



# HLB North American Tax Conference

Puerto Rico

Harmonized Sales Tax (HST)

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- Excise Tax Act: Every person who makes a taxable supply of goods or services in Canada in the course of a commercial activity engaged in by the person in Canada is required to register for the GST/HST



- Taxpayers registered under GST/HST **do not** receive the same relief as those under income tax treaties
- Those who are not subject to income tax in Canada due to treaty relief may be still exposed to GST/HST under the Excise Tax Act



- Non-residents that register for GST/HST are generally required to apply and post a bond as security (approx. 50% of estimated yearly tax, minimum \$5,000)



- Existing registrants should ensure they are aware of the changes made to the GST/HST
- Does your client have the ability to handle the change?
  - New rules
  - Province of British Columbia opting out of Harmonization
  - Province of Quebec opting to accept Harmonization



- With the introduction of the HST in Ontario & British Columbia major changes were made to the place of supply rules for determining if a supply is made in province
- The new rules impact all GST/HST registrants regardless of the province in which they operate
- British Columbia has decided to opt out of the HST effective target date March 13, 2013
- Quebec has agreed to Harmonize its QST with the GST effective January 1, 2013



- The GST/HST rate varies between 5%- 15.5% depending upon the province and if it is harmonized
- GST/HST registrants are responsible for collecting taxes at the correct rate
- Registrants who erroneously undercharge their customer are responsible for the shortfall



- Situation:
  - new company incurs expense before registration
  - lost ITCs
- Issue:
  - need to “be registrant” when tax is payable or is paid on the supply



- Company A is incorporated and based in the U.S
- Company A ships goods into a warehouse in Canada
- Company A as an importer of record pays GST at time of importation through its customs broker.
- Company A is not registered for GST.

*(cont'd...)*

**SLF**



*(cont'd...)*

- Company A is not entitled to recover the GST it pays on imports
- Company A sells to Canadian customers more than \$30,000 worth of goods.
- Company A should be registered for GST as it is required to charge GST.



## *Questions:*

- How to deal with the recovery of GST paid?
- How to correct the problem that tax was not charged or collected on sales?
- How to fix the go forward? (registration/customer relationship)



## ITC restrictions on Ontario HST paid

- ITC's restricted for "Large Businesses"
  - Taxable sales over \$10M annually
  - On an associated basis
  - Intercompany sales
  - Adjustment for short fiscal years



- Restricted Purchases:
  - Energy (except energy used for farming or for production of goods for sale)
  - Telecommunication services other than internet or toll free numbers
  - Road vehicles less than 3000 Kg & related fuel, parts and certain services
  - Food, beverage and entertainment



## Restricted Purchases:

- *Example*
  - Food, beverage and entertainment
  - Cost of Meal = \$1,000
  - HST @ 13% = \$ 130
- How to account for it?



- *Example (cont'd...)*
  - Federal Portion
    - On GST/HST return, you can claim  $\frac{1}{2}$  of 5% = \$25
  - Provincial Portion
    - On GST/HST return, you can claim  $\frac{1}{2}$  of 8% = \$40
  - If the company has > \$10M in sales, then net recovery for Ontario portion is = NIL



## *What you need to do*

1. Determine if your business is a larger business during the recapture period (i.e., exceeds the threshold for the period). If not, re-visit in the following year
2. If #1 applies, keep track of OHST that is paid and currently due on specified goods and services that will be subject to recapture
3. Recapture the provincial portion of the restricted ITC's as appropriate.



## Accounting Systems

- Significant changes required
- Need to track provincial component of HST in Ontario and British Columbia
- Identify restricted expenses in order to deduct
- Financial accounting implications
- Challenges- Accounting system limitations
- Need in-depth commodity tax knowledge



## Penalties for misreported RITCs

- Can be very significant
- 5% of difference between actual and reported RITCs, plus an additional 1% per month, to a maximum of 5 months
- Potential application of gross negligence penalty
- Consider impact of RITC correction requests
- Voluntary disclosure?



