CHARTERED PROFESSIONAL ACCOUNTANTS NOVA SCOTIA

CONTINUING PROFESSIONAL DEVELOPMENT

SPRING PD 2024

GST/HST - Fundamentals

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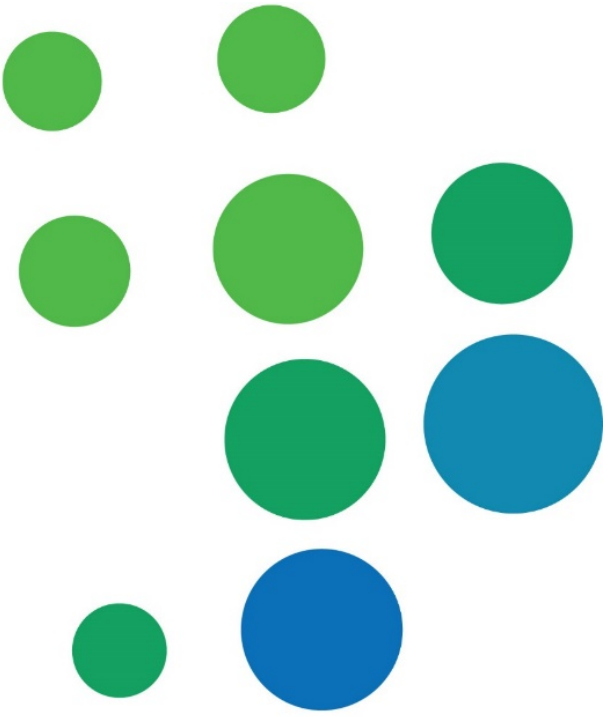

PROFESSIONAL DEVELOPMENT

GST/HST – THE FUNDAMENTALS

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CPA CHARTERED PROFESSIONAL ACCOUNTANTS

CPA PRO

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TABLE OF CONTENTS

Module 1 – Introduction and the Basics

1 Recent Changes 1-1
1.1 Introduction 1-7
1.2 The Basics 1-17

Module 2 – Who Pays the GST/HST

2.1 Who Pays Tax? 2-1

Module 3 – Collecting GST/HST

3 Collecting GST/HST 3-1
3.1 Registration Requirements 3-2
3.2 Registration Requirements – associated 3-5
3.3 Registration Requirements – obstacles 3-8
3.4 Registration Requirements – voluntary 3-9
3.5 Registration Requirements – other issues 3-10
3.6 QST Registration for Non-Residents 3-11
3.7 Collecting GST/HST 3-15
3.8 Illustration 3-22
3.9 Summary 3-26

Module 4 – Other Collection Issues

4 Sale of Commercial Real Property 4-1
4.1 Purchase of Carbon Allowances 4-2
4.2 Inter-company Transactions 4-3
4.3 Drop Shipments 4.4

Module 5 – GST Place of Supply Rules

5 Place of Supply Rules 5-1
5.1 GST Place of Supply Rules 5-2
5.2 Tangible Personal Property 5-4
5.3 Tangible Personal Property – lease or licence 5-5
5.4 Intangible Property 5-6
5.5 Real Property 5-7
5.6 Services 5-8
5.7 Outside of Canada 5-9

Module 6 – GST Place of Supply Rules

6 HST Place of Supply 6-1
6.1 Tangible Personal Property 6-3
6.2 Services 6-10
6.3 Intangible Personal Property 6-23
6.4 Real Property 6-31
6.5 Illustration 6-32

Module 7 – Import Issues

7 Imported Goods 7-1
7.1 Imported Non-Goods 7-5
7.2 Imported Services and Intangibles 7-6
7.3 Imports into HST Provinces 7-7
7.4 Who Pays Tax 7-8
7.5 Section 180 Flow Through Provisions 7-10

Module 8 – Export Issues

8 Exports 8-1
8.1 Exports - Goods 8-2
8.2 Exports - Services 8-4
8.3 Exports – Intangible Personal Property 8-6
8.4 Exports 8-7

Module 9 – General Recovery Rules

9 General Recovery Rules 9-1
9.1 Claiming Input Tax Credit Documentation 9-2
9.2 General Recovery Rules 9-4
9.3 ITC Restrictions and Limitations 9-7
9.4 Apportionment Rules 9-11
9.5 Section 186 Holdco Rules 9-16

Module 10 – Employee Reimbursements And Allowances And Other Payments

10 Employee Reimbursements 10-1
10.1 Employee Allowances 10-4
10.2 Reimbursements to Non-Employees 10-10
10.3 Company Credit Cards 10-12

Module 11 – Reporting Net Tax Overview

11 Filing a GST Return 11-1
11.1 Calculating Net Tax 11-2
11.2 Filing Frequency 11-5
11.3 Instalment Payments 11-6
11.4 Completing the GST Return 11-7
11.5 Common Filing Mistakes 11-9
11.6 Adjustments to Previously Filed Returns 11-12
11.7 Sample Return 11-13

Module 12 – Compliance Issues

12 Compliance 12-1
12.1 Summary 12-8

Module 1
Introduction and Overview

1. COURSE OVERVIEW

The course provides an overview of Canada's federal sales tax, the GST/HST, relevant for accountants working with clients or in industry.

The GST and HST place of supply rules are presented in detail with examples because their misinterpretation often creates significant exposures for suppliers located in both harmonized and non-harmonized provinces.

Also reviewed are registration, collection requirements, who pays tax, documentation, input tax credit entitlements and some cross border issues. The material highlights common sources of errors and assessments frequently discovered during a GST/HST audit or a review of a client's books and records.

After this course you should be able to identify common exposures and situations that require further research, assistance from the Canada Revenue Agency or the aid of a GST/HST specialist.

This course will not make you a GST/HST expert, but will introduce you to numerous topics and issues, so you can identify possible recovery opportunities or liability issues.

If this is your first GST/HST course, the volume of information can be overwhelming. The objective today is to create a basic level of awareness so you can recognize potential issues as they arise.

The materials include references to the *Excise Tax Act* (ETA) and other government publications which are available online free of charge.

1.1. RECENT CHANGES

Slides discussed in this section: Slide 1-1 to 1-6

2021 Update

The federal government proposes to implement a temporary tax on certain corporations providing digital services in Canada, effective January 1, 2022 until an acceptable multilateral approach to taxing the revenues of digital corporations comes into effect.

The proposed tax is intended to capture revenues derived by digital corporations from value-creating activities in Canada by remote digital means, such as collecting user data and content contributions, which are currently not subject to Canadian corporate tax.

On November 3, 2022, the Department of Finance released draft legislation that would add a new part (Part XX) to the *Income Tax Act*. This new part would implement the reporting and due diligence standards of the *Model Rules for Reporting by Platform Operators* developed by the Organization for Economic Co-operation and Development. If implemented, the legislation will require platform operators, except if specifically exempt, to report certain information regarding sellers (including names, addresses, tax identification numbers and consideration received) to the CRA and to follow certain due diligence procedures starting in 2024.

Effective September 1, 2022, the 2021 federal budget announced a proposal for a tax under new legislation, on the sale of new luxury cars and personal aircraft with a retail sales price over $100,000 and boats with a retail sales price over C$250,000 that are purchased for personal use. The tax would apply at the lesser of 20 per cent of the value above the threshold retail sales price for such goods (e.g., 20 per cent of the value over C$100,000 for personal aircraft), or 10 per cent of the full value of such goods.

The GST/HST would apply to the final sale price, inclusive of the proposed luxury tax.

To level the playing field in the e-commerce industry for Canadian vendors and non-resident vendors, the federal government announced in its annual budget the intent to move forward with legislation requiring non-resident vendors to become GST registrants when they sell goods, intangible personal property and services to unregistered Canadian customers.

For non-residents selling goods though a fulfilment warehouse, the warehouse will be required to charge and collect the tax so the non-resident does not have to register for GST. If the non-resident sells the goods directly to unregistered customers, they will have to register.

The new registration rules also extend to short-term accommodation platform operators such that regardless of the registration status of the property owner, GST/HST will apply to the rental.

2022 Update

For rebate claim periods ending after April 7, 2022, the expanded hospital rebate would no longer distinguish between health care services rendered by physicians and nurse practitioners**.** Therefore, to be eligible for the expanded hospital rebate, a charity or non-profit organization must deliver the health care service with the active involvement of, or on the recommendation of, either a physician *or* a nurse practitioner.

Prior to May 7, 2022, an assignment sale in respect of newly constructed or substantially renovated residential housing may either be taxable or exempt for GST/HST

- An assignment sale made by an individual would generally be taxable if the individual has originally entered into the agreement of purchase and sale with the builder for the primary purpose of selling their interest in the agreement. If the individual had originally entered into the agreement for primary

purpose other than selling, such as to occupy the home as a place of residence, the assignment sale would generally be exempt. This led to uncertainty of the GST/HST application

Effective May 7, 2022, the federal budget announced amendments to the ETA to make all assignment sales in respect of newly constructed or substantially renovated residential housing taxable for GST/HST purposes

- GST/HST would generally apply to the total amount paid for a new home by its first occupant, with possible exclusion of deposit amounts for assignment agreements entered into after May 6, 2022

2023 Update

While beyond the scope of this course, this is added for completeness and to address the 2023 Federal budget proposals.

