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September 20, 2024

Via email: Anne.Ellefsen-Gauthier@cra-arc.gc.ca

Anne Ellefsen-Gauthier
Director, Large Business Audit Division
GST/HST Directorate, Compliance Programs Branch Canada Revenue Agency
Ottawa ON K1A 0L5

Dear Ms. Ellefsen-Gauthier:

Re: Suggested Means of Addressing GST/HST & Carousel/Missing Trader Fraud

The Commodity Tax, Customs, and Trade Section of the Canadian Bar Association (**CBA Section**) welcomes the opportunity to comment on the Canada Revenue Agency's (**CRA**) suggestions to address GST/HST fraud. We are providing this submission as a response to the meeting CRA had with our Section in May, where we discussed common issues related to the administration of GST/HST, sales and excise taxes, and other transaction-based taxes.

The Canadian Bar Association is a national association representing over 40,000 legal professionals, including lawyers, notaries, law professors, and students across Canada. Our mandate includes promoting the rule of law, improving access to justice, advocating for effective law reform, and providing expertise on how legislation impacts Canadians' daily lives. The CBA Section comprises approximately 40 members and works to enhance awareness and understanding of legal and policy issues related to commodity tax, customs, and trade.

The CBA Section appreciates the CRA's interest in exploring collaborative solutions and is pleased to provide the following recommendations to address GST/HST fraud.

1. Executive Summary

The CBA Commodity Tax, Customs & Trade Section believes that the CRA's goal of reducing fraud is laudable and that it is imperative that the CRA take proactive steps to reduce fraud. The CRA currently has significant powers to address this issue, but, in our respectful submission, the CRA's current approach to fraud frequently focuses on the wrong party and does too little to prevent the fraud in the first place. Therefore, our section of the CBA provides the following suggestions and recommendations to more effectively address GST fraud:

1. Registration Due Diligence, Deregistration, Notification
2. Security Requirement
3. Attestation
4. Electronic Invoicing and Mandatory Reporting
5. Reverse Charge

6. Public Outreach / Information Dissemination
7. Prosecute Known Fraudsters

2. Background

GST fraud in Canada has been recognized as an issue since the inception of the GST in 1991. A common form of GST fraud is the carousel scheme, which involves goods circulating through a series of entities, each obligated to pay the GST and each of which claims an input tax credit ("ITC"), until they are oftentimes eventually exported as zero-rated supplies or otherwise become zero-rated. In these schemes, typically at least one company in the chain disappears without remitting the GST. Carousel schemes are arguably the worst type of tax evasion, because they appropriate the tax itself out of money paid by honest Canadians. While the CBA Commodity Tax, Customs & Trade Section is sympathetic to the CRA's laudable goal of reducing fraud, the CRA's response to GST fraud has not been primarily focused on stopping the fraud, but rather trying to deny ITCs from innocent recipients.

GST fraud is a form of tax evasion perpetrated by criminals; however, to our knowledge, the CRA has only very rarely sought criminal or penal sanctions against the actual perpetrators. Instead, the CRA's focus appears to have been on assessing unremitted amounts by rejecting ITC claims from innocent taxpayers, who have nothing to do with the fraud except for the bad luck to have transacted with the fraudster.

Further, it appears that the CRA has responded to fraud by increasing the number of audits of ITC claimants, and by increasing scrutiny of the requirements for claiming ITCs. These enforcement measures unfairly shift the compliance burden from dishonest taxpayers to honest ones and shift the Act's administration/enforcement burden from the CRA to those same honest taxpayers.

The CRA's audit and enforcement powers are currently extensive and completely sufficient to deal with GST fraud. However, these powers – and in particular, the criminal enforcement powers – are not currently being appropriately utilized to deal with the issue. Accordingly, CRA's statutory audit and enforcement powers should not be increased as a way to deal with the issue. Rather, we have outlined actionable recommendations herein designed to enhance the CRA's and Department of Finance's capacity to effectively detect and prevent fraud from occurring in the first place.

