Canada Revenue Agency | Agence du revenu du Canada

CRA/CBA COMMODITY TAXES ROUNDTABLE 2017

Questions and Answers

March 23, 2017

Canada

The Canada Revenue Agency (CRA) always welcomes the opportunity to discuss commodity tax issues with representatives of the Canadian Bar Association (CBA).

The following comments provided during our meeting represent our general views with respect to the subject matter and do not replace the law found in the Excise Tax Act (ETA) and 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 particular situation, you may wish to refer to the ETA and regulations, or contact any CRA GST/HST rulings centre for additional information. All references to legislative provisions in our comments are references to the ETA unless otherwise noted.

A ruling should be requested for certainty in respect of any particular GST/HST matter. For more information on making a ruling request, refer 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.

CBA members located in the province of Quebec, who wish to make a technical enquiry or request a ruling related to the GST/HST, may contact Revenu Quebec by calling 1-800-567-4692.

Exception: The CRA administers the GST/HST and the QST for listed financial institutions that are selected listed financial institutions (SLFIs) for GST/HST or QST purposes, or both, whether or not they are located in Quebec. If you wish to make a request for a ruling related to the application of the GST/HST or QST to these listed financial institutions, refer to GST/HST Memorandum 1.4, Excise and GST/HST Rulings and Interpretations Service, for more information. To make a technical enquiry related to these listed financial institutions by telephone, call 1-855-666-5166.

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1. Meaning of "Principal Business"

a) There is no clear guidance on the meaning of "principal business" found in the definition of "financial institution" in subsection 149(1) of the Excise Tax Act (ETA). This is problematic for leasing companies and third-party administrators (insurance) who are engaged in a mix of exempt and taxable supplies and whose revenues from exempt activities may go below or above the 50% revenue threshold from year to year.

   Can the CRA provide guidance as to how it will interpret the term "principal business" and whether such determination must be made on an annual basis?

b) Pursuant to subparagraph 149(1)(a)(viii) of the ETA, holding companies may be seen as listed financial institutions, insofar as they finance subsidiaries through debt rather than equity. An absurd extreme would be a holding company that holds shares of a wholly-owned subsidiary worth $100,000 and debt of that same subsidiary worth $200,000, generating $1,000 in dividends and $5,000 in interest annually. Under that example, the holding company would not be a de minimis financial institution, both because of the thresholds in paragraphs 149(1)(b) and (c) and because of the carve-out for interest from affiliates in subsection 149(4) of the ETA. However, could the CRA take the view that the holding company's "principal business" is as a lender?

   Can the CRA confirm that it will import the distinction between "business" and "property" income found in the Income Tax Act to the ETA, so that in this example, the passive holding of shares or debt would not constitute a "business"?

CRA Comments

a) GST/HST Memorandum 17.6, Definition of "Listed Financial Institution", provides guidance on the meaning of the term "principal business" in section 149 of the ETA. The term "business" is defined in subsection 123(1) of the ETA to include a profession, calling, trade, manufacture, or undertaking of any kind whatever, with or without regard to an expectation of profit. Any activity engaged in on a regular or continuous basis involving the supply of property by way of lease, licence, or similar arrangement is also included in the definition. An office or employment is excluded from the definition of business.

   The ETA does not define "principal", and therefore its common or ordinary meaning applies for GST/HST purposes. As a result, in the context of section 149 of the ETA, the CRA considers that "principal" refers to the person's chief or main business activity.

   To determine what the principal business of a person is for the purposes of section 149 of the ETA, a review of the facts and circumstances of each case is required. This review may include an examination of each kind of business activity carried out by the person.

   Some factors to be considered, but not limited to, include:

   - the total number of supplies made and the total value of the revenue received from supplies made in each business activity;

- the relative value of the assets employed in each business activity;
- the commercial practices of the person, including the time, attention, and efforts expended by the employees, managers, or corporate officers in each business activity; and
- the terms of any partnership agreement if the person is a partnership, or corporate objects in the case of a corporation.

Although revenues received by a person are considered in determining the principal business of the person, they are not the only factor that will be considered and is not itself a determinant factor.

It is important to note that if at any time in a particular taxation year a person is described in one of the categories listed in subparagraphs 149(1)(a)(i) through (xi) of the ETA (such as a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof), the person is a financial institution throughout a particular taxation year of the person. However, generally a person does not need to determine its "principal business" on an annual basis; this determination should be made any time there is a significant change to the person's business activities.

b) In the example included in your question, the information provided on the holding company is limited to the value of the shares and the debt held by the holding company and the related income received. As discussed in the response to the first part of this question, to determine what the principal business of a person is for the purposes of section 149 of the ETA, a review of the facts and circumstances of each case is required and there are a number of factors to be considered in making this determination which may include the treatment of the income for income tax purposes. However, no one factor in and of itself is determinative. In the example provided, there is insufficient information to determine whether the principal business of the holding company is the lending of money or the purchasing of debt securities or a combination thereof and therefore a listed financial institution under subparagraph 149(1)(a)(viii).

2. Voluntary Disclosures Program Update

In several instances, we have experienced some difficulties and have received contradicting information through the GST/HST Voluntary Disclosures Program (VDP). In this respect, we wish to have a clear explanation on the procedures respecting the GST/HST VDP as well an update as to measures to address the following:

- Having access to an experienced agent who is able to efficiently process files;
- Receiving a confirmation from CRA indicating when and how the file would be processed before providing the taxpayer's name; and
- Waiting for a confirmation of the Central Management in order to obtain answers to various questions.

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CRA Comments

As part of the CRA Service Renewal strategy, effective February 20, 2017, VDP operations have been centralized in the Shawinigan-Sud National Verification and Collections Centre. This centralization will enable the CRA to continue to develop and leverage a single centre of expertise to respond to enquiries and process VDP submissions related to the GST/HST.

3. ITC Supporting Documentation with respect to Retail Purchases

Facts/Background

Major retailers issue cash register receipts that do not identify the purchaser, when a purchase is made at the retail store. This question is about such retail purchases, not purchases made by setting up a business account with the store or by ordering online.

Is it the CRA's view that a business that wishes to buy goods totalling more than $150 can never acquire goods from such a store in a retail purchase if it wants to claim an input tax credit (ITC)? For example, an individual carrying on business can never walk into a major retailer to buy a computer because the receipt will not identify the purchaser's name.

The store's cash register is unable to produce a receipt that identifies the purchaser's name. However, if the purchase is made with a debit card or credit card, the purchaser's name appears on the card and on the billing documentation for the card; and the card number's last 4 digits appear on the retailer's receipt, showing payment made with that card on the date shown. The credit card statement (for a credit card purchase) or bank statement (for a debit card purchase) shows the purchase exactly matching the receipt and the last 4 digits of the card appear on both, linking the documents together.

Question

Will the CRA accept this combination of documents as "supporting documentation" as defined in section 2 of the Input Tax Credit Information (GST/HST) Regulations (Regulations)?

CRA Comments

Subsection 169(1) of the Excise Tax Act (ETA) provides that a GST/HST registrant is generally entitled to claim an ITC to recover the GST/HST it has paid on the purchase of property or a service based on the extent that the purchase is for consumption, use or supply in the registrant's commercial activity. Subsection 169(4) of the ETA imposes a requirement that a registrant obtain sufficient evidence in such form containing such information as will enable the amount of the ITC to be determined.

There is no requirement that the evidence needed to support an ITC claim be contained in a single document. "Supporting documentation" as defined in section 2 of the Regulations is not limited to invoices, but includes other documentation that can be used to verify the accuracy of a registrant's claim. Accordingly, if the required information as prescribed in section 3 of the Regulations is available through a combination of supporting documentation that allows for the verification of the ITC then the documentary requirements for purposes of subsection 169(4) would be met.

Therefore, with respect to the example, if all the information related to the supply is accessible and is prescribed information that enables the CRA to determine the amount of the ITC, then that information will be acceptable to the CRA as satisfying the documentary requirements under subsection 169(4).

4. Leasing of Equipment/Carrying on Business in Canada

Facts/Background

1. A non-resident lessor who is in the business of leasing tangible personal property outside of Canada enters into an agreement to supply by way of lease, a piece of industrial equipment to a resident registrant who will use the equipment at its business facility in Canada.
2. The non-resident lessor acquires the equipment outside Canada from a non-resident supplier.
3. The lessee is given physical possession of the equipment at its facility in Canada, at the beginning of the lease.
4. The lease agreement is concluded outside of Canada.
5. The equipment is to be maintained by the lessee at its own expense.
6. The non-resident lessor has no agents, employees or physical premises in Canada.
7. The non-resident lessor is not listed in a directory in Canada.
8. The non-resident lessor does not solicit business in Canada.
9. The non-resident lessor does not have a bank account in Canada.
10. Payments under the lease are made to the lessor's bank account outside of Canada.