- Budget 2023 proposes to amend the GST/HST definition of "financial service" to clarify that payment card clearing services rendered by a payment card network operator are excluded from the definition to ensure that such services generally continue to be subject to the GST/HST.

1.2 INTRODUCTION

Slides discussed in this section: Slide 1-7 to 1-18

GST

Authority for the GST/HST is found in Part IX of the ETA

The GST rate is set by the federal government and is imposed at a prescribed rate of tax on taxable supplies made in Canada (subsection 165(1))

Supplies of taxable property and services made in Canada are required to determine their registration status.

Those that are registrants are required to collect and remit the GST to the CRA

If you are a business operating as a sole proprietor, partnership, or corporation, the goods and services tax/harmonized sales tax (GST/HST) amounts that you collect from your customers are considered deemed trust amounts for the government. These are not ‘your’ funds. See comments on directors' liability later in the course.

The Canada Revenue Agency (CRA) is responsible to administer the tax and verify compliance.

GST is a federal tax calculated on the value of taxable property or services made or deemed to be made in Canada.

The GST rate is set by the federal government and it is imposed at a prescribed rate of tax on taxable supplies made in Canada (subsection 165(1)).
The tax is collected by GST registrants on all taxable supplies made in Canada. The tax collected is remitted to the Canada Revenue Agency (CRA).

It is a value-added tax that is charged at every level of the supply chain.

Reference: GST/HST Guide, RC4022, “General Information for GST/HST Registrants”.

HST

HST replaces the provincial sales tax with a single federal tax, which is composed of the federal GST portion and a provincial component.

HST generally applies to the same tax base as the GST.

Organizations registered for GST, are automatically registered for HST.

The HST simplifies sales tax compliance by combining the federal and provincial sales taxes on a single federal remittance form. In addition, for most organizations there is no requirement to track the GST and HST separately.

Section 277 of the *Excise Tax Act* (ETA) gives the *New Harmonized Value added Tax System Regulations* the authority to override the ETA (these are the prescribed rules often seen in the ETA to provide further information). Consequently, certain rules set out in the ETA are overridden by the rules set out in the regulations, such as, the HST place of supply rules.

The Quebec provincial sales tax (QST) will not be covered in the course but be aware that the Quebec sales tax rules parallel the GST/HST rules. Quebec is not a harmonized province and the QST is still a provincial sales tax. To register for the QST a person must register with the Quebec provincial government.

Effective July 1, 2010, Nova Scotia increased its HST rate to 15% (5% federal part and 10% provincial part). Effective January 1, 2014 and January 1, 2015, the provincial portion will be reduced by 1 percent each year.

On July 1, 2010, Ontario and British Columbia harmonized their retail sales taxes with the GST. In Ontario, at a rate of 13% (5% federal part and 8% provincial part) and in British Columbia at a rate of 12% (5% federal part and 7% provincial part).

On April 1, 2013, British Columbia replaced the harmonized sales tax with a provincial sales tax of 7 percent. This sales tax will be administered by the provincial government of British Columbia. Check the British Columbia website for more information.

Effective April 1, 2013, Prince Edward Island replaced their provincial sales tax with the HST at a rate of 14%.

The HST rates changed in 2016 for Newfoundland and Labrador, New Brunswick and Prince Edward Island.

The above table summarizes the federal and the current provincial sales tax rates across Canada.

For Manitoba - The previously announced RST rate reduction from 7% to 6% that were effective July 1, 2020, have all been deferred until further notice.

VAT

The value-added tax (VAT) concept is not unique to Canada. More than 170 countries worldwide levy a VAT on goods and services.

Value-added taxes avoid the cascading of taxes through a system of input tax credits.

Under this system, suppliers are provided with input tax credits (ITCs) equal to the tax paid for inputs to their taxable business operations.
For example, tax paid by a manufacturer to purchase raw materials is recovered by claiming as an input tax credit. Therefore, the tax is not an expense to the manufacturer.

The ultimate sales tax burden is generally on the final consumer who purchases the property or services for personal consumption or non-commercial use.

ETA

Part IX of the *Excise Tax Act* (ETA) legislatively defines the GST and HST, and the regulations prescribed by the Minister of National Revenue are used to fill in the details of the GST/HST that are applicable on most supplies of property and services made available in Canada. As a result, the GST/HST is a sales tax on almost everything purchased by businesses and consumers (with limited exceptions).

Navigating the ETA can be very difficult. Therefore, a general understanding of the GST/HST legislation will make it easier to recognize what the various provisions do and how they work together.

The following slides provide a summary of the divisions provided in the Act and a brief description.

Division II is further subdivided into

- Subdivision a - imposition of tax (sections 165 to 168)
- Subdivision b - input tax credits (sections 169 and 170)
- Subdivision c - special cases (sections 171 to 194, some examples: include becoming or ceasing to be a registrant, taxable benefits, agents, coupons and rebates, import arrangements, etc.)
- Subdivision d - capital property (sections 195 to 211, includes the override rules and the change-in-use rules)
- Subdivision e – electronic commerce (section 211.1 to 211.25, includes accommodations, intangible personal property and services)

Division V contains information regarding collection and remittance issues and it is further subdivided into

- Subdivision a - collection of tax (sections 221 to 224)
- Subdivision b - remittance of tax (sections 225 and 237)
- Subdivision c - returns (sections 238 to 239)
- Subdivision d - registration rules (sections 240 to 242)
- Subdivision e - fiscal periods and reporting periods (sections 243 to 251)

The restructuring of the HST system commenced when initially Ontario and British Columbia harmonized in 2010 and then Prince Edward Island in 2013. This resulted in the creation of section 277.1 of the ETA to allow the HST rules for provinces to be enacted by way of regulation rather than amendment to the ETA.

- The HST rules provided in the Schedules to the ETA are overridden by the *New Harmonized Value-added Tax* rules set out in regulations.
    - For example, Schedule IX of the ETA presents the place of supply rules to determine when a supply of property or a service is deemed for HST purposes to be made in a particular province.

1.2 THE BASICS

Slides discussed in this section: Slide 1-17 to 1-1-25

An understanding of the definitions in the Act is critical in the application of tax. Division I of the ETA contains most (but not all) definitions in subsection 123(1) and in other areas as required to describe the application of tax.

If a word has been defined, it means that the general meaning has been enhanced for the purposes of the ETA

- For example, see the definition of a 'person' for the purposes of the ETA

For GST purposes, a partnership is deemed to be a person separate from its members. Accordingly, the partnership, rather than the members, is the person required to register and account for tax.

Service means anything other than
a) property,
b) money, and
c) anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in the course of or in relation to the office or employment of that person.

Real property includes
- in respect of property in the Province of Quebec, immovable property and every lease thereof,
- in respect of property in any other place in Canada, messuages, lands and tenements of every nature and description and every estate or interest in real property, whether legal or equitable, and
- a mobile home, a floating home and any leasehold or proprietary interest therein.

Money – for example, a gift certificate is money according to GST/HST Policy Statement P-202 Gift Certificates for additional information.

Cryptocrrecncy

Regarding non-legal currencies, such as Bitcoin or Ethereum, the definition of financial instrument in subsection 123(1) of the ETA includes paragraph (f.1) to include a virtual payment instrument.

Effective May 18, 2019, virtual payment instrument is generally defined as property that is a digital representation of value that functions as a medium of exchange (like money, it is an instrument that is accepted as payment in transactions for property and services and is recognized as a measure of value) and exists only at a digital address of a publicly distributed ledger (for example, blockchain). Since a virtual payment instrument is limited to property, it would not include anything that is considered to be money for purposes of the GST/HST. Therefore, this treats virtual currency as a financial instrument for GST/HST purposes, meaning that suppliers would not be required to charge and collect GST/HST on supplies of virtual currency.

Proposed section 188.2 contains rules related to the application of GST/HST to mining activities in respect of cryptoassets and to remuneration received as a consequence of performing mining activities. Will be deemed to have come into force on February 5, 2022.

Supplies

Most supplies of property and services provided in or imported into Canada are subject to the GST or HST. However, some supplies may be zero-rated or exempt.

Zero-rated supplies are still taxable supplies, just at a 0% rate of tax. Thus, they will factor into the requirement to register for the GST/HST and the $30,000 threshold. (Revisited in module 3)

It is very important to understand that even though zero-rated supplies and exempt supplies both have nil GST/HST to collect, the classification of something as zero-rated or exempt will impact the person's ability

to claim ITC's (discussed in later slides) as only persons involved in commercial activities may be eligible to recover the GST/HST paid. The definition of commercial activities will be discussed later in this Module.

Section 141.1 deems supplies of personal property not to be made in the course of commercial activity. Therefore, the sale of personal property used primarily for personal use and not in the course of a business or adventure in the nature of trade regardless of a person's registration status is not subject to GST or HST. This rule does not apply to real property. Refer to P-167R, *Meaning of the First Part of the Definition of Business* for further information on the concept of whether a particular activity constitutes a business or not.

Taxable supplies made in Canada attract tax of 5% under subsection 165(1), plus the provincial portion of the HST under subsection 165(2) if they are made in an HST province (unless the supply specifically exempt or zero-rated) on the value of the consideration for the particular supply.

Taxable supplies made outside Canada fall outside the scope of subsection 165(1) and are not taxed.

