments, in the GST/HST return for each reporting period in which the tax became payable or was paid without having become payable. However, the large business may still be required to report the RITCs at different recapture rates in that reporting period (for example, where that reporting period straddles a recapture period).

- Finally, if a large business has reported an RITC in respect of the acquisition of a qualifying motor vehicle and subsequently either sells the vehicle to an unrelated person or removes it from a specified province and registers it in another province, subsection 236.01(3) of the ETA and sections 33 and 34 of the Regulations allow the large business a deduction from net tax. The deduction amount is an absolute value

which is to be claimed in the reporting period in which the sale is made, or the vehicle is removed from the specified province. If this reporting period is one in which the recapture rate is reduced, the amount of the deduction allowed is still 100% of the amount as calculated under section 34.

QUESTION # 2: Project to Update GST/HST Bulletins, Publications, and Forms

Changes in the law and the economy necessitate constant revisions to published guidance. For example, CRA's website notes that several forms and publications related to selected listed financial institutions are currently being developed (http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/frmspbs/clntgrp-eng.html). Outdated guidance creates uncertainty for businesses attempting to apply those rules and can result in disputes between business and CRA. We invite a discussion of the process CRA uses for identifying which publications are out of date and how it prioritizes the revision of those documents.

CRA Comments

Every effort is made by the CRA to ensure that the forms, guides and technical publications on the CRA website are as up-to-date as possible. Rigorous quality review processes are in place to ensure that Canadians can rely on the certainty that this information provides, and to ensure that the information is made available in a timely manner.

There are two areas within the CRA which publish GST/HST publications:

1. The Taxpayer Services Directorate (TSD) in CRA's Taxpayer Services and Debt Management Branch (TSDMB), which publishes numerous general guides and forms which target a broad, general audience and cover a broad array of topics related to both income tax and GST/HST.

2. The Excise and GST/HST Rulings Directorate in CRA's Legislative, Policy and Regulatory Affairs Branch (LPRAB), which publishes the more technical GST/HST publications (these include quarterly issues of the Excise and GST/HST News, Memoranda Series, Notices, Info Sheets, Technical Information Bulletins, Qs and As and Policy Statements) . These publications target audiences with a more in-depth technical knowledge of the GST/HST (e.g. commodity tax practitioners, industries, etc.).

These two areas work in close collaboration during the development of products. For instance, the technical experts in our GST/HST Rulings program conduct rigorous technical stakeholder reviews of all of the general GST/HST publications and forms published by TSD on an ongoing basis. In doing so, we also ensure that appropriate alignments and hyperlinks are made to the

more technical publications, as required. When significant changes are announced and new forms and guides are required as a result, the level of collaboration intensifies to ensure that the CRA provides the necessary information to those affected.

As well, for the general GST/HST forms and publications developed and issued by Revenu Quebec, there is a stakeholder review process in place that is very similar to the process used by TSD. TSDMB coordinates the CRA review of these publications and forms and GST/HST Rulings reviews these for technical accuracy. The CRA also has processes in place to share new or revised CRA publications and forms with Revenu Quebec to ensure consistency in published information.

Basic Process for CRA general forms and guides (TSD)

The TSD has an annual review cycle in place to ensure that products are published in relation to the changing tax years (e.g., T1 package). TSD authors are responsible for reviewing and updating products in accordance with established standards and for the technical accuracy and language quality of their publications. To identify which publications require an update or if a new publication is required:

- External developments are monitored and impact on products is analyzed (e.g. budget announcement and new legislation)

- Client feedback is gathered (e.g. usability testing, profile of enquires, Web analytics, etc.)

- Planning sessions with primary stakeholders are conducted with Office(s) of Primary Interest (OPI's) to determine priorities

- An ongoing assessment of current portfolios of print and Web products is conducted to ensure technical accuracy. This is achieved through regular annual reviews, ad hoc reviews (as a result of legislative changes outside of regular Federal budget announcements) off-cycle and prior to print reviews.

- Quality assurance activities are also in place to maintain and improve quality and ensure consistent standards are applied.

Basic process for GST/HST technical publications

When new legislation is announced, the first priority for GST/HST Rulings is to ensure that related GST/HST technical information is made available on the CRA website as soon as

possible. Often, this information (the "what") is made available in the form of Notices, Q's and A's, articles in the Excise and GST/HST News, or Info Sheets shortly after the announcement and before the legislation becomes effective. We have been quite effective at doing this. Generally, the regulations that provide the details on "how" the legislation applies follow much later than the initial announcement. As regulations become available, new publications are developed and/or existing ones are updated.

When announcements are made, priority is also given to analyzing impact and identifying the need for new publications or the updating of existing technical publications. This workload is "triaged" accordingly and categorized as high, medium or low in our work plans, based on a number of factors (e.g. scope, impact, number of rulings requests, rulings issued, etc.). At the same time, emerging issues such those identified in incoming rulings requests are monitored, and where necessary, key information demands and major issues are synthesized into new publications to meet demand.

With respect to the process used to identify which publications are out of date, an inventory of these products is maintained and prioritized on an ongoing basis in work plans developed for staff. This inventory is regularly reviewed and often reprioritized as major issues arise. The fact that GST/HST legislation becomes effective immediately or retroactively poses operational challenges due to the transactional, real time nature of the tax, which leaves little planning time. As a result, we need to remain nimble and flexible as an organization in the reprioritization of this workload, while at the same time balancing this and other workload demands with available resources.

All draft GST/HST technical publications undergo an intense review process and are then discussed and approved by a Technical Discussion Group (TDG) comprised of technical experts and the directors and Director-General in the Excise and GST/HST Rulings Directorate in LPRAB. Where significant content or policy changes occur, input is also sought from the Department of Finance and/or key external or internal stakeholders, or the publication is posted for consultation purposes to ensure that various perspectives are considered prior to finalization.