Question

Would the CRA consider that the non-resident lessor is carrying on business in Canada based solely on the fact that delivery of the equipment to the lessee occurs in Canada?

Discussion

The above facts are essentially the same as Example No. 3, Lease of Tangible Personal Property, in GST/HST Policy Statement P-051R2, Carrying on Business in Canada, except for the fact that: (i) the lease agreement is concluded outside of Canada; (ii) the non-resident lessor does not have a bank account in Canada; and (iii) payments under the lease are not made to the lessor in Canada.

CRA Comments

Whether a non-resident is carrying on business in Canada for GST/HST purposes is a question of fact requiring consideration of all relevant facts. The factors that the CRA considers in

determining whether a non-resident person is carrying on business in Canada for GST/HST purposes are set out in GST/HST Policy Statement P-051R2, Carrying on Business in Canada.

Based on the information provided, the non-resident would not be considered to be carrying on business in Canada for GST/HST purposes. The only relevant factor present in Canada in the scenario is the place of delivery, which is insufficient to conclude that the non-resident is carrying on business in Canada.

5. Merger of US Corporation with Canadian Branch

Facts/Background

1. A corporation resident in the US (USCo1) has a Canadian branch.
2. USCo1 merges with an affiliated, sister corporation resident in the US (USCo2), to form a MergeCo (with USCo2 as the successor).
3. As a result of the merger, the Canadian branch assets are transferred from USCo1 to MergeCo.

Question

Does CRA agree that section 271 of the Excise Tax Act (ETA) should apply to deem the transfer of the Canadian branch assets from USCo1 to MergeCo not to be a supply for GST/HST purposes?

Discussion

Section 271 of the ETA is broadly worded to apply "[W]here two or more corporations … are merged or amalgamated to form one corporation".

There is no restriction in the wording of section 271 that such corporations must be "resident in Canada" or that such merger or amalgamation must occur under Canadian law.

This is in contrast to other provisions of the ETA where there are specific restrictions with respect to the residency of the person. For example, the definition of "qualifying member" in subsection 156(1) of the ETA is restricted to "a registrant that is a corporation resident in Canada or a Canadian partnership". Other examples include sections 2, 5, 6, 6.1, 6.3, 7, 8, 10, 10.1, 13, 15.3, 15.4, 17, 18, 19, 20, 21, 22.1, and 23 of Part V of Schedule VI to the ETA, which zero-rate specific supplies of property or services made to a "non-resident person", provided other conditions are also met.

We would submit that since Parliament chose not to put any restrictions in section 271 based on residency of the corporations involved in a merger or amalgamation, it would be improper to read such restrictions into the section. Furthermore, reading in such restrictions would result in an uneven playing field between Canadian resident corporations involved in a merger/amalgamation and US resident corporations (who may have a Canadian branch) involved in a merger/amalgamation, as only the former would be allowed to benefit from the relief accorded by section 271.

CRA Comments

We have advised previously that section 271 of the ETA applies to "statutory amalgamations", meaning that the procedures for amalgamating follow amalgamation rules set out in a Canadian or provincial statute under which the corporation is incorporated. Generally, where an amalgamation occurs under a statute, the amalgamating corporations are continued as one corporation, with the new successor corporation being regarded as a continuation of the predecessor corporations. However, section 271 deems for purposes under Part IX of the ETA (other than for specific provisions and for prescribed purposes set out under the Amalgamation and Windings-Up Continuation (GST/HST) Regulations) the new successor corporation to be a separate person from either predecessor corporation.

Section 271 would not apply if the merger or amalgamation of two or more corporations results from

- one corporation purchasing the property of the other corporation (in this situation, the general GST/HST rules apply), or
- the property of the other corporation being distributed to the one corporation as a result of the winding-up of the other corporation.

There is no specific restriction in the wording of section 271 that such corporations must be resident in Canada or that such a merger or amalgamation must occur under Canadian law.

Where pursuant to the state, provincial or federal laws under which the entities are incorporated, the predecessors are continued as one corporation with the new successor being a continuation of the predecessors (otherwise than as a result of a purchase or distribution of property described above), it appears that section 271 would apply.

6. Application of the Wash Transaction Policy to GST/HST Voluntary Disclosures involving Agents and Principals

Facts/Background

In circumstances where an agent is acting on behalf of a principal, absent a section 177 election, all GST/HST reporting (GST/HST collectible, ITCs and the resulting net tax) is to be done by the principal on their periodic GST/HST return. However, in circumstances where an agent has reported and remitted the GST/HST collectible on behalf of the principal, the correct amount of net tax in respect of the relevant transaction has been remitted to the government, just simply by the agent on behalf of the principal.

The CRA's current policy on wash transactions does not deal with this circumstance. Further, when a voluntary disclosure is made by both the agent and the principal jointly, the CRA appears to currently handle the disclosure separately. In particular, as the agent has over-reported net tax, the CRA treats the disclosure as a request to amend prior returns of the agent, with the principal's being treated as a voluntary disclosure. This creates cash flow issues for the principal, as the principal is required to remit the under-reported net tax and then wait for the agent's amended returns to be reassessed and the resulting credit paid to the agent.

This becomes even more cumbersome when an agent is acting on behalf of multiple principals. We have seen circumstances where an agent is in the business of acting on behalf of hundreds of separate principals.

Discussion

It would be appropriate for the CRA to expand the Voluntary Disclosures Program (VDP) to specifically address this circumstance as a wash transaction. Further, given that in remitting net tax to the CRA, the agent was acting in its capacity as agent for its principal, as opposed to treating the agent and principal separately, amounts over-remitted to the CRA by the agent, on behalf of the principal, should be accounted for by simply transferring such amounts from the agent's GST/HST account on the date of the remittance to the principal's GST/HST account.

Question

Will the CRA expand the VDP to address this situation as a wash transaction?

CRA Comments

The Standing Committee on Finance's October 2016 report (The Canada Revenue Agency, Tax Avoidance and Tax Evasion: Recommended Actions) recommended that the CRA conduct a comprehensive review of the VDP. In addition, in December 2016, the Offshore Compliance Advisory Committee (OCAC) released its Report on the Voluntary Disclosures Program[1], which contained 11 recommendations. As a result, the CRA is currently in the process of reviewing the VPD and the OCAC recommendations. Comments from the CBA will be considered in the context of this review.

7. The Auditor General's Report and the Objection Process

On November 29, 2016, the Auditor General issued a report on the CRA's handling of income tax objections, including both a summary of conclusions and recommendations. Included in the Auditor General's Report were findings that: (1) income tax objections were not processed by the CRA in a timely manner; (2) target times for objection review were deficient; (3) objection decisions were not adequately analyzed or reviewed; and (4) decisions on objections were not properly shared within the CRA among the audit and appeals branches. While these observations and the related recommendations dealt specifically with income tax objections, they very likely apply to GST/HST objections as well.

The CRA has planned specific action to address these concerns for income tax objections. What steps, if any, are proposed at this time to improve the GST/HST objection process, and what is the timeframe for their implementation?

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[1] https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/report-on-voluntary-disclosures-program.html

CRA Comments

A comprehensive action plan has been developed to address the recommendations of the OAG report. Initiatives stemming from this action plan will be implemented for income tax as well as GST/HST objections.

In particular, we have already begun to improve communications to taxpayers by enhancing content on the Agency's website. Taxpayers and tax preparers can now find information on the date of the GST/HST[2] and Income tax[3] objection files currently being assigned to appeals officers.

We have also updated the CRA website to include enhanced information on how to resolve typical tax issues, such as requesting an adjustment to a tax return, prior to filing an objection.

From an operational perspective, we are reviewing all CRA programs' letters and manuals to ensure that the taxpayer is provided with all available recourse options when submitting new or additional information. We have also created a formal, structured communication between Appeals and the assessing and audit programs as well as the regions on the results of objections decisions. This feedback, and any trend analysis could lead to other programs enhancing policy, procedures and/or training.

We are reviewing our processes using a LEAN methodology to identify delays and we are looking at implementing different workload management strategies (for example, specialization, centres of expertise) to improve our effectiveness in resolving objections in a timely manner.

