New GST Rules and Consultations Touch Many Bases

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Many businesses will be affected by Finance’s recently proposed changes to the GST/HST rules and regulations, including companies that offer registered pension plans to their employees or use drop-shipment certificates for sales of goods to non-residents. Finance’s package of almost 300 pages of legislation, regulations and explanatory notes will also affect some financial institutions.

Some of the changes apply immediately. Other changes are proposed to take effect for entities’ next fiscal year, while some proposed changes will be effective once they are passed into law.

The package also includes a 16-page consultation paper on expanding the selected listed financial institution (SLFI) rules to include certain investment limited partnerships.

Under the legislative proposals, employers and pension entities that have master trusts within their pension plan structures will see significant changes to their GST/HST obligations and pension entity rebates. The proposals also clarify various GST/HST rules related to the drop-shipment rules and certificates and include some other technical amendments.

Finance will accept comments on the draft legislation until August 31, 2016 and on the consultation paper until November 30, 2016.

This TaxNewsFlash-Canada summarizes selected proposals in the draft legislation, regulations and consultation paper released by Finance on July 22, 2016.
GST/HST pension plan rules

The proposals introduce rules that will essentially bring master trusts of pension entities within the application of the GST/HST pension plan rules. The current pension plan rules generally apply to participating employers and pension entities of their registered pension plans. The proposed changes will significantly affect many components of the GST/HST pension plan rules where there is a master trust in the structure, including the deemed supplies made by the employers, the tax adjustment notes, the election related to the actual supplies, the pension entity rebates and the special attribution method (SAM) formula and its calculations.

The proposals also include a few technical changes to the current GST/HST pension plan rules that may also affect the GST/HST obligations and calculations of employers and pension entities.

Background — GST/HST pension plan rules

Participating employers that offer registered pension plans to their employees are generally deemed to have made taxable supplies to their registered pension plans on the last day of their fiscal year and are required to remit amounts of taxes related to those supplies under the GST/HST pension plan rules.

Some pension plan structures include a number of pension entities as well as master trusts. In general, a master trust is a trust whose units are owned by the pension entities in the particular pension plan arrangement. Essentially, the master trust provides for the collective investment of the assets of the participating pension entities.

Under the new proposals, some employers will also be deemed to have made taxable supplies to master trusts of their pension plans in addition to any other deemed supplies made to the pension entities of their pension plans.

Summary of proposed changes to the GST/HST pension plan rules

The draft legislation related to the GST/HST pension plan rules includes amendments to:

- Allow a pension entity to include certain amounts of tax in its pension entity rebate calculations only if the employer has included the amount of tax in its return for a particular reporting period
- Require certain employers to add back a higher amount in computing their net tax relating to shared pension entity rebates in cases where a particular election is not in place
- Include master trusts in the current GST/HST pension rules
- Provide that some employers will be considered to have made deemed supplies to certain master trusts and will be required to remit GST/HST calculated on the deemed supplies based on specific calculations
- Introduce provisions to limit the effect of remitting GST/HST on both the actual supplies and deemed supplies made by employers to master trusts
• Provide a rebate to eligible pension entities related to GST/HST paid by master trusts or deemed to be paid
• Introduce various consequential tax adjustments under the SLFI rules related to the new rules for master trusts.

The proposals also include some technical changes related to the GST/HST pension plan rules.

**KPMG observation**

While many of the July 22, 2016 amendments will apply prospectively, some changes could affect GST/HST returns and pension rebates related to previous reporting and claim periods. Employers and pension plans should review the proposed changes carefully and determine how they may affect their current and past transactions and rebates.

**GST/HST changes for drop-shipment rules**

Finance also announced several technical amendments to the GST/HST drop-shipment rules. Businesses that have transactions subject to the drop-shipment rules with non-residents or that issue or accept drop-shipment certificates should ensure they review all the changes and determine whether any of the proposed changes affect their tax obligations.

**Drop-shipment rules — Background**

The drop-shipment rules generally ensure that, where a non-resident business not registered for GST/HST makes a supply of goods located in Canada, the GST/HST applies in the same way as it would generally apply if the goods were imported into Canada.

For example, a unregistered non-resident business may purchase goods from a Canadian supplier and request that the goods be delivered to another person in Canada (i.e., a consignee). Under the drop-shipment rules, the Canadian supplier may be required to charge and collect GST/HST based on the fair market value of the goods.

The drop-shipment rules include exceptions that allow unregistered non-resident businesses to acquire goods and commercial services in respect of goods in Canada on a tax-free basis, provided that all the required conditions are met. For example, the rules will relieve GST/HST on the taxable supply in Canada if the goods are exported from Canada or transferred to a GST/HST registered consignee that issues a valid drop-shipment certificate to the consignor accepting potential liability for tax in a subsequent transfer or non-commercial use of the goods.

