

## **GST/HST News #40**

**Spring 2001**

### **Standard Disclaimer**

The *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), as well as excise taxes and duties. This publication is provided for information purposes only and does not replace law, either enacted or proposed. For further information on any of the articles contained in this newsletter, contact your nearest Canada Customs and Revenue Agency (CCRA) tax services office or call Business Enquiries at 1-800-959-5525. Comments or suggestions about the newsletter should be sent to the Editor, *GST/HST News*, Policy and Legislation Branch, CCRA, Ottawa, Ontario K1A 0L5.  
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## **Bill C-13**

On February 23, 2001, Bill C-13, an Act to Amend the *Excise Tax* Act received first reading in the House of Commons.

The Bill mainly contains measures relating to the goods and services tax and harmonized sales tax and the measures tabled in the House of Commons on February 20, 2001 and October 4, 2000, which include sales tax initiatives that were proposed in the 2000 budget.

In addition to the previous measures, Bill C-13 includes the following new proposals:

- a refinement to the existing New Housing Rebate, which would qualify a new single-family dwelling for the rebate where it is used primarily as a place of residence by the owner as well as to provide short-term accommodation to the public in certain circumstances, as is the case with many bed-and-breakfast establishments;
- amendments clarifying the application of the existing excise taxes on automobile air conditioners and on new heavy automobiles; and
- an amendment allowing the Minister of National Revenue to waive or cancel interest (or penalties calculated in the same manner as interest) under the excise tax system, consistent with the authority already provided under the GST/HST and income tax systems.

The Press Release can be found on the Department of Finance Internet site under the heading "News Releases and Speeches" or by using this address:

<http://www.fin.gc.ca/newse01/01-017e.html>

## **Section 167 Election Concerning the Supply of a Business or Part of a Business (Form GST44)**

Subsections 167(1) and 167(1.1) of the *Excise Tax Act* permit a supplier to make a supply of a business or part of a business to a recipient with no GST/HST payable on the property or services supplied under the agreement (with some exceptions), if both parties to the transaction elect to do so. The election cannot be made, however, where the supplier is a registrant and the recipient is a non-registrant.

To be eligible to use this election certain conditions must be met, including:

- the supplier must supply a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier; and
- the recipient must be acquiring, under the agreement, ownership, possession or use of all or substantially all (generally 90% or more) of the property that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or part of a business.

To determine whether a supply meets the above-mentioned conditions for eligibility, the following guidelines should be applied to the facts of a particular situation.

1. Is the supplier supplying, and is the recipient acquiring, a business or a part of a business?

For GST/HST purposes, a business is an activity including a profession, calling, trade, manufacture, or undertaking of any kind, but does not include an office or employment. The assets of a business usually include: real property, equipment, inventory, and intangibles such as goodwill. Ordinarily, the supply of one or more individual assets will not be considered a supply of a business. The nature of a business (or part) will normally determine the package of assets that would be required to carry on the business (or part of a business). Generally, no one type of property, regardless of its value, determines whether there has been a supply of a business.

In general, a "part of a business" is an activity that may be a functionally and physically distinct operating unit, or it may be an activity which supports or is related to the broader business but is organized as a separate activity which is capable of operating on its own. For example, the supply of a production line including all equipment, inventory and intangible property such as a product formula, among other assets, may be considered to be the supply of a part of a business.

2. Is the recipient acquiring ownership, possession or use of all or substantially all of the property?

To meet the "all or substantially all" condition, any property not acquired under the agreement for the supply (e.g., acquired from other sources or already in the possession of the recipient), but required by the recipient to carry on the business, must fall within the remaining general margin of 10% of the fair market value of all the property required to carry on the business. For example, where the real property used in the supplier's business is not acquired by the recipient (e.g., the recipient intends to rent its facilities from a third party) the real property subsequently acquired or used by the recipient must comprise 10% or less of the fair market value of all the property required to carry on the business.

In addition, the recipient must be capable of carrying on the same kind of business that was established or carried on by the supplier with the property that the recipient has acquired under the agreement.

To summarize, the election is available, subject to exceptions, on the supply of a business or part of a business as a going concern. The election is not meant to relieve GST/HST payable on individual assets supplied in situations not involving business acquisitions, regardless of the value of the assets.