In particular, on April 1, 2017, we are introducing a new process where we will be requesting additional information much earlier in the objections process for low-complexity objections. This will ensure objections are fully "work-ready" once assigned to appeals officers, and provide added value to appeals officers in the form of a recommendation.

8. GST/HST Voluntary Disclosures and the Offshore Compliance Advisory Committee

On December 8, 2016, the Offshore Compliance Advisory Committee (OCAC), which was established by the Minister of National Revenue to report on administrative strategies to deal with offshore income tax compliance, provided the OCAC's report and recommendations in respect of the Voluntary Disclosures Program (VDP). While some of the OCAC's recommendations regarding the VDP were formulated with an eye specifically on offshore income tax compliance, the recommendations include proposals that would affect the VDP more generally, including GST/HST disclosures. Some of the

[2] https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/goods-services-tax-harmonized-sales-tax-gst-hst.html
[3] https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/income-tax.html

recommendations that GST/HST practitioners could potentially find troubling include: (1) less generous relief where there is willful default or carelessness amounting to gross negligence, large amounts, multiple years, repeat use, sophisticated taxpayers, or "other circumstance[s] in which a high degree of taxpayer culpability contributes to the failure to comply"; (2) the requirement to disclose advisers who "assisted" with non-compliance; (3) higher level sign-offs for larger or more complex disclosures, or those involving novel legal issues or "high-profile" cases; (4) a harder line on enforcing full and complete information; and (5) the elimination of the right to object to an assessment based on a voluntary disclosure. Some practitioners have already raised concerns that the VDP has recently become a "less friendly" program for GST/HST disclosures (for example, see Q#3 from last year's CBA meeting regarding issues of "completeness" in GST/HST disclosures going back to 1991).

In this context, there is a concern that the recommendations of the OCAC, if implemented, would: (1) increase discretion and reduce certainty, which is already a significant issue in GST/HST disclosures (for example, "how far back" a GST/HST disclosure should go); and (2) further reduce the usefulness of the VDP for GST/HST disclosures at a time when the value of the program has arguably diminished in recent years.

Question

Can the CRA please advise what impact the OCAC's report and recommendations will have on the GST/HST VDP?

CRA Comments

The OCAC supported the VDP as an integral part of the CRA's administrative and enforcement regime and offered recommendations for enhancement and improvement for the benefit of Canadians. In addition to the OCAC recommendations, in October 2016, the House of Commons Standing Committee on Finance recommended that the CRA conduct a comprehensive review of its VDP by March 31, 2017. The CRA is looking at the program holistically to ensure that it continues to provide individuals and corporate taxpayers/registrants with an opportunity to correct inaccurate or incomplete information or to disclose information not previously reported to the CRA, while ensuring that the program is fair to the vast majority of Canadians who pay their fair share of taxes. The CRA is in the process of reviewing these recommendations. Public consultations on the changes are expected to start in the spring and the CRA plans to communicate changes to the program in the fall of 2017.

9. Meaning of "Builder"

Under the definition of "builder" in subsection 123(1) of the Excise Tax Act (ETA), it is possible to have more than one "builder" of a building at the same time. Under subsection 191(10) of the ETA, if person A is a builder and leases a building to person B and B is also a builder and subleases a unit in the building to an individual, then A is deemed to have made the sublease and it has a self-supply. On a literal reading of subsection 191(10), however, nothing deems B not to have made the sublease. That could mean it also has a self-supply at the same time as A has a self-supply. B should not have such a supply. For subsection 191(10) to apply, paragraph (c) thereof requires A to give possession of the complex to B. A is then deemed to have leased the unit in the complex to the individual at the time it gave possession of the complex to B. Assuming that A gives B possession of the

buildings before B subleases any unit therein to an individual, A will be deemed to have given possession of the unit to the individual before B actually gives possession to that individual, so that B will not be within paragraph 191(3)(c).

Can the CRA confirm this?

CRA Comments

Although it may be possible to have more than one builder of a residential complex at the same time, based on the limited information provided, it is not clear how both persons A and B would be considered builders. For example, if person A were the owner of the land on which it constructs or engages another person to construct a residential rental building (we assume a multiple unit residential complex given your reference to subsection 191(3) of the ETA), person A would be a builder under paragraph (a) of the definition of "builder" in subsection 123(1) of the ETA. If subsequent to the construction, person B were to enter into a head lease for the complex with person A for the purpose of subleasing residential units within the complex directly to individuals for use as their place of residence, person B would not be a builder and would not face a self-supply (that is, person B is not a builder under paragraph (d) of the definition of "builder" in subsection 123(1)).

Alternatively, if person A were to have purchased a newly constructed multiple unit residential complex for the primary purpose of entering into a head lease for the complex with person B for the same purpose described above, person A would be a builder under paragraph (d) of the definition of "builder" in subsection 123(1). Again, however, person B would generally not be a builder and would not face a self-supply.

As such, it is not clear how person B would face a self-supply.

If there is a situation where person B is also builder, we would appreciate an opportunity to review all of the facts of the given situation to consider the application of the self-supply rules, and, where necessary, engage in discussions with our colleagues at Finance Canada.

10. ITC Entitlement and GST/HST Obligations of Wind Up

Pursuant to section 272 of the Excise Tax Act (ETA) where a subsidiary corporation (SubCo) is wound up into a parent corporation (ParentCo) owning at least 90% of the issued shares of each class of capital stock of that subsidiary, ParentCo is deemed to be the same corporation as, and a continuation of, SubCo for prescribed purposes under the ETA and the applicable regulations promulgated thereunder. Neither the legislation nor any CRA publications make clear whether, pursuant to the operation of section 272, ParentCo is permitted to file GST/HST returns and claim input tax credits (ITCs) using SubCo's GST/HST account number, or whether it is required to file returns and claim ITCs using its own GST/HST account number. It is also unclear whether the CRA requires notice of the wind-up to be given by ParentCo following the successful winding up of SubCo.

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Facts/Background

1. SubCo is a registrant, and claimed ITCs and filed its GST/HST returns using its assigned GST/HST number (12345 6789 RT 0001).
2. ParentCo is a holding company, holding 100% of the shares of each class of capital stock of SubCo. As a holding company, ParentCo does not carry on any active business and is, therefore, not a registrant nor is it registered for GST/HST purposes.
3. SubCo was wound up into ParentCo.
4. Prior to being wound up into ParentCo, SubCo operated a retail business with annual taxable sales in excess of $30,000. Accordingly, SubCo was not a "small supplier".
5. ParentCo intends on carrying on the retail business of its predecessor SubCo for several months following the winding up of SubCo, in order to liquidate the remaining inventory acquired from SubCo (the "Remaining Inventory").
6. Pursuant to the operation of section 272, ParentCo is deemed to be the same corporation as, and a continuation of, SubCo for certain prescribed purposes, including claiming ITCs (subsection 169(1) of the ETA) and the filing of GST/HST returns (section 238 of the ETA).

Questions

a) Is ParentCo permitted to claim ITCs and file its GST/HST returns using SubCo's GST/HST account number?

b) If ParentCo is permitted to retain SubCo's GST/HST account number:

   i. Is ParentCo required to make a formal request to the CRA asking for the retention of SubCo's GST/HST account number, following the winding up of SubCo?

   ii. Can you confirm whether SubCo's GST/HST account number - now retained by ParentCo - would be recorded as 12345 6789 RT0002 as a result of the winding up of SubCo?

   iii. If ParentCo's forecasted taxable sales from the liquidation of the Remaining Inventory is expected to be less than $30,000, can you confirm that, as a "small supplier", ParentCo would be permitted to de-register its GST/HST account?

c) If ParentCo is not permitted to retain SubCo's GST/HST account number:

   i. Please confirm that ParentCo would be required to obtain its own GST/HST account number?

   ii. If ParentCo's forecasted taxable sales from the liquidation of the Remaining Inventory is expected to be less than $30,000, please confirm that, as a "small supplier", ParentCo would not be required to register for a GST/HST account?

CRA Comments

Our comments are based on the assumption that SubCo's assets have already been transferred to ParentCo and that SubCo has been dissolved.

a) ParentCo would not be permitted to claim ITCs and file its GST/HST returns using SubCo's GST/HST account number. Each "person", which is defined in subsection 123(1) of the ETA to include a corporation, is assigned a single unique business number (BN) when first registering for a program account with the CRA. Under its unique BN, every corporation is assigned a program account for corporation income tax purposes and, depending on its particular situation, it may also request a program account for GST/HST, payroll, import/export, or other purposes.

