



## Anti-avoidance Rules

This version replaces the one dated February 2015 and outlines the new anti-avoidance rules relating to the provincial public service body rebate for municipalities in Newfoundland and Labrador.

This memorandum explains the application of the anti-avoidance rules in respect of the GST/HST.

All legislative references in this publication are to the *Excise Tax Act* (the Act) unless otherwise specified. The information in this publication does not replace the law found in the Act and its regulations.

If this information does not completely address your particular situation, you may wish to refer to the Act or relevant regulation, or call GST/HST Rulings at 1-800-959-8287 for additional information. If you require certainty with respect to any particular GST/HST matter, you may request a ruling. GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service* explains how to obtain a ruling or an interpretation and lists the GST/HST rulings centres.

If you are located in Quebec and wish to request a ruling related to the GST/HST, please call Revenu Québec at 1-800-567-4692. You may also visit the Revenu Québec website at [www.revenuquebec.ca](http://www.revenuquebec.ca) to obtain general information.

For listed financial institutions that are selected listed financial institutions (SLFIs) for GST/HST or Quebec sales tax (QST) purposes or both, whether or not they are located in Quebec, the CRA administers the GST/HST and the QST. If you wish to make a technical GST/HST or QST enquiry related to SLFIs, please call 1-855-666-5166.

### GST/HST Rates

Reference in this publication is made to supplies that are subject to the GST or the HST. The HST applies in participating provinces at the following rates: 13% in Ontario, New Brunswick and Newfoundland and Labrador, 14% in Prince Edward Island and 15% in Nova Scotia. The GST applies in the rest of Canada at the rate of 5%. If you are uncertain as to whether a supply is made in a participating province, see GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province*.

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La version française de la présente publication est intitulée *Règles anti-évitement*



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## General

1. The anti-avoidance rules are intended to prevent persons from benefitting from transactions undertaken primarily for the purpose of avoiding, reducing, or deferring the payment of tax, or increasing a refund or rebate or other amount.
2. If a transaction is such that it is inconsistent with the overall spirit and intent of the Act, then an anti-avoidance rule may apply. For example, transactions that rely upon the strict wording of a provision in the Act to gain a benefit where none was intended and, therefore, defeat the purpose of the provision, would be subject to the anti-avoidance rules.

## General anti-avoidance provision

3. Section 274 of the Act provides a general anti-avoidance rule (GAAR) that applies to all persons.
4. For purposes of section 274, the following expressions are defined in subsection 274(1):
  - “tax benefit” means a reduction, an avoidance or a deferral of tax or other amount payable under Part IX of the Act or an increase in a refund or rebate of tax or other amount under Part IX;
  - “tax consequences” to a person means the amount of tax, net tax, input tax credit, rebate or other amount payable by, or refundable to, the person under Part IX, or any other amount that is relevant to the purposes of computing that amount;
  - “transaction” includes an arrangement or event.
5. Where an avoidance transaction is undertaken, subsection 274(2) provides that the tax consequences will be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that include that transaction.
6. Pursuant to subsection 274(3), an avoidance transaction is a transaction that alone, or as part of a series of transactions, would result, directly or indirectly, in a tax benefit were it not for section 274, unless the transaction can reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.
7. Pursuant to subsection 274(4), subsection 274(2) does not apply in respect of a transaction where it may reasonably be considered that the transaction would not result, directly or indirectly, in a misuse of the provisions of Part IX or in an abuse of Part IX as a whole. Tax planning or transactions that are carried out for purposes other than obtaining tax benefits but which minimize the payment of tax, as compared to other transactions which would achieve the same purpose but which would result in higher tax liability, may not be considered to be avoidance transactions.
8. Pursuant to subsection 274(5), where subsection 274(2) applies, the following actions, without restricting the generality of subsection 274(2), may be taken into account in determining the tax consequences to a person that are reasonable in the circumstances in order to deny the tax benefits resulting from an avoidance transaction:
  - any input tax credit or any deduction in computing tax or net tax payable may be allowed or disallowed, in whole or in part;
  - any such credit or deduction may be allocated, in whole or in part, to another person;
  - the nature of any payment or other amount may be recharacterized; and

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- the tax effects that would otherwise result from the application of other provisions of Part IX may be ignored.

9. Pursuant to subsection 274(6), where the GAAR applies to a particular transaction under subsection 274(2) and a notice of assessment, reassessment, or additional assessment has been sent to a person in respect of that transaction, any other person may, within 180 days after the sending of the notice, request in writing an assessment, reassessment, or additional assessment to apply subsection 274(2) to that same avoidance transaction.