3. Submission

The CBA Commodity Tax, Customs & Trade Section makes the following suggestions to prevent GST fraud:

1. **Registration Due Diligence, Deregistration, Notification:** Investigate the bona fides of GST/HST registration applicants, in particular, in high-risk industries and refuse to register suppliers who are expected to carry out fraudulent GST/HST activities. Also, implement a system where businesses who fraudulently failed to remit GST/HST collected are promptly prospectively deregistered, and the public is notified so that other taxpayers can avoid transacting with such fraudsters. This would enable innocent taxpayers to identify potentially fraudulent suppliers, and to swiftly cut off further involvement with them.
2. **Security Requirement** – Subsection 240(6) of the ETA provides that a non-resident of Canada who does not have a permanent establishment in Canada is required to post security with CRA in respect of their GST account. Introduce expanded security requirements giving the Minister the power to require a corporation (resident or non-resident of Canada) that carries on any prescribed commercial activity (i.e. activities which are ripe for carousel fraud) to post a reasonable amount as security in respect of their GST account. Further, if the corporation fails to provide the required security, the Minister may suspend the corporation's GST registration number until the security is posted and during which period the corporation's GST registration number will be deemed to be invalid. Once the security is posted, the registration will be deemed to be valid retroactively to the date of the suspension.

3. **Attestation:** Implement a certification-based attestation system where businesses in certain high-risk industries (*e.g.* precious metals, employment agencies) must obtain government certifications confirming their compliance with tax laws prior to entering into specified contracts. This would provide assurance to purchasers that suppliers are compliant with tax laws, minimizing the risk of engaging with fraudulent entities.
4. **Electronic Invoicing and Mandatory Reporting:** The CRA investigate potentially implementing a system similar to what is being done in Quebec which requires electronic invoicing and mandatory reporting requirements for businesses operating in certain high-risk industries (*e.g.* precious metals, employment agencies) to enhance transparency and accountability in transactions. This would facilitate real-time monitoring of transactions, making it more difficult for fraudsters to engage in deceptive practices, and easier for the CRA to identify and address fraud more quickly.
5. **Reverse Charge:** Consider legislative amendments, similar to the rules for real property and emission allowances to shift the burden of GST remittance from the supplier to the purchaser in certain high-risk industries. This would help prevent fraudulent suppliers from evading GST remittance and ensure that taxes are collected effectively. We recognize that this suggestion would require the co-operation of the Department of Finance.
6. **Public Outreach / Information Dissemination:** The CRA should notify the public regarding the CRA's knowledge of existing schemes, high-risk industries and fraud indicators so that innocent registrants are less likely to transact with fraudulent suppliers.
7. **Prosecute Known Fraudsters:** Where the CRA has legitimate evidence of GST fraudsters, it should pursue criminal charges, raise assessments against them, and pursue collections.

4. Discussion

Deregistration and Notification

An obvious step for the CRA to take when it learns that a business is engaged in GST fraud is to remove them from the GST registry prospectively. If the company is not validly registered for GST/HST, it cannot engage in a carousel scheme as a company purchasing goods or services from it would generally not be able to claim an ITC. Further, the CRA could notify other registrants (who are, after all, the government's collection agents and entitled to be given sufficient information to carry out their responsibilities under the Act).

While this is a fairly basic first step, it is our experience that it is often not taken. Instead, our experience is that CRA auditors tend to deny an innocent taxpayer's claim for ITCs because they believe the taxpayer "should have known" about a fraud, when the CRA had actual knowledge of the fraud and failed to take any steps to warn other persons in the industry. This is precisely what happened in the recent *Frigorifique*¹ case. The CRA denied the taxpayer's ITCs, and the Crown argued that the taxpayer was complicit in or should have known about fraud committed by some of its suppliers. The Tax Court noted that "**the tax authorities knew perfectly well that the registered suppliers had not paid the GST perceived and did not ask the appellant any questions or alert her**".² In the circumstances, the Court allowed the taxpayer's appeal and vacated the CRA's assessments. Unfortunately, the actual fraudster's GST numbers are often still valid years after the initial assessment (such as in *Frigorifique*) as the CRA has failed to deregister the fraudster and failed to notify the public, with the fraudster moving onto its next innocent victim.