   The provisions in section 272 of the ETA would deem ParentCo to be the same corporation as SubCo only for those purposes specified in that section and the Amalgamations and Windings-up Continuation (GST/HST) Regulations (Regulations). However, ParentCo is still a separate legal entity and, as such, is a separate person with its own BN. Where SubCo has been dissolved due to being wound up into ParentCo, SubCo would no longer exist as a separate person. As a result, its BN must be cancelled, including its GST/HST program account.

   Furthermore, where SubCo's assets have been transferred to ParentCo as part of the winding up process, ParentCo would be considered the supplier in respect of any subsequent sales of those assets. As a result, where ParentCo is a GST/HST registrant (refer to (c) below), those sales must be accounted for under ParentCo's GST/HST account number.

b) This is not applicable. As discussed in our response to question (a), ParentCo is not permitted to retain SubCo's GST/HST account number.

c) As ParentCo would not be permitted to claim ITCs and file its GST/HST returns using SubCo's GST/HST account number:

   i. ParentCo will be required to obtain its own GST/HST account number under its existing BN where it is a registrant for GST/HST purposes.

   ii. A "registrant" is defined in subsection 123(1) of the ETA as a person who is registered, or who is required to be registered for GST/HST purposes. In accordance with subsection 240(1) of the ETA, every person who makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to register for GST/HST purposes. One exception to this requirement is where the person is a "small supplier".

      The determination of whether a person is a small supplier is made with reference to section 148 of the ETA. According to the Regulations, the application of section 148 is a prescribed purpose with respect to section 272 of the ETA. As a result, ParentCo would be deemed to be the same corporation as SubCo when determining whether it is a small supplier under section 148.

      This means that ParentCo would be required to take into account SubCo's consideration from taxable supplies over its previous four calendar quarters

when determining whether it is required to register for GST/HST purposes. Since SubCo operated a retail business with annual taxable sales in excess of $30,000 and was therefore not a small supplier, then ParentCo would not be a small supplier either. As a result, ParentCo would be required under subsection 240(1) of the ETA to register for GST/HST purposes. Under subsection 240(2.1), ParentCo would be required to apply for GST/HST registration before the thirtieth day after the day it makes its first taxable supply in Canada.

11.Section 156 Election

a) Pursuant to subparagraph 156(4)(b)(ii) of the Excise Tax Act (ETA), a section 156 election may be filed any day after the particular day that the Minister may allow. How can registrants obtain the permission of the Minister to file an election after the dates in subparagraph 156(4)(b)(i) have passed? Registrants who have filed the election late are simply receiving a letter of non-acceptance by the CRA. Further written responses from the registrant explaining the delay and requesting authority to file on a later date are answered with the identical initial form letter denying availability of the election.

b) Corporations A and B are 100% owned by the same individual. Mistakenly relying on a section 156 election, Corporation A did not charge GST/HST on inter-corporate supplies of management services to Corporation B. Corporation A is assessed for the failure to collect GST/HST. Can the CRA confirm that if Corporation A and Corporation B thereafter amalgamate to form Amalco, pursuant to section 271 of the ETA and the Amalgamation and Windings-Up Continuation (GST/HST) Regulations (Regulations), Amalco can claim the input tax credit (ITC) that Corporation B would be entitled to, such that Amalco's liability is reduced to only the interest and penalty.

CRA Comments

a) In July 2016, GST/HST Policy Statement P-255, Late-filed Section 156 Elections and Revocations, was released. This policy statement provides guidelines on when the CRA will accept a late-filed section 156 election or revocation of the election. A written request to have the election or revocation of the section 156 election filed late must be submitted to the Assistant Director of Audit of the tax services office of the first specified member making or revoking the election as identified on the election form (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).

   At the end of January 2017, a memorandum to introduce new internal procedures for the review and processing of requests received by tax services offices to accept late-filed Form RC4616 was issued to the field offices. As a result of these new procedures, all requests should now be reviewed by audit staff to determine if the parties listed on Form RC4616 meet all of the legislated eligibility conditions for making or revoking the section 156 election and if the late-filed Form RC4616 should be accepted based upon the guidelines listed in GST/HST Policy Statement P-255.

b) Generally, where an amalgamation occurs, the amalgamating corporations are continued as one corporation, with the new successor corporation being regarded as a continuation of the predecessor corporations. However, for GST/HST purposes, section 271 of the ETA deems that the new successor corporation is a separate person from each of the predecessors except for specific provisions and for prescribed purposes set out under the Regulations (for example, section 225 Net tax). In accordance with section 271, for the purposes of applying the GST/HST provisions in respect of property or a service acquired, imported or brought into a participating province by a predecessor, the new successor corporation is considered to be the same corporation as and a continuation of each of the predecessors.

   Assuming that a predecessor met the conditions for claiming input tax credits (ITCs) (other than having the documentary evidence) in respect of tax that became payable or was paid without having become payable, and subsequently the documentation is obtained, the predecessor (or after amalgamation, the new successor) may claim that ITC in its net tax calculation for another reporting period, subject to the four or two year time limitation under subsection 225(4) of the ETA.

   Depending on the timing involved and the facts of the situation, audit policies provide that it may be feasible to accept alternative documentation to support an ITC. The Input Tax Credit (GST/HST) Regulations set out the possibility to use as supporting documentation "any other document validly issued or signed by a registrant in respect of a supply made by the registrant on which GST/HST is paid or payable". Where the predecessor (the supplier) did not provide the documentary evidence to the other predecessor prior to the amalgamation, the new successor could provide the necessary documentation thereby allowing the new successor to claim the ITC effectively reducing their liability to any applicable interest and penalty.

12. "Arranging For"

Facts/Background

We have noted the following "Notice to the reader" on the CRA website with respect to B-105, Changes to the Definition of Financial Service:

> This publication is in the process of being updated. It will include additional examples to clarify the application of the legislation where a car dealer earns a commission when it assigns a conditional sales contract or similar agreement to a financial institution. In addition, references to insurance and updated examples regarding insurance will be provided in another publication.
>
> In the context of insurance, the term "arranging for" in paragraph (l) of the definition of financial service in subsection 123(1) of the Excise Tax Act is generally intended to include intermediation activities that are normally performed by a person whose principal business is as an insurance agent or broker. In determining if a person is "arranging for" the issuance of insurance, all of the facts surrounding the transaction must be considered, including the activities performed by the intermediary and the nature of the insurance product. For example, a promotional or administrative service does not become a financial service of "arranging for" the issuance of

insurance simply because the person is the only point of contact between the customer (insured) and the insurer.

(emphasis added)

The update regarding the term "arranging for" is also mentioned in relation to car dealers or travel agents in the November issue of the Excise and GST/HST News:

Incidental promotion of insurance products

A person, such as a car dealer or travel agent, may promote insurance products that are incidental to the products or services (for example, vehicles or travel services) that the person supplies to its customers. The insurer that supplies the insurance generally pays an amount to the person for the person's promotional and administrative service. An example of this would be when a car dealer (the Dealer) sells a car to a customer under a financing arrangement. The Dealer offers the customer creditor disability insurance under which the insurer may pay all or part of the balance owing on the financed vehicle in the event of the disability of the customer. If a customer would like the insurance, the Dealer ensures the customer completes a short application form, the Dealer collects the insurance premium, and forwards the form and the insurance premium to the insurer. The insurer pays the Dealer for its service. The Dealer is making a taxable supply of a promotional and administrative service to the insurer. This service is not a financial service. If the Dealer is a GST/HST registrant, it will generally be required to collect GST/HST on the payment from the insurer.

In the context of insurance, the term "arranging for" in paragraph (l) of the definition of a financial service in subsection 123(1) of the Excise Tax Act is generally intended to include intermediation activities that are normally performed by a person whose principal business is as an insurance agent or broker. A taxable promotional and administrative service provided by a person such as a car dealer does not become an exempt supply of a financial service of "arranging for" the insurer's supply of insurance simply because the person may be the only point of contact between the customer and the insurer.

(emphasis added)

Question

It is a question of fact whether a person is "arranging for" a financial service. It may be that some car dealers are providing a promotional and administrative service, and other car dealers are truly "arranging for". The above-mentioned Notice to the reader refers to the fact that, "In determining if a person is "arranging for" the issuance of insurance, all of the facts surrounding the transaction must be considered…".

Is there still a place for an examination of all of the facts on a case-by-case basis? Or, is the CRA proclaiming that a car dealer or travel agent may never "arrange for" a financial service?

