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Bill C-50 receives Royal Assent

Bill C-50, the *Budget Implementation Act, 2008*, received Royal Assent on June 18, 2008 and is now referred to as Statutes of Canada, 2008, c. 28.

A summary of the GST/HST and excise duty measures in the Bill is provided in the Winter 2008 edition (No. 67) of the *Excise and GST/HST News*.

Elections under the *Excise Tax Act*

The *Excise Tax Act* (the Act) provides opportunities for registrants to personalize their business activities with the CRA. For example, by electing to change your reporting period or by electing to make certain sales taxable, you can tailor your business affairs and account responsibilities to suit your needs.

Should you **elect** to conduct business in a certain manner, you are required to either complete an election form or otherwise state in writing that the election has been made, and the election or statement must be retained with your books and records. Generally, the election remains in effect until you notify the CRA with a “Revocation of an Election” or your business activities change to such an extent that the particular election criteria no longer apply to you. Please note that each election has specific requirements; some forms or letters must be filed with the CRA and others need only be retained in your books and records.

If the election you choose is a joint election, each party must keep a completed copy with their books and records while the election is in effect and generally for six years after the end of the year to which an election relates. If revoking an election, a copy must also be kept by each party.

The following is a list of possible elections in the order of the provision of the Act to which they relate. All forms are available on the CRA Web site at www.cra.gc.ca/forms.

Section 129

Application by a Public Service Body to have Branches or Divisions Designated as Eligible Small Supplier Divisions.
Send the completed Form GST31 to your tax services office.



Subsection 141.02(7)

Transitional Year Election or Revocation of an Election for a Qualifying Institution to Determine Input Tax Credits on Residual Inputs. Send the completed election Form GST117 to your tax services office. Please refer to GST/HST Technical Information Bulletin B-098, *Application of Section 141.02 to Financial Institutions That Are Qualifying Institutions* for more information.

Subsection 141.02(9)

Election or Revocation of an Election for a Financial Institution to use the Prescribed Percentage. Send the completed election Form GST118 to your tax services office. Please refer to GST/HST Technical Information Bulletin B-099, *Application of Section 141.02 to Financial Institutions That Are Not Qualifying Institutions* for more information.

Subsection 150(1)

Election or Revocation of an Election to Deem Certain Supplies to be Financial Services. Send the completed election Form GST27 to your tax services office. This is a joint election used by members of a closely-related group. Please refer to GST/HST Memorandum 17.14, *Election for Exempt Supplies* for more information.

Subsections 156(2) and (2.1)

Closely Related Corporations and Canadian Partnerships – Election or Revocation of the Election to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration. This election does not apply to the sale of real property or to any supply of property or a service that is not acquired by a recipient for consumption, use or supply exclusively in a commercial activity of the recipient. This is a joint election. A copy of the completed election Form GST25 or a statement of prescribed information must be kept with the books and records (not sent to the tax services office) of each party to the election.

Subsections 167(1) and (1.1)

Election Concerning the Acquisition of a Business or Part of a Business. For an election made under subsection 167(1), no GST/HST is payable in respect of a supply of any property or service made under the agreement for the supply of a business or part of a business, other than a taxable supply of a service that is to be rendered by the supplier, a taxable supply of property by way of lease, licence or similar arrangement and, where the recipient is not a registrant, a taxable supply of real property. A recipient that is a registrant must file the completed election Form GST44 with the CRA within the time in which the recipient is required to file its return for any tax that is payable on the supply of the business or that would have been payable if the election had not been made. The recipient must keep with its books and records a completed election form or, if the original was filed with the CRA, a copy of that form. This election can be made by two non-registrants. However, if the supplier is a GST/HST registrant and the recipient is not a registrant, this election cannot be used.

Section 167.11

Joint Election for Time-limited GST/HST Relief for Initial Transfers from a Foreign Bank's Canadian Subsidiary to Its Newly Established Canadian Branch. Write a letter according to the information requested in GST/HST Notice 233 *Filing an Election under Section 167.11 of the Excise Tax Act* and send it to the address provided in that notice.