Under subsection 165(3), zero-rated supplies are taxed at 0% (i.e., taxed at zero-percent if certain conditions are met). If a supply were zero-rated under Schedule V, no tax would be collected on the supply by a GST registrant.

Determination of the tax status of a supply depends on the proper classification of the supply. It is important to understand that most supplies are generally taxable (or zero-rated) unless they are included in Schedule V as an exempt supply.

Certain goods and services are taxed at a rate of 0% (zero-rated). This means the GST/HST is not charged on the supply of these goods and services.

Since zero-rated supplies are considered to be a taxable supply, a GST/HST registrant may be able to claim an input tax credit for the GST/HST paid or payable on expenses provide zero-rated sales or supplies.

Each of the above parts of the Act describes the conditions to meet before declaring a supply is zero-rated.

Following CRA publications provide more details on some of the zero-rated supplies

- Booklet RC4080, GST/HST *Information for Freight Carriers*
- GST/HST Memoranda Series Chapter 4, *Zero-rated supplies*
- GST/HST Memoranda Series Chapter 4.1, *Drugs and Biologicals*
- GST/HST Memoranda Series Chapter 4.2, *Medical and Assistive Devices*
- GST/HST Memoranda Series Chapter 4.3, *Basic Groceries*
- GST/HST Memoranda Series Chapter 4.4, *Agriculture and Fishing*
- GST/HST Memoranda Series Chapter 4.5.2, *Exports - Tangible Personal*
- GST/HST Memoranda Series Chapter 4.5.3, *Exports - Services and Intellectual*
- GST/HST Memoranda Series Chapter 28, *Special sectors: Transportation*
- GST/HST Memoranda Series Chapter 28.2, *Freight Transportation Services*
- GST/HST Memoranda Series Chapter 28.3, *Passenger Transportation Services*
- GST/HST Info Sheet GI-048, *Fertilizer and Pesticides*
- GST/HST Info Sheet GI-049, *Fishing Equipment and Products*
- GST/HST Info Sheet GI-051, *Zero-Rated Farm Equipment*

Certain goods and services are exempt from the GST/HST. This means that no GST/HST applies to them.

Persons that provide only exempt goods and services are generally not registered for the GST/HST.

As a non-registrant, the person does not charge the GST/HST on supplies of exempt goods and services and does not claim input tax credits.

GST non-registrants should always be mindful of the amount of taxable supplies (including zero-rated supplies), if any, made each year in case this amount goes over $30,000 registration threshold that will cause them to become required to register for the GST.

Following CRA publications provide more details on some of the zero-rated supplies

- Guide RC4049, *GST/HST Information for Municipalities*
- Guide RC4081, *GST/HST Information for Non-Profit Organizations*
- Guide RC4082, *GST/HST Information for Charities*
- GST/HST Memoranda Series Chapter 5.3, *Legal Aid Services*
- GST/HST Memoranda Series Chapter 17, *Special sectors: Financial institutions*
- GST/HST Memoranda Series Chapter 19.2.1, *Residential Real Property - Sales*
- GST/HST Memoranda Series Chapter 19.2.2, *Residential Real Property, Rentals*
- GST/HST Memoranda Series Chapter 19.5, *Land and Associated Real Property*
- GST/HST Memoranda Series Chapter 28.1, *Ferries, Toll Roads and Toll Bridges*

From a customer's perspective there is no visible difference between whether a supply is zero-rated or exempt, as no tax is charged.

From a registrant's perspective, if a supply is zero-rated, it is considered to be a taxable supply. This may result in a small supplier being required to register for the GST or a GST registered supplier may be able to recover the GST/HST paid (by claiming an input tax credit) on eligible business inputs related to its commercial activities.

If the supplier makes exempt supplies, no GST/HST recovery is available by claiming input tax credits. If the supplier is a public service body, it may be eligible to claim a public service body rebate.

Excerpt from subsection 123(1) of the ETA:

- *Commercial activity* of a person means
  - a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,
  - an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and
  - the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply

In the above definition, notice that exempt supplies are specifically excluded from the definition of a commercial activity. Thus, only activities related to the making of a taxable supply are considered to be commercial activities.

The biggest difference between the two types of supplies is that a supplier making taxable supplies may be able to claim input tax credits. In contrast, a supplier of exempt supplies is not able to claim input credits for the GST/HST paid on supplies related to the making of the exempt supplies.

Module 2
Who Pays GST/HST?

2. WHO PAYS TAX

Slides discussed in this section: Slide 2-1 to 2-2

Section 165 imposes GST/HST on the recipient of a taxable supply made in Canada. Whereas section 221 generally requires a GST registered supplier of a taxable supply to collect the tax and remit the tax as an agent for the crown (there are some exceptions).

The definition of *recipient* is a defined term (subsection 123(1)) and understanding its concept is extremely important for recovery purposes. For example, only the recipient of a taxable supply may claim an input tax credit for the tax paid on purchases related to its commercial activities.

The CRA defines *recipient of a supply of property or a service* to mean:

- where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration;
- where bullet (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration; and
- where no consideration is payable for the supply:
  - in the case of a supply of property by way of sale, the person to whom the property is delivered or made available;
  - in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available; and
  - in the case of a supply of a service, the person to whom the service is rendered.

In simple terms, the recipient of a supply is the person who is the *bill* to as stated on an invoice or specified in the contract.

Small supplier means a person whose revenue (along with the revenue of all persons associated with that person) from worldwide taxable supplies was equal to or less than $30,000 ($50,000 for public service bodies) in a single calendar quarter and over the last four consecutive calendar quarters. The calculation excludes consideration attributable to the sale of goodwill of a business, supplies of financial services, and supplies by way of sale of capital property.

- Charities and public institutions are also considered small suppliers if they meet the gross revenue test of $250,000 or less.

Section 166 of the Act relieves the recipient from having to pay tax on a supply made by a small supplier, who is not required to be registered for GST purposes. Note that this relief does not extend to a taxable sale of real property or to a supply made by a person that is required to be registered but has failed to do so.

Specific recipients of taxable supplies are not required to pay the GST or the HST.

Suppliers must be careful when not charging tax. They should always verify the purchaser is not required to pay tax. In addition, the supplier should retain documentation to support the non-collection of tax from the recipient (such as a photocopy including the name and number on an Indian status card).

Over the years there have been various organizations opposed to paying tax. These organizations may provide their members with sales tax exemption cards. Suppliers are advised to watch out for these fake exemption cards. If a supplier accepts a fake exemption card and does not charge tax on a taxable supply, the supplier is still required to remit the tax on the supply to the CRA. If false exemptions are discovered during an audit, the supplier will be assessed for not collecting tax.

Barter transactions are an exchange of property or services where money is not exchanged. The transactions may be subject to GST/HST. Module 3 discussed barter transactions in more detail.

In the sharing economy, individuals and businesses share their assets with others for a price. Arrangements are generally made using online platforms through a third party or using a website or an application (app).

Some examples of the types of online platforms considered to be part of the sharing economy include Airbnb, VRBO, Uber, and Lyft.

Provincial governments are generally not required to pay the GST/HST. However, specific provinces and one territory have agreed to pay the GST/HST. This is referred to as the Pay and Rebate Model since they get a 100% rebate for all tax paid. Refer to section 122 of the Excise *Tax Act* (ETA).

A list of government agencies and departments of eligible for this exception is available from the CRA.

A supplier must obtain and retain a certificate or other approved documentation to support the tax-free status of the government department or agency. The certificate wording should be similar to the following:

This is to certify that the property and/or services ordered/purchased hereby are being purchased by

_____ [Name of Provincial/Territorial Government Department or Institution], and are not subject to GST/HST.

_____
Signature of Authorized Official

An exemption certificate is not required if payment is made using a provincial government credit card, provided an invoice is issued to an exempt provincial government. Also, employees of a provincial

government can pay for hotels and meals, in the course of official provincial business, using their government credit card, as long as the invoice is issued to the government. In contrast, employees are not relieved from GST/HST when paying with a personal credit card or cash. The provincial government exemption does not extend to purchases made by employees in their own name.

Non-taxable sales to provincial governments are treated like zero-rated supplies.

Paragraph 122(a) of the ETA states Part IX (sections 122–363.2, the GST/HST legislation) applies to the federal government. Thus, federal government departments and agencies are required to pay GST/HST on their purchases and collect GST/HST on their taxable supplies (except where the supply is exempt or zero-rated).

Refer to GST/HST Memorandum Series Chapter 18.2, *Provincial Governments* updated February 2020.

First Nation people (referred to in the legislation as status Indians) who live in Canada are required to pay the GST/HST on the same basis as other people in Canada. There is a limited exception from charging tax under Section 87 of the *Indian Act*. Section 87 allows no tax to be charged for "personal property of an Indian or a band situated on a reserve".

This provision is not extended to First Nation people who have contracted out of the *Indian Act*, trusts or Indian owned corporations. The definition of status Indian excludes Inuit, Métis and other aboriginal people. Therefore, they are not eligible for this exemption. Over the next few years, there are other First Nations people that will be opting out of the *Indian Act*.

Sales made on a reserve to persons who do not have a status Indian card are subject to GST or HST.

There are very specific conditions that must be met before tax is not charged on a taxable supply. For example, goods must be delivered to a reserve (supplier must retain proof of delivery) and/or services must be performed on a reserve.