CRA Comments

It is a question of fact whether a person is making a supply of a financial service or another service. In the context of the insurance industry, relevant facts include the nature of the insurance product and the activities performed by the person.

In the situations that we have examined to date, the facts indicated that the car dealer or travel agent was making a supply of a promotional and administrative service and not a supply of an "arranging for" service under paragraph (l) of the definition of "financial service" under subsection 123(1) of the Excise Tax Act.

Where the facts in a given situation are the same or similar to those that we have reviewed, it is reasonable to expect that the same conclusions may be reached.

13. Acknowledgement of Objections

When a professional advisor files a Form GST159, Notice of Objection (GST/HST), on behalf of a client, and with the objection, supplies a duly completed Form RC59, Business Consent for Access by Telephone and Mail, appointing the advisor as a representative, CRA's practice currently is to send the acknowledgement of the objection only to the client, unless a Form RC59 for the advisor is already on file. Any new Form RC59 is sent for processing. Depending on the sophistication of the client, the acknowledgement may or may not be passed on to the advisor. This can cause some delays in providing information to the CRA.

Question

Will the CRA consider sending a copy of the acknowledgement to the advisor once Form RC59 has been processed?

CRA Comments

The CRA can only send a copy of the acknowledgement to the representative if Form RC59 has already been processed or the representative is identified on the Notice of Objection and the objection has been signed by the taxpayer. It is recommended that the representative submit the authorization electronically prior to filing the objection. Where an unauthorized representative is identified on an objection that was not signed by the taxpayer, the acknowledgment letter will advise the taxpayer/registrant that there is no authorization for the representative and that a Form RC59 is required.

Tax professionals may wish to note that the CRA website describes faster alternatives to Form RC59, Business Consent[4].

[4] https://www.canada.ca/en/revenue-agency/news/newsroom/tax-tips/tax-tips-2016/tax-professionals-cra-offers-faster-alternatives-rc59-business-consent-form.html

14.Section 285 Gross Negligence Penalty

Facts/Background

When a GST/HST auditor or examiner contemplates assessing the gross negligence penalty under section 285 of the Excise Tax Act (ETA) the CRA's practice currently is to advise the registrant in the proposal letter that the penalty is being considered. That is ordinarily the only communication between the CRA official and the registrant with respect to the potential application of such penalty before the assessment is made. The factors motivating the CRA official's consideration of the penalty are not included in the letter. Instead, they are generally set out in the Penalty Recommendation Report, which is only completed when the assessment is made. The effect is that, in advance of the assessment being made, the registrant is usually not made aware of, or able to respond to, the CRA's particular reasons for the assessment of the gross negligence penalty.

This practice is surprising for several reasons. First, the CRA bears the onus of proving the justification for the penalty. If by the proposal stage of an audit or examination the CRA cannot provide a detailed explanation for the consideration of the penalty, then arguably, the penalty should not be imposed. Second, and perhaps more importantly, the CRA is required to follow rules of procedural fairness in its interactions with registrants. These rules include affording registrants an opportunity to respond to the particulars of the claim against them. The gross negligence penalty, when imposed, adds a significant amount to the total assessment and, like the remainder of the assessment, is payable immediately by the registrant. But registrants confronted with the potential application of the penalty are generally compelled to dispute the penalty in the dark.

Question

Will the CRA consider changing this practice by instructing auditors and examiners contemplating the gross negligence penalty to enclose a draft Penalty Recommendation Report along with the proposal letter?

CRA Comments

The CRA agrees that a person under audit or examination has a right to know and understand the reasoning behind an assessment and any applicable penalties. Currently, auditors and examiners are only required to advise registrants that a penalty under section 285 of the ETA is being considered in their proposal letters. We understand that in certain cases further clarification on why the penalty under section 285 of the ETA is being considered is warranted and therefore we will take your comments under consideration.

15.Self-assessment of the Provincial Component of the HST

Facts/Background

Assume that a private vocational college in Ontario leases a piece of equipment valued at CAD $1 million from a European supplier which is not registered for GST/HST purposes, is not resident in Canada and does not carry on business in Canada. The equipment is delivered to the college outside Canada and the college imports the equipment into Canada. The lease provides that after one year the college can exercise an option to purchase the equipment for $800,000. On import, the college pays 5% GST under section 212.1 of the

Excise Tax Act (ETA). The college also self-assesses the 8% provincial HST under section 220.07 of the ETA. The equipment remains at the college campus in Ontario. The college is not eligible for any refund of the tax.

After one year, the college exercises the option to purchase. Through the application of section 136.1(1.1) of the ETA, the college appears to be deemed to have received delivery of the sale of the equipment in Ontario. This appears to trigger the application of the provincial portion of the HST under section 220.06 of the ETA.

The intention of the legislation is not to charge tax a second time. Section 11 of the New Harmonized Value-Added Tax System Regulations provides the exemption (that prior to 2010 was found in section 220.06). It states as follows:

> Non-taxable property — subsection 220.06(3) — For the purposes of paragraph 220.06(3)(b) of the Act, no tax is payable under subsection 220.06(1) of the Act in respect of a supply of property made to a recipient that is delivered or made available to the recipient in a participating province, or is sent by mail or courier to an address in the participating province, if
>
> (a) the supply is made by a person that paid tax under section 220.05 or 220.07 of the Act in respect of bringing the property into the participating province; or …

Question

The reference to the supplier having paid the tax does not work in a case where the recipient was liable to pay the tax under section 220.07 of the ETA. Would the CRA confirm whether or not this is the intention? Or is there an alternative provision that would avoid the second application of the provincial part of the HST? Otherwise, there is double taxation imposed on the same person in respect of the same piece of equipment.

CRA Comments

Based on the information provided, we agree with the conclusion that tax would apply under section 220.07 of the ETA, and then under section 220.06 of the ETA based on the exercising of the option to purchase the equipment. We have made the Department of Finance Canada aware of the tax policy issue that is raised by this situation.

16. Application of Subsection 301(4)

Facts/Background

In certain cases, taxpayers may not want to have an objection officer review their re-assessment but rather, taxpayers may wish to appeal their re-assessments directly to the Tax Court. For instance, the taxpayer may have had the exact same issue in a previous year, which was confirmed at the objection stage and will soon be before the Tax Court, or there may be clear CRA rulings or statements directly on point which the taxpayer believes are incorrect. Under section 306 of the Excise Tax Act (ETA), taxpayers may appeal to the Tax Court after 180 days have elapsed from the filing of the Notice of Objection if the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or has reassessed. However, in circumstances where the taxpayer believes there is little to no chance that an objection officer will reverse an assessment, the taxpayer

will often prefer to move the case to Tax Court as quickly as possible, and would rather not have to wait 180 days before appealing. Subsection 301(4) of the ETA specifically provides that a person who wishes to appeal directly to the Tax Court can request that the Minister not reconsider the assessment objected to, in which case the Minister may confirm the assessment without reconsideration. This rule is clearly intended to allow taxpayers to move their cases to Tax Court in a timely manner without having to wait a full 180 days.

Unfortunately, there does not appear to be any special process at the CRA to deal with applications made under subsection 301(4). In practice, due to significant delays in assigning objection officers to files and in having them review the files assigned to them, it usually takes at least 3 months (and often close to 6 months) before an objection officer is assigned to the file and issues a confirmation. Further, even where the taxpayer specifically requests that the confirmation be issued under subsection 301(4), objection officers will often say that they have to review the decision, and will sometimes even state in the Notice of Confirmation, "[h]aving carefully reconsidered the assessment with reference to the information and reasons set forth in your Notice of Objection…" The current process does not appear to be the most efficient use of valuable CRA resources, and at the same time appears to limit and, in some cases, disregard subsection 301(4) due to delays.

Question

Does the CRA have any process in place to expedite Notices of Objection made under subsection 301(4) of the ETA? If not, will the CRA consider creating a process in order to expedite Notices of Objection made under subsection 301(4) of the ETA?

CRA Comments

When Appeals becomes aware that a request under subsection 301(4) of the ETA has been made, the case is reviewed at the earliest opportunity to determine if it is an appropriate case to proceed with the request. The authority to confirm the assessment without reconsideration is delegated to specific officers of the Appeals Branch. The decision to accept the request and confirm the assessment without reconsideration is a discretionary decision made by the proper delegated officer. If the decision is to accept the request, the objection will be confirmed without reconsideration.