The draft legislation includes numerous amendments to clarify and modernize the drop-shipment rules. As a result of these technical changes, some Canadian suppliers may be required to collect GST/HST from their non-resident clients. The proposals include various amendments to the related exceptions that could potentially affect the scope of the GST/HST
relief. Also, the wording in the drop-shipment certificates has changed. Consignees that have issued certificates and consignors that have received the certificates should review the circumstances covered by the certificates and whether they may be affected by the proposed changes.

In general, the proposed changes in the draft legislation apply to supplies made after July 22, 2016. However, some changes will only apply after they are enacted.

**KPMG observation**

Canadian businesses that are subject to the drop-shipment rules should carefully review the proposed changes to determine whether any of the changes to the general drop-shipment rules and the exceptions affect their transactions, based on their specific facts and circumstances.

**Other GST/HST changes for investment plans and certain financial institutions**

Finance’s draft legislation also introduces several amendments for various other GST/HST rules. Some of these changes are consequential to amendments made to other provisions. The proposals include, among other things, changes to:

- Include credit unions under the SLFI rules for banks
- Extend the SLFI rules to group trusts for registered education saving plans
- Amend some provisions related to qualifying small investment plans in light of the changes related to master trusts
- Clarify the amounts to be included in the SAM formula related to the section 150 closely related group election
- Simplify the SAM formula to reflect the fact that it was common for SLFIs to make a certain election under the SAM formula
- Amend various rules for imported supplies into Canada and for supplies brought into or used in HST-participating provinces
- Clarify and amend certain provisions related to municipal transit services.

The Department of Finance invites interested businesses to provide comments on the draft legislation by August 31, 2016.

**Consultation paper for investment limited partnerships and investment plans**

The Department of Finance also released a 16-page consultation paper related to the GST/HST rules for certain limited partnerships and investment plans. The paper does not appear to propose effective dates for the measures discussed.

The paper includes the following proposals.
Expand SLFI rules to include investment limited partnerships

In the consultation paper, Finance proposes to expand the SLFI rules to include investment limited partnerships. Finance notes that the proposed changes would address the “uneven treatment between investment entities structured as limited partnerships and entities that are currently defined as investment plans”.

In the paper, Finance discusses many aspects of how the SLFI rules may apply to investment limited partnerships, including determining the permanent establishments of a partnership as well as the calculation of the provincial attribution percentages for GST/HST.

Changes to the definition of investment plan

The paper proposes to include “investment limited partnership” in the definition of “investment plan” for GST/HST purposes. As an investment plan and listed financial institution, an investment limited partnership could be subject to the SLFI rules if the partnership qualifies as a SLFI, as well as being subject to all the other rules that affect financial institutions.

Finance proposes to define the term “investment limited partnership” to “include a limited partnership whose principle activity is the investing of funds on behalf of a group of investors through the acquisition and disposition of financial instruments”.

Permanent establishment test

The consultation paper proposes that an investment limited partnership would generally be considered a SLFI if it has a permanent establishment in an HST province and a permanent establishment in any other province. An investment limited partnership would generally “be deemed to have a permanent establishment in a province if a partner holding one or more of its units (i.e., an interest in the partnership) is resident in the province or if the investment limited partnership is able to sell or distribute its units in the province.” The SLFI rules have requirements for different types of persons to help determine whether a particular person is resident in a particular province.

The paper also proposes to provide special rules to determine the SLFI status similar to the ones for certain investment plans that have two or more provincial series or whose units are designed to be sold or distributed to investors in a single province.

Provincial attribution percentages

To determine the provincial attribution percentages of investment limited partnerships that qualify as SLFIs, Finance proposes in the consultation paper to use rules similar to the current
rules that apply to distributed investment plans. The calculations would generally be based on the value of units held by partners that reside in the province.

The consultation paper notes several components of the current SLFI rules that Finance is considering or on which Finance is specifically seeking feedback for investment limited partnerships, including:

- The three methods to determine and apply the provincial attribution percentages (i.e., preceding-year, current year and real-time methods)
- The provincial attribution percentage rules for investment plans with more than one series of units
- The look-through rules (i.e., the information sharing requirement rules)
- The attribution of unitholders rules under which investment plans may be required, in determining their provincial attribution percentages, to allocate the value of the units to the HST province with the highest provincial tax rate when certain investor information is missing.

**Expand the self-assessment rules**

The consultation paper proposes to amend the imported supplies rules for financial institutions to ensure that certain non-resident limited partnerships would be required to self-assess an amount of GST/HST in respect of their Canadian activities.

**New GST rebate**

The paper proposes to introduce a new GST rebate for certain investment plans that have non-resident investors.

Comments on this consultation paper should be submitted to Finance by November 30, 2016.

**We can help**

KPMG’s Indirect Tax professionals can help you identify which changes included in Finance’s release may affect your business and your registered pension plans. We can help you assess the impact of the proposed changes on your operations as well as your GST/HST obligations.

We can also keep you abreast of the progress of these proposals as they make their way into law. For details, contact your KPMG adviser.
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