Benefits and Pensions MONITOR
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Harmonized Sales Tax (HST) & GST Faq For Pension Plans And Other Employee Benefit Arrangements

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What kind of programs does this FAQ address?

This document is intended for sponsors of the following types of investment plans:

- Registered pension plans (RPPs), including defined benefit RPPs (DBRPPs)
- Capital accumulation plans (CAPs), which include:
  - Defined contribution RPPs (DCRPPs)
  - Deferred profit sharing plans (DPSPs)
  - Group registered retirement savings plans (GRRSPs)
  - Group tax-free savings accounts (TFSAs)
  - Other group arrangements featuring investment funds
- Employee benefits plans operated under a trust including:
  - Retirement compensations arrangements (RCAs)
  - Savings plans
  - Stock purchase plans
  - Health and welfare plans

Do the new GST/HST rules impact only businesses in HST provinces?

No. Almost every plan listed above will be affected in some way by changes to GST rules and new and pending rules arising from the implementation of HST in Ontario and British Columbia.

What issues will plan sponsors have to consider regarding HST?

There are several potential issues for plan sponsors, including:

- GST/HST registration
- New Canada Revenue Agency (CRA) requirements for administration, filing and GST/HST tax assessment requirements
- GST pension rebates (RPPs only)
- HST assessment or rebate
- Deemed supply or re-supply of services to the plan
- How input tax credits may be claimed
- Allocation of HST paid by underlying investment funds to individual member accounts

Will plans have to charge GST or HST for services rendered?

It is very unlikely that plans would charge GST or HST, unless the plan provides taxable services to another entity (such as another plan).

GST-HST registration – If plans don't charge GST or HST, why might they have to register?

Changes to 'place of supply rules' and new proposed HST rules for financial institutions that are applicable to 'investment funds' will mean that many RPPs, DPSPs, and other similar trusteed arrangements may either have to pay an HST assessment or become entitled to an HST rebate. Any such plan with beneficiaries (including retirees and terminated members) in two or more provinces where at least one province is an HST province will have to carry out self-assessment calculations to determine HST owing or refundable. Registration may be necessary where there is a requirement to file returns, pay GST/HST or claim an HST rebate.

Input Tax Credits (ITCs), deemed supply of services and special GST/HST rebate rules applicable to RPPs (passed into law)

On July 12, 2010 Royal Assent was given to Bill C9, An Act to implement certain provisions of the budget tabled in Parliament on March 4, 2010 and other measures, S.C. 2010, c.12. The Act included provisions for changes to the Excise Tax Act (ETA), originally proposed in a release published by the Department of Finance on September 23, 2009, which will have significant impact on registered pension plans (RPPs). The new rules are applicable to fiscal years commencing on or after September 23, 2009.

Will employers participating in an RPP be able to claim input tax credits in respect of GST/HST charged by third-parties that provide services to an RPP?

No, participating employers will not be able to claim ITCs in respect of goods and services supplied or deemed to be supplied to the pension plan.

What is meant by services 'deemed to be supplied' to an RPP?

Services relating to the pension plan whether provided by a third party or a participating employer (at fair market value) will be deemed to be supplied to the pension plan, unless:

- ❖ The services are required for compliance with securities legislation where the participating employer is an issuer or prospective issuer of securities
- ❖ The services evaluate the feasibility or financial impact on a participating employer of establishing, altering or winding up a pension plan, but not including services relating to an actuarial report where required by a law of Canada or a province (e.g. solvency valuation report, or a report as may be ordered by a pension regulator)
- ❖ The services evaluate the financial impact on the assets and liabilities of a participating employer of the pension plan (e.g. accounting valuation)
- ❖ The services relate to negotiations with a union or similar organization of employees
- ❖ Prescribed purposes (yet to be determined).

How is GST or HST determined if an RPP has members in more than one province?

The value of services and applicable GST/HST must be self-assessed by plan sponsors and allocated by province, where the plan covers members in two or more provinces, at least one of which is an HST province.

Self-assessment calculation requirements are somewhat complex, and particularly so for plans with fiscal years that span July 1, 2010, the implementation date for HST in Ontario and British Columbia. Self-assessment may result in GST/HST amounts due, or rebates claimable.

What has happened to the GST rebate for specified multi-employer RPPs?

The 33 per cent rebate will be extended to almost all RPPs based on assessed GST/HST, subject to a 2 year limitation period, and plans may elect to transfer such rebate to a participating employer.