Subsection 173(2)

Election for Passenger Vehicles or Aircraft to be Deemed To Be Used Exclusively in Non-commercial Activities. A copy of GST30 or a statement of prescribed information must be kept with your books and records. This election cannot be revoked.

Subsection 177(1.1)

Election and Revocation of an Election Between Agent and Principal. This election is for a registrant agent who makes taxable supplies (other than by auction) to recipients on behalf of a principal who is required to collect GST/HST on those supplies. With this election, the agent and principal jointly elect for the agent to account for the GST/HST on these supplies instead of the principal. The agent and principal must each keep a copy of the completed election Form GST506 with their books and records. This election may also be made for a single supply.

Subsection 177(1.3)

Election and Revocation of Election Between Auctioneer and Principal. An auctioneer and a principal can use this form to jointly elect to have the principal collect and account for the GST/HST on taxable supplies of prescribed goods made by the auctioneer on behalf of the principal and to have the auctioneer charge tax to the principal on the supply of the auctioneer's service relating to the supplies of the goods. Both the auctioneer and the principal have to be registrants for GST/HST purposes. The auctioneer and principal must each keep a copy of the completed election Form GST502 with their books and records.

Subsection 191(7)

Election Concerning the Provision of a Residence or Lodging at a Remote Work Site. Keep the completed election Form GST17 with your books and records during the entire period it is in effect and for six years after it ceases to have effect.

Section 211

Election or Revocation of an Election by a Public Service Body to Have an Exempt Supply of Real Property Treated as a Taxable Supply. Send the completed election Form GST26 to your tax services office no later than one month after the end of the reporting period in which the election or revocation becomes effective. You must file a separate election form for each real property to which you want the election to apply.

Section 225.1

Election or Revocation of an Election Not To Use the Net Tax Calculation for Charities. Send the completed election Form GST488 to your tax services office no later than one month after the end of the reporting period in which the election or revocation becomes effective.

Subsections 225.2 (4), (5) and (6)

Election Under the Special Attribution Method for Selected Listed Financial Institutions and Notice of Revocation. This joint election, between a selected listed financial institution (SLFI) and a person other than an SLFI, who are closely related and have made an election under section 150, allows the SLFI to use a cost-based method of determining the value of certain supplies received from the non-SLFI, for purposes of the SLFI's net tax calculation under the HST. File this completed election Form GST497 with your tax services office no later than the due date of the GST/HST return for the reporting period in which the election is to become effective. Please note that CRA has the discretion to allow late-filed elections.

Section 227

Election and Revocation of an Election to use the Quick Method of Accounting. Send the completed election Form GST74 to your tax services office. Please refer to the booklet RC4058, *Quick Method of Accounting for GST/HST*, for more information.

Subsection 227(1)

Election or Revocation of the Election by Public Service Bodies to Use the Special Quick Method of Accounting. Send the completed election Form GST287 to your tax services office. Please refer to the booklet RC4247, *The Special Quick Method of Accounting for Public Services Bodies*, for more information.

Section 233

Election to Use the Actual Part of a Patronage Dividend that is Attributable to Taxable Supplies (Other than Zero-Rated Supplies) for Purposes of Consideration and GST/HST Adjustments. The subsection 233(2) election applies primarily to co-operatives, although it is not limited to such organizations. It permits patronage dividend payers to elect to treat the dividends as a reduction of consideration. This election overrides the general rule to apportion the calculation of the consideration and GST/HST adjustments when paying a dividend to particular members (e.g., of a co-operative) in any given fiscal period. There is no form required to be completed for this election.

Otherwise, a co-operative can elect not to treat patronage dividends as reductions to the sale price. By choosing the subsection 233(3) *Election Not to Use Patronage Dividends for Purposes of Consideration and GST/HST Adjustments* neither the co-operative nor its members have to adjust their net GST/HST and the combined net tax liabilities of both the co-operative and its members are unaffected. There is no form required to be completed for this election.