¹ *Entrepôt Frigorifique International Inc. c. Le Roi*, 2024 TCC 78. See also: *SNF L.P. v. The Queen*, 2016 TCC 12 where Revenu Quebec issued multiple GST/HST registrations to applicants despite labelling each of them as a "risky registration".

² At para. 31.

Further, the CRA could exercise a higher level of scrutiny when the same directors of a fraudulent entity proceed to register a new entity. Otherwise, it appears that bad actors can abscond with the GST they have collected and then start the same scheme over again using a new entity. We are aware of cases in which the CRA has argued that an ITC claimant "should have known" that it paid tax to a fraudulent company, because the directors of a supplier company are the same as those of a company that was previously involved in fraud—even though the taxpayer had no idea who the directors were and the CRA had proceeded to register the second company despite having full knowledge of the fraud. Rather than blaming the customers and denying their ITCs (as seems to be current standard practice), the CRA should take steps in such cases to actually prevent the fraud, such as by refusing to register the second company (and pursuing criminal charges against the directors).

In the UK, HMRC pre-emptively refuses registration to entities suspected of intending to abuse the VAT system for illicit gains and deregisters businesses found to be using their VAT Registration Number primarily for fraudulent activities such as evasion or misrepresentation of taxable transactions.³ Revenue authorities in other countries, such as the UK and Ukraine, include a "black list" of *mala fide* VAT registrants that is available online on the website of the tax authority and which is regularly updated⁴. The Canadian government should adopt similar principles and practices, by promptly deregistering businesses who are known to be engaged in fraud, and either publishing a list of such taxpayers or otherwise notifying taxpayers upon detecting fraud. Indeed, doing so is probably required of the CRA by Right 14 in the Taxpayer Bill of Rights:

You have the right to expect us to warn you about questionable tax schemes in a timely manner.

Please note that the recommendations in this section are subject to the following caveats:

- The de-registrations and listing of company's names who are not compliant should be limited to situations where there is a clear case of fraud (e.g. tax collected and not remitted), and not to situations where there is a real dispute between the parties.
- We are aware of situations where the CRA has retroactively deregistered companies, which causes issues for innocent recipients who, at the time of the transaction, relied on the registration status.

Security Requirement

Currently the CRA can only require a person who is a non-resident of Canada to post security in respect of their GST account. In carousel fraud or "missing trader" cases, generally the fraudster is a shell company with no assets. By being issued a valid GST number, however, to those who are purchasing from a missing trader will pay GST to them, and as the missing trader is validly registered for GST purposes, the purchaser/recipient (i.e. the innocent party) is entitled to claim the GST paid to the missing trader as an input tax credit. If the missing trader were required to post reasonable security with the CRA in respect of their GST account, and their GST account was "suspended" until the security was posted, then a purchaser/recipient who checked the GST registry prior to payment of an invoice would find that the missing trader's GST number was not valid. The purchaser/recipient would then know that they would not be able to claim an input tax credit in respect of the GST charged by their supplier and would therefore have a clear reason not to pay GST to the supplier. If the supplier was a legitimate supplier and posts security bringing their GST account back into

³ The principle's effectiveness was reinforced in the Upper Tribunal's ruling on Impact Contracting Solutions.

⁴ See [online](#) where the UK publishes a list of tax debtors who deliberately got their tax affairs incorrect. The list includes both individual and corporate tax debtors. See also [online](#) for a link to the English-version website of the State Tax Service of Ukraine. At the bottom is a link to an icon "find out more about your business partner", which allows companies to access information on other taxpayers and their tax indebtedness (if any) through their e-cabinet.

compliance, the supplier's registration would be marked as "valid" back to the date of the initial suspension. If the supplier was a fraudulent missing trader, they will not bring their account into compliance, but at least a diligent purchaser/recipient will have not paid GST to the missing trader.

