



November 19, 2012

Via email: rainer.nowak@fin.gc.ca

Rainer Nowak
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Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Mr. Nowak:

Re: Review of Application of GST/HST to Financial Services

I am writing on behalf of the National Commodity Tax, Customs & Trade Section of the Canadian Bar Association (CBA Section) to thank you for meeting with our representatives on June 22, 2012. At the request of Finance Canada, the CBA Section is pleased to provide the following comments on the Department's current review of the application of the GST/HST to financial services.

In order of importance:

- (1) We believe that the decision to consider all possible alternatives *other than* the zero-rating of financial services unnecessarily restricts the scope of the Department's review, leading to the continued possibility of cascading of GST/HST for Canadian businesses attempting to compete globally, and providing them at a competitive disadvantage because of the application of the GST/HST to financial services. To achieve a simple, modern, efficient and neutral system for financial services, the Department may wish to consider the option of zero-rating of financial services, and evaluate that option with all others.
- (2) The CBA Section is of the view that announcing proposed amendments without draft legislation or regulations is undesirable. In the absence of draft legislation, taxpayers cannot be certain of the obligations with which they should comply.¹

¹ Cases in point include changes announced in response to the State Farm Tax Court of Canada decision (Division IV imported taxable supply changes announced on November 16, 2005; draft legislation not released until January 26, 2007) and changes announced to preempt possible adverse outcomes in the General Motors Canada case (proposed changes announced on January 26, 2007; draft legislation not released until September 23, 2009).

(3) The HST Selected Listed Financial Institutions (SLFI) administrative compliance burden on investment plans should be reduced. There seems to be compliance obligations imposed on investment plans that have no purpose, or which might be viewed as excessive given the overall amount of GST/HST at issue.²

(4) The Department requested examples of issues with the application of the GST/HST to financial services, the CBA Section's members have brought the following examples to our attention:

- **Cross-Border Financial Services** - The Division IV tax self-assessment rules are particularly stringent in respect of cross-border financial services provided to a "qualifying taxpayer" (as defined in section 217.1 of the *Excise Tax Act* (ETA)) from a non-resident affiliate (e.g., its U.S. parent). Most financial services which would otherwise be exempt if supplied in Canada between related parties resident in Canada would be subject to these stringent cross-border self-assessment rules when supplied by a non-resident affiliate to a related "qualifying taxpayer". The same financial services would be exempt if provided cross-border by an arm's length party to a "qualifying taxpayer". These rules create an unfair GST/HST burden on qualifying taxpayers who obtain cross-border services from related parties. We recommend removing this bias by revising the self-assessment rules to treat all cross-border financial services as exempt, whether they are provided by arm's length or non-arm's length suppliers.
- **Regulation of SLFI Investment Plans Overly Complex** - The draft January 28, 2011 HST SLFI Regulations for investment plans (the Jan 2011 Draft) substantially overhauled the June 30, 2010 version (the June 2010 Draft) and is overly complex. As an example, under subsection 32(1) of the June 2010 Draft, the PAP formula read as A/B where A is the total of the amounts determined under the formula $(A1 + A2)/A3$, with straight forward definitions of each of these elements (explained in about 9 lines) and B is the number of attribution points in respect of the FI for the particular period.

By contrast, in the Jan 2011 Draft, subsection 34(1), intended to replace subsection 32(1) of the June 2010 Draft, two different formulas are to be used, depending on the particular HST province and each formula is substantially longer than the one in the June 2010 Draft.³ The explanation of A4 alone for either formula is longer (or at least as long) as the explanation of all of the elements comprising A in the previous version. The PAP concept is straight-forward and should be simplified.

² Areas that might be simplified include eliminating the requirement for investment plan SLFIs to register for the GST/HST to make certain filing elections pursuant to subsection 59(1) of the Jan 2011 Draft and subsection 240(1.2) of the ETA, and eliminating the requirement for a joint election with the investment manager to make the tax adjustment transfer (TAT) (which could be deemed to be the default). Similarly, one might rethink the requirement that investment plan SLFIs register for the GST/HST to avoid filing monthly GST/HST returns (which conceivably could be nil GST/HST returns for the reason noted in the previous paragraph).

³ A of the first formula reads: $[(A1 + A2)/A3] + [A4 \times ((A1 + A2)/A5)] + [(1 - A4) - (A5/A3)]$
 A of the second formula reads: $[(A1 + A2)/A3] + [A4 \times ((A1 + A2)/A5)]$

The CBA Section trusts these comments will help Finance Canada in its work. We appreciate the opportunity to comment and would be pleased to answer any questions or provide further information.

Yours truly,

(original signed by Noah Arshinoff by Cyndee Todgham Cherniak)

Cyndee Todgham Cherniak
Chair, National Commodity Tax, Customs & Trade Law Section