In March 2012, GST/HST Rulings received additional resources as a result of HST implementation in Ontario. These resources have been deliberately dedicated to updating GST/HST publications and other related activities. As a result, over the past two years 50 new and 21 revised GST/HST technical publications have been issued. We have been making significant progress in the updating of our publications, and plan to continue to do so.

Details related to the example cited in this question:

TSD and GST/HST Rulings have been working very closely on the development of the new forms and guides for selected listed financial institutions (SLFIs). Given that the Comprehensive

Integrated Tax Collection Agreement (CITCA) established that the CRA would, on behalf of Revenu Québec, administer the QST with respect to persons that are SLFIs for GST/HST or QST purposes or both, the immediate priority of the CRA was to determine which forms and publications would be affected. Our efforts were prioritized as follows:

- Although the relevant legislation and procedures were not yet available, the creation of combined QST/GST/HST returns for SLFIs became the first priority.

- Our second priority was the forms used to claim QST/GST/HST rebates.

- Our third priority was the creation of forms used for QST/GST/HST elections and applications.

These priorities have been affected by the dates that new legislation and confirmation of new procedures have become available to us.

On the CRA website, to ensure that the target audience would not be confused, we created two separate webpages providing relevant forms and publications information for affected clients:

- The first webpage provided information for listed financial institutions about existing GST/HST forms and publications available to them where QST information would not be required.

- The second webpage (example cited) was created to provide information about newly- and soon-to-be-developed combined QST/GST/HST versions of returns, elections, and applications. This page has been frequently updated as new SLFI products have become available. The current version of this webpage no longer lists the forms and publications currently being developed. Its sole purpose is to provide information and links to the newly-developed products.

QUESTION # 3: Rules for Recovery of GST/HST on Out-of-Pocket Costs

Service firms, consultants, and other GST/HST registrants routinely charge their clients for out-of-pocket costs they incur in the course of performing their work. Those expenses commonly include travel and related costs for food and beverages (and occasionally,

entertainment).[1] Misapplication of the GST/HST rules to those charges complicates compliance by businesses invoiced for out-of-pocket expenses by their service providers.

Some suppliers mistakenly include GST/HST charged on out-of-pocket expenses in the amounts that are passed through to their clients. Those charges should be invoiced to clients ex-original GST/HST and treated as additional consideration for the underlying service (also taking on the same GST/HST status). Further complications arise when suppliers and/or their clients misapply income tax and GST/HST rules for meals and entertainment costs. When a client is aware its supplier has not correctly handled the GST/HST aspects of the supplier's disbursements charges, the client must spend time bringing the error to the attention of a supplier and explaining why the invoice is incorrect. Because this occurs frequently, it creates an inefficient system often involving cancellation and re-issuance of invoices.

Although CRA has published guidance concerning lawyers' disbursements, there is no single publication that explains the GST/HST rules for a non-law firm's recovery of out-of-pocket costs, including those that are non-taxable when initially incurred such as costs incurred outside Canada. Clear direction on this topic, including examples, would help reduce the frequency of GST/HST errors on re-billable disbursements. TEI would be willing to work with CRA on guidance applicable to this issue.

Is CRA willing to create written guidance that provides comprehensive and easy-to-understand guidance on the administration of the GST/HST aspects of re-billable out-of-pocket costs?

CRA Comments

Yes, we appreciate your suggestion and intend to develop a GST/HST info sheet in which we will provide comprehensive and easy-to-understand guidance, including examples, with respect to the application of GST/HST to re-billable out-of-pocket costs.

We also welcome the opportunity to work collaboratively with you with respect to the development of this publication prior to its publication. To this end, we would also appreciate it if you could advise us whether there are any other specific issues or scenarios, in addition to those identified in this particular question that you believe would be beneficial to have addressed in the publication. This would help us to better understand the nature of any problems or confusion that may currently exist with respect to re-billable out-of-pocket costs, and thus help to ensure that the publication is as effective as it can be in addressing those issues.

[1] Please note that in the majority of cases there is no agency relationship between the supplier and its client.

QUESTION #4: Filing GST/HST Returns in Functional Currency
(Finance Only)

QUESTION # 5: Continuing Refinements to My Business Account

TEI is appreciative of the continuing refinements that CRA is making to My Business Account. The use of this online tool has streamlined a number of administrative tasks and provided a single location where businesses can access important information about their tax status.

a. *Future improvements.* Can the CRA My Business Account team discuss improvements that will be included in the next release of My Business Account?

b. *Authorized representative status.* Has a date been set for expanding authorized representative status (RepID) to an individual such as a non-resident who does not file a T1 Income Tax Return?

c. *Cooperation with Revenu Québec.* Can the CRA My Business Account team provide an update on their work with their counterparts at Revenu Québec? Specifically, it would be helpful to understand efforts to enable companies whose GST/HST is administered by Revenu Québec to access their GST/HST account information electronically so these companies can share the same efficiencies in administering their GST/HST accounts as all other companies in Canada.

CRA Comments

a. Below are enhanced and future e-services:

Enhanced e-services

1. Pre-authorized debit agreement
2. Manage direct deposit
3. Register a formal dispute (Notice of Objection)
4. GST/HST - File an election added for: GST20-1 and RC7220-1
5. File a return - expanded to partnership accounts
6. Payroll accounts
   Initiate a payment search
   Transfer of a misallocated credit

Future e-services

1. Enquiries service for:
   GST/HST (April 2015)
   Partnership (April 2015)

2. Submit Documents for:
   GST/HST (April 2015)
   CPP/EI Rulings (April 2015)
   T2 Audit (October 2015)

b. Represent a Client online service (October 2014)
   Non-resident representatives living in the USA

   Non-resident representatives living in the United States are now able to register for, and have access to the Represent a Client online service.

   In order to gain access to RAC, these representatives are required to apply via a new form, the RC391, *Application for a Canada Revenue Agency Non-Resident Representative Number (NRRN)*, and submit documentation to the CRA to support the verification of their identity.