This new security requirement should be limited to persons that are both (a) corporations (whether resident or non-resident), partnerships or trusts (all of whose members or beneficiaries are corporations), and (b) engaged in prescribed commercial activities (i.e. those that are ripe for carousel fraud). The amount of security should also be limited to a reasonable amount, taking into account the assets of the registrant and those of its corporate group. There should also be a mechanism for a person for whom CRA has requested security to have the decision to impose the security requirement reviewed to ensure that legitimate traders do not face an unreasonable financial barrier of having to come up with security in respect of their GST account.

Attestation

We recommend that the federal government follow Quebec's lead in introducing something similar to the *attestation de Revenu Québec*.

Recently, there have been several cases where purchasers verified GST registration numbers through the GST registry, only to have tax authorities dispute that these numbers belonged to the genuine suppliers (on the basis that these companies had not remitted the tax, often arguing that the GST registration was for a shell company or other entity without assets who could not have provided the goods/services). Such instances are concerning because innocent ITC claimants, who are not colluding with the suppliers, may still face denial of their ITC claims.

To address these issues, the Quebec government introduced a new measure in 2010: the *attestation de Revenu Québec*. This attestation certifies that a person or business met the following conditions on the date of its application for the attestation:⁵

- It had filed the returns and reports required under Quebec tax laws.
- It did not have any overdue account with Quebec's minister of revenue in respect of a tax law or, if it did, it had reached and abided by a payment agreement, or the collection of its debts had been legally suspended.

An *attestation de Revenu Québec* is valid from the time of issue until the end of the third month following the month in which it is issued. A business can sign up for automatic renewal of the attestation if the business holds at least one valid attestation at the time the request is made. However, a person applying to use the automatic renewal service on behalf of a business must have a general power of attorney with respect to the business. Presumably, each automatic renewal is vetted by the tax authorities to ensure that the business has remained compliant.

The *attestation de Revenu Québec* is a prerequisite for bidding on or entering into certain contracts, including construction and public contracts, and agreements with temporary help agencies. Its issuance provides some assurance to potential purchasers that the supplier complies with tax laws and is less likely to engage in fraudulent activities.

While currently focused on the construction and temporary help industries, the attestation could potentially expand to address issues in other sectors, such as the scrap metal industry, where we understand that there is some concern over invoice-of-convenience practices (e.g. transactions lacking actual goods transfer between suppliers and purchasers) or carousel schemes.

Implementing a similar attestation system at the federal level could significantly enhance transparency and compliance across various industries, ensuring fair competition and protecting

⁵ Revenu Québec, "Contracts Requiring an Attestation de Revenu Québec" [online](#).

taxpayers from fraudulent practices. Such a measure would foster trust and confidence in business transactions nationwide.

Additionally, the government could consider establishing a central, publicly available electronic database of businesses operating in high-risk industries prone to GST fraud and carousel schemes, such as the gold-refining industry or the employment agency industry, where the list contains companies that are tax compliant. Such a mechanism would enable taxpayers to verify that their suppliers are legitimate businesses that are actually in the industries in which they claim to be.

We note that if the CRA had implemented a program similar to the *attestation de Revenu Québec*, there would have been no need for the CRA to go after a company such as Fiera Foods⁶ for paying GST/HST to registered employment agencies who absconded with the GST/HST they collected as the employment agencies who acted fraudulently would presumably not have received the attestation from the CRA, and Fiera Foods would not have dealt with them, thus stopping the fraud before it happens.

Electronic Invoicing and Mandatory Reporting

Given the importance of tracking and controlling transactions in dealing with fraud, the CRA should consider implementing electronic invoicing (“**e-invoicing**”) and real-time reporting systems, particularly focusing on high-risk industries. These measures aim to deter the issuance of counterfeit invoices and to manage transactions and refund claims with greater efficiency and immediacy.