For further reference please see Policy Statement P-188, *Supply Of A Business Or Part Of A Business For The Purpose Of The Election Under Subsection 167(1)*. For discussion regarding franchises please see Policy Statement P-179, *Interpretation of Business that was Established for Purposes of subsection 167(1) of the ETA*, and Policy Statement P-181, *Amounts for Certain Services and Licences and the ss. 167(1) Election of the ETA*. These are all available on the CCRA Internet site at this address:

[www.ccr-aadrc.gc.ca/menu/EmenuKPA.html](http://www.ccr-aadrc.gc.ca/menu/EmenuKPA.html)

## **Nisga'a government entities**

The *Nisga'a Final Agreement Act* came into effect on May 11, 2000. As a result of this legislation, Nisga'a Governments will pay the GST/HST when acquiring taxable goods and services.

Nisga'a Governments include the Nisga'a Lisims Government which is the government of the Nisga'a Nation and the four Nisga'a Villages; namely the Nisga'a Village of New Aiyansh, the Nisga'a Village of Gitwinksihlkw, the Nisga'a Village of Laxgalt'sap and the Nisga'a Village of Gingolx.

## Designated Charities

The *Excise Tax Act* provides that certain charities may apply for designated charity status. In order to be eligible, one of the charity's main purposes must be the provision of employment, training for employment, or employment placement services for individuals with disabilities, or the provision of instructional services to assist such individuals in securing employment, and the charity must supply, on a regular basis, services that are performed, in whole or in part, by individuals with disabilities.

Once designated, all of the otherwise exempt services the charity provides to registrants will be taxable, thereby enabling the charity to claim input tax credits. In addition, a designated charity can use the "Special Quick Method for Public Service Bodies" for calculating its net tax remittances (instead of the "Net Tax Calculation Method for Charities").

There is an exception in the case of the above-noted services involving individuals with disabilities. If the supply of the service is made to a public sector body or to a board, commission or other body established by a government or municipality, supplies provided to these entities will remain exempt. Supplies by the charity of services such as educational or health care services are not affected by the designation and remain exempt.

Charities may request to be designated by writing to the Director, Public Services Bodies and Governments Division, Excise and GST/HST Rulings Directorate, 14<sup>th</sup> Floor, Tower A, Place de Ville, Ottawa K1A 0L5. For further details concerning your application, please contact the Business Enquiries line at 1-800-959-5525.

## **Proposed Amendment to Vocational Training Exemption**

Bill C-13 proposes amendments to the *Excise Tax Act* (the Act) with regards to vocational training. For purposes of the GST/HST, the Act exempts tuition or examination fees in respect of courses supplied by educational institutions leading to certificates, diplomas, licences, or similar documents, or classes or ratings in respect of licences, that attest to the competence of individuals to practise or perform a trade or vocation.

The existing exemption is subject to conditions that limit its application to cases:

- where the documents, classes or ratings are prescribed by regulation;
- where the supplier is either federally or provincially regulated; or
- where the supplier is a non-profit organization or public institution.

It is proposed that the exemption would apply to supplies made by governments. It is also proposed to repeal the conditions listed above. The repeal of these conditions would ensure that similar vocational training provided in different provinces receives the same GST/HST treatment regardless of the regulatory regime with respect to vocational schools existing in each province.

Finally, the proposed amendments would enable suppliers to elect not to have their supplies exempted under this provision. If the election were made by a supplier, the supplies described above would be taxable (assuming that the supplies were not covered by another exempting provision).

The proposed amendments extending the exemption to supplies by governments and repealing the above conditions are proposed to apply to supplies for which all of the consideration becomes due after October 4, 2000, or is paid after that day without having become due. The proposed amendments also exempt supplies for which consideration became due or was paid on or before October 4, 2000, unless any amount was charged or collected as or on account of tax unless the supplier has already treated the supply as taxable.

For more information regarding these proposed amendments relating to vocational training please contact the Business Enquiries line at 1-800-959-5525 or refer to the February 23, 2001, News Release (2001-017) and accompanying Backgrounder on the Department of Finance Internet site under the heading News Releases, 2001 at this address: <http://www.fin.gc.ca/newse01/01-017e.html>

## **Automobile Expense Deduction Limits**

On December 20, 2000, Finance Canada issued a Press Release (2000-096) announcing the new automobile expense deduction limits for the year 2001 and the prescribed rates for determining the taxable benefit on automobile operating expenses for businesses.

The ceiling for “passenger vehicles” for capital cost allowance purposes increases from \$27,000 to \$30,000 (plus applicable GST/HST and provincial sales taxes) for purchases after 2000, and the limit on deductible leasing costs will increase from \$700 per month to \$800 per month (plus applicable GST/HST and provincial sales taxes) for leases entered into after 2000. The term “passenger vehicle” has the same meaning for GST/HST purposes as it does for income tax purposes.

The general prescribed rate used to determine the taxable benefit relating to the personal portion of automobile operating expenses paid by employers will increase from 15 cents to 16 cents per kilometre. For taxpayers employed principally in selling or leasing automobiles, the prescribed rate will increase from 12 cents to 13 cents per kilometre.