   Non-resident representatives living in the USA will use this number to register online for RAC.

c. The administration of the GST in Quebec is the responsibility of Revenu Québec under an agreement signed in early 1990. The agreement states that Revenu Québec must provide a service comparable to that offered to businesses registered for GST in the rest of Canada.

   For technological reasons, Quebec companies do not currently have access to the accounts of the GST/HST through My Business Account as the systems of the Canada Revenue Agency and Revenue Quebec handle their GST/HST data independently of each other.

   The Canada Revenue Agency is aware of the situation and is working with Revenu Québec to find a solution.

QUESTION # 6: Financial Services

a. *Arranging for Financial Services*. Defined financial services are treated as exempt supplies under the ETA. Paragraph (l) of the definition of financial services in section 123 of the ETA includes arranging for financial services. The legislation provides no additional guidance on

what activities constitute "arranging for" financial services. The courts have applied varying interpretations of this language. For example, the Tax Court of Canada found in *Global Cash Access (Canada) Inc. v. The Queen*, 2012 TCC 173, that "[t]he term 'arrange for' in this context has been broadly interpreted as 'plan or provide for; cause to occur.'" On appeal, the Federal Court of Appeal determined that paragraph (l) of the ETA did not apply in the case.

Given the lack of consistency from the courts on this point, we invite a discussion on the following items:

(i) Could CRA discuss the types of common interpretive errors they see taxpayers making when determining whether a service can be treated as "arranging for" a financial service?

(ii) Could CRA discuss the criteria (or weighting of criteria) used to determine when a service will be treated as arranging for a financial service?

(iii) Could CRA and Finance discuss whether any changes are being considered to address the outcome of the *Global Cash Access* decision and other similar cases (*e.g.*, legislative amendments, published guidance, etc.)?

b. *Financial Institution GST/HST Annual Information Returns*.

(i) Could CRA and Finance discuss any changes that are being considered for the Financial Institution GST/HST Annual Information Returns?

(ii) Would CRA/Finance consider setting up a working group with industry participants to discuss possible changes to the return that would both improve the information being provided on the return and help simplify the current reporting requirements?

(iii) Would CRA/Finance consider eliminating the obligation to file the Financial Institution GST/HST Annual Information Returns for persons qualified as financial institutions under the *de minimis* rule of paragraph 149(1)(c), when the principal activities of such persons are to make taxable supplies and the reason they qualify as financial institutions under the *de minimis* rule of paragraph 149(1)(c) in a given year is due to the receipt of interest on cash flow required for their commercial activities?

c. *Imported Taxable Supply Rules for Financial Services*.

(i) Could CRA and Finance discuss any changes they are considering to the imported supply rules of sections 217 and 218 of the ETA? For example, are any changes being

considered in relation to loading, or will any further guidance be released on this concept?

(ii) Retroactive Legislation on Reinsurance Premiums from 2010 Federal Budget (CRA only). The 2010 Federal Budget tabled complex retroactive legislation that affected the insurance industry, specifically reinsurance premiums. This legislation affects all Canadian insurance companies and all large corporations that have captive insurance companies. CRA has advised on numerous occasions that clarification on their position with respect to this legislation will be coming soon. At the annual TEI Canadian Tax Conference in May of this year, "soon" was defined to "hopefully, mean less than 3 months."

There is significant uncertainty in the market in respect of the definition of "expense loading" and other issues related to this legislation. Even professional advisory firms have taken slightly different positions. Until CRA clarifies its position the market for reinsurance will continue to be fraught with uncertainty.

When will CRA clarify its position on this legislation?

CRA Comments

a. *Arranging for Financial Services*

(i) *Common interpretative errors*

Some of the common interpretive errors concerning the phrase "arranging for" under paragraph (l) of the definition of "financial service" in subsection 123(1) of the ETA are as follows.

- As with any case, one common error is the proper characterization of a supply (i.e., whether there is a single supply or multiple supplies, and where there is a single supply, what is the predominant element of the supply). For example, where the financial intermediation activity is a small component of a single supply of a management service the supply is predominantly a management service and would therefore not be an arranging for service under paragraph (l).

- Another common interpretive error concerning the phrase "arranging for" is interpreting it too broadly. For example, in the insurance industry, if an insurer acquires administrative services these services may be used by the insurer in issuing the insurance policy but they are not services of "arranging for" the issuance of an insurance policy.

- Similarly, a common misconception is that there must be an "arranging for" service when an intermediary is involved. However, where the intermediary is not specifically relied upon for the provision of a financial service to a customer and merely refers the customer to a financial institution, this would generally not be considered an arranging for service. For example, where an intermediary receives a fee for referring a person to the provider of a loan, the intermediary's service would not be included in paragraph (l) of the definition of "financial service".

(ii) *Criteria used to determine when a service will be treated as arranging for a financial service*

The term "arranging for" is generally intended to include intermediation activities that are normally performed by financial intermediaries described in subparagraph 149(1)(a)(iii) of the ETA, such as agents, brokers and dealers in financial instruments or money.

In determining if an intermediary's service is included in paragraph (l) of the definition of "financial service" found in subsection 123(1) of the ETA and not excluded by paragraphs (n) to (t) of the definition, all the facts surrounding the transaction must be considered. In 2011, CRA published Technical Information Bulletin B-105, *Changes to the Definition of Financial Service* (TIB B-105) which provides some guidance, examples and factors/criteria to consider in determining whether a particular supply of a service is included in paragraph (l) and excluded by paragraphs (n) to (t) of the definition of "financial service". Since that time, we have had the opportunity to review some fact situations which allows us to further expand on this guidance and which will lead to future changes to this publication.