In the case of a transportation service, both the origin and destination must be on a reserve. The supplier must retain documentation to support the sale was made to a status Indian, Indian band or band-empowered entity.

Indian bands and band-empowered entities may be entitled to point-of-sale tax relief on partial or off-reserve purchases for services related to band management activities.

Supplies to status Indians are effectively treated as zero-rated and considered to be made in the course of commercial activities so input tax credits may be claimed to recover the tax paid on expenses related to providing these types of supplies.

To avoid exposures in this area, ensure the documentation requirements and reporting requirements have been met. Also, retain supporting documentation as evidence in case of an audit.

As part of land claims settlements and arrangements for self-government, various First Nations bands have agreed to be subject to the GST/HST.

- Maa-nulth First Nations - May 1, 2019

See Notice 238, *First Nations Having a Self-Government Agreement Ending Indian Act Tax Relief - Determining Tax Relief for Indian Members Who Are Not Citizens* and GST/HST Notice 143, *Application of GST/FNGST to Yukon First Nations and their Members* for more information.

Many tribes are entering into agreements with the Government of Canada to impose the First Nations Goods and Services Tax, such as

- Cayoose Creek - February 13, 2018

- Skowkale First Nation - January 31, 2020
- Toquaht Nation - February 18, 2020
- Ucluelet First Nation - March 10, 2020
- Uchucklesaht Tribe - March 17, 2020
- Huu-ay-aht First Nations - March 27, 2020
- Mosquito, Grizzly Bear's Head, Lean Man First Nation - June 23, 2020

Also refer to these publications

- B-039 GST/HST Administrative Policy - *Application of the GST/HST to Indians*
- GI-114, Application of *GST/HST to Indian Individuals*
- GI-115, Application of *GST/HST to Indian Bands and Band-empowered Entities*
- GI-116, *Information for Businesses Located on a Reserve*
- GI-117, *Information for Off-reserve Businesses that Sell Goods or Provide Services to Indians, Indian Bands, or Band-empowered Entities*
- GI-127, *Documentary Evidence when Making Tax-Relieved Sales to Indians and Indian Bands over the Telephone, Internet and Other Electronic Means*

This is a special POS rebate available to Ontario First Nation (status Indians) purchasers mirroring the old Ontario retail sales tax exemption before Ontario joined the HST provinces on July 1, 2010.

Effective September 1, 2010, the rebate allows suppliers to provide a POS rebate of 8% (the Ontario provincial component of the HST) at the time of sale to eligible Ontario First Nation purchasers for off-reserve purchases. Therefore, only the 5% federal portion of the GST is charged to qualifying purchasers.

To be eligible, the purchaser must show a valid Certificate of Indian Status card or provide written certification for band or band Council purchases and the supplier must retain this information for audit purposes.

Reference material

- GI-106, *Ontario First Nations Point-of-Sale Relief - Reporting Requirements for GST/HST Registrant Suppliers*

The supplier must report the POS rebate on two forms as illustrated above. Form GST189 may be filed electronically.

See GST/HST Info Sheet GI-106, *Ontario First Nations Point-of-Sale Relief - Reporting Requirements for GST/HST Registrant Suppliers* for more detailed information.

The legislation provides a variety of point-of-sale (POS) rebates for the provincial portion the HST. The next few slides will provide a list of the point-of-sale rebates by HST province

The POS rebates allows a supplier to only charge and collect the 5% GST on taxable supplies (e.g., on books) to the purchaser by crediting back the provincial portion of the HST Therefore, only the 5% GST (or 5% federal portion of the HST) is applicable. The provincial portion of the HST is not actually tracked anywhere by the supplier, it is simply not charged (with the exception of the Ontario status Indian POS exemption previously discussed).

Additional information

- GI-063, *Point-of-Sale Rebate on Children's Goods*
- GI-065, *Harmonized Sales Tax for Ontario and British Columbia – Point-of-Sale Rebate on Books*
- GI-169, *Point-of-Sale Rebate on Heating Oil*
- RTG:197, *Point-of-Sale Rebates for Prince Edward Island HST*

All HST provinces provide a rebate on printed books. Books meeting all the POS conditions are subject to only 5% GST throughout Canada.

RTG:197, *Point-of-Sale Rebates for Prince Edward Island HST*

GST/HST Info Sheet GI-063, *Point-of-Sale Rebate on Children's Goods*

In Ontario, the provincial government is offering a rebate of 8% on electricity charges but this rebate is not a federal point-of-sale rebate. Therefore, a full 13% ITC recovery is available for the HST paid and large businesses were subject to the temporary reporting restrictions.

Additional information

- GI-060, *Harmonized Sales Tax for Ontario – Point-of-Sale Rebate on Newspapers*
- GI-063, *Point-of-Sale Rebate on Children's Goods*
- GI-064, *Harmonized Sales Tax for Ontario – Point-of-Sale Rebate on Prepared Food and Beverages*
- GI-065, *Harmonized Sales Tax for Ontario and British Columbia – Point-of-Sale Rebate on Books*

Module 3
Collecting GST/HST

1. COLLECTING GST/HST

The collection of GST/HST contains numerous issues and misinterpretation may result in significant audit exposures.

In simple terms, the legislation requires the person making a taxable supply in Canada to calculate and collect the GST/HST from the recipient of the supply (the purchaser) and remit the tax as a tax collecting agent for the federal government (subsection 221(1)). However, before this can be done, the supplier must determine if it is required to be a GST registrant.

If they are required to be a registrant, then they must answer numerous questions (see below) to determine if the supply being provided is subject to tax

- Is GST registration required?
- Is the supply taxable, zero-rated or exempt?
- How is the supply being made? By sale, lease or license?
- Is the supply made in Canada?
- Where did the supply occur in Canada?
- What is the consideration for the supply?
- Is the recipient required to pay tax?
- Are there any special rules that must be considered for this type of supply?

GST/HST Memoranda Series chapter 2, *Registration*, provides the following publications to determine if a person is required to register, how to register and de-register:

- *Required registration*
- *Small suppliers*
- *Voluntary registration*
- *Branches and divisions*
- *Non-resident registration*

- *Security requirements for non-residents*
- Cancellation of Registration
- Guide RC4027, *Doing Business in Canada - GST/HST Information for Non-Residents*
- Guide RC4022, *General Information for GST/HST Registrants*
- RC4103, GST/HST *Information for Suppliers of Publications*

1.1. REGISTRATION REQUIREMENTS

Slides discussed in this section: Slide 3-2 to 3-4

The requirement to register for GST/HST is broad and intended to capture most entities carrying on taxable activities in Canada. Subsection 240(1) requires every person who makes a taxable supply in Canada in the course of a commercial activity to be registered except where

a) the person is a small supplier as defined in section 148
b) the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business, or
c) the person is a non-resident person who does not 'carry on' a business in Canada.

Generally, an entity or person with worldwide taxable sales exceeding $30,000 (include all sales subject to GST and HST, zero-rated sales and sales from associated persons) over any four or fewer consecutive calendar quarters must register (public service body - the limit is generally $50,000). Refer to: 240(1), 148 and 148.1 of the ETA. A person whose taxable sales are under the threshold is considered a small supplier and may not be required to register.

A registrant who operates different businesses or has different branches or locations may elect to open separate reporting accounts for each business or branch by completing form GST10. Each business or branch will have the same GST number but with a different suffix, such as, RT0001, RT0002, etc.

CRA has the authority to assign a person a GST registration number if that person fails to register after being notified by the CRA. Failure to register is a very common audit exposure.

The CRA website contains a questionnaire to determine when registration is required.

Any person, who is engaged in a commercial activity in Canada, may register voluntarily under subsection 240(3) even though not required to do so.

An individual whose only commercial activity is making a taxable sale of real property, such as the building of a residential house, is generally not required to register but may voluntarily do so to claim ITCs (although most tax paid is recoverable by way of a rebate if the individual is not registered).

Generally, a Canadian small supplier has the option to register or not for GST purposes. When an individual voluntarily registers when not entitled to do so, as in the case of an individual earning employment income or a GST registered individual operating a business without reasonable expectation of profit (e.g., hobby farm). Under audit, their registration will be terminated and all ITCs claimed will be reversed. The tax collected will be labelled tax collected in error, since they are deemed not to have made a taxable supply. Refer to Policy Statement P-176, *Application of Profit Test To Carrying on a Business*.

Registration is optional for a small supplier. A person qualifies as a small supplier under section 148, and therefore not required to register if the consideration from taxable supplies made by the person or by an associate of the person is less than $30,000 annually. A common misconception is that the $30,000 threshold is performed annually but is should be performed monthly and each calendar quarter to determine if taxable supplies exceed the threshold.

Once the $30,000 threshold is exceeded, the person ceases to be a small supplier is required to register and account for tax on its supplies, generally commencing the first day of the second month after the threshold is exceeded; they are given a one-month grace period.

Small supplier status is also lost if the $30,000 threshold is exceeded in any one calendar quarter. In this case, the person is deemed to be registered and must account for tax on every taxable supply made immediately after the threshold is exceeded, including the transaction that caused the threshold to be exceeded.

Once a person is registered or required to be registered, the person cannot deregister under subsection 240(3) until it can prove that registration is not required. Therefore, the person must cease all commercial activity or must satisfy the four-calendar quarter threshold test again.