Subsection 236.4

Election to Adjust Net Tax for the Self-supply of a Residential Complex. This election allows a builder of a residential complex or an addition to a multiple unit residential complex to elect to adjust its net tax where the builder did not report and account for an amount of GST/HST in respect of a self-supply of the complex or addition on or before February 26, 2008, (i.e., the builder acted as though the self-supply rule did not apply). The builder must file the election for a reporting period that ends on or before February 26, 2010 using election Form GST119. This election cannot be revoked. Please refer to GST/HST Info Sheet GI-045, *Residential Care Facilities and Proposed Changes in the 2008 Budget*, for more information.

Section 244

Election or Revocation of an Election to Change a GST/HST Fiscal Year. To change your fiscal year, call the CRA at 1-800-959-5525 or send completed Form GST70 to your tax services office. If you selected an incorrect fiscal year when you became a GST/HST registrant, do not use this form. Instead, call us at 1-800-959-5525. Please refer to guide RC4022, *General Information for GST/HST Registrants*, for more information.

Sections 246, 247 and 248

Election for GST/HST Reporting Period. To change your reporting period call the CRA at 1-800-959-5525 or send completed Form GST20 to your tax services office. Please refer to guide RC4022, *General Information for GST/HST Registrants*, for more information.

Subsection 261.31(3)

Election by segregated fund and insurer. An insurer and a segregated fund of the insurer that is not a selected listed financial institution may jointly elect, in prescribed form containing prescribed information, to have the insurer pay to, or credit in favour of the fund, the amount of any rebates payable to the fund in respect of supplies of specified services made by the insurer to the fund. To file for this election use "Reason code 14" on Form GST189, *General Application for Rebate of GST/HST*, and follow the directions on this form.

Subsection 273(1)

Election or Revocation of an Election to Have the Joint Venture Operator Account for GST/HST. This form must be completed for each co-venturer that wishes to jointly elect with you. Both the operator and the co-venturer have to sign this form. The operator and the co-venturer have to keep the completed election Form GST21 or a statement of prescribed information with their books and records. Alternatively, an operator may complete *Streamlined Election or Revocation of an Election to Have the Joint Venture Operator Account for GST/HST*

on behalf of the co-venturers if the operator has written authorization from them to do so. The operator and co-venturers must keep a copy of completed Form GST355 with their books and records.

Schedule V, Part I, paragraphs 9(2)(b) and 9(2)(f)

Real Property – Election to Make Certain Sales Taxable. For an election under paragraph 9(2)(b), file a copy of the completed election Form GST22 with your tax services office before the sale is completed. For an election under paragraph 9(2)(f), file a copy of the completed election Form GST22 with your GST/HST return for the reporting period that includes the day of the sale of the real property back to the person you purchased it from. This election cannot be revoked. Please refer to GST/HST Memorandum 19.4.1, *Commercial Real Property - Sales and Rentals*, for more information.

Schedule V, Part III, sections 6 and 8

Educational Services: Election and Revocation of the Election to Make Certain Supplies Taxable. A copy of the completed election Form GST29 or a statement of prescribed information must be kept with your books and records.

Schedule V, Part VI, section 17

Election by a Public Sector Body to Have Its Exempt Memberships Treated as Taxable Supplies. A copy of the completed election Form GST23 or a statement of prescribed information must be kept with your books and records.

Schedule V, Part VI, section 18

Election to Tax Professional Memberships. A copy of the completed election Form GST24 or a statement of prescribed information must be kept with your books and records.

Specially designed medical and assistive devices

The Act lists medical and assistive devices that are zero-rated (taxable at 0%) for GST/HST purposes. Recent changes to the Act zero-rate certain additional goods that are specially designed for use by individuals with a disability.

For supplies made after February 26, 2008 the Act zero-rates the supply of a chair, walker, wheelchair lift or similar aid to locomotion, with or without wheels, including motive power and wheel assemblies if the good is specially designed to be operated by an individual with a disability for locomotion of that individual. This may include wheelchairs, wheelchair lifts, lifts designed to move persons with physical disabilities up and down stairs, and electric mobility vehicles, such as scooters and golf carts. In all cases, the goods must have features, qualities and capabilities that are specially designed for the locomotion of an individual with a disability and designed so that the individual with the disability can operate the goods independently.