For example, the criteria used to determine whether a person is "arranging for" a financial service includes whether the person is performing the normal business activities of an intermediary in a given industry. In the insurance industry, the solicitation of insurance policies by insurance agents or brokers is regulated by the provinces or territories of Canada. As such, the licensing or authorization of insurance agents or brokers is particularly relevant in the interpretation of paragraph (l) of the definition of a "financial service" in subsection 123(1). In this respect, we will consider the activities performed by a licensed or authorized insurance agent or broker to determine if there is a supply of arranging for the issuance of an insurance policy. For more information see GST/HST Memorandum 17.9, *Insurance Agents and Brokers*.

Another criterion used to determine whether a person is "arranging for" a financial service looks at the degree of direct involvement of the intermediary. For example, where it is the normal business practice to merely refer the person to a financial service provider, this referral would not meet the "arranging for" criteria as a referral service is not considered an "arranging for" service.

It is also important that the exclusions to the definition of "financial service" found under paragraphs (n) to (t) be considered to determine whether a particular service is an "arranging for" service under paragraph (l). For example, paragraph (r.4), clarifies that certain services that are preparatory to or provided in conjunction with a financial service are excluded from that definition.

Once again, we encourage you to submit requests for rulings to obtain certainty in this area. These rulings may be used to develop additional examples in TIB B-105.

(iii) *Global Cash Access decision*

As noted in the question, the Federal Court of Appeal in *Global Cash Access (Canada) Inc. v. The Queen* determined that paragraph (l) of the definition of "financial service" in subsection 123(1) of the ETA did not apply. The court concluded that paragraph (l) did not apply as the casinos received their consideration for the financial services they actually performed (which fell within paragraph (g) of the definition), not for arranging for services to be performed. Therefore, this decision does not have an impact on our interpretation of paragraph (l) of the definition of a "financial service".

A service is a financial service where it is included in any of paragraphs (a) to (m) of the definition of "financial service" in subsection 123(1) of the ETA and not excluded by paragraphs (n) to (t) of the definition. The 2010 legislative amendments to the definition reaffirmed the longstanding policy intent that services in the nature of management, administration, and marketing or promotional activities are intended to be taxable as they are not themselves financial services.

b. *Financial Institution GST/HST Annual Information Returns.*

(i) Currently, the CRA is not contemplating any changes with respect to the information requirements related to the Financial Institution GST/HST Annual Information Return. However, we would like to take this opportunity to advise you

that the CRA will be releasing new Guide RC7219, *GST/HST and QST Annual Information Return for Selected Listed Financial Institutions* related to Form RC7291 and an updated version of Guide RC4419, *Financial Institution GST/HST Annual Information Return* related to Form GST111 in the near future.

(ii) It is our understanding that Finance Canada is currently reviewing the reporting requirements related to the annual information return for financial institutions as part of its overall review of how the GST/HST applies to financial services and financial institutions and that consultation with the industry is part of the overall review process.

(iii) A reporting institution is defined under subsection 273.2(2) of the *Excise Tax Act* and excludes a prescribed person or a person of a prescribed class. To date, only selected listed financial institutions that are investment plans as defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST)* Regulations are prescribed persons. This exclusion from being a reporting institution was accomplished through an amendment to the *Financial Services and Financial Institutions (GST/HST) Regulations*. A similar amendment to these regulations would be required to exclude other persons, for example, all persons that are only financial institutions because of paragraph 149(1)(c). Finance Canada is responsible for making any changes to the regulations related to the *Excise Tax Act*.

c. *Imported Taxable Supply Rules for Financial Services*

(i) In June 2011 CRA issued Technical Information Bulletin B-095 "The Self Assessment Provisions of Section 218.01 and Subsection 218.1(1.2) for Financial Institutions (Import Rules)". This document explains the general interpretation and application of the import rules. At this time there are no plans to amend Technical Information Bulletin B-095 (the "TIB"). However, we may update the TIB as ruling requests are received and completed and any issues therein are identified.

If you have a particular situation for which you would like clarification of how the import rules apply we encourage you to submit a request for a ruling or interpretation following the requirements for such requests outlined in GST Memorandum 1.4.

(ii) Further to discussions with various industry representatives and Finance, CRA is currently working on a publication which will explain CRA's administrative position with respect to the application of the import rules to reinsurance contracts.

QUESTION # 7: Threshold Amounts and Procurement Cards (Finance Only)

QUESTION # 8: Ontario Ministry of Finance First Nations Point-of-Sale Exemption Audits

Beginning September 1, 2010, Ontario began providing a point-of-sale exemption to the provincial component of the HST for sales of qualifying property or services made to First Nations peoples (referred to as Status Indians, Indian Bands and councils of an Indian Band living off-reserve in Ontario). Vendors provide a credit at the time of sale on these purchases. If a First Nations person makes a qualifying purchase but is charged the Ontario portion of the HST, he or she can apply to the Ontario Ministry of Finance for a refund of that amount. When a vendor makes a qualifying sale, it reports those amounts separately on its GST/HST returns filed with CRA.

The Ontario Ministry of Finance has been conducting its own audits of vendors making qualifying sales under the Ontario First Nations point-of-sale exemption. Those auditors do not appear to have any information on the exemption amounts included by registrants on their GST/HST returns filed with CRA.

a. Is CRA aware of the Ontario Ministry of Finance audits of the Ontario First Nations point-of-sale exemption?

b. If a business is subjected to an Ontario Ministry of Finance First Nations point-of-sale exemption audit, will CRA exclude this review if CRA audits the same period?

CRA Comments

A verbal response was provided by the Large Business Audit & Program Integration Division of the Compliance Programs Branch.

QUESTION # 9: Notice of Objection – Procedures

Despite the best efforts of CRA and businesses, some issues remain unsettled at the end of an audit. The inability to agree on an issue is often the result of a misunderstanding about the underlying facts. Finding a way to collaboratively eliminate those misunderstandings would result in fewer cases being appealed to the courts, saving all parties unnecessary time and expense.

a. *Avoiding factual misunderstandings (CRA only)*. We invite a discussion with CRA about its policy on Appeals officers discussing their determinations in advance of issuing decisions to ensure that there are no misunderstandings about the underlying facts that would lead to inappropriate results and unnecessary litigation.