The threshold calculation excludes sales of capital property and goodwill on the sale of a business. Also excluded from the calculation are supplies deemed to be made by other persons, such as supplies of TPP deemed under subsection 177(1) to be made by an agent, or supplies deemed to be made by the operator of a JV where a valid election under section 273 is in place. However, as noted in Module 2, royalties collected and paid to artists by a prescribed collecting body are still included in the determination of the artist's threshold calculation, notwithstanding that s.177(2) otherwise deems the collecting body to be the supplier.

Many taxpayers fail to include in the $30,000 registration threshold the following:

- Zero-rated supplies – these are still taxable supplies, just taxed a 0%
- Taxable supplies made outside of Canada – this could include taxable or zero-rated supplies
- Taxable supplies made by Associated persons – this includes supplies made in or outside of Canada by these associated persons

3.2. Registration Requirements – Associated

Slides discussed in this section: Slide 3-5 to 3-7

The terms closely related and associated do not have the same meaning for GST purposes.

Section 128 - Closely related corporations - common corporate ownership and voting control at least 90% of voting shares (both value and number)

Section 127 - Associated persons - corporation and non-corporations look at voting shares to determine control (more than 50%)

A person is associated with a partnership if the total income share of the partnership to which the person and other persons associated with that person are entitled is more than one-half of the partnership's total profits.

Similarly, a person is associated with a trust if the total value of the interest held by that person, and other persons associated with that person, exceeds one-half of the total value of all interests in the trust.

Under the *Income Tax Act* s.256(1.2)(f)(ii) for purposes of determining whether two corporations are controlled by the same person, each beneficiary of a discretionary trust is deemed to own all shares of a corporation held by the trust. Thus, a corporation (Corp A) controlled by an individual, who is also a beneficiary of a discretionary trust which controls another corporation (Corp B), is deemed to be associated with Corp B since the individual is deemed to control both corporations.

Unlike the income tax association rules described above, there is no provision which deems discretionary beneficiaries to control the trust interests; however, two corporations which are associated for income tax purposes because of this rule are still associated for GST purposes. A person other than a corporation is associated with a particular corporation if the corporation is controlled by that person or by an associated group of persons of which that person is a member. Finally, if two persons are associated with a third person, those two persons are also associated with each other.

It is important to note that individuals cannot be associated with one another, only with corporations, partnerships and trusts. For example, whiles spouse 1and spouse 2 are clearly related, they are not associated. Accordingly, taxable supplies made by the husband are not included in the threshold calculation of spouse 2. Refer to section 127 for more information.

The definition of associated persons is different for GST and income tax purposes. CRA publication *Excise and GST/HST News* No. 65 (Summer 2007) stated:

- The concept of associated persons deals with control between persons. For example, an individual and a corporation are associated with each other for GST/HST purposes if the corporation is controlled by the individual. Also, a person and a partnership are associated with each other if the total of the shares of the profits of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total profits of the partnership or would be more than half of the total profits of the partnership if it had profits. Corporations are associated with each other for GST/HST purposes if they meet the conditions for association set out under the *Income Tax Act*. Moreover, persons are associated with each other if each of them is associated with the same third person. The provisions for determining if persons are associated for GST/HST purposes are set out in section 127 of the *Excise Tax Act*. Associated persons must combine their total taxable supplies to determine whether they are small suppliers and how often they must file GST/HST returns.

Section 127 provides that a particular corporation is associated with another corporation for GST purposes if they are considered to be associated pursuant to subsections 256(1) to (6) of the *Income Tax Act*. Section 127 extends the concept of association to include persons other than corporations.

Registration Requirement – examples

Situation 1

- Canco is subsidiary of NR Co, a non-resident
- Taxable supplies made outside Canada by NR Co exceed $8,000,000 annually
- Canco is required to be registered as soon as it makes a $1.00 taxable supply in Canada

Situation 2

- Ms. A owns 60% of Holdco; other 40% held by family members
- Holdco owns 100% of Opco
- Opco is registered with more than $2,000,000 in sales
- Opco pays $24,000 management fee to Holdco
- Holdco pays $24,000 ‘consulting’ fee to Mrs. A; not treated as salary
- Holdco is required to be registered and must account for GST/HST on the consulting fee
- Ms. A is also required to be registered and must account for GST/HST on the consulting fee
- Question: Is consulting fee actually employment income? The facts of each case must be considered.

3.3. Registration Requirements – Obstacles

Slides discussed in this section: Slide 3-8

A person who fails to register when required will be required to remit the tax it should have collected and will be subject to interest and penalties on the amounts remitted late. In addition, failure to register on a timely basis may result in the loss of some input tax credits.

When a person registers when not entitled to do so, as in the case of an individual earning employment income or without reasonable expectation of profit, they will have collected tax in error, since they are deemed not to have made a taxable supply.

Under section 222 any amounts that a registrant collects as tax are deemed to be held in trust for the Crown, whether or not the tax was properly chargeable to the registrant's customers. This also applies to persons registered that should not have been registered.

Consequently, any tax a person collects whether registered or not must be remitted to CRA or refunded directly to the customer.

In addition, if a person registers in error and they have claimed input tax credits to which they are not entitled. The ITCs will have to be repaid with interest and penalty charges.

3.4. Registration Requirements – Voluntary

Slides discussed in this section: Slide 3-9

Any person, who is engaged in a commercial activity Canada, may register voluntarily under subsection 240(3). This may be beneficial to some persons so that they may recover the GST/HST on inputs to their business activities by claiming input tax credits.

Remember, there is no separate registration for HST because HST is a component of the GST as previously discussed.

The sale of real property by an individual for over $30,000 does not require the person to become a registrant. However, the non-registrant may be required to collect tax on the taxable sale of real property (refer to section 6.1) and remit the amount to the CRA.

Québec is not a harmonized province. To register for QST a person must register with the Québec government.

A small supplier defined in section 148 is not required to register but may do so voluntarily.

Additional information to consider for a small supplier becoming a registrant:

- GST Memorandum 400-3-1, *Becoming and Ceasing to Be a Registrant*
- Policy Statement P-018R, *Limitation on ITC Eligibility where Person becomes a Registrant*
- Policy Statement P-019R, *Eligibility for ITC on start-up costs - Eligible capital property*
- Policy Statement P-176R, *Application of Profit Test to Carrying on a Business (Revised Sept 30, 1998)*
- Income Tax Interpretation IT-143, *Bulletin Meaning of Eligible Capital Expenditure*

A non-resident not carrying on business in Canada may not register for GST for the sole purpose of recovering GST/HST paid on taxable purchases Additional information is contained in Guide RC4027, *Doing Business in Canada, - GST/HST Information for Non-Residents* and Policy Statement P-051, *Carrying on Business in Canada.*

3.5. Registration Requirements – Other Issues

Slides discussed in this section: Slide 3-10 to 3-11

Registering for GST automatically registers a person for HST. Registration issues can become problematic when determining who must register and when to register for some persons but for most, it is a relatively straightforward exercise.

Remember, there is no separate registration for HST because HST is a component of the GST as previously discussed.

Québec is not a harmonized province. To register for QST, a person must register with the Québec government.

QST registration rules effective in 2019 refer to slide 3-11.

On March 27, 2018, Québec presented its annual budget which proposed to expand the mandatory Québec Sales Tax (QST) registration rules for non-residents of Québec (even those with no presence in the province) making supplies (over $30,000 over a 12-month period) to Québec unregistered consumers. Registration will be required for: Operators of specified digital platforms must register and collect the QST on the taxable supplies, other than zero-rated supplies, of incorporeal movable property or services made in Québec to specified Québec consumers through their digital platform by suppliers located outside Québec, from the effective date of registration.

Non-residents of Canada that make supplies of incorporeal moveable property (IPP) and services to specified Québec consumers - effective January 1, 2019

Residents of Canada that reside outside Québec and make supplies of corporeal moveable property (goods), IPP and services to specified Québec consumers are required to register as of September 1, 2019.

Registration is mandatory for suppliers that meet the following conditions:

- They do not have a permanent establishment in Québec, nor do they carry on a business in Québec.
- They are not currently registered for the QST.
- They make more than $30,000 per year in supplies of goods, IPP and services to non-QST registered consumers in Québec.

Movable property that does not have a physical existence and money. Examples include patents, copyrights, trademarks, antivirus software downloads and E-newspaper subscription downloads. Note that the terms used to refer to property for QST purposes are different from those used for GST purposes. Incorporeal movable property is the equivalent of intangible personal property.

The Quebec website has an online questionnaire to assist is determining if registration is required.

It is important to note that new registrants required to register under the new specified registration system will not be eligible for input tax refunds.

Go to the QC website for more information regarding the new simplified registration program for non-residents of Quebec. Immediately, you may want to calculate your sales to Quebec over the past 12-months to determine if your taxable sales in Quebec are over the $30,000. If the taxable sales exceed $30,000 then the new registration rules may affect your organization.

3.6. QST Registration for Non-Residents

Slides discussed in this section: Slide 3-12 to 3-14

Effective July 1, 2021, non-resident vendors and non-resident distribution platform operators providing taxable digital products and services to consumers in Canada will generally be required to register for and collect GST/HST under a new simplified GST/HST regime, where specific conditions are satisfied.

