



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

January 9, 2012

Via email: flaherty.j@parl.gc.ca

The Hon. James M. Flaherty P.C. M.P.
Minister of Finance
Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Minister:

Re: Double Taxation under the Excise Tax Act and Provincial Tax Statutes

I write on behalf of the Commodity Tax, Customs and Trade Law Section of the Canadian Bar Association (CBA Section) to raise concerns about double tax for legal fees and other professional services now being imposed on taxpayers in Manitoba. Double tax will discourage taxpayers in participating provinces from utilizing the services of Manitoba professionals in respect of their Manitoba legal issues.

The CBA is a national association representing over 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. The CBA Section represents lawyers from across Canada who deal with law and practice issues relating to commodity tax, customs and trade remedy matters.

I refer you to the letter from Ken Mandzuik, President of the Manitoba Bar Association and the response dated January 19, 2011 of Rosann Wowchuk, Manitoba Minister of Finance (copies attached).

There is clearly potential for double tax on legal fees or other professional services for taxpayers in Manitoba. Both Manitoba sales tax and HST can be charged on the same services. If full input tax credits (ITCs) were made available to the recipient of the supply, the issue would seem to be ameliorated given that there does not seem to be a question of recaptured ITCs. However, even if there is an ITC available to the recipient, a Manitoba lawyer will be at a disadvantage as their client will be out greater "cash" until the ITC is received/recognized.

As noted, one instance where double tax will be paid is where a Manitoba law firm provides an opinion, to an Ontario client, relating to a Manitoba business. This service will be taxed under the Manitoba legislation (which is similar to the former B.C. legislation which imposed tax on legal services) and will also be subject to HST.

This will become a larger issue when B.C. opts out of the HST, and reverts to the social service tax. B.C. and Manitoba lawyers (and other professionals) will be required to collect retail sales tax on their services as well as HST in many situations.

There may be recovery through the ITC mechanism. However, unrecoverable double tax would arise for recipients who are not entitled to ITCs. This would include charities, financial institutions, educational institutions and so forth. It would also include municipalities as they do not receive a full HST rebate.

The tax might reasonably be rebated pursuant to section 261.3 of the *Excise Tax Act* (ETA). Rebate could be accorded on the basis that the service was made in a participating province and acquired by the person for consumption or use in Manitoba.

However, the governing section does not clearly provide a rebate in every case of double taxation. The provision for rebate depends on the place of consumption or use of a service, which is fact-specific. For example, the service may relate to Manitoba but it is actually used at the headquarters in Ontario; that is, the service was received and used by the Ontario taxpayer in Ontario, even though it might relate to Manitoba. Arguably, the service may not be acquired for consumption or use outside of Ontario and the rebate would be inapplicable. In this case, the Ontario taxpayer would be subject to double tax.

One solution to this double tax problem would be to draft clearer legislation to provide relief in situations where there will be double tax. Alternatively, the HST Place of Supply Rules could be amended to clarify that a service that attracts a provincial sales tax is supplied in the province where that tax applies, and not in a participating province.

The CBA Section believes this issue should be addressed either in section 261.3 of the ETA or in the HST Place of Supply Rules. Members of the CBA Section would be pleased to work collaboratively with your officials in crafting amendments to solve this problem.

Yours truly,

(original signed by Rebecca Bromwich for Craig McDougall)

Craig McDougall,
Chair, CBA Commodity Tax, Customs and Trade Law Section

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November 19, 2010

The Hon. Rosann Wowchuk
Minister of Finance
103 – 450 Broadway
Winnipeg, Manitoba
R3C 0V8

The Hon. Andrew Swan
Minister of Justice and Attorney General for Manitoba
104 – 450 Broadway
Winnipeg, Manitoba
R3C 0V8

Dear Ministers,

Re: HST and RST on Legal Fees

It has come to our attention that in some circumstances a client may have to pay both HST and RST on their legal fees. We feel that this “double tax” puts Manitoba lawyers in an unfair disadvantage.

For example, if a Manitoba law firm is hired by an individual in Ontario in respect of a business he or she owns in Manitoba, the HST supply rules (based on the address of the client) requires that Ontario HST be charged at 13%. However, as the business relates to Manitoba, RST must also be charged. If we understand the rules correctly, the result is that 20% sales tax must be charged.

What is the Manitoba government planning to do to ensure that this type of legal business is not being turned away in our Province because of this “double tax”?

Yours truly,

Ken Mandzuik
President
Manitoba Bar Association

cc Paul Grower
Chair, Manitoba Bar Association Tax Law Section

Stacy Nagle
Executive Director, Manitoba Bar Association



**MINISTER OF
FINANCE**

Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

JAN 19 2011

Mr. Ken Mandzuik, President,
Manitoba Bar Association
1450 – 363 Broadway
Winnipeg MB R3C 3N9

Dear Mr. Mandzuik:

I am writing in response to your letter regarding the prospect for double taxation of provincial HST and Manitoba Provincial Sales Tax (PST) on legal fees in Manitoba.

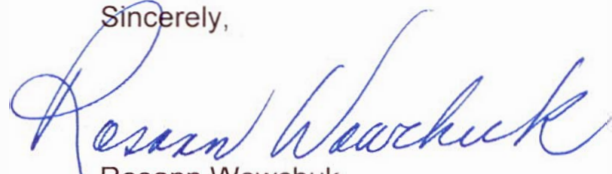
Officials in my department are aware that the federal HST place of supply rules may, in very limited situations, result in both provincial HST and Manitoba PST applying. For most businesses, input tax credits will fully offset provincial HST and alleviate any potential for double taxation.

As you know, provinces are not able to impose their taxes beyond their boundaries. However the HST is a federal tax administered by a national tax agency, the Canada Revenue Agency. Under the federal HST place of supply rules, agreeing provinces' sales taxes can apply in a manner that would be unconstitutional and unenforceable under Manitoba's provincially administered and legislated retail sales tax. Accordingly, in rare and exceptional instances where both a provincial HST and Manitoba sales tax are payable, it is the HST that is over-reaching and giving rise to double taxation.

While I agree that double taxation is not a desirable tax policy and should be avoided, in this instance I believe the remedy for the members of the Manitoba Bar Association rests more appropriately with the federal government.

Thank you for writing and bringing this matter to my attention.

Sincerely,



Rosann Wowchuk,
Minister

- c. Honourable Andrew Swan
Paul Grower
Stacy Nagle