   (i) In the absence of a written policy, what considerations do Appeals officers take into account when making these determinations?

   (ii) In the absence of a written policy, what considerations do Appeals officers take into account when making these determinations?

b. *Alternative dispute resolution*. Are there any plans to study or advance the use of alternative dispute settlement arrangements such as arbitration or mediation in order to minimize the high costs of litigation?

CRA Comments

a. The Appeals Manual provides that the Appeals officer should contact the objector or the authorized representative

   - To obtain additional documentation and clarification. The Appeals officer must determine whether the objector requires copies of any of the audit working papers that support the assessment and fully understands the assessment.

   - To explain the outcome of the review. The Appeals Officer has to contact the objector and advise him/her of his preliminary decision. Depending on the complexity of the case, the team leader or the Chief of Appeals may want to approve the appeals officer's proposal before any contact is made with the objector.

b. The CRA is committed to reducing litigation costs on an ongoing basis. Initiatives aimed at minimizing the cost of litigation are regularly considered by the CRA. If initiatives are selected for implementation~~,~~ they will be communicated in due course.

QUESTION # 10: Status of TEI Submissions on Sections 156 and 273 of the ETA

a. *Changes to Section 156 GST/HST Election for Nil Consideration.* On September 19, 2014, TEI submitted a letter to CRA and Finance addressing welcome changes to section 156 of the ETA announced in the Federal Budget. While generally positive, TEI noted a number of

concerns about the new election provisions. For example, the proposed requirement to file all section 156 elections with CRA will create a heavy administrative burden that will not improve the administration of the election. We invite a discussion of the issues contained in our letter.

b. *Section 156 Nil Consideration Elections and Amalgamations.* The amendments to section 156 resulting from proposals announced in the 2014 Budget will require 156 elections to be filed with the Minister of National Revenue. The proposed amendments to paragraph 156(4) provide that existing elections in effect before January 1, 2015 must be filed with the Minister before January 1, 2016. New elections coming into force after January 1, 2014 must be filed by the earliest date on which any of the parties to the election are required to file a return for the period that includes the day on which the election becomes effective.

Section 271 of the ETA provides that a corporation resulting from an amalgamation is deemed to be a continuation of each predecessor corporation under Part IX of the ETA for prescribed purposes. Section 156 of the ETA is one of those prescribed purposes. Consequently, a section 156 election made by a predecessor corporation before an amalgamation remains in effect after an amalgamation so long as the amalgamated corporation continues to satisfy the requirements of section 156.

Assume A Co and B Co are parties to a section 156 election with C Co with an effective date before January 1, 2015. A Co and B Co amalgamate into D Co on January 1, 2015. Assume all corporations are "specified members" of a qualifying group under section 156 subsequent to the amalgamation.

Would the CRA confirm that the section 156 election to which the amalgamated D Co is now a party (by operation of section 271) remains an election entered into before January 1, 2015 with the result that the election would be required to be filed before January 1, 2016?

c. *Application of Sections 156 and 167 to the Sale of a Business.* Consider the following scenario:

- Aco (parent company) and Bco (subsidiary company) are both closely related for purposes of section 156 of the ETA.

- Aco and Bco are partners in a partnership (no other partners) - Pship.
- Xco (parent company) and Yco (subsidiary company) are both closely related for purposes of section 156 of the ETA.

- Neither Xco nor Yco are affiliated with Aco or Bco.

- Aco, Bco, Pship, Xco, and Yco are all exclusively engaged in commercial activity for GST purposes.

- For purposes of the ensuing transaction, Aco forms a new wholly-owned subsidiary Cco (registered for GST).

- The below transaction steps occur on the same day:

    1. Cco and Xco amalgamate to create Amalco 1.
    2. Amalco 1 and Yco amalgamate to create Amalco 2.
    3. Amalco 2 sells all of its assets to Pship.

    It is assumed that steps 1 and 2 are non-taxable events per section 271 of the ETA (which deems certain transfers of property by amalgamating corporations not to be taxable supplies). Please comment on the availability of the section 156 election (election for nil consideration) and/or section 167 election (election for supply of assets of a business) to relieve the need for Amalco 2 to charge GST to Pship on step 3 considering that Cco and Xco were never closely related, Cco was a new company with no prior business, and the effect (if any) of the Tax Court of Canada's decision in *Aviva Canada Inc. v. R.,* [2006] T.C.C. 57.

d. *Changes to Section 273 GST/HST Joint Venture Election*. On July 18, 2014, TEI submitted a letter to CRA and Finance addressing changes to the joint venture election in section 273 of the ETA proposed as part of the Federal Budget. TEI commended CRA and Finance for their efforts in developing and crafting the expansion of the election to include all joint ventures engaged exclusively in commercial activities where all participants of the joint venture are also engaged exclusively in commercial activities.

    The use of joint ventures has become ubiquitous. Historically, businesses in the oil and gas sector have entered into joint ventures for innumerable projects that exist for long periods and often change considerably over time. Many other industries also regularly make use of joint ventures in various contexts. If businesses were required to file joint venture elections for each joint venture with CRA, it would create a substantial administrative burden on both businesses and CRA with no compliance or tax administration benefit to anyone. Indeed, a requirement to file a joint venture election would run contrary to the Government's commitments under the "Red Tape Reduction Policy of Economic Action

Plan 2014." Recent amendments to the section 156 election for nil consideration requiring the filing of those elections with CRA have made businesses concerned that a similar requirement could be mandated for the section 273 joint venture election.

We invite a discussion of the issues addressed in our July 18, 2014 letter, and specifically our comments on the ill effects of requiring joint venture elections to be filed with CRA.