10. Pursuant to subsection 274(7), notwithstanding any other provision of Part IX, the determination of the tax consequences to any person, resulting from the application of section 274, will only be made through a notice of assessment, reassessment, or additional assessment. A person cannot use subsection 274(2) to revise their tax payable, or any other amount, without requesting an adjustment under the procedure outlined in subsection 274(6).

11. Pursuant to subsection 274(8), upon receipt of a request by a person under subsection 274(6), the Minister will consider the request with all due dispatch and assess, reassess, or make an additional assessment with respect to the person to the extent that the assessment, reassessment, or additional assessment relates to the avoidance transaction of another person. The Minister is not restricted to the four-year time limit in subsections 298(1) and (2) when considering a request made under subsection 274(6).

## **Anti-avoidance rules respecting rate change**

### ***Variation of agreement – 2006 rate reduction***

12. Section 274.1 provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service (original agreement) is entered into before July 1, 2006, between a supplier and a recipient;
- the original agreement is subsequently (on or after May 2, 2006), either directly or indirectly, varied or altered, or terminated and one or more new agreements are entered into at a later time with each other or with other persons and the recipient receives one or more supplies, that includes all or substantially all of the property or service that was to have been provided under the original agreement;
- the supplier, recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the original agreement is entered into or at the later time when the new agreements are entered into;
- under the original agreement, GST would have been calculated at the rate of 7% on all or part of the value of the consideration for the supply attributable to the property or service;
- under the varied, altered, or new agreements, GST, in the absence of section 274.1, would be calculated at the rate of 6% on any part of the value of the consideration for the supply attributable to any part of the property or service; and
- it may not reasonably be considered for both the supplier and the recipient that these varied, altered, or new agreements have been undertaken or arranged primarily for *bona fide* purposes other than to benefit in any manner from the rate change.

13. If the above conditions are satisfied, the GST in respect of the supply made under the varied, altered, or new agreements will be calculated at the rate of 7% on any part of the consideration attributable to any part of the property or service.

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## **Variation of agreement – 2008 rate reduction**

14. Section 274.11 provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service (original agreement) is entered into before January 1, 2008, between a supplier and a recipient;
- the original agreement is subsequently (on or after October 30, 2007), either directly or indirectly, varied or altered, or terminated and one or more new agreements are entered into at a later time with each other or with other persons and the recipient receives one or more supplies, that includes all or substantially all of the property or service that was to have been provided under the original agreement;
- the supplier, recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the original agreement is entered into or at the later time when the new agreements are entered into;
- under the original agreement, GST would have been calculated at the rate of 6% or 7% (as the case may be) on all or part of the value of the consideration for the supply attributable to the property or service;
- under the varied, altered, or new agreements, GST, in the absence of section 274.11, would be calculated at the rate of 5% on any part of the value of the consideration for the supply attributable to any part of the property or service; and
- it may not reasonably be considered for both the supplier and the recipient that these varied, altered, or new agreements have been undertaken or arranged primarily for *bona fide* purposes other than to benefit in any manner from the rate change.

15. If the above conditions are satisfied, the GST in respect of the supply made under the varied, altered, or new agreements will be calculated at the rate of 6% or 7% (as the case may be) on any part of the consideration attributable to any part of the property or service.

## **Anti-avoidance rules – rate changes**

16. Section 274.2 contains an anti-avoidance rule to prevent persons from improperly taking advantage of a change in the rate of tax imposed under Part IX.

17. For purposes of section 274.2, the following expressions are defined in subsection 274.2(1):

- “person” does not include a consumer (generally, that is, an individual who receives property or service for personal use or consumption and not for business use);
- “rate change” means any change in any rate of tax imposed under Part IX;
- “tax benefit” means a reduction, an avoidance or a deferral of tax or other amount payable under Part IX, or an increase in a refund or rebate of tax or other amount under Part IX;
- “transaction” includes an arrangement or event.

18. Subsection 274.2(2) provides that the amount of tax, net tax, input tax credit, rebate, or other amount payable by, or refundable to, one or more of the persons involved in the following transaction or series of transactions, or any other amount relevant to computing that amount, is to be determined by the Minister as is reasonable in the circumstances in order to deny the tax benefit to any of those persons, where the following conditions are met:

- a transaction, or a series of transactions, involving property is made between two or more persons not dealing at arm's length at the time any of the transactions are made;

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- the transaction, any transaction in the series of transactions, or the total series of transactions would, in the absence of section 274.2, result directly or indirectly in a tax benefit to one or more of the persons involved in the transaction or series of transactions; and
  - it may not reasonably be considered that the transaction, or series of transactions, has been undertaken or arranged primarily for *bona fide* purposes, other than to obtain a tax benefit arising from a change in tax rates for any of the persons involved in the transaction or series of transactions.