17. Recovery of GST/HST Self-assessed in respect of a Taxable Supply

Facts/Background

An unregistered non-resident corporation (USCo) provides consulting services to Canadian financial institutions. As USCo did not charge GST/HST on its services and the services were used 100% in the course of the financial institutions' exempt activities, the financial institutions self-assessed tax on the full amount of consideration paid under Division IV of the Excise Tax Act (ETA).

In late 2016, the CRA audited USCo and determined that, based on the amount of time USCo's employees spent in Canada providing services, it was required to register for GST/HST purposes effective July 1, 2013 and should have charged and collected tax on supplies made to its Canadian customers from that date forward. Accordingly, the CRA assessed USCo for GST/HST not collected for the reporting periods from July 1, 2013 to

December 31, 2016. USCo registered for GST/HST and began collecting tax on supplies made after January 1, 2017. USCo is also seeking to recover the amount assessed by charging the GST/HST to the financial institutions. The financial institutions refuse to pay the GST/HST to USCo claiming that they have already paid the tax under Division IV.

Discussion

Typically, if a person is assessed for GST/HST not collected, it would seek to recover the assessed tax from the recipient of the supply. However, if the recipient of the supply has already paid the tax and cannot recover it, it would be absurd to require that it pay the tax again. However, if the CRA assesses USCo, it would have the right to charge and collect the tax from the financial institutions. Therefore, to the extent the financial institutions cannot claim rebates to recover the tax, either both of USCo and the financial institutions will pay the tax or the financial institutions will pay the tax twice.

Question

a) Would the financial institutions be able to claim rebates to recover the tax self-assessed as tax paid in error under section 261 of the ETA (at least for the normal two year limitation period)?

   If the financial institutions are unable to recover the tax self-assessed and remitted by way of rebate (for example, for tax paid beyond the two year limitation period and/or if the CRA were to disallow claims made within the limitation period), the CRA would effectively receive tax on the same supplies twice if it assesses USCo for the tax not collected – once from USCo and once from the financial institutions.

CRA Comments

Where the return that included the amount self-assessed as Division IV tax has been previously assessed, the financial institution would not be entitled to claim a section 261 rebate in respect of the self-assessed amount. Otherwise, yes, the financial institution would be entitled to claim a tax paid in error rebate under section 261 in respect of the amount self-assessed as Division IV tax.

However, where the financial institution can demonstrate that it has or had a liability under Division II for the amount in question and therefore was not required to self-assess under Division IV, the financial institution would be able to request to have its return reassessed in order to have the amount that was originally included as Division IV tax removed and refunded to the financial institution subject to the applicable legislative time limit.

Question

b) Does the CRA have an administrative policy to address the collection of tax in these circumstances? For example, would the CRA apply the principles of GST/HST Policy Statement P-131R, Remittance of Tax Collected by a Person other than the Supplier in Limited Circumstances, and not assess USCo because it does not seek to collect tax twice? For example, if notified of the fact that the tax has been self-assessed by the recipients, would the CRA consider determining that the tax was paid by the financial institutions under paragraph 296(1)(b) of the ETA and not assess USCo for the tax not collected?

CRA Comments

There is not currently an administrative policy in place that would address the issue you have raised. Any administrative position taken would be at audit's discretion at the time of audit and based on the facts of the case at hand. In the example provided, the possibility of double remittance is due to the non-compliance of USCo and not through a business arrangement between two parties for collection and remittance of tax such as one that is indicated in P-131R.

18. ITC Documentation Requirements for Purchases by Partners and Employees

Part I: Facts/Background

A partner in a registrant law firm partnership (Great Law Firm LLP), which is engaged exclusively in commercial activities acquires a new Apple MacBook Pro primarily for use in the commercial activities for the law firm partnership, and pays for the computer using his personal credit card. All information required under the Input Tax Credit Information (GST/HST) Regulations (Regulations) is present in the receipt issued to the partner (Apple Receipt) although the only "recipient" name listed on the invoice is the partner's first and last name. GST/HST payable by the partner of $252.07 is specified on the Apple Receipt. After presenting the Apple Receipt and a copy of his credit card bill to Great Law Firm LLP, the partner is reimbursed for the entire cost of the computer, including the $252.07 he paid in GST/HST.

Question

After reimbursing the partner for the MacBook Pro, can Great Law Firm LLP claim an input tax credit (ITC) of $252.07, supported only by the Apple Receipt issued to the partner and Great Law Firm LLP's records for the partner's reimbursement for these charges?

Discussion

The answer should be "yes", as section 175 of the Excise Tax Act (ETA) deems Great Law Firm LLP to have "received a supply of the" MacBook Pro, and deems "any consumption or use of the" MacBook Pro by the partner in relation to activities of Great Law Firm LLP "to be consumption or use by [Great Law Firm LLP] and not by [the partner]". The same section deems Great Law Firm LLP to have paid, at the time the reimbursement is paid, tax in respect of the supply equal to the total amount reimbursed.

Subsection 199(2) of the ETA also then deems Great Law Firm LLP to have acquired the MacBook Pro, which is capital property, "for use exclusively in commercial activities" of Great Law Firm LLP, entitling Great Law Firm LLP to a full ITC in respect of the $252.07 paid by the partner to Apple.

Furthermore, by virtue of his status as a "partner" in Great Law Firm, LLP, the partner is "a duly authorized agent or representative" of Great Law Firm LLP,[5] for purposes of subparagraph 3(c)(ii) of the Regulations, and the Apple Receipt listing only the partner's first and last name, and containing all of the other informational requirements set out in the Regulations, constitutes full and proper ITC documentation for purposes of subsection 169(4) of the ETA.

CRA Comments

As explained below, we confirm that under subsection 175(1) of the ETA, Great Law Firm LLP would be deemed to have paid, at the time the reimbursement is paid to the partner, tax in respect of the supply of the MacBook Pro equal to the total amount of tax reimbursed. As Great Law Firm LLP is a GST/HST registrant, it may claim an ITC, under subsections 169(1) and 199(2) of the ETA for the GST/HST paid by the partner.

With respect to the documentary evidence, as Great Law Firm LLP is deemed to have acquired the Apple MacBook Pro, no additional supporting documentation is required where subsection 175(1) applies. Documentation identifying the partner, rather than the partnership, should satisfy the documentary requirements.

Under subsection 175(1) of the ETA, if an employee of an employer, a member of a partnership, or a volunteer who gives services to a charity or public institution acquires or imports property or a service or brings it into a participating province for consumption or use in relation to the activities of the employer, partnership, charity or public institution (each referred to as the "person") and pays the related GST/HST payable for which the employee, member or volunteer is reimbursed by the person, the person is deemed to have received a supply of the property or service and to have paid tax at the time the reimbursement is paid. Furthermore, any consumption or use of the property or service by the employee, member or volunteer in relation to the activities of the person is considered to be the consumption or use of the person.

Generally, documentation issued in respect of the expense identifies the employee, member or volunteer as the recipient of the property or service. For this reason, subsection 175(1) of the ETA deems the person to have received a supply of the property or service, paid tax in respect of that supply, and consumed or used the property or service in its activities. Accordingly, no additional documentation is required where subsection 175(1) applies since the person who acquired the property or service is considered to be the person who reimbursed the expense, and not the employee, member or volunteer. Therefore, documentation identifying the employee, member or volunteer should satisfy the documentary requirements.

The amount of the ITC in respect of a reimbursement that can be claimed may be based on the deemed tax paid (the "exact calculation method" based on the actual tax paid by the employee, partner or volunteer) or using a factor of deemed tax paid.

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[5] This is a conclusion based on the common law, and is also supported by subsection 272.1(1) of the ETA.

Registrants who use the exact calculation method to determine their ITC eligibility for reimbursements are subject to the general documentary and information requirements as prescribed under subsection 169(4) of the ETA.

Supporting documentation for claiming an ITC is prescribed by the Regulations and includes:

a) an invoice;

b) a receipt;

c) a credit card receipt;

d) a debit note;

e) a book or ledger of account;

f) a written contract or agreement;

g) any record contained in a computerized or electronic retrieval or data storage system; and

h) any other document validly issued or signed by a registrant in respect of a supply made by the registrant on which the GST/HST is paid or payable.

When the factor method is used, 90% or more of the supplies for which the reimbursement is paid must have been subject to the related tax rate. The factor rates are lower than the tax rates in recognition of the fact that the total expenses may include tips, provincial sales tax, and other amounts that are not subject to the GST/HST.