CRA Comments

a. Changes to Section 156 GST/HST Election for Nil Consideration

At any time after 2014, where a person that is a specified member of a qualifying group files an election made jointly with another specified member of the group, every taxable supply with certain exceptions made between those two members at a time when the election is in effect is deemed to have been made for no consideration. Effective January 1, 2015, an election or revocation of an election must be made by completing and filing Form RC4616, *Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration for GST/HST Purposes.* Whether the Government will reconsider the filing requirement for the Form RC4616 is a matter of tax policy, which is the responsibility of the Department of Finance. We note that your submission was also forwarded to the Department of Finance for consideration.

Regarding the practical issues and concerns listed in your letter, we are pleased to provide the following information.

1) Whether an election would remain valid where a new entity acquires property with the intention of making a taxable supply within 12 months, but due to unforeseen circumstances, does not do so? What documentation would be accepted by CRA to support the election?

   The election under section 156 must be made jointly by a person that is a specified member of a qualifying group and another specified member of the same group and filed with the CRA. A specified member of a qualifying group means, *inter alia*, a qualifying member of the group. Pursuant to subparagraph (c)(iii) of the definition of "qualifying member" under subsection 156(1), a registrant that has no property (other than financial instruments and property of a nominal value) and that has not made taxable supplies may be a qualifying member, provided certain conditions exist such as an expectation that the registrant will be making supplies throughout the following twelve months (i.e., twelve months from the effective date of the election) and that all or substantially all of those supplies will be taxable supplies. This may be reviewed during the course of an audit. The CRA would generally review available documentation such as business plans or input tax credit claims and the activities undertaken by the registrant to make taxable supplies, such

as research and marketing that support the expectation that the registrant will be making taxable supplies throughout the twelve months.

Whether an election made under those circumstances would remain in effect where taxable supplies have not been made depends on the particular circumstances, for example, whether the registrant has since acquired property other than financial instruments or property having other than nominal value. Where a registrant meeting the conditions of subparagraph (c)(iii) of the definition of "qualifying member" makes an election and subsequently acquires certain property for consumption, use or supply exclusively in its commercial activities, the registrant may now meet the conditions of subparagraph (c)(i). Provided the registrant had not ceased to be a qualifying member prior to the acquisition of the property, the election would remain in effect. Note that an election ceases to have effect in certain situations, one of which is when the registrant ceases to be a specified member of the qualifying group. For example, where subparagraphs (c)(i) and (c)(ii) do not apply, a registrant would cease to be a specified member of the qualifying group where the registrant would no longer have a reasonable expectation of making taxable supplies.

2) Will CRA continue to permit "Group Filings" by completing a supplemental form that includes multiple members of a closely related group in order to establish that each member of the group is making the section 156 election with every other member of the group? If a supplemental form is permitted, which entity in the closely held group must file the election form with CRA?

While an election (or revocation of an election) is between two members, the Form RC4616 and electronic filing (additional information provided below) will permit multiple elections and revocations to be filed together. Every combination of eligible corporation and eligible Canadian partnership, among the names included, will be considered to have made the election (or to have revoked the election) with respect to supplies made between them. While there is no legislative requirement as to which specified member should file the Form RC4616, the Form RC4616 and electronic filing is designed such that the 1st specified member identified in Part A of the form would be the specified member filing the form. It should be noted that there is a requirement as to when the Form RC4616 is to be filed. To make an election (or revocation), the Form RC4616 must be filed on or before the day on which the GST/HST return for the reporting period that includes the effective date of the election (or revocation) is required to be filed. The Form RC4616 is to be filed by the earliest date that a GST/HST return is due from the specified members who intend to make the election (or revocation).

3) Which entity must file a revocation of the election (e.g., the same entity that initially filed the election, any member of the closely related group, or some other entity)?

There is no legislative requirement as to which specified member should file a Form RC4616 to revoke a previously made election. The Form RC4616 and electronic filing permit multiple revocations to be filed together. Both the Form RC4616 and electronic filing is designed such that the 1st specified member identified in Part A of the form would be the specified member filing the form.

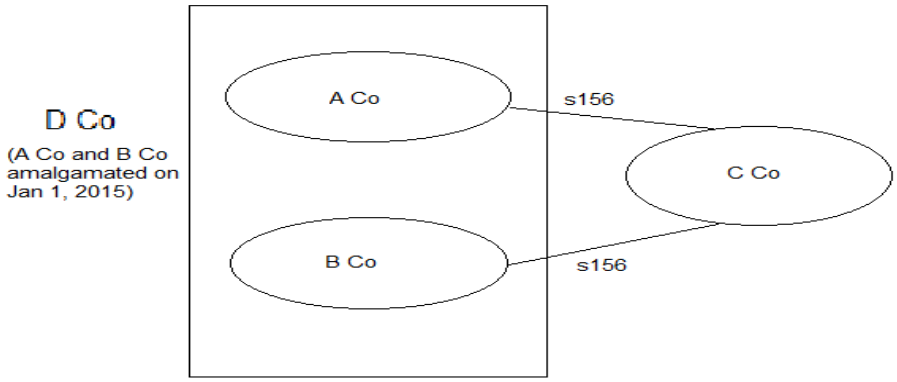
4) Whether the amendments to section 156 will effectively revoke elections filed prior to 1992 and require taxpayers to file new election forms? In such a circumstance, would an effective date be permitted that includes all periods that remain open under the applicable statute of limitations? Whether the current authorized representative would be considered to be the authorized representative for all prior years in the case of the section 156 election and other elections forms requiring filing with CRA as referenced in the Federal Budget?

   Where a specified member of a qualifying group has an election with another specified member of the group in effect before 2015 that is still in effect on January 1, 2015, and they are jointly electing to continue to use the election (when all of the eligibility requirements continue to be met), the Form RC4616 must be filed after 2014 and before January 1, 2016. In this case, the election remains the original election and, as a result, the effective date specified on the Form RC4616 should be the original effective date of the election. A current authorized individual may sign and file the Form RC4616. With respect to election forms filed prior to 1992, subsection 156(2.01) states that an election filed before January 1, 2015 is deemed never to have been filed.