19. Pursuant to subsection 274.2(3), despite any other provision of Part IX, a tax benefit will only be denied under subsection 274.2(2) through an assessment, reassessment, or additional assessment.

20. Pursuant to subsection 274.2(4), where the anti-avoidance rule applies to a particular transaction under subsection 274.2(2) and a notice of assessment, reassessment, or additional assessment has been sent to a person in respect of that transaction, any other person may, within 180 days after the sending of the notice, request in writing an assessment, reassessment, or additional assessment to apply subsection 274.2(2) to that same avoidance transaction.

21. Pursuant to subsection 274.2(5), upon receipt of a request by a person under subsection 274.2(4), the Minister will consider the request with all due dispatch and assess, reassess, or make an additional assessment with respect to the person to the extent that the assessment, reassessment, or additional assessment relates to the avoidance transaction of another person. The Minister is not restricted to the four-year time limit in subsections 298(1) and (2) when considering a request made under subsection 274.2(4).

## **Anti-avoidance rules relating to harmonization – Part 2 of the *New Harmonized Value-Added Tax System Regulations***

### ***Application***

22. Pursuant to section 34 of the *New Harmonized Value Added Tax System Regulations* (the regulations), the anti-avoidance rules in Part 2 of the regulations apply despite any provision of the Act.

### ***Variation of agreement – new harmonized province***

23. Section 35 of the regulations provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service (original agreement) is entered into between a supplier and a recipient at any time before the harmonization date of a participating province;
- the original agreement is subsequently, either directly or indirectly, varied or altered, or terminated and one or more new agreements are entered into at a later time with each other or with other persons and the recipient receives one or more supplies, that includes all or substantially all of the property or service that was to have been provided under the original agreement;
- the supplier, recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the original agreement is entered into or at the later time when the new agreements are entered into;
- under the original agreement, the provincial part of the HST would have been calculated at the tax rate of the participating province on all or part of the value of the consideration for the supply attributable to the property or service;

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- under the varied, altered, or new agreements, the provincial part of the HST, in the absence of section 35, would not apply to, or would be calculated at a lesser rate on, any part of the value of the consideration for the supply attributable to any part of the property or service; and
  - it may not reasonably be considered for both the supplier and the recipient that these varied, altered, or new agreements have been undertaken or arranged primarily for *bona fide* purposes other than to, directly or indirectly, reduce, avoid, or defer tax or any other amount payable under Part IX or benefit in any manner from the participating province becoming a participating province.

24. If the above conditions are satisfied, the provincial part of the HST in respect of the supply made under the varied, altered, or new agreements will be calculated at the tax rate of the participating province that would have been calculated in respect of the supply made under the original agreement on any part of the consideration attributable to any part of the property or service.

25. Section 35 of the regulations applies to any agreement varied or altered, or terminated on or after March 26, 2009 and to any new agreement entered into on or after that date.

### ***Variation of agreement – change in tax rate***

26. Section 36 of the regulations provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service (original agreement) is entered into between a supplier and a recipient at any time before the particular date on which a change in the tax rate for a participating province applies;
- the original agreement is subsequently, either directly or indirectly, varied or altered, or terminated and one or more new agreements are entered into at a later time with each other or with other persons and the recipient receives one or more supplies, that includes all or substantially all of the property or service that was to have been provided under the original agreement;
- the supplier, recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the original agreement is entered into or at the later time when the new agreements are entered into;
- under the original agreement, the provincial part of the HST would have been calculated on all or part of the value of the consideration for the supply attributable to the property or service at the higher tax rate that is the greater of the tax rate that applies immediately before the particular date, and the tax rate that applies on the particular date;
- under the varied, altered, or new agreements, the provincial part of the HST, in the absence of section 36, would not apply to, or would be calculated at a rate lesser than the higher rate on any part of the value of the consideration for the supply attributable to any part of the property or service; and
- it may not reasonably be considered for both the supplier and the recipient that these varied, altered, or new agreements have been undertaken or arranged primarily for *bona fide* purposes other than to, directly or indirectly, reduce, avoid, or defer tax or any other amount payable under Part IX or benefit in any manner from the rate change.