E-invoicing mandates businesses to electronically transmit essential supply-related information to the tax administration in real time, replacing the current audit-based approach. This shift offers numerous benefits, including cost reduction through timely issue identification and resolution, improved fraud detection, and potentially higher tax revenues. Additionally, e-invoicing streamlines processes for taxpayers by integrating invoice data into their payment and accounting systems, thereby reducing vulnerabilities to fraudulent activities.

Europe has mandated e-invoicing since 2014, requiring all public entities to adopt it by April 2019,⁷ alongside real-time reporting systems like Italy’s XML-based *sistema di interscambio*. France plans to enforce mandatory e-invoicing for large companies by 2024, extending to smaller companies in subsequent years. The UK’s digital VAT reporting regime (MTDfV) since 2019 mandates real-time data transmission from ERP systems, applicable universally since April 2022.

Additionally, several other jurisdictions, including Quebec, have increased their reporting obligations for certain sales tax registrants so that transactions are reported to the tax authority periodically or in near-real time. Quebec has implemented certain enhanced reporting measures in the remunerated passenger transportation sector and restaurant and bar industry to address concerns with unreported and underreported sales. For the remunerated passenger transportation sector, in order to operate a taxi business, taxpayers must send prescribed information such as the type of transaction, amounts, and applicable taxes using the certified sales reporting system to Revenu Quebec at the end of each trip.⁸ Similarly, by May 31, 2025, operators of restaurant establishments subject to mandatory billing

⁶ In the case of *Fiera Foods Company v. The King*, 2023 TCC 140, Justice Owen noted that “The actions of the Agencies are not the actions of the Appellant and nothing in the scheme of the ETA leads to a contrary conclusion. Each had its obligations under the ETA and only the Agencies failed to meet those obligations, albeit in an egregious fashion. In short, there is simply no reasonable basis for the Minister to conclude that the Appellant demonstrated “such an indifference to appropriate and reasonable diligence in a self-assessing system as belies or offends common sense”. The Appellant simply claimed input tax credits that any reasonable person in the circumstances of the Appellant would believe were available under the ETA.”

⁷ EU Directive 2014/55/EU.

⁸ Revenu Québec, “Summary of Obligations – Mandatory Billing in the Remunerated Passenger Transportation Sector” [online](#).

measures will be required to send Revenu Quebec their transaction data using a certified sales recording system (“SRS”) and give every customer a bill produced using that SRS.⁹

To alleviate compliance burdens on smaller businesses, consideration could be given to raising the GST threshold or limiting mandatory real-time reporting to high-risk sectors. While initial costs for such systems may be considerable, Canada could adopt proven international reporting frameworks instead of developing new ones, potentially reducing implementation challenges.

Implementation of e-invoicing and mandatory reporting is expected to curb tax fraud, bolster government revenues, and reduce the need for reassessments and audits.

Reverse Charges

We recommend that the CRA work with the Department of Finance to amend to section 221 of the *Excise Tax Act*¹⁰ (perhaps by the addition of a new subsection 221(2.2), similar to existing (2) and (2.1)) to introduce a reverse charge mechanism, which would shift the GST liability from sellers to buyers in transactions between registered businesses. Under this mechanism, GST would not change hands at each transaction point; instead, the buyer would be responsible for remitting the tax to the CRA and applying it as a credit against their own tax liabilities on subsequent sales. This approach ensures that the final buyer in the supply chain before the consumer remits all GST owed, thereby preventing suppliers in B2B sales from disappearing without remitting collected taxes.

Currently, Canada uses a reverse-charge mechanism with respect to certain sales of real property and supplies of certain emission allowances. We believe that expanding this mechanism to encompass supplies that are considered high-risk by the Canadian government could effectively help mitigate GST fraud issues.