5) Whether CRA would permit electronic filing of the election using *My Business Account* rather than requiring the filing of the paper format?

   The electronic filing of the election (or revocation of an election) is expected to be available through *My Business Account* in April 2015. Until electronic filing is available, the election must be made using the paper format. The paper format will remain available for registrants who do not file electronically.

b. Section 156 Nil Consideration Elections and Amalgamations



In the case of an amalgamation where the conditions under section 271 are satisfied, the new corporation formed on amalgamation will generally be treated, for GST/HST purposes, as being a separate person from each of the predecessor corporations, except for specific purposes, including where a section 156 election is in place. For purposes of the nil consideration election under section 156, the new corporation will be considered to be the same corporation as, and a continuation of, each of the predecessor corporations.

Where A Co and B Co have an election under section 156 with C Co in effect before 2015 and where A Co and B Co are amalgamated on January 1, 2015 to form "D Co", D Co would be considered to be the same corporation as, and a continuation of, each of the predecessor corporations for purposes of the election. Specifically, provided the requirements under section 156 (e.g., specified member of a qualifying group) imposed when the predecessors originally made the election continue to be met, an election made by a predecessor with C Co would continue to be in effect.

Since D Co and C Co have an existing election with an effective date before January 1, 2015, which is still in effect on that date, the Form RC4616 to treat certain supplies made between them after 2014 as having been deemed to be made for nil consideration must be filed after 2014 and before January 1, 2016.

c. Application of Sections 156 and 167 to the Sale of a Business

Section 167

It is a question of fact whether any particular transaction would qualify as a supply of a business as required under section 167. Since we do not know the detailed factual situation, we are not able to comment specifically on the above, however, we are pleased to provide the following general comments.

Two persons (other than a registrant supplier and non-registrant recipient) are eligible to make a joint election under section 167 where:

1. the supplier is supplying a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier; and

2. under the agreement for the supply, the recipient is acquiring all or substantially all of the property such that the recipient is capable of carrying on the business or part as a business.

In accordance with section 167 and as stated in GST/HST Memorandum 14.4, *Sale of a Business or Part of a Business*, to qualify for the election, the supplier must be selling a business (or part of a business) that was established or carried on by the supplier, or that was established or carried on by another person and acquired by the supplier.

Where Amalco 2 is formed, the provisions of paragraph 271(a) deem Amalco 2 to be a separate person from its predecessors, other than for certain purposes: section 167 is not one of those purposes. One of the conditions for making an election under subsection 167(1) is that the supplier must be supplying a business that was established or carried on by it or that was established or carried on by another person and acquired by it. Amalco 2 would not meet the condition of making a supply of a business that was established or carried on by another person and acquired by it. Amalco 2 did not acquire the property of the business from its predecessors since paragraph 271(c) deems the transfer of property from the predecessors to Amalco 2 not to be a supply for GST/HST purposes. Thus, it does not appear that an election under subsection 167(1) is available in this situation.

Section 156

Section 156 provides that a "specified member" of a "qualifying group" may elect jointly with another specified member of the same qualifying group to have taxable supplies between them deemed to have been made for no consideration. In order for Amalco 2 and Partnership to elect, each must fall within the meaning of specified member and they must be members of the same qualifying group.

The definition of "qualifying group" under subsection 156(1) specifies that the qualifying group must consist of:

(a) a group of corporations each member of which is closely related under section 128, or
(b) a group of Canadian partnerships, or of Canadian partnerships and corporations, each member of which is closely related under the meaning provided in section 156.

Therefore, Amalco 2 and Partnership must be closely related under section 156 in order to be members of the same qualifying group.

Although it can be established that Aco, Bco, Cco and the Partnership are members of the same qualifying group, the same cannot be established with respect to Amalco 2 (i.e., whether it is a member of the same qualifying group as Aco, Bco, Cco and Partnership). There are insufficient facts to determine whether, once the amalgamations occur, Amalco 2 would be closely related to Partnership under section 156. A person that is not a member of the particular qualifying group would not meet the condition set out in paragraph (a) of "qualifying member" (requiring the person to be a member of the group) and, thus, would not be a "specified member". If Amalco 2 and Partnership are not specified members of the same qualifying group, they are not able to make an election under section 156.

Aviva

It is the Canada Revenue Agency's position that the decision in Aviva applies to a specific fact situation and we will apply the Court's decision in fact situations that are the same as those in the Aviva case.

Generally, where a corporation makes a supply that is not exempt from GST/HST, it is engaged in a commercial activity, regardless of whether there is a reasonable expectation of profit, or whether the transaction is part of a business the corporation regularly carries on. Therefore, a supply of property or a service by a corporation is generally subject to GST/HST unless it is an exempt supply.

d. Joint Ventures

Budget 2014 announced that the Government intended to propose new joint venture election measures, as well as complementary anti-avoidance measures, that will allow the participants in a joint venture to make the joint venture election as long as the activities of the joint venture are exclusively commercial and the participants are engaged exclusively in commercial activities.

As you aware, the CRA has been involved in discussions with the Department of Finance on the Budget 2014 announcement. We acknowledge that a requirement to file the election with the CRA is a significant administrative concern for your members, particularly in the oil and gas sector, where we understand a particular registrant may be the operator for hundreds of joint ventures, and would thus be required to file an election for each joint venture with the CRA.

We look forward to a discussion of this matter with you. We note that any concern regarding a potential requirement under the ETA to file the joint venture election would involve a tax policy issue for which the Department of Finance is responsible. It is therefore appropriate for you to also pursue a discussion of this issue during your meeting with them.