In addition, the Act zero-rates the supply made after February 26, 2008 of a commode chair that is specially designed for use by an individual with a disability.

Finally, the supply after February 26, 2008 of a chair that is specially designed for use by an individual with a disability will be zero-rated if the chair is supplied on the written order of a physician for use by a consumer named in the order. These chairs do not have to be designed as an aid to locomotion nor designed to be operated independently by the individual with a disability. Such chairs may include convalescent or positioning chairs that are specially designed for use by an individual with a disability.

Please note that the supply of a general purpose chair that may be of assistance to an individual with a disability but that does not have special design features, qualities and capabilities that address the particular needs of an individual with a disability will not be zero-rated under the Act.

Should you require clarification with respect to the above, please contact GST/HST Rulings at 1-800-959-8287.

Pesticides

A pesticide is any product that is used as a means for directly or indirectly controlling, preventing, destroying, mitigating, attracting, or repelling any pest. Pesticides include herbicides, insecticides, fungicides, disinfectants and rodenticides.

The supply of a pesticide is zero-rated if the pesticide is labelled in accordance with the *Pest Control Products Regulations* under the *Pest Control Products Act* as having a purpose that includes agricultural use and a product classification other than “Domestic”. With respect to the phrase “that includes agricultural use”, the term “agricultural” is not defined for GST/HST purposes. However, the CRA considers that the common meaning of “agriculture” includes horticulture.

As well, pesticides may be labelled as having a purpose that includes more than one use. Provided one of the uses is considered to be agricultural use, the supply of the pesticide will be zero-rated.

In general, supplies of all pesticides are taxable at 5% and 13% unless they meet the above requirements. The tax status of the supply of a pesticide does not depend on the volume purchased, alternative uses, or the actual use by the purchaser.

For more information please refer to GST/HST Info Sheet GI-048, *Fertilizer and Pesticides*.

GST and the Ontario Destination Marketing Fee

For GST/HST purposes, short-term accommodation (called “transient” accommodation in Ontario) is lodging for a period of less than a month in hotels, motels, tourist homes, lodging houses, or similar establishments. In Ontario, a number of these establishments charge a Destination Marketing Fee (DMF) to fund promotional campaigns to boost their municipality's tourism trade. DMFs are currently imposed in certain Ontario jurisdictions including Toronto, Kingston, Ottawa and Niagara Falls. The DMF is levied by suppliers of short-term accommodation and certain travel-related supplies including food and beverages for immediate consumption. Other vendors are not to charge a DMF.

It has come to our attention that the application of the GST and the Ontario retail sales tax to supplies of short-term accommodation may be misapplied in situations where the DMF is levied.

GST is calculated on the consideration for the supply of short term accommodation including the DMF. However, GST will not apply on the Ontario retail sales tax amount calculated on the consideration. Please note that there is an exemption from the GST for supplies of short-term accommodation, where the consideration for the supply including the DMF does not exceed \$20 a day.

There is currently a temporary exemption from Ontario retail sales tax for the DMF amount charged on supplies of short-term accommodation where certain conditions are met. For further information please contact the Ontario Ministry of Revenue at www.rev.gov.on.ca

Long distance roaming calls

Cellular service providers often enter into agreements to allow their subscribers to use their cell phones to make or receive calls while in another provider's service area. Generally, these calls are referred to as roaming calls.

When a subscriber makes a long distance roaming call, the subscriber's provider has to buy, from the other service provider, the airtime and long distance services necessary to supply the long distance roaming call to the subscriber. When the subscriber's plan does not include long distance roaming calls, the subscriber's provider usually bills the subscriber on a pay-per-use basis for the services purchased from the other service provider. Typically, these amounts are shown as separate items on the subscriber's monthly invoice or statement.

The CRA's position is that the subscriber's provider buys the airtime and long distance services from the other service provider for use in supplying a single long distance roaming call to the subscriber. Consequently, a long distance roaming call is considered to be made in Canada, and therefore subject to GST/HST, where the call is:

- emitted **and** received in Canada; or
- emitted **or** received in Canada **and** the billing location for the call is in Canada.