Under the new rules a specified non-resident vendor, who is defined as a non-resident of Canada person that does not make supplies in the course of a business carried on in Canada and is not currently a GST/HST registrant, is required to register if their actual, or reasonably expected, supplies/sales of taxable services or intangible personal property to

Canadian customers exceed $30,000 annually (excluding sales made through a GST/HST registered distribution platform operator).

This sales tax process has been simplified with online registration, return filing and remittances.

Non-resident vendors would determine the tax rate for their taxable supplies based on the consumer's place of residence (using the customer's billing address, SIM card, IP Address, and/ or banking information among other indicators).

Distribution platform operators are required to collect and remit the GST/HST on sales by non-registered vendors to Canadian purchasers. Safe Harbour rules were introduced to protect platform operators by (i) imposing joint and several or sole liability for the collection and remittance of applicable GST/HST on the third-party operator and non-resident vendor where the non-resident has provided false information, and (ii) limiting the liability of the platform operator where the platform operator reasonably relied on information provided by the non-resident vendor.

Non-resident vendors and non-resident distribution platform operators registered under the simplified regime are required to charge GST/HST on taxable supplies made to Specified Canadian Recipients (recipients who are not registered, or have not provided proof of registration, under the normal GST/HST regime and who's usual place of residence is Canada).

Non-resident vendors and non-resident distribution platform operators registered under the simplified regime cannot claim input tax credits (ITCs) to recover GST/HST paid on their business inputs. However, they are allowed to deduct amounts in respect of uncollectible bad debts from the GST/HST they are required to remit for a reporting period.

If they wish to claim ITCs to recover GST/HST paid on their business inputs, they may register under the regular GST/HST regime.

The CRA stated it would take a practical approach to compliance and exercise discretion in administering these new registration rules over a 12-month transition period, starting from the July 1, 2021, effective date.

Fulfillment warehouses such as Amazon (distribution platform operators) will also be affected by these new rules. GST/HST registered fulfillment warehouses/operators are deemed to be the supplier in respect of any sales on their platform by non-registered vendors. Therefore, they would be responsible for collecting and remitting GST/HST on the final price for those goods.

An annual information return is required to be completed within six months after the end of the calendar year to notify the CRA that they are a fulfillment warehouses/operator and to disclose information on the third-party vendors using their platforms.

These new non-resident registration rules apply to suppliers of goods shipped from outside Canada directly to a purchaser in Canada (e.g. sent by mail or courier directly) where the supplier's annual sales exceed $30,000.

Online platforms which arrange for short-term residential accommodations (i.e. Airbnb rentals for less than one-month and more than $20/day) are required to collect GST/HST for supplies of accommodations in Canada. Therefore, GST/HST would apply to all supplies of short-term accommodations supplied through a digital platform and either the platform or the underlying supplier of the accommodation would be required to collect and remit the tax.

Accommodation platform operators would be able to register, collect and remit GST/HST under the simplified regime.

Accommodation platform operators would also be required to maintain records and file an annual information return with the CRA by six months after the end of the calendar year.

3.7. Collecting GST/HST

Slides discussed in this section: Slide 3-15 to 3-21

Under section 221 of the Act registrants are required to collect and remit tax as an agent of the Crown on all taxable supplies made in Canada (the location where a supply is deemed to be made will be discussed in Modules 4 and 5, the place-of-supply rules). Generally, the GST/HST is calculated on the total purchase price (the term consideration will be discussed later in this module) but it can be calculated on something else in certain instances, such as transactions between related parties.

It is important to remember that the supplier is required to report the tax collected on its GST return when the tax becomes due (subsection 152(1) provides when a tax liability is created) even if tax has not been collected from the purchaser/recipient.

A registrant is defined to include anyone who is registered and anyone who is required to register.

In addition, section 224 allows the supplier to sue the recipient for the uncollected tax. The Act defines a supply to be the provision of property or service in any manner, including sale, transfer, barter, exchange, license, rental, lease, gift or disposition. Therefore, most transfers of property or services provided are considered to be a taxable supply unless there is a provision to zero-rate or exempt the supply.

The determination of when a supply is created is very important.

Barter transactions and trade-ins are a typical exposure area because registrants tend to overlook the GST/HST consequences on sales where no cash is exchanged or the purchase price value is netted against the trade-in.

Currently, the sharing economy is becoming very popular, and it is very easy to forget that the sales tax rules still apply. Such as with a barter transaction when money is not exchanged (example on next page), ride sharing where mandatory GST registration rules apply and house sharing/exchanging for short periods of time may trigger GST registration.

A barter transaction is where 2 persons agree to exchange property or services.

An example may be a social media influencer who advertises or promotes products on social media and in turn, receives free perks (clothes, merchandise, trips, etc.), commissions, subscriptions, etc. The influencer is providing a promotional service, which is a taxable service. The influencer will be required to monitor the value of goods or services received for providing this service to determine if GST registration is required. If the influencer is a GST registrant the services provided will be taxable.

If the exchanged supplies include taxable property or services, the consideration (or purchase price) used to calculate the GST/HST is based on the fair market value of each of the taxable supplies exchanged.

It is important for a person (if a GST registrant) to calculate and remit the GST /HST hypothetically collected on the exchange of the taxable supplies to the CRA.

In addition, the purchasers (of each transaction) may be eligible to claim an input tax credit to recover the GST/HST charged by the other person in the barter transaction. Consequently, it is recommended that both persons involved in the barter transaction prepare and exchange invoices to support the payment of the GST/HST. Ensure the invoices meet the required documentation requirements.

There are special rules for barter transaction networks to exchanges taxable supplies tax-free. Under subsection 181.3(5), it is only the consideration given for the *barter unit* that is deemed to be nil. Refer to section 181.3 for more information. To be eligible for the application of section 181.3, a barter exchange network must apply under subsection 181.3(2) for a designation by the CRA.

Refer to IT-490, *Barter Transactions*.

The value for consideration is generally defined to include any amount that is payable for a supply by operation of law. It may be the form of money, a thing, a service, forbearance in the exercise of a right or anything else of value which induces the supplier to make the supply. Duty paid value of imports includes the duty-paid value which includes the value for customs purposes + customs duty, if applicable + additional duties, if applicable + countervailing or anti- dumping duties, if applicable + excise tax, if applicable.

Consideration is the amount payable for a supply. It may include separate charges related to the supply which may be separately itemized on an invoice or billed at a later date. Examples of consideration include mandatory service charges billed by a restaurant, a Covid-19 surcharge or property tax billed to a commercial tenant.

The value of the consideration may be affected by discounts and price adjustments.

Most invoice discounts reduce the amount of the consideration subject to tax. Where a supplier agrees to adjust the price after the fact (other than for an early payment discount), it is the supplier's option whether to adjust the original tax charged (although CRA expects the supplier to adjust tax where the recipient is not entitled to ITC) according to section 232.

This option to ignore the tax impact of a price adjustment simplifies the accounting associated with volume rebates or promotional allowances which may include a mixture of taxable and zero-rated supplies. It also recognizes that most recipients of such discounts/rebates are probably entitled to full ITC in any event.

Where the supplier agrees to adjust the tax amount, it is required to issue a credit note (or have the recipient issue a debit note) containing all the prescribed information required on the original invoice. The tax applied to the discount adjustment must be the same GST/HST rate used on the original invoice.

The supplier generally has up to four years in which to adjust the price, but only 2 years if the wrong amount of tax was originally charged (See GST New Memoranda Series chapter 12-2, Refund, Adjustment or Credit of the GST/HST under Section 232 of the *Excise Tax Act* for more information).

The calculation of GST/HST is based on the value of consideration multiplied by prescribed tax rate. Subsection 153(1) requires the value of consideration for supply the expressed as money. As such, the consideration for supply can be the purchase price, fair market value or the duty paid value.
Consideration includes any amount that is payable for a supply by operation of law as per the definition in subsection 123(1). The amount of consideration may be derived from the value of money, services or things exchanged. Therefore, consideration can be calculated on the fair market value of goods exchanged in a barter transaction.

Consideration given to one person by another without receiving anything in return (no supply is received), is not included in the definition of consideration (such as, a donation of goods or a non-mandatory tip given to a server of a meal at a restaurant).

A deposit paid to a supplier is security to ensure a purchaser performs its obligations under a contract, is not consideration as there is no supply. The deposit, which is simply money, will only attract tax when is applied against a taxable supply (subsection 168(9)).

A wholly voluntary payment made by one person to another person without receiving anything in return is not consideration. For example, a tip given to a server at a restaurant.

Determining when a payment is consideration and when it is not, can often be difficult to determine. During an audit, an auditor will refer to contracts, review how the transaction is accounted for and consider other documentation to make this determination.

When a GST/HST liability is created is a very important concept to understand. These rules are also the underlying basis of transitional rules when tax rate changes occur.

Under subsection 168(1), tax is payable by the recipient on a taxable supply on the earlier of the date the consideration for the supply is paid or becomes due. The date is very important since this is the date that determines the reporting period a registrant is required to remit the full amount of tax.

Taxes due on the sale of real property on the earlier of the date ownership or possession is transferred under an agreement for purchase and sale.

At the same point in time, subsection 221(1) requires a registered supplier to collect tax (except in the situation where the purchaser of real property is required self-assess). For example, a supplier sells televisions (taxable goods for GST purposes) to a customer. When the supplier either issues an invoice or receives payment – whichever occurs first, it is that instant in time that triggers the GST/HST liability.