QUESTION # 11: Modification and Termination Payments Under Section 182 of the ETA

Under section 182 of the ETA, certain damage payments or other amounts paid relating to the modification or termination of an agreement are deemed to include GST/HST. For example, if a person (the "Customer") makes a modification or termination payment to a registrant (the "Vendor") relating to an agreement for the making of a taxable supply, the modification or termination payment is deemed to include GST/HST (assuming all requirements under section 182 are met). In many cases, the Customer and Vendor document their modification or termination in a written agreement (a "Termination Agreement"). The ETA contains no requirement for a Termination Agreement to include a clause addressing the applicability of section 182 to the modification or termination payment.

Assuming the Customer is registered for GST/HST and engaged exclusively in a commercial activity, will the Termination Agreement (along with other documentation evidencing the Vendor's GST/HST registration number) satisfy the recordkeeping requirements necessary to claim an input tax credit for the GST/HST deemed to be included in the termination or modification payment under section 182?

CRA Comments

An agreement to breach, modify or terminate an existing agreement to make a taxable supply (other than a zero-rated supply) may meet the conditions of subsection 182(1) of the *Excise Tax Act* and consequently payments made under the second agreement to compensate a registered supplier may be deemed to include an amount of GST/HST. In order for subsection 182(1) to apply, a termination agreement must meet all the conditions of that provision. Where one or more of the conditions are not met, the termination or modification payment will not be deemed to include GST/HST as per Policy Statement P-218R "*Tax Status of Damage Payments, Whether Or Not Within Section 182 of the Excise Tax Act*". In this regard, the CRA will examine the original agreement and the termination agreement to determine whether the conditions of subsection 182(1) have been met.

Where the conditions of subsection 182(1) of the *Excise Tax Act* have been met, in order for the Customer making the payment to claim an input tax credit for the amount of tax that is deemed to have been paid, the documentary requirements in subsection 169(4) must generally be met. Under paragraph 169(4)(a), a registrant wishing to claim an input tax credit must first obtain sufficient evidence in such form, containing such information as will enable the amount of the

input tax credit to be determined including any such information as may be prescribed under the *Input Tax Credit Information (GST/HST) Regulations.*

Whether a particular termination agreement meets the documentary requirements under subsection 169(4) to claim an ITC will be determined on a case by case basis.

QUESTION # 12: GST Flow-Through – Potential Double Recovery Under Section 180 of the ETA

Registrants generally request a copy of the B3, *Canada Customs Coding Form*, issued by Canada Border Services Agency ("CBSA") as back-up documentation for claiming an input tax credit to recover the GST by a non-resident non-registrant ("NR²") vendor on the import of tangible personal property into Canada, and then reimburse the NR². In cases where physical possession of the tangible personal property remains with the registrant there is very little risk that a NR² vendor will be able to recover the GST from any other source. In the event the tangible personal property is returned, there is potential that the NR² vendor will seek a GST refund from CBSA when the property is exported from Canada. If this occurs, the NR² vendor would essentially recover the GST twice (*i.e.*, once from the registrant purchaser and once from CBSA). On February 17, 2014, section 180.01 was added to the ETA to prohibit the NR² vendor from recovering the GST that was paid on import more than once. However, this new section focuses on the NR² vendor not the registrant who is located in Canada and subject to GST/HST audit. Questions remain about the obligations of Canadian registrants in these situations.

What are the registrant's responsibilities if it has (i) paid an amount to an NR² vendor as a recovery for GST paid at the border for the import of tangible personal property, (ii) claimed an input tax credit, and (iii) later returns the tangible personal property to the NR² vendor exporting it from Canada?

CRA Comments

Based on the information provided, the registrant in the scenario provided would not have any further GST/HST responsibilities under the *Excise Tax Act* with respect to the tangible personal property that is imported and subsequently returned. It is unclear how the NR² vendor could recover the GST twice in this case. Section 180.01 of the ETA was introduced to prevent the potential for such a recovery and generally provides that no portion of the tax paid by the non-resident person in a section 180 situation shall be rebated, refunded or remitted to the non-resident person, or shall otherwise be recovered by the non-resident person, under the ETA or any other Act of Parliament.

QUESTION # 13: Place of Supply

In the event where the general place of supply rule for services is being applied for a particular standard-rated supply made in Canada, can CRA provide guidance on the proper place of supply where the registrant supplier of the services is directed by the recipient to prepare the invoice for the supply with the recipient listed as the bill to party and to place the address of the recipient's third party broker on the invoice rather than the recipient's head office address (where the broker's address is in a different province than the recipient's head office address)? More specifically, is the place of supply of the services based on the recipient's head office address or the broker's address that was placed on the invoice?

In a similar context, would the guidance with respect to the place of supply of the services change where the supplier is being directed by the recipient to prepare the invoice with the recipient's third party broker listed as the bill to party and to place the broker's address on the invoice rather than the recipient's head office address (where the broker's address is in a different province than the recipient's head office address)?

CRA Comments

Based on the limited information provided, it would be the address of the head office of the recipient that would determine the province in which the supply of the service is made in the scenarios provided in the question.

Generally, under subsection 13(1) of the *New Harmonized Value-Added Tax System Regulations* of the *Excise Tax Act*, a supply of a service is made in a province if, in the ordinary course of business of the supplier, the supplier obtains an address in the province that is

a. if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier;

b. if the supplier obtains more than one address described in paragraph (a), the address that is most closely connected with the supply; or

c. in any other case, the address in Canada of the recipient that is most closely

connected with the supply.

Based on the information provided, the supplier in the scenarios provided has obtained a single business address of the recipient in Canada that is the recipient's head office address. It would therefore be this address that would determine the province in which the supply of the service is made under paragraph 13(a) of the Regulations. The address of the third party broker that is obtained by the supplier would not be considered to be a business address of the recipient for purposes of the place of supply rule in section 13 of the Regulations and would therefore not be relevant to the determination of the place of supply of the service in this case.