Example

A person subscribes to a cellular service plan. The billing location for the cell phone is Ontario. The person takes their cell phone to Boston, Massachusetts, and makes a long distance roaming call to Thunder Bay, Ontario. The person's cellular service provider bills airtime and long distance charges for the long distance roaming call. The long distance roaming call is considered to be made in Canada because the call is received in Canada and the billing location is in Canada. The person's provider must charge and account for GST on both the airtime and long distance charges billed for the single supply of the long distance roaming call.

Where a call is made in Canada, the cellular service provider must also determine whether the call is made in a particular province. If the call is made in a participating province (i.e., Nova Scotia, New Brunswick or Newfoundland and Labrador) then the call is subject to HST. If the call is made in a non-participating province then the call is subject to GST.

A call is considered to be made in a particular province where the call is:

- emitted **and** received in that province;
- emitted **or** received in that province **and** the billing location for the call is in that province; or
- emitted in that province **and** received outside that province **and** the billing location for the service is not in a province in which the call is emitted or received.

Example

A person subscribes to a cellular service plan. The billing location for the cell phone is New Brunswick. The person takes their cell phone to Toronto, Ontario, and makes a long distance roaming call to Fredericton, New Brunswick. The person's cellular service provider bills airtime and long distance charges for the long distance roaming call. The long distance roaming call is considered to be made in New Brunswick because the call is received in New Brunswick and the billing location is in New Brunswick. The person's provider must charge and account for HST on both the airtime and long distance charges billed for the single supply of the long distance roaming call.

More information on the billing location for cell phones can be found in the article *Ordinary location of mobile phones* in the Summer 2006 edition (No. 61) of the *Excise and GST/HST News*.

Changes to the rates and the method of calculating excise duty on certain tobacco products

The *Budget Implementation Act, 2008* implements a number of amendments to the *Excise Act, 2001* which became effective July 1, 2008. Specifically, there is a change to the manner in which duty and special duty are applied to manufactured tobacco and tobacco products (other than cigarettes and tobacco sticks) packaged after June 30, 2008, **except** for exported tobacco products (unstamped), other than cigarettes or tobacco sticks not exceeding the legislated threshold.

The revised duty and special duty rates for manufactured tobacco and tobacco products (other than cigarettes and tobacco sticks) can be found in Excise Duty Notice EDN21, *Enhancements to Tobacco Compliance and Changes to Duty and Special Duty on Certain Tobacco Products*.

An instruction sheet on how to report information on your return or make an application for refund of the excise duties and special duties for manufactured tobacco and tobacco products (other than cigarettes and tobacco sticks) will be included with your return, if applicable.

Please contact your regional excise duty office should you have questions or require additional information regarding the recent amendments to the *Excise Act, 2001*.

New Business Number (BN) starts with “7”

All new businesses registering with the CRA receive a 9-digit Business Number (BN) to identify the business. In the past, all BNs began with the numbers “1” or “8”.

The CRA will now be issuing BNs for new businesses starting with the number “7” or “8”. If you, your clients, or your customers receive a new BN registration starting with “7”, you can be confident it is a valid CRA number.

Businesses that already have a BN starting with the number “1” or “8” will continue to use their existing BN when communicating with the CRA and will not be affected by the change. When adding additional program accounts (such as GST/HST or payroll deductions) to an existing BN, the 9-digit number at the beginning of the new program account will remain the same.

For more information on registering a new business with the CRA visit www.cra.gc.ca/bn.

Prescribed rates of interest

The prescribed annual rate of interest in effect from July 1, 2008 to September 30, 2008 on overdue amounts payable to the Minister is 7%. The prescribed annual rate of interest on amounts owed by the Minister (i.e., rebates or refunds) is 5%. These rates are applicable to income tax, excise tax, the softwood lumber products export charge, GST/HST and the air travellers security charge (ATSC). These rates are also applicable to excise duty (except excise duty on beer).

The prescribed annual rate of interest respecting excise duty on beer, on amounts payable for the indicated period, is set at 5%.