A person using the factor method is exempt from the statutory and regulatory documentary and information requirements in respect of the expenses reimbursed to the employee, member or volunteer. However, the person must maintain books and records, including all documentation required to substantiate such deductions under the Income Tax Act, and capture information such as:

- the name and GST/HST number of the employer, partnership, charity, or public institution that paid the reimbursed amount;
- the name of the employee, member or volunteer who received the reimbursement;
- the total amount of the reimbursement paid to the employee, partner or volunteer;
- the total GST or HST deemed to have been paid in respect of the reimbursement;
- the reporting period in which the reimbursement was paid; and
- the nature of the expense.

Refer to GST/HST Memorandum 9.4, Reimbursements, for more information on reimbursements and documentary requirements.

Part II: Facts/Background

Same facts as Part I, except that the individual is an employee of a registrant corporation (Great Corporation Inc.), which is engaged exclusively in commercial activities.

CRA/CBA Roundtable – March 23, 2017

Question

After reimbursing the employee for the MacBook Pro, can Great Corporation Inc. claim an ITC of $252.07, supported by the Apple Receipt and Great Corporation Inc.'s records for the reimbursement of the employee for these charges?

CRA Comments

Subsection 175(1) of the ETA applies to reimbursements made by an employer, a charity, a public institution or a partnership. Therefore, the comments provided in Part I would also apply to a reimbursement made by Great Corporation Inc. to its employee.

19.ITC Supporting Documentation

Facts/Background

Assume Xco, a GST/HST registrant, has acquired goods or services from Yco, also a registrant, in a taxable supply. Assume that GST/HST was correctly charged, paid, collected and remitted on this supply. Yco misaddressed its invoice to Xco, either:

a) spelling Xco's name wrong, or

b) using a different name (for example, that of Xco's sole shareholder, who actually placed the order).

Assume that except for this mistake, the invoice otherwise meets all the requirements for input tax credit (ITC) documentation, and assume that Xco is otherwise clearly entitled to an ITC for the GST/HST charged on the supply.

Questions

If Xco obtains a "corrected invoice" from Yco, after the fact, correctly addressed to Xco, will it be accepted as "supporting documentation" as defined in section 2 of the Input Tax Credit Information (GST/HST) Regulations (Regulations), in both cases (i) and (ii) above?

If Xco obtains from Yco a letter confirming that Yco misaddressed the original invoice and that it should have been addressed to Xco, will the combination of the letter from Yco and the original invoice be accepted as "supporting documentation" as defined in section 2 of the same Regulations, in both cases (i) and (ii) above?

CRA Comments

The Regulations provide that "supporting documentation" as defined in section 2 of the Regulations is not limited to invoices, but includes other documentation that can be used to determine the ITC claim of a registrant. Where all the prescribed information as defined in section 3 of the Regulations is set out in the supporting documentation, a registrant may be able to claim an ITC in respect of a supply they acquired in the course of their commercial activity even though the invoice issued for that supply may contain errors related to the registrant name or be issued to the wrong registrant. The determination of whether sufficient information is available to support the ITC claim is fact specific and can only be determined on audit.

CRA/CBA Roundtable – March 23, 2017

Regarding the fact scenario described above:

We wish to point out that where invoices are incorrectly made out to another person, the incorrectly identified person is not entitled to claim the ITC because the person is not the recipient of the supply. Before the actual recipient of the supply is able to claim the applicable ITC using an invoice that indicates the name of an incorrect person, the actual recipient must obtain evidence substantiating that they are the recipient of the supply.

If an attempt is made to remedy the situation by obtaining an amended invoice in compliance with the disclosure requirements, then the CRA will accept the amended invoice as supporting documentation.

With respect to the letter from the supplier confirming and correcting the error in the invoice, such a letter could be included as supporting documentation for purposes of determining the recipient's ITC. Paragraph (h) of the definition of "supporting documentation" includes "any other document validly issued or signed by a registrant in respect of a supply made by the registrant on which GST/HST is paid or payable". Consequently, a letter issued by a supplier in respect of a supply made by that supplier would qualify under this paragraph.

20. Application of Subsection 221(2) to Payments made by Builder to Purchaser

Facts/Background

Subsection 221(2) of the Excise Tax Act (ETA) relieves the supplier who "makes a taxable supply of real property by way of sale" from having to collect tax under certain situations including where the recipient is registered for GST/HST purposes (and, in the case of a recipient who is an individual, the property is neither a residential complex nor supplied as a cemetery plot or place of burial, entombment or deposit of human remains or ashes). What constitutes "real property" is defined to include an interest in real property whether legal or equitable and, in GST/HST Memorandum 3.1, Liability for Tax, the CRA states that the right to purchase land under a contract is an interest in real property, as follows:

> 56. Real property (ss. 123(1)) - Real property consists of land, buildings, leasehold interests in such property, and, in the Province of Quebec, immovable property and every lease thereof. The definition of real property also includes a mobile home, a floating home and any leasehold or proprietary interest therein. The term is also defined to include all other rights and interests in real property such as easements, the right under a lease or licence to use or take possession of land, and a right or option to purchase land under a contract.

Question

In situations where an individual has agreed to purchase a newly constructed home from a corporation that is the builder of the home and, the individual subsequently decides that he no longer wants to purchase the home, does subsection 221(2) of the ETA apply to relieve the builder from having to pay GST/HST on any consideration that is paid by the builder to the individual in relation to the termination of the agreement of purchase and sale, if the purchaser is GST/HST registered?

For clarification, consider the following scenario:

In 2015, Mr. X enters into an agreement of purchase and sale to acquire a newly constructed home for $500,000 that is expected to be completed in January 2017. In December 2016, Mr. X decides that he no longer wants to acquire the home which the parties believe would be worth between $600,000 and $700,000. The builder agrees to pay Mr. X $100,000 for Mr. X's agreement to terminate the agreement of purchase and sale and release the builder of all obligations. Should Mr. X charge and collect GST/HST on the $100,000 payment that he receives from the builder.

CRA Comments

With respect to the scenario provided, the following comments are based on the assumption that Mr. X makes a taxable supply of real property to the builder (the Vendor). However, the language used in the question and in the scenario provided raises the possibility that the amount paid by the Vendor is not consideration for a supply of real property, but rather an amount paid in respect of the termination of an agreement of purchase and sale. It seems peculiar that the Vendor would agree to pay an amount to Mr. X for Mr. X's agreement to terminate the agreement of purchase and sale, particularly given that it is Mr. X who wants to be relieved of his obligations under the agreement of purchase and sale. If anything, one would expect that Mr. X would pay or forfeit an amount to the Vendor for terminating the agreement of purchase and sale. Furthermore, if the Vendor and Mr. X were to mutually agree that it is in their best interests to terminate the agreement of purchase and sale, then one would expect that the Vendor might return any deposits previously given by Mr. X. However, one would not expect that the Vendor would compensate Mr. X for the increase in the fair market value of the property between the time that the agreement of purchase and sale was entered into and the time of its termination. At any rate, although the scenario provided is not clear, we will nonetheless respond to your question on the assumption that Mr. X is making a supply of real property by way of sale to the Vendor, and that the amount paid by the Vendor is consideration for that supply.

As you know, subsection 221(2) of the ETA relieves a supplier who makes a taxable supply of real property by way of sale from the requirement to collect the tax payable by the recipient if any one of the exceptions in paragraphs 221(2)(a) to (c) is applicable.

In the scenario provided, before determining whether any one of those exceptions is applicable, it must first be established that the supplier is making a taxable sale of real property. Generally, when a purchaser, such as Mr. X, enters into an agreement of purchase of sale for the acquisition of a newly constructed house, the purchaser, Mr. X, is acquiring an interest in real property, namely an interest in a residential complex. If Mr. X subsequently receives consideration to transfer that interest to builder (the Vendor), Mr. X would be considered to be making a sale of the interest in the residential complex. Whether the sale of that interest is taxable generally depends on whether or not Mr. X is a builder.

If Mr. X is not a builder in his own right (for example, at the time of entering into the agreement of purchase and sale, he intended to acquire the house for his personal use), the sale of that interest would generally be exempt under section 2 of Part I of Schedule V to the ETA. Where that is the case, tax would not be payable by the recipient and, therefore, subsection 221(2) would not apply.

If Mr. X, however, is considered to be a builder in his own right (for example, at the time of entering into the agreement of purchase and sale, he did so for the primary purpose of selling the interest or the house itself), tax would be payable by the Vendor calculated on the value of consideration ($100,000) for the supply. If Mr. X is a non-resident or is resident by reason only of subsection 132(2), or the Vendor in the scenario is GST/HST registered, pursuant to paragraph 221(2)(a) or (b) respectively, Mr. X would be relieved of his obligation to collect the tax payable.