For GST/HST purposes, registrants who acquire, import, or bring into a participating province, a passenger vehicle for use as capital property in their commercial activities are not entitled to claim an input tax credit in respect of the GST/HST payable on the portion of the cost of the vehicle which exceeds the maximum capital cost for income tax purposes.

Where a registrant leases a passenger vehicle, input tax credits may be claimed in the normal manner. However, if the lease costs exceed the maximum amount deductible for income tax



purposes, the input tax credits claimed in excess of the maximum deductible leasing costs are subject to recapture.

A copy of this News Release can be found on the Department of Finance web site at [www.fin.gc.ca](http://www.fin.gc.ca) under News Releases and Speeches, or by going directly to the following address: [www.fin.gc.ca/newse00/00-096e.html](http://www.fin.gc.ca/newse00/00-096e.html)

## Retailer alert

Retailers should remain on the alert for individuals presenting cards which they claim make them exempt from paying both provincial sales taxes and the federal GST/HST.

The only individuals who can purchase goods and services without paying the GST/HST are Indians where;

- the individual presents a *Certificate of Indian Status* card **and**
- the goods are sold on a reserve, or the goods are delivered (by you or your agent) to a reserve; or
- the services (e.g., haircuts, small appliance repairs) are performed entirely on a reserve.

Although some provinces issue tax exemptions from provincial sales tax to farmers, municipalities and other businesses, these exemptions **do not apply** to the GST/HST.

Registrant vendors who **do not** collect the GST/HST from an individual who falsely claims an exemption, must still remit the tax that should have been collected.

Local police forces have indicated that they would like to be informed of individuals attempting to claim GST/HST exemptions to which they are not entitled.

For additional information on “Tax Myths” please consult the following CCRA Internet sites:

### English

<http://www.ccra-adrc.gc.ca/newsroom/ifm/menu-e.html>

### French

<http://www.ccra-adrc.gc.ca/newsroom/ifm/menu-f.html>

## **New Distribution Centre Opens in Atlantic Region**

The CCRA has opened a new Atlantic Distribution Centre for clients in the Atlantic provinces. With it come new procedures for ordering CCRA guides and forms for Atlantic province clients.

One effect of the change is that, while single copies of common CCRA forms and publications are still available for pick-up at local offices, larger and bulk orders will be shipped to you by mail or courier.

You have four easy ways to request CCRA forms and publications:

**On-line:** Visit the CCRA Internet site. Many guides and forms can be downloaded, or you can use the handy on-line order form: <http://www.ccra-adrc.gc.ca/formspubs/menu-e.html>

**By phone:** Call us toll-free at 1-800-959-2221

**By fax:** Fax your order toll-free to 1-866-869-5011

**In person:** Place your order when you visit your local tax services office. Single copies of many guides and forms are still available for pick-up at your local office.

## **Sushi Platters**

Recently, the CCRA has become aware that some retailers have not been applying the GST/HST consistently to sales of sushi platters. A tray or platter of sushi is considered to be an arrangement of prepared food and as such is subject to GST at 7% or HST at 15%.

## **Recipient of a taxable supply and entitlement to input tax credits**

An article on this topic was published in the Winter 2000-2001 GST/HST News (Issue #39). The following serves to clarify the “Exception” paragraph at the end of the article.

The intent of the “Exception” paragraph was to highlight the documentary requirements for claiming input tax credits (ITCs) where it is required to identify the recipient on supporting documentation.

As an alternative to indicating the name of the recipient, it is acceptable that the sales invoice or other supporting documentation indicate the name of the recipient’s duly authorized agent or representative.

**Agent:** Where a person is acting solely in its capacity as agent when it agrees to pay for a supply, the principal is the recipient of the supply and liable to pay the tax. The principal may claim an ITC provided that the conditions for claiming the ITC are met.

**Representative:** However, where the person is merely the person’s representative, the representative is the recipient if it agrees to pay for the supply. Whether or not the representative will be able to claim an ITC will depend on whether the conditions for claiming an ITC are met.

Where a person’s representative negotiates with a supplier on the person’s behalf, but the person actually enters into the agreement for the supply and the person is liable to pay for the supply, the person is the recipient and may claim the ITC even if the supplier has only indicated the name of the representative on the invoice. To substantiate the ITC, the person will have to maintain evidence (e.g., agreement in writing) to establish that it is the recipient.