Period	Income Tax, Excise Tax, Softwood Lumber Products Export Charge, GST/HST and ATSC, Excise Duty (wine, spirits, tobacco)		Excise Duty (beer)
	Refund Interest	Arrears and Instalment Interest	Arrears Interest
2008			
July 1 – September 30	5%	7%	5%
April 1 – June 30	6%	8%	6%
January 1 – March 31	6%	8%	6%
2007			
October 1 – December 31	7%	9%	7%

Penalties

A failure to file penalty is charged on a return that is filed late with an unremitted or unpaid amount. This penalty is equal to: (a) 1% of the amount overdue on the return, plus (b) one quarter of the amount calculated in (a), times the number of complete months the return was overdue, starting April 1, 2007, to a maximum of 12 months.

For more information on these interest rates and penalties refer to GST/HST Info Sheet GI-024, *Harmonizing the Administrative Provisions Respecting Standardized Accounting*. Prescribed interest rates for previous years are available on the CRA Web site.

What's new in publications

The following is a list of new or revised excise and GST/HST forms and publications.

GST/HST forms

GST288 *Supplement to Form GST189 and Form GST498*
RC151 *GST/HST Credit Application for Individuals Who Become Residents of Canada*

GST/HST Guides

RC4036 *GST/HST Information for the Travel and Convention Industry*
RC4070 *Guide for Canadian Small Businesses*
RC4210 *GST/HST Credit (Including related provincial credits and benefits) For the period from July 2008 to June 2009*
RC4405 *GST/HST Rulings - Experts in GST/HST Legislation*

GST/HST memoranda

3-3-1 *Drop-Shipments* (revised)

GST/HST policy statements

P-184 *Credit Card Expenses and the Registrant's Use of Factors for Claiming Input Tax Credits* (revised)
P-237 *The Acceptance of a Due Diligence Defence for a Penalty Imposed Under Subsection 280(1) of the Excise Tax Act for Failure to Remit or Pay an Amount When Required, and for a Penalty Imposed Under Section 280.1 for Failure to File a Return When Required* (revised)

GST/HST Info Sheets

GI-046 *Foreign Convention and Tour Incentive Program - Hunting and Fishing Packages*
GI-047 *Taxidermy - Animal, Bird and Fish Mounts*
GI-048 *Fertilizer and Pesticides*

All GST/HST, Excise Duty, and Excise Taxes and Special Levies publications can be found on the CRA Web site at www.cra.gc.ca/gsthsttech.

Enquiries

For online access to account balances, transactions and more for your GST/HST, softwood lumber products export charge, air travellers security charge as well as excise taxes and duty accounts, visit www.cra.gc.ca/mybusinessaccount.

For general information and to make enquiries regarding your account (except for softwood lumber products export charge accounts), call Business Enquiries at 1-800-959-5525

For enquiries regarding your softwood lumber products export charge account, call 1-800-935-0313

To make enquiries regarding the status of specific GST/HST domestic rebate claims, call 1-800-565-9353

Forms and publications

To access forms and publications online visit www.cra.gc.ca/orderforms

To order forms and publications by telephone call 1-800-959-2221

Your business is located in Quebec?

Contact Revenu Québec at 1-800-567-4692 or visit their Web site at www.revenu.gouv.qc.ca

The *Excise and GST/HST News* is published quarterly and highlights recent developments in the administration of the goods and services tax (GST) and harmonized sales tax (HST), First Nations goods and services tax (FNGST) and First Nations tax (FNT), softwood lumber products export charge, air travellers security charge (ATSC) as well as excise taxes and duties. If you would like to receive a link to each new edition of the *Excise and GST/HST News* as it is published, subscribe to the electronic mailing list.

This publication is provided for information purposes only and does not replace the law, either enacted or proposed. Please note that any commentary in this newsletter regarding proposed measures should not be taken as a statement by the CRA that such measures will in fact be enacted into the law in their current form. Comments or suggestions about the newsletter should be sent to the Editor, *Excise and GST/HST News*, Legislative Policy and Regulatory Affairs Branch, CRA, Ottawa, ON K1A 0L5.