Changes to Place of Supply Rules (draft regulation stage)

In order to accommodate variances in the provincial value added tax (PVAT) rate components in HST, it is necessary to change the GST/HST place of supply rules in the ETA regulations. Draft regulations were published April 30, 2010.

The basic principle is that GST/HST is calculated based on the address where goods and services are received by the plan member. Where services may be attributable to two or more provinces, one or more of which is an HST province, then tax is prorated proportionately by province based on measures relative to the services (e.g. assets for most 'investment funds'). The result is a blended rate of GST/HST is invoiced to the plan member.

How do the new place of supply rules impact pension plans and other employee benefit arrangements?

There will be complexities in relation to place of supply rules, particularly if services are 're-supplied' by a plan sponsor to plan members (e.g. paid for by the plan sponsor on behalf of plan members). Plan sponsors will need to carefully evaluate the manner in which services relating to such plans are paid for, how GST/HST is charged on invoices and how taxes may be allocated to plan member accounts. Sponsors may have to work with vendors to clarify any 'look-through' arrangements, and may have to seek tax rulings in some cases.

HST Rules for Financial Institutions (draft regulation stage)

In conjunction with changes to place of supply rules, HST rules for financial institutions are set out in draft regulations published June 30, 2010, with an additional consultation period to July 31, 2010. These rules capture RPPs, DPSPs, and employee benefit plans. They also capture mutual funds (including pooled funds) and segregated funds of insurers, which are held under various capital accumulation plans.

The rules are complex, and involve calculations to determine GST/HST payable and allocation of HST by province according to proportionate assets (liabilities for defined benefit RPPs) of the "investment plans" by province of residency of unitholders / beneficiaries, making and filing of relevant elections and filing of information reports.

How are RPPs, DPSPs, and employee benefit plans captured by the HST rules for financial institutions?

In the ETA, the definition of 'financial institution' includes an 'investment plan' which includes 'a trust governed by' any of the following:

❖ a registered pension plan
❖ an employee profit sharing plan*
❖ a registered supplementary unemployment benefit plan
❖ a registered retirement savings plan
❖ a deferred profit sharing plan
❖ a registered education savings plan
❖ a registered retirement income fund
❖ an employee benefit plan*
❖ an employee trust*
❖ a mutual fund trust
❖ a pooled fund trust
❖ a unit trust
❖ a retirement compensation arrangement

** including similar non-registered savings plans*

What is a 'Selected Listed Financial Institution'?

An investment plan included in the list above (listed financial institution) with unitholders / beneficiaries (including retirees or former employees) in two or more provinces, at least one of which is an HST province will be considered to be a selected listed financial institutions (SLFI).

What are the administrative implications for administrators of SLFIs?

Administrative implications may include, but are not necessarily limited to, the following:

❖ Determination of 'reporting entity' and filing of related elections
❖ Filing of reports and performing related 'Special Attribution Method' calculations, or providing administrative support to the reporting entity in relation to data requirements for such calculations

What are the 'Special Attribution Method' (SAM) calculations?

SAM calculations will utilize a formula to determine the net tax liability of an SLFI investment plan, with the result of either additional HST payable or HST rebate available for recovery.

Do the administrative implications extend to all 'investment plans' or is there relief available for some plans?

Not all plans will be affected – only SLFIs will be faced with administrative requirements. In addition, "small investment plans" are afforded some administrative relief. Small investment plans are those with assets of under $10,000,000 or net annual GST/HST payable of $10,000.

Are there any governance implications for plan sponsors?

Yes. Capital accumulation plans (CAPs) where taxable fees are deducted from member accounts or netted from investment returns will need review how HST is allocated among member accounts, particularly in respect of members in non-HST provinces. There may be potential fiduciary liability risks in respect of HST paid that is attributable to individuals who reside in non-HST provinces.

Where can I get more information?

Technical information is available from the federal Department of Finance at ***www.fin.gc.ca***

Sponsors of pension plans and other employee benefit arrangements are encouraged to seek independent expert advice on the new GST/HST rules and the impact on their plans. Greg Hurst & Associates Ltd. (***www.greghurst.ca***) or Millson Parker Chartered Accountants (***www.millsonparker.ca***) are available to provide professional services.

Greg Hurst & Associates Ltd. has also partnered with the Centre for Employee Benefits of Humber College to design a one-day course on GST/HST administration for administrators of pension plans and similar employee benefit courses. Courses are expected to commence in the early fall. Further information can be obtained at ***www.humber.ca/ceb/*** ■

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