27. If the above conditions are satisfied, the provincial part of the HST in respect of the supply made under the varied, altered, or new agreements will be calculated at the higher tax rate of the participating province that would have been calculated in respect of the supply made under the original agreement on any part of the consideration attributable to any part of the property or service.

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28. Section 36 of the regulations applies to any agreement varied or altered, or terminated on or after April 6, 2010 and to any new agreement entered into on or after that date.

### ***Harmonized event – transactions***

29. Section 37 of the regulations contains an anti-avoidance rule to prevent persons from improperly taking advantage of a harmonization event.

30. For purposes of section 37 of the regulations, the following expressions are defined in subsection 37(1):

- “harmonization event” means the transition by a province to the new harmonized value-added tax system or any change referred to in paragraph 277.1(3)(a) of the Act as “provincial tax policy flexibility”;
- “person” does not include a consumer (generally that is, an individual who receives property or service for personal use or consumption and not for business use);
- “tax benefit” means a reduction, an avoidance or a deferral of tax or other amount payable under Part IX or an increase in a refund or rebate of tax or other amount under Part IX;
- “transaction” includes an arrangement or event.

31. Subsection 37(2) of the regulations provides an anti-avoidance rule in respect of the provincial part of the HST where:

- a transaction, or a series of transactions, involving property, is made between two or more persons, not dealing at arm’s length, at the time any of the transactions are made;
- the transaction, any transaction in the series of transactions, or the total series of transactions would, in the absence of section 37, result directly or indirectly in a tax benefit to one or more of the persons involved in the transaction or series of transactions; and
- it may not reasonably be considered that the transaction, or series of transactions has been undertaken or arranged primarily for *bona fide* purposes, other than to obtain a tax benefit arising from a harmonization event, for one or more of the persons involved in the transaction or series of transactions.

32. If the above conditions are satisfied, the amount of tax, net tax, input tax credit, rebate, or other amount payable by, or refundable to, a person(s) under Part IX who is involved in the transactions or series of transactions, or any other amount relevant to computing that amount, is to be determined by the Minister as is reasonable in the circumstances in order to deny the tax benefit to any of those persons.

33. Section 37 of the regulations applies to any transaction made on or after March 26, 2009.

34. Pursuant to subsection 37(3) of the regulations, a tax benefit will only be denied under subsection 37(2) through an assessment, reassessment, or additional assessment under Part IX.

35. Pursuant to subsection 37(4) of the regulations, where the anti-avoidance rule applies to a particular transaction under subsection 37(2) and a notice of assessment, reassessment, or additional assessment has been sent to a person in respect of that transaction, any other person may, within 180 days after the sending of the notice, request in writing an assessment, reassessment, or additional assessment to apply subsection 37(2) to that same avoidance transaction.

36. Pursuant to subsection 37(5) of the regulations, upon receipt of a request by a person under subsection 37(4), the Minister will consider the request with all due dispatch and assess, reassess, or make

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an additional assessment with respect to the person to the extent that the assessment, reassessment, or additional assessment relates to the avoidance transaction of another person. The Minister is not restricted to the four-year time limit in subsections 298(1) and (2) when considering a request made under subsection 37(4) of the regulations.

### **Anti-avoidance rules relating to the provincial public service body rebate for municipalities in Newfoundland and Labrador – Part 3.2 of the *New Harmonized Value-Added Tax System Regulations***

37. Section 58.47 of the regulations contains an anti-avoidance rule to prevent municipalities resident in Newfoundland and Labrador from improperly taking advantage of an increase in the public service bodies' (PSB) rebate rate applicable to municipalities in that province.

38. Where this anti-avoidance rule applies, the municipality's PSB rebate of the provincial part of the HST payable on the acquisition of the property involved will be reduced. This reduction will also impact the basic tax content of the property, as the definition of "basic tax content" takes into account the PSB rebate that a person is entitled to claim, or that the person would have been entitled to claim if the property had been acquired for use exclusively in activities that are not commercial activities.