## What GST/HST rate do you charge?

1. Depends on where the supply is made
2. Need to determine whether the supply is made in a HST participating province or in a non-participating province



Harmonized	Jurisdiction	Rate	Total Rate	PST on GST
	Alberta	5% GST only	5% GST only	N/A
	NWT	5% GST only	5% GST only	N/A
	Nunavut	5% GST only	5% GST only	N/A
	Yukon	5% GST only	5% GST only	N/A
Yes	BC	12%	12%	N/A
Yes	New Brunswick	13%	13%	N/A
Yes	Newfoundland	13%	13%	N/A
Yes	Nova Scotia	15%	15%	N/A
Yes	Ontario	13%	13%	N/A
	Manitoba	7%	12%	No
	PEI	10%	15.5%	Yes
	Quebec	8.5%*	13.925%	Yes
	Saskatchewan	5%	10%	No
*Increasing to 9.5% January 1, 2012				



- Different rules for different suppliers
  - Depends on the nature of the supply
- Applies to supply made in Canada on or after May 1, 2010
- Does your client do Business with Provinces other than Ontario?



## ***Supply of TPP - General Rule***

- A sale of tangible personal property (TPP) is deemed to be made in the province where supplier delivers the property or makes it available to the recipient.
- Generally based on where legal delivery takes place
- However, deemed to be made in the province of destination where the supplier ships the goods (including a common carrier, courier or mail)



## ***Supply of TPP - General Rule (cont'd...)***

### *Example:*

- Alberta supplier sells goods to an Ontario company
- Legal delivery occurs in Alberta (i.e. FOB Alberta)
- Alberta supplier ships the goods to Ontario

### *Result*

- 13% Ontario rate of HST applies



## ***“Supply and Install” of TPP***

### *Example*

- Supply and install of a sign in Alberta
- Supplier manufactures the sign in Ontario
- Supplier delivers the sign to customer in Alberta

### *Result*

- GST at 5% would be collected on the supply and install
- Supply is deemed to be made in Alberta and not Ontario



## Proposed General Rules

- Emphasis is on the location of the recipient not always where the service is performed
- The place of negotiation is no longer a factor



- The general rules do not apply where specific rules apply:
  - Passenger transportation
  - Freight transportation services
  - Postage and mail delivery services
  - Telecommunication services
  - Personal services (i.e. haircuts)
  - Services in relation to tangible personal property or real property
  - Services that relate to a location-specific event (i.e. conference, seminar)
  - Services rendered in connection with litigation
  - Customs brokerage services



## Rule 1

- The supply of a service is proposed to be made in a province
  - If in the normal course of business the supplier of a service obtains an address of the recipient that is located in the province and is the home or business address in Canada of the recipient.



## Rule 1

### *Example*

- Wedding planner located in Ontario
- Plans a wedding to be held in Quebec
- 40% of the planning services performed in Quebec and 60% performed in Ontario
- Customer's home address is in Manitoba and obtained in the normal course of business

### *Result*

- Supply of service is made in Manitoba and subject to 5% GST



## Rule 2

- Address in Canada not obtained in the normal course of business
  - If the “Canadian element” of the service is performed primarily (more than 50%) in the participating provinces, the supply is made in the participating province in which the greatest proportion of the Canadian element of the supply is made.



## *Example*

- Ontario on line service provider edits documents over the internet
- Documents sent by customer via email and edited documents returned by email
- Service provider does not obtain customer's address
- Editing services performed in Ontario
- HST at 13% applies



## Rule 3

- Address in Canada not obtained in the normal course of business and the “Canadian element” of the service is performed primarily (more than 50%) in the participating provinces, but service performed equally in 2 or more participating provinces.

### *Example*

- Service is performed 50% in Ontario and 50% in BC
- HST at 13% would apply



## Rule 4

- Address in Canada not obtained in the normal course of business and the “Canadian element” of the service is performed otherwise than primarily in the participating provinces.
- Supply is made in a non-participating province.



- Director at time amount owing
- Joint and several liability along with corporation
- Due diligence defense
- Up to 2 years after ceasing to be a director
- Can appeal



***Questions?***