GST/HST Measures in the 2016 Federal Budget

March 22, 2016

Today, the Federal Government of Canada tabled the Budget. There are a few GST/HST Measures. The following is an excerpt from the Budget:

Medical and Assistive Devices

Medical and assistive devices that are specially designed to assist an individual in treating or coping with a chronic disease or illness or a physical disability are generally zero-rated under the Goods and Services Tax/Harmonized Sales Tax (GST/HST). Zero-rating means that suppliers do not charge purchasers GST/HST on these medical devices and are entitled to claim input tax credits to recover the GST/HST paid on inputs in relation to these supplies. The medical devices eligible for zero-rating are listed in the GST/HST legislation.

Budget 2016 proposes to add insulin pens, insulin pen needles and intermittent urinary catheters to the list of zero-rated medical devices to reflect the evolving nature of the health care sector.

Insulin Pens and Insulin Pen Needles

Insulin infusion pumps and insulin syringes are currently included in the list of zero-rated medical devices. These devices are used to inject insulin for the treatment of diabetes. Insulin itself is currently zero-rated as a drug.

Insulin pens are also used to inject insulin for the treatment of diabetes, and are an alternative to infusion pumps or syringes. Budget 2016 proposes to add insulin pens and insulin pen needles to the list of zero-rated medical devices.

This measure will apply to supplies made after Budget Day and to supplies made on or before Budget Day unless the supplier charged, collected or remitted GST/HST in respect of the supply.

Intermittent Urinary Catheters

Urinary appliances that are designed to be worn by an individual are currently included in the list of zero-rated medical devices. Intermittent urinary catheters are an alternative to catheters that are left in place.

Budget 2016 proposes to add intermittent urinary catheters, if supplied on the written order of a medical doctor, registered nurse, occupational therapist or physiotherapist for use by a consumer named in the order, to the list of GST/HST zero-rated medical and assistive devices.

This measure will apply to supplies made after Budget Day.

Purely Cosmetic Procedures

Supplies of purely cosmetic procedures are not considered to be supplies of basic health care and are intended to be subject to the GST/HST, regardless of the status of the supplier.

Budget 2016 proposes to clarify that the GST/HST generally applies to supplies of purely cosmetic procedures provided by all suppliers, including registered charities. Taxable procedures will generally include surgical and non-surgical procedures aimed at enhancing or altering an individual's appearance, such as liposuction, hair replacement procedures, hair removal, botulinum toxin injections and teeth whitening.

A cosmetic procedure will continue to be exempt if it is required for medical or reconstructive purposes, such as surgery to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. As well, cosmetic procedures paid for by a provincial health insurance plan will continue to be exempt.

This measure will apply to supplies made after Budget Day.

Exported Call Centre Services

Under the GST/HST rules, exported supplies are generally relieved (i.e., zero-rated) from the GST/HST. This means that suppliers do not charge purchasers GST/HST on these supplies and are entitled to claim input tax credits to recover the GST/HST paid on inputs used in relation to these supplies.

Budget 2016 proposes to modify the zero-rating rules for certain exported supplies of call centre services. Specifically, the supply of a service of rendering technical or customer support to individuals by means of telecommunications (e.g., by telephone, email or web chat) will generally be zero-rated for GST/HST purposes if:

- the service is supplied to a non-resident person that is not registered for GST/HST purposes; and
- it can reasonably be expected at the time the supply is made that the technical or customer support is to be rendered primarily to individuals who are outside Canada at the time the support is rendered to those individuals.

This measure will apply to supplies made after Budget Day. It will also apply to supplies made on or before Budget Day in cases where the supplier did not, on or before that day, charge, collect or remit an amount as or on account of tax under Part IX of the Excise Tax Act in respect of the supply.