Payment is a relatively straightforward term to understand.

It is when a supplier receives payment or receives property or services if involved in a barter transaction.

Consideration due is not related to a customer's payment terms. Subsections 152(1) and 168(1) require registrants to report all tax collectible even if the tax has not yet been paid by the purchaser.

Special rules exist for leases, vending machine sales, instalment payments, rental property, construction contracts and conditional sales. For example, where goods are not paid for and no invoice is produced, tax is deemed to be payable the end of the month following the month in which ownership or possession of the goods is transferred to the purchaser.

The timing of tax on services is determined solely under the general rule, therefore, tax is payable on the earlier of the date of the invoice or the date paid.

The following publications discuss the creation and timing of the tax liability. These publications are the CRA's administrative policy for interpreting the ETA.

- GST Memorandum 300-6-1, *Time of Liability General Rule*
- GST Memorandum 300-6-2, *Payments*
- GST Memorandum 300-6-3, *Invoices*
- GST Memorandum 300-6-4, *Agreements in Writing*
- GST Memorandum 300-6-9, *Consignment Sales*
- GST Memorandum 300-6-10, *Coin-Operated Devices*
- GST Memorandum 300-6-11, *Override Rule*
- GST Memorandum 300-6-15, *Value not Ascertainable*

- GST Memorandum 300-7, *Value of Supply*
- GST Memorandum 300-7-10, *Foreign Currency*

3.8. Illustration

Slides discussed in this section: Slide 3-22 to 3-25

3.8. Summary

Slides discussed in this section: Slide 3-26

To summarize what we have learned up to this point

A registrant is required to charge and collect tax on all taxable supplies made in Canada

A recipient or purchaser of a taxable supply is required to pay the GST or the HST

The supplier is required to calculate the tax which is based on the value (consideration or purchase price) of the supply multiplied by the prescribed tax rate

The supplier of a taxable supply is required to collect the tax and remit the tax as a tax collection agent of the Crown.

The next Module will describe the place of supply rules used to determine the tax rate

Module 4
Other Collection Issues

4. SALE OF COMMERCIAL REAL PROPERTY

Slides discussed in this section: Slide 4-1

Supplies of real property made in Canada by way of sale are generally taxable under section 165 of the ETA unless specifically exempted. This rule also applies to small suppliers.

Under the reverse collection rule, the GST registered purchaser is required to self- assess the GST or HST liability in its GST return on line 205. This is a mandatory reporting requirement.

If you the purchaser is not registered for GST/HST and you are purchasing the real property from a non-resident who is not required to charge tax, use form GST62, *Goods and Services Tax / Harmonized Sales Tax (GST/HST) Return (Non- Personalized)* to self-assess the tax.

If the purchaser (whether a GST registrant or not) does not use the real property more than 50% in its commercial activities then it must report the GST/HST payable using form GST60, *GST/HST Return for Acquisition of Real Property or Carbon Emission Allowances*. This form must be filed by the end of the calendar month following the month of the purchase.

If the purchaser is eligible to claim an input tax credit, it may claim it on line 106 of its GST return. Remember, to use the apportionment rules to determine the percent of use in commercial activities. Refer to CRA publications: Guide RC4022, *General Information for GST/HST Registrants,* GST New Memoranda chapter 8-1*, General Eligibility Rules and* GST New Memoranda chapter 8-2, *General Restrictions and Limitations* for more information.

In situations where the supplier collects the GST or HST in error, the purchaser is still required to self-assess the GST or HST and claim the corresponding input tax credit. Tax incorrectly paid to the supplier is referred to as *tax paid in error*. Therefore, the purchaser should ask the supplier for refund of the tax paid or the purchaser should file a rebate claim with the CRA for the tax paid in err*or within 2-years* of the tax becoming payable (if you are requesting a rebate make sure you can prove you self-assessed the GST/HST). For rebates claims use form GST189, *General Application for Rebate of GST/HST*.

Refer to the GST New Memoranda Series chapter 19, *Real Property* for more *information.*

4.1 Purchase of Carbon Allowances

Slides discussed in this section: Slide 4-2

The legislation for the self-assessing on carbon allowances was first introduced on June 27, 2018 and enacted in December 2018.

- Subsection 123(1) defines an "emission allowance" as something that meets all of the following conditions: It is one of the following: an allowance, or a credit, or an instrument.

Department of Finance news release dated June 27, 2018, announced the purchaser must self-assess the GST/HST on emission allowances:

- Government Adjusts GST/HST Rules for Carbon Emission Allowances
- A fair and efficient tax system is an important part of the Government's commitment to help the middle class and to build an economy that works for everyone. To ensure fairness and efficiency, ongoing adjustments are needed to ensure the rules are functioning effectively.
- The Department of Finance Canada released draft technical changes to the Goods and Services Tax/Harmonized Sales Tax (GST/HST) rules for sales of carbon emission allowances, such as those traded in cap-and-trade systems. When the GST/HST is payable on such a sale, the purchaser of carbon emission allowances is responsible for self-assessing the tax amount. This replaces the previous requirement whereby the seller of the allowance collected the tax from the purchaser and remitted it to the Canada Revenue Agency (CRA). This brings the Canadian rules in line with how these allowances are treated internationally.
- These technical changes will generally only apply to the secondary market of carbon pollution pricing instruments in which businesses with spare allowances typically sell their surplus to companies that have exceeded their emission targets. Purchasers will report the GST/HST amount to be paid in their tax return and, if entitled, claim an input tax credit in the same tax return. This does not affect the imposition of the GST/HST, but rather how it is accounted for and remitted to the CRA.
- The initial supply of emission allowances by a Canadian government entity generally remains exempt from the GST/HST.

4.2 Inter-Company Transactions

Slides discussed in this section: Slide 4-3

Many organizations with related parties are under the incorrect assumption transactions between related parties are not subject to GST or HST. Taxable transactions between separate legal entities are subject to the general application and collection rules.

In order to ease the sales tax accounting burden and eliminate cash flow consequences arising from intercompany transactions, subsection 156(2) permits certain closely related Canadian corporations or partnerships to elect to treat taxable supplies between them as if they were made for no consideration. The election can only be made if specific conditions have been met.

As of January 1, 2015, the election form must be filed with the CRA (Form RC4616, Election *or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration for GST/HST Purposes* and effective April 1, 2015, it can be filed electronically through *My Business Account*). To circumvent unwanted audit exposures related the non-collection of tax on inter-

Company transactions, it is now very important to verify the election has been filed with the CRA.

The legislation defines who is a closely related corporation (partnership). Basically, two corporations are closely related if one of the corporations owns at least 90% of the voting shares of the other. Two corporations owned by an individual (or a group of corporations and individuals) do not qualify for the election.

In addition, the 2016 Federal Budget proposed to add a requirement due to the complexity of some corporate structures so that a parent corporation or partnership of a subsidiary corporation must hold and control at least 90% of the votes in respect of every corporate matter of the subsidiary corporation (with limited exceptions) in order to be considered to be closely related. The election does not apply to sales of real property or to supplies that are not made for use or supply exclusively in commercial activities. Refer to GST/HST Notice No 303, *Changes to closely related test*.

Refer to GST/HST the CRA website and New Memoranda series Chapter 14.5, *Election for nil consideration* (this publication has not been updated for the 2015 and 2016 revisions) for more information. On July 22, 2016, the CRA released Policy Paper P-255, *Late-filed Section 156 Elections and Revocations* which provides guidelines on how to request a late filed election.

A related group that includes a listed financial institution may make a section 150 election to treat supplies of property or service as exempt supplies. This election does not apply to imported supplies. Refer to CRA form to be completed and filed with CRA, GST27*, Election or Revocation of an Election to Deem Certain Supplies to be Financial Services*.

4.3 Drop Shipments

Slides discussed in this section: Slide 4-4 to 4-6

Drop shipment scenarios are common in Canada and can result in a significant exposure if the mechanics of these rules is not clearly understood.

A drop shipment can occur when a Canadian supplier sells goods to a non-registrant who in turn sells the goods to a Canadian recipient and the non-resident asks the Canadian supplier to deliver the goods to the Canadian recipient.

If the non-resident is registered for GST, the normal place-of-supply and collection rules apply.

If the non-resident is not registered for GST, exposures can be created for the Canadian supplier. These rules will be reviewed the following slides.

On July 22, 2016, the Department of Finance proposed changes to the drop shipment rules (most of these changes are effective July 22, 2016, and others were implemented on December 15, 2017). Please refer to the new rules described in *Department of Finance Releases Legislative and Regulatory Proposals Relating to the Goods and Services Tax/Harmonized Sales Tax.*

On May 17, 2019, the Department of Finance announced a proposed extension of the drop shipment rules to relieve certain services supplied to unregistered non-residents in respect of fungible properties. Fungible means the properties must be essentially identical to each other, or be of the same class or kind, be of the same measure and state, and be interchangeable for commercial purposes. For example, a one kilogram of pure gold bar is considered to be the same as one kilogram of gold coins. Excluded from this provision are services in relation to continuous transmission commodities (e.g., electricity, crude oil, natural gas or other goods transferred by means of a wire, pipeline or other conduit). It also does not include relief for storage services for goods.

The above illustrates a Canadian supplier selling goods to an unregistered non-resident of Canada who resells the goods and requests the goods to be delivered directly to the non-residents customer in Canada.