21. Section 254 New Housing Rebate and Assignment of Purchase and Sale Agreement

Facts/Background

Section 254 of the Excise Tax Act (ETA) (and similar provisions in section 256.21 of the ETA) provide a new housing rebate on the purchase of newly constructed single residential complexes by individuals, when certain conditions are satisfied. Three of the conditions are specified in paragraphs 254(2)(a), (b) and (c) as follows:

a) a builder of a single unit residential complex or a residential condominium unit makes a taxable supply by way of sale of the complex or unit to a particular individual,

b) at the time the particular individual becomes liable or assumes liability under an agreement of purchase and sale of the complex or unit entered into between the builder and the particular individual, the particular individual is acquiring the complex or unit for use as the primary place of residence of the particular individual or a relation of the particular individual,

c) the total (in this subsection referred to as the "total consideration") of all amounts, each of which is the consideration payable for the supply to the particular individual of the complex or unit or for any other taxable supply to the particular individual of an interest in the complex or unit, is less than $450,000.

Question

In situations where a builder has entered into an agreement of purchase and sale with a particular individual (Mr. A) and Mr. A has assigned the agreement of purchase and sale to Mr. B., can the CRA provide some general comments on whether Mr. B would be entitled to claim the rebate and, if so, what would be considered the value of the consideration for the residential complex in situations where Mr. B is required to pay money to Mr. A for the assignment.

For example, consider the following situation:

Builder agrees to sell home for $250,000 plus GST/HST to Mr. A. Mr. A no longer wants to purchase the home and has agreed to assign the agreement of purchase and sale to Mr. B for $150,000 plus GST/HST. The agreement of purchase and sale is not novated; however, title to the home transfers directly from the builder to Mr. B.

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Please comment on the following:

a) Can Mr. B claim a new housing rebate in situations where the conditions in paragraphs 254(2)(e) through (g) of the ETA are all satisfied?

b) Can Mr. B assign the rebate to the builder pursuant to subsection 254(4) of the ETA?

c) How would the value of the consideration for the rebate be calculated?

CRA Comments

In general, section 254 of the ETA provides a new housing rebate to an individual for a portion of the tax paid on the purchase of the housing if certain conditions are met. Those conditions, as set out in paragraphs 254(2)(a) to (g), must all be satisfied before the Minister can pay the rebate. The amount of the rebate is calculated under the formula provided in paragraphs 254(2)(h) and (i).

In a situation where a builder enters into an agreement of purchase and sale with an individual (Mr. A in your example), and Mr. A assigns the agreement of purchase and sale to Mr. B, Mr. B may be entitled to the rebate provided all of the conditions in paragraphs 254(2)(a) to (g) are met, not just the conditions in paragraphs 254(2)(e) through (g) as suggested in your submission.

In your example, the formula outlined in paragraph 254(2)(i) would apply. In determining the amount of the rebate, that formula makes reference to the "total consideration" as described in paragraph 254(2)(c). Under paragraph 254(2)(c), the "total consideration" is the sum of the consideration payable for the housing itself (that is, the purchase price of $250,000) and the consideration payable for any other taxable supply of an interest in the housing (that is, the assignment fee of $150,000). Please note, the fact that Mr. A is charging GST/HST to Mr. B suggests that Mr. A is a "builder" as defined in subsection 123(1); if Mr. A were not a builder, his assignment of the agreement of purchase and sale would be an exempt supply under section 2 of Part I of Schedule V and the consideration for the exempt assignment would not be included in determining the "total consideration" as described in paragraph 254(2)(c). In your example, the total consideration used to calculate the rebate is $400,000.

Although the new housing rebate cannot be assigned per se to a builder, generally the builder who has sold the housing may, pursuant to subsection 254(4), pay or credit the amount of the rebate to the individual purchaser. However, in the situation where there are two builders, such as in your example, the individual purchaser (that is, Mr. B) could file a rebate directly with the Canada Revenue Agency.

More information can be found in Guide RC4028, GST/HST New Housing Rebate.

22.Place of Supply of Intangible Personal Property

Facts/Background

1. A supplier makes a supply of intangible personal property (IPP) to a non-registered non-resident recipient.

2. The IPP may not be used in Canada.

3. The IPP relates to tangible personal property (TPP) ordinarily situated in Canada.

Question

a) Is the place of supply of the IPP in or outside Canada?

b) Would the answer to the question above change if the IPP related to both TPP ordinarily situated in Canada and TPP ordinarily situated outside Canada?

Discussion

Paragraph 142(1)(c) of the Excise Tax Act (ETA) provides that the supply of IPP is in Canada if the IPP may be used in whole or in part in Canada or if, inter alia, the IPP relates to TPP ordinarily situated in Canada. Since the IPP relates to TPP ordinarily situated in Canada, the place of supply of the IPP should be in Canada.

However, paragraph 142(2)(c) provides that the place of supply of IPP is outside Canada if the IPP may not be used in Canada or if, inter alia, the IPP relates to TPP ordinarily situated outside Canada. Since the IPP may not be used in Canada, the place of supply of the IPP should be outside Canada.

CRA Comments

If it is determined based on a complete set of facts that the supply being made by a registrant is a supply of IPP that relates to TPP and that the TPP is ordinarily situated in Canada, the supply would be deemed to be made in Canada for GST/HST purposes pursuant to subparagraph 142(1)(c)(ii) of the ETA. This would not change if the supply of the IPP relates to TPP that is ordinarily situated in Canada and TPP that is ordinarily situated outside Canada.

23. Publication Update

We assume that the CRA is constantly updating its publications. Which publications are currently being reviewed/revised and when will the updated revised version be released?

CRA Comments

The CRA is constantly updating its publications. More particularly, the GST/HST Rulings program in the CRA has in place and regularly reviews detailed work plans to update a wide range of GST/HST technical publications on the CRA website.

Barring any unforeseen needs that may require us to redirect and reprioritize efforts to reflect new legislative or policy changes in other publications, we expect that the following publications will be published to the CRA website within the next six months.

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GST/HST Memoranda[6]

- Rebate for Cooperative Housing
- GST/HST Registration for Listed Financial Institutions
- Freight Transportation Services
- Passenger Transportation Services
- Imported Goods

GST/HST Technical Information Bulletins

- Point of Sale Rebate on Books
- Application of the GST/HST to the Practice of Acupuncture

GST/HST Info Sheets

- Ride-sharing
- Water Haulers
- Builders and GST/HST NETFILE
- Determining Whether a Public Service Body is Resident in a Province for Purposes of the Public Service Bodies' Rebate

GST/HST Notices

- GST/HST Pension Plan Rules for Master Trusts

Other information relevant to publications

You may also be interested to know that the CRA is transitioning its website to the new government-wide Canada.ca website. Up to now, we had been posting our technical publications in both HTML and PDF formats on the CRA website (while most other areas of the CRA had moved to HTML only). In preparation for our migration to Canada.ca, we are now posting any new technical publications in HTML format only. The following considerations were made in moving in this direction:

- Over 80% of readers already use HTML versions while less than 20% use the PDF versions;
- HTML format allows us to provide useful hyperlinks to other related information while PDF does not;

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[6] It should be noted that we had prepared and planned to publish a series of nine GST/HST memoranda on educational services in the near future, however, these have been delayed because of a recent Federal Court of Appeal decision.

- HTML is the official primary "accessible" (meaning usable, with appropriate software, by visually impaired persons) format that will be used on the new Canada.ca website;
- Should a change be required in a publication (for example to correct errors or make minor updates), it can be made quickly and easily in HTML format;
- The print produced for HTML webpages has improved significantly over the years. An HTML print version includes the CRA and Government of Canada header, table of contents, and the same tables and subtitles that are available in other formats.

The CRA will continue to retain historical versions of its publications internally and make them available upon request. Historical versions of technical excise and GST/HST publications are also generally available to subscribers of tax publishing houses. It is advisable and likely more convenient for a client to print and retain any technical publication or webpage content being used as reference material, should it be required in the future.

24.Update on Audit Issues

Please provide an update regarding any new or developing audit issues.

CRA Comments

A verbal update was provided at the meeting.

25.Update on Court Cases/Objections

Please provide an update regarding any new/developing issues in the Court cases and objections areas.

CRA Comments

A verbal presentation on current cases was provided at the meeting.