Reporting of Grandparented Housing Sales

Under the transitional rules that applied when a province either joined the harmonized value-added tax system since 2010 or increased its HST rate, certain sales of newly constructed or substantially renovated homes were grandparented for HST purposes. This meant that the housing sale was not subject to the provincial component of the HST or the increased HST rate, as applicable. A housing sale was generally grandparented if the agreement of purchase and sale was entered into in writing on or before the announcement date of the transitional rules and ownership and possession of the housing was transferred on or after the date on which the HST, or the increased HST rate, came into effect.

Under the current rules, builders are subject to special reporting requirements, which involve reporting their grandparented housing sales where the purchaser was not entitled to a GST New Housing Rebate or a GST New Residential Rental Property Rebate. The rules also include penalties for misreporting (i.e., under-reporting, over-reporting or failing to report).

Budget 2016 proposes to simplify builder reporting by:

- limiting the reporting requirement to those grandparented housing sales for which the consideration is equal to or greater than $450,000; and
- providing builders with an opportunity to correct past misreporting and avoid potential penalties by allowing them to elect to report all past grandparented housing sales for which the consideration was equal to or greater than $450,000.

This measure will apply in respect of any reporting period of a person that ends after Budget Day. In addition, if the above election is made, the measure will also apply to any supply of grandparented housing in respect of which the federal component of the HST became payable on or after July 1, 2010. Builders will generally have between May 1, 2016 and December 31, 2016 to make the election.

GST/HST on Donations to Charities

The GST/HST does not apply to a donation if the donor does not receive anything in return. However, if the donor receives property or services in exchange for the donation, even if the value of the donation exceeds the value of the offered property or services, the GST/HST generally applies on the full value of the donation. (A number of exceptions to this treatment apply, including where the service or property offered by the charity relates to a special fundraising event, such as a gala dinner, annual cookie sale or charity auction, or where the charity provides the donor goods that were previously gifted to the charity. Such supplies are exempt from GST/HST. In addition, a charity that qualifies as a "small supplier" (e.g., makes under $50,000 of taxable sales annually) is not required to collect GST/HST.)

Special rules are provided under the Income Tax Act to deal with transactions where property or services are supplied in exchange for or in recognition of a donation to a charity. Under the Income Tax Act "split-receipting" rules, where a charity encourages or recognizes a donation by supplying property or services in exchange, the charity generally may issue a donation receipt for the amount paid by the donor less the value of any property or service that the donor receives. Consequently, such donations are treated less favourably under the GST/HST than under the Income Tax Act.

To bring the GST/HST treatment of this type of exchange into line with the treatment under the Income Tax Act split-receipting rules, Budget 2016 proposes a relieving change to provide that when a charity supplies property or services in exchange for a donation and when an income tax receipt may be issued for a portion of the donation, only the value of the property or services supplied will be subject to GST/HST. The proposal will apply to supplies that are not already exempt from GST/HST. It will ensure that the portion of the donation that exceeds the value of the property or services supplied is not subject to the GST/HST.

This measure will apply to supplies made after Budget Day.

In addition, where a charity did not collect GST/HST on the full value of donations made in exchange for an inducement, for supplies made between December 21, 2002 (when the income tax split-receipting rules came into effect) and Budget Day, the following transitional relief will be provided:

If GST/HST was charged on only the value of the inducement, consistent with the income tax split-receipting rules, or if the value of the inducement was less than $500, the donors' and charities' GST/HST obligations will effectively be satisfied, resulting in no further GST/HST owing.

In other cases, the charity will be required to remit GST/HST on the value of the inducement only (i.e., the relieving split-receipting rules will apply).

***De Minimis* Financial Institutions**

Under the GST/HST, special rules apply to financial institutions, particularly in determining their entitlement to input tax credits. For GST/HST purposes, financial institutions include persons whose main business is providing financial services such as banks, insurance companies, investment dealers and investment plans. The GST/HST legislation also includes rules to ensure that other persons that provide a significant amount of financial services, such that they may be in competition with traditional financial institutions, are also treated as financial institutions for GST/HST purposes. For example, a person will generally be treated as a financial institution throughout a taxation year if the person's income for the preceding taxation year from interest, fees or other charges with respect to the making of an advance, the lending of money, the granting of credit, or credit card operations, exceeds $1 million.