39. For purposes of section 58.47 of the regulations, the following expressions are defined in subsection 58.47(1):

- "initial supply" of a property by a person means
  - if any supply by way of sale of the property was made by the person after July 15, 2015 but before 2016, the last supply by way of sale of the property made by the person before 2016; and
  - in any other case, the first supply by way of sale of the property made by the person after 2015.
- "rebate entitlement" means the amount of a rebate that a person is entitled to claim under section 259 of the Act in respect of an acquisition of property or that the person would have been so entitled to claim if the property had been acquired for use exclusively in activities that are not commercial activities. In this memorandum, "rebate entitlement" will be referred to as the PSB rebate.
- "specified portion of the basic tax content" at any time, of property of a person means the amount that would be the "basic tax content", as defined in subsection 123(1) of the Act, of the property at that time if only amounts of tax under subsection 165(2), sections 212.1 and 218.1 and Division IV.1 of Part IX of the Act were included in determining that basic tax content.
- "specified tax" means an amount of tax payable under subsection 165(2), section 212.1 or 218.1 or Division IV.1 of Part IX of the Act. In this memorandum, "specified tax" will be referred to as the provincial part of the HST.

40. For claim periods ending after 2015, subsection 58.47(2) of the regulations requires that a person's PSB rebate of the provincial part of the HST payable on the acquisition of property by the person after the person last made a supply of the property by way of sale be adjusted. The anti-avoidance rule in subsection 58.47(2) applies where the following conditions are met:

- the property is property of the person at any time before 2017;
- the person makes a particular taxable supply by way of sale of the property after July 15, 2015;
- the person is the recipient of another taxable supply of the property (referred to as the "reacquisition") after the time at which the particular taxable supply was made and the provincial part of the HST



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becomes payable in respect of the reacquisition, or is paid without having become payable, on a particular day that is after 2015;

- on the last day of the claim period of the person that includes the particular day, or on the last day of the person's fiscal year that includes that claim period, the person is a municipality (including a designated municipality where the property is "designated municipal property" as defined in subsection 123(1) of the Act); and
- the particular taxable supply and the reacquisition of the property are part of a transaction or series of transactions that may not reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to, directly or indirectly, benefit in any manner from a change made to the PSB rebate rate applicable to municipalities resident in Newfoundland and Labrador.

41. Pursuant to subsection 58.47(3) of the regulations, if the above conditions are met, the person's PSB rebate of the provincial part of the HST will be adjusted in accordance with the following rules:

- (a) if the reacquisition is a supply by way of **sale**, the PSB rebate of the provincial part of the HST is reduced by the amount determined by the formula

$$A - B$$

where

"A" is the specified portion of the basic tax content of the property at the time at which the initial supply of the property was made, and

"B" is the amount that would be, if no improvements had been made by the person to the property since the last acquisition of the property by the person and in the absence of paragraph 58.47(3)(a), the specified portion of the basic tax content of the property at the end of the claim period; and

- (b) if the reacquisition is a supply made **otherwise than by way of sale**,

(i) if the total (referred to as the "total tax") of all amounts, each of which is an amount of the provincial part of the HST in respect of an acquisition of the property by the person after the person last made a supply of the property by way of sale that becomes payable, or is paid without having become payable, during the claim period, is less than the specified portion of the basic tax content of the property at the time at which the initial supply of the property was made, the PSB rebate of the provincial part of the HST is nil, or

(ii) if subparagraph (i) does not apply and the total tax minus the amount that would be the PSB rebate of the provincial part of the HST in the absence of subparagraph 58.47(3)(b)(ii) is less than the specified portion of the basic tax content of the property at the time at which the initial supply of the property was made, the PSB rebate of the provincial part of the HST is the amount determined by the formula

$$A - B$$

where

"A" is the total tax, and

"B" is the specified portion of the basic tax content of the property at the time at which the initial supply of the property was made.

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42. Section 58.47 of the regulations is deemed to have come into force on July 15, 2015.

### **Further information**

All **GST/HST technical publications** are available on the CRA website at [www.cra.gc.ca/gsthstech](http://www.cra.gc.ca/gsthstech).

To make a **GST/HST enquiry** by telephone:

- for **general GST/HST enquiries**, call **Business Enquiries** at 1-800-959-5525
- for **technical GST/HST enquiries**, call **GST/HST Rulings** at 1-800-959-8287

If you are located in **Quebec**, call **Revenu Québec** at 1-800-567-4692 or visit their website at [www.revenuquebec.ca](http://www.revenuquebec.ca).

If you are a **selected listed financial institution** (whether or not you are located in Quebec) and require information on the **GST/HST** or the **QST**, go to [www.cra.gc.ca/slfi](http://www.cra.gc.ca/slfi) or

- for **general GST/HST or QST enquiries**, call **Business Enquiries** at 1-800-959-5525
- for **technical GST/HST or QST enquiries**, call **GST/HST Rulings SLFI** at 1-855-666-5166