For more information on ITCs please refer to the 400 series of *GST Memoranda* which discuss input tax credits in detail. They are available on the CCRA Internet site at this address:

<http://www.ccra-adrc.gc.ca/menu/EmenuKEE.html>

## **Excise Tax Corner**

### Objections and Appeals

Pursuant to the *Excise Tax Act* (the Act) any person who has been assessed in respect of excise taxes, either by Notice of Determination in the case of refunds, or Notice of Assessment in the case of assessments, has the right to appeal the determination or assessment. The person must file a Notice of Objection (Form E413) setting out the reasons for the objection and all relevant facts on which the person relies.

The objection must be filed within ninety days after the day on which the Notice of Determination/Assessment was sent. The required form (Form E413) is available on the CCRA's Internet site under Forms and Publications or by using the exact address [www.ccra-adrc.gc.ca/E/pbg/cf/e413bq/README.html](http://www.ccra-adrc.gc.ca/E/pbg/cf/e413bq/README.html)

Should the appellant not receive a favourable decision to the objection filed, the decision may be appealed to the Canadian International Trade Tribunal or the Federal Court - Trial Division within ninety days of the date the Notice of Decision is sent to the person.

### Notice of Objection - Purchaser (Form E 414):

The Act allows a purchaser to object to a Notice of (Re)Assessment or Notice of Determination issued to a supplier relating to transactions with the purchaser in question. In effect, it transfers the rights to appeal to the purchaser, provided the supplier has assigned its rights to the purchaser in respect of the transaction(s).

The Act specifies a number of conditions that must be met before the purchaser can avail itself of this option and the notice must be filed within 120 days of the date on the notice issued to the supplier. The required form to file this objection is E 414 and is available on the CCRA's Internet site under Forms and Publications or by using the exact address:  
[www.ccra-adrc.gc.ca/E/pbg/cf/e414bq/README.html](http://www.ccra-adrc.gc.ca/E/pbg/cf/e414bq/README.html).

For further information on either of these two issues, please direct your inquiries to the Business Enquiries line at 1-800-959-5525.

## What's new in publications

### GST/HST Memoranda Series

Memorandum 17.14

*Election for Exempt Supplies*

### GST/HST Guides

RC4028

*GST/HST New Housing Rebate*

RC4081

*GST/HST Information for Non-Profit Organizations*

Current publications can be found on the CCRA Internet site at [www.ccra-adrc.gc.ca](http://www.ccra-adrc.gc.ca) at the following address: [www.ccra-adrc.gc.ca/menu/EmenuHDA.html](http://www.ccra-adrc.gc.ca/menu/EmenuHDA.html) for guides, pamphlets, forms, and the *GST/HST News*, or at [www.ccra-adrc.gc.ca/menu/EmenuKZW.html](http://www.ccra-adrc.gc.ca/menu/EmenuKZW.html) for GST/HST Memoranda, Technical Information Bulletins, Policy Papers and Notices.

## Prescribed rates of interest

GST/HST interest and penalty compound daily. Income tax interest also compounds daily. For excise duty, penalty compounds monthly, and interest compounds daily. For all other taxes noted below, penalties and interest are calculated monthly for each month or part-month in which a balance remains. The total amount payable is based on the total tax, penalties, and interest outstanding. Prescribed interest rates are adjusted every calendar quarter.

These rates of interest are also available on the CCRA Internet site at this address:

<http://www.ccra-adrc.gc.ca/E/pub/gi/prierem/README.html>

	GST/HST, Excise Tax (annualized rates)		Excise Duty (annual rates)		Income Tax (annual rates)		Arrears and Instalment Interest %
	Interest % *	Penalty %	Interest %	Penalty %	Refund Interest %	Interest %	
2001							
January 1 - March 31	6.0833	6.0	8.0	6.0	8.0		10.0
April 1 - June 30	4.8132	6.0	8.0	6.0	8.0		10.0

\* To calculate interest for GST/HST purposes only, divide the adjusted annual interest rate by 365 and apply it daily.

## **TIS Operations Name Change**

The Excise and GST/HST Rulings Directorate, Policy and Legislation Branch, has a field component operating under the name *Technical Interpretation Services* (TIS). TIS officers provide technical interpretations and rulings to registrants in their own regions. TIS operations are housed in the following tax services offices: Halifax, Ottawa, Toronto, Hamilton, London, Winnipeg, Saskatoon, Calgary, Edmonton and Vancouver.

As of April 1, 2001, Technical Interpretation Services will be called **GST/HST Rulings**.

## **GST/HST Enquiries**

To make enquiries regarding your GST/HST account call Business Enquiries at 1-800-959-5525

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

To make enquiries regarding the status of visitor rebate claims call 1-800-668-4748

To obtain copies of forms and publications call 1-800-959-2221