In 2006, the UK government introduced a reverse charge mechanism for goods vulnerable to GST fraud. This led to the implementation of reverse charge procedures for mobile phones and computer chips in 2007, and for gas and electricity in 2014.¹¹ Similarly, Australia responded to large-scale carousel frauds in the metal industry by implementing a reverse charge mechanism for metal sales between GST-registered suppliers and purchasers, effective from April 1, 2017, covering taxable supplies of gold, silver, or platinum.¹² Again, had the CRA implemented such changes at the same time as Australia, it would have prevented millions of dollars of tax fraud.

Following the examples of the UK and Australia, we recommend amending Canadian legislation to extend reverse charge mechanisms to high-risk industries. This proactive measure aligns with international best practices and would enhance the integrity of Canada’s GST system by reducing opportunities for fraudulent activities in vulnerable sectors.

A variation on the above idea would be to allow the recipients of supplies to pay tax directly to the Minister on the account of the registrant who would otherwise be required to collect it. Such a mechanism would not entail a wholesale change to a self-assessing system; rather, it would be a means for registrants in high-risk industries to ensure that the tax is making its way to the government and that they are not going to be subsequently assessed for the consequences of another taxpayer's fraud.

We are aware of situations where legitimate taxpayers in high-risk industries have tried to pay GST directly to the CRA instead of a supplier to reduce the CRA taking unreasonable positions that they were participants in a fraud, but the CRA has refused, citing an alleged statutory inability to do so.

⁹ Revenu Québec, “Mandatory Billing in the Restaurant Sector” [online](#).

¹⁰ Excise Tax Act, RSC 1985, c E-15.

¹¹ Government of UK, “Domestic Reverse Charge Procedure”, (www.gov.uk/guidance/the-vat-domesticreverse-charge-procedure-notice-735#the-law).

¹² Australian Taxation Office, “Reverse Charge in the Valuable Metals Industry” [online](#).

Public Outreach / Information Dissemination

Even if the CRA is not prepared to inform taxpayers about specific fraud that it is aware of, we recommend that the CRA better educate taxpayers about what it considers to be an indicator that a particular supplier is fraudulent. At a minimum, it would be helpful for the CRA to make public a list of which industries it considers to present a high risk of fraud to ensure that those taxpayers in those industries undertake higher diligence.

It is inappropriate for the CRA to take the position that taxpayers "should have known" about fraud based on specific facts that are not obvious. For example, in the precious metals industry, the CRA has taken the position that taxpayers "should have known" they were paying GST to fraudulent gold dealers because of the purity of the gold. It is unclear to us—and likely many taxpayers—why the purity of gold would be an indicator of GST fraud. If the CRA is genuinely interested in preventing fraud, and truly believes that to be a relevant indicator, it should publicly say so, so that taxpayers can undertake the appropriate diligence.

In educating taxpayers about indicators of fraud, the CRA should be mindful of whether the facts it is asking taxpayers to consider are within their knowledge. For example, the fact that a taxpayer pays amounts to a supplier that has not filed any income tax returns is not a useful indicator *to the taxpayer* that the supplier is engaged in fraud, because that is a fact that only the CRA would know.

Prosecute Known Fraudsters

Where the CRA has legitimate evidence of GST fraud, it should pursue criminal charges, raise assessments and pursue collections against the actual perpetrators of the fraud.

As with the above suggestion to de-register fraudsters, we note that this suggestion must be applied carefully and only to the clearest cases—for example, where a taxpayer has collected tax and absconded with it. We do not mean to suggest that the CRA should pursue criminal charges against the innocent parties that paid the tax.

5. Concluding Comments

Thank you once again for the opportunity to engage with the CRA in this collaborative effort to strengthen the tax framework. Should you require any additional information or wish to discuss any aspect of our submission further, please do not hesitate to contact us.

Yours truly,

(original letter signed by Noel Corriveau for Brent F. Murray)

Brent F. Murray
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