Under this rule, a person that earns more than $1 million in interest income in respect of bank deposits in a taxation year will be considered to be a financial institution for GST/HST purposes for its following taxation year even though the earning of such interest would generally not, by itself, bring that person into competition with traditional financial institutions.

To allow a person to engage in basic deposit-making activity without that activity leading it to being treated as a financial institution for GST/HST purposes, Budget 2016 proposes that interest earned in respect of demand deposits, as well as term deposits and guaranteed investment certificates with an original date to maturity not exceeding 364 days, not be included in determining whether the person exceeds the $1 million threshold.

This measure will apply to taxation years of a person beginning on or after Budget Day and to the fiscal year of a person that begins before Budget Day and ends on or after that day for the purposes of determining if the person is required to file the Financial Institution GST/HST Annual Information Return.

Application of GST/HST to Cross-Border Reinsurance

The GST/HST applies to domestic purchases as well as to importations of property and services. GST/HST rules require certain recipients of imported taxable supplies of services and intangible personal property to pay tax on a self-assessment basis. Additionally, special GST/HST imported supply rules for financial institutions require a financial institution, including an insurer, with a presence outside Canada (e.g., in the form of a branch or a subsidiary) to self-assess GST/HST on certain expenses incurred outside Canada that relate to its Canadian activities.

Budget 2016 proposes to clarify that two specific components of imported reinsurance services, ceding commissions and the margin for risk transfer, do not form part of the tax base that is subject to the self-assessment provisions contained in the GST/HST imported supply rules for financial institutions and to set out specific conditions under which the special rules for financial institutions do not impose GST/HST on reinsurance premiums charged by a reinsurer to a primary insurer.

This measure will apply as of the introduction of the special GST/HST imported supply rules for financial institutions (i.e., in respect of any specified year of a financial institution that ends after November 16, 2005). In addition, this measure will allow a financial institution to request a reassessment by the Minister of National Revenue of the amount of tax owing by the financial institution under the special GST/HST imported supply rules for a past specified year of the financial institution, as well as any related penalties or interest, but solely for the purpose of taking into account the effect of this measure. A financial institution will have until the day that is one year after the day that these amendments receive Royal Assent to request such a reassessment.

Closely Related Test

Under the GST/HST, special relieving rules allow the members of a group of closely related corporations or partnerships to neither charge nor collect GST/HST on certain intercompany supplies. To qualify for these relieving rules, each member of this group must, among other requirements, be considered to be closely related to each other member of the group, supporting the assumption that the members effectively operate as a single entity.

In the case of a subsidiary corporation owned by a parent corporation or partnership, the closely related concept is reflected in a test that requires the parent to have nearly complete ownership and voting control over the subsidiary corporation. The current test requires that the parent corporation or partnership own 90 per cent or more of the value and number of the shares of the subsidiary corporation that have full voting rights under all circumstances. However, due to the complexity of share capital structures, it has been suggested that a parent corporation or partnership could be considered to be closely related to a subsidiary corporation even if it lacks nearly complete voting control over the subsidiary corporation.

To ensure that the closely related test applies only in situations where nearly complete voting control exists, Budget 2016 proposes to require that, in addition to meeting the conditions of the current test, a corporation or partnership must also hold and control 90 per cent or more of the votes in respect of every corporate matter of the subsidiary corporation (with limited exceptions) in order to be considered closely related.

This measure will generally apply as of the day that is one year after Budget Day. The measure will apply as of the day after Budget Day for the purposes of determining whether the conditions of the closely related test are met in respect of elections under section 150 and section 156 of the Excise Tax Act that are filed after Budget Day and that are to be effective as of a day that is after Budget Day.

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