The Canadian supplier is required to charge GST or HST based on the place-of-supply rules. However, in this situation, under subsection 179(1), the supplier must calculate the GST/HST on the fair market value of the goods (not the selling price to the non-resident).

Subsection 179(1) is an anti-avoidance provision that effectively requires the Canadian supplier to collect tax from the non-resident based on the fair market value of the goods supplied by the non-resident to the non-resident's Canadian customer.

Since the unregistered non-resident is not able to recover the tax paid by claiming input tax credit, under section 180 (flow through provision, see Module 9, section 9.7), the Canadian recipient of the supply if a GST registrant may be able to recover the tax paid, if the goods are used in its commercial activities and if specified conditions are met. For additional information, refer to GST/HST Memoranda Series chapter *3.3.1, Drop-Shipments*.

The charging of tax can be avoided if the conditions provided in subsection 179(2) are met.

Basically subsection 179(2) will apply when a GST registered supplier sells goods to an unregistered non-resident (who is not a consumer of the goods) where there is an agreement between the supplier and the unregistered non-resident for the sale of taxable goods that are supplied by way of sale in Canada. The Canadian supplier causes physical possession of the goods to be transferred at a place in Canada to a 3rd party, who is registered for GST purposes and the 3rd party provides the Canadian supplier with a drop shipment certificate. Drop-shipment certificates should be obtained and retained for review by an auditor during an audit.

When these conditions are met the sale of goods to the non-resident is deemed to be made outside Canada and therefore not subject to tax. It is recommended that the Canadian supplier also obtain a written verification from the non-resident that they are indeed both a non-resident and not registered for GST purposes. Refer to Appendix B in GST New Memoranda Series chapter 4-5-1, *Exports - Determining Residence Status*.

A copy of the sample drop shipment certificate is provided in GST New Memoranda Series chapter *3-3-1, Drop-Shipments.* In addition, this publication contains examples and additional information on the application of the drop-shipment rules.

On July 22, 2016, the Department of Finance changed the drop shipment rules. The rule discussed above has not changed. Under the new rules, where the unregistered non-resident instructs the goods to be delivered to a GST registered person other than the consignee (other GST registered third party who acquires possession of the goods), the consignee or the other person may issue an Owner's Certificate to the Canadian supplier to deem the sale to be made outside Canada. Please refer to the new rules described in *Department of Finance Releases Legislative and Regulatory Proposals Relating to the Goods and Services Tax/Harmonized Sales Tax* released on July 22, 2016.

Module 5
GST Place of Supply Rules

5. PLACE OF SUPPLY RULES

Slides discussed in this section: Slide 5-1

There are numerous considerations that must be well thought-out when calculating GST/HST. This is why a question in respect of the GST/HST is never simple because there are so many aspects to be considered.

Since the legislation contains so many rules and exceptions to rules, characterization of facts is essential. A great illustration of characterization comes when dealing with the GST and HST place-of-supply rules. The rules make a distinction between property supplied by way of sale and property supplied by way of lease, license, or similar arrangement.

5.1 GST Place of Supply Rules

Slides discussed in this section: Slide 5-2 to 5-3

The ETA imposes GST or HST on taxable supplies of property and services made in Canada under Division II.

The place-of-supply rules in sections 142 - 144 determine whether a supply is made in Canada and thus subject to GST or HST.

If a supply is made in Canada, then a completely different set of place-of-supply rules, provided in ETA Schedule IX and the New Harmonized Value-added Tax System Regulations, determine what province the supply is deemed to be made in, and thus what rate of tax applies (e.g., 5% in Alberta, 13% in Ontario). Consequently, persons doing business in Canada must use both the GST and HST place-of-supply rules.

If a supply is made outside Canada under sections 142 - 144 neither GST nor HST applies.

There are different place-of-supply rules for the different types of supplies.
Understanding the characterization or nature of the supply is important when using the place-of-supply rules. A supply can be a

- straightforward supply of a single property or service, e.g., sale of a book

- multiple supply – e.g., sale of equipment with a separate supply of an extended warranty (two supplies made at the same time)
- single supply - where two or more components are so interconnected and intertwined that they cannot realistically be provided separately. This is considered a "single supply", taking on the characteristics of the dominant element for GST/HST purposes.
- incidental supply – e.g., sale of cereal with a free toy in the box (the toy is supplied as a bonus for buying the cereal and is ignored because it is incidental to the main supply) - see section 138.

See CRA publications for more information on the different types of supplies. Policy Statement P-077R, Single and Multiple Supplies

- **Policy Statement P-159R-1, *Meaning of the Phrase Reasonably Regarded as Incidental- (Revised first in April 1998 second on March 8, 1999)***
- **Policy Statement P-160R, *Meaning of the Phrase -Where a Particular Property or Service is Supplied Together with any Other Property or Service***
- **GST Memorandum 300-6-6, *Combined Supplies***

5.2 Tangible Personal Property

Slides discussed in this section: Slide 5-4

The GST place-of-supply rules for tangible personal property or goods supplied by way of sale requires the determination of where the goods are delivered or made available to the recipient of the supply.

The location where the supplier makes the goods available to the recipient or purchaser is based on the actual delivery or the constructive delivery (for example, supplier gives goods to a third-party free carrier for delivery to the purchaser) of the goods.

The key to determining the place of supply is to understand the legal delivery terms contained in a sales agreement or contract. If no written contract is available, the actions of the supplier will be considered and along with the provincial *Sale of Goods Act*.

Inco terms can be very helpful when determining the location of legal delivery when included in a contract.

For further reference, see GST New Memoranda Series chapter 3-3, *Place of Supply*, it contains numerous examples.

5.3 Tangible Personal Property – lease or licence

Slides discussed in this section: Slide 5-5

The GST place-of-supply rules for tangible personal property or goods supplied by way of lease or license requires the determination of where the goods are delivered or made available to the recipient of the supply. This rule is the same as the rule for goods supplied by way of sale but because this is a lease or license this determination is only made once. The determination of whether the supply is made in or outside Canada does not change until the contract matures or is terminated

5.4 Intangible Property

Slides discussed in this section: Slide 5-6

The GST place-of-supply rule for intangible personal property is very complex and requires the supplier to determine where the intangible personal property can be used. If the intangible personal property can be used in whole or in part in Canada then at least 5% GST will apply.

Examples of the tangible personal property includes intellectual property, rights to use software, memberships, goodwill, contractual rights, trademarks, admissions, vacation club memberships, purchasing of points, etc.

There may be a zero-rating provision available for non-residents or unregistered non-residents of Canada.

If the intangible personal property is related to real property, such as, a membership fee to use real property located in Canada, the place of supply will be where the real property is situated.

Where the intangible personal property is related to tangible personal property (or goods), where the goods are situated will be the place of supply.

If the intangible personal property is related to a service, then where the service is performed in Canada will be the place of supply.

For further reference, see GST New Memoranda Series chapter 4-5-3, *Exports - Services and Intellectual Property*, GST/HST Technical Information Bulletin B-090, *Electronic commerce* and GST/HST Info Sheet GI-034, *Exports of Intangible Personal Property.*

5.5 Real Property

Slides discussed in this section: Slide 5-7

The GST place-of-supply rule for real property is based on where the real property is situated.

If the real property is situated in Canada, then at least 5% GST will apply.

For further reference, see Policy Statement P-169R, *Meaning of in Respect of Real Property Situated in Canada and in Respect of Tangible Personal Property that Situated in Canada at Time the Service is Performed, for Purposes*.

5.6 Services

Slides discussed in this section: Slide 5-8

The GST place of supply rule for services is an all or nothing test determined on where the service is performed. Therefore, if part of the service is performed in Canada, then at least 5% GST will apply.

Special rules exist for non-residents of Canada that may zero-rate the service.

For further reference see GST New Memoranda Series chapter 4-5-3, *Exports - Services and Intellectual Property*, GST/HST Technical Information Bulletin B-090, *GST/HST,* Electronic commerce, GST New Memoranda Series chapter 3-4, *Residence* and GST New Memoranda Series chapter 4-5-1, *Exports - Determining Residence Status*.

5.7 Outside of Canada

Slides discussed in this section: Slide 5-9

These rules override the GST place-of-supply rules previously discussed.

Section 143 provides that taxable supplies made by non-residents of Canada that are not carrying on business in Canada, are not a GST registrant and are not supplying admissions or prescribed property are deemed to be made outside Canada.

Section 144 allows supplies sold before being released from Canada Customs to be deemed sold outside Canada and not subject to GST.

Module 6
GST Place of Supply Rules

6. HST PLACE OF SUPPLY

Slides discussed in this section: Slide 6-1 to 6-2

The HST place-of-supply rules are different from the GST place-of-supply rules and these rules apply to all supplies made in Canada regardless of whether a person has a permanent establishment in a non-HST province.

Once a supply is determined to be made in Canada, the HST place-of-supply rules must be used to determine the province of supply. Since the HST provinces have different tax rates, a supplier must determine the province of supply in order to charge and collect the correct tax rate under subsection 221(1).

The HST place-of-supply rules contained in GST/HST Technical Information Bulletin B-103, *Place of Supply Rules for Determining Whether a Supply is Made in a Province* are effective May 1st, 2010.

The following slides contain tables that have been over-simplified for illustration purposes. When making a sales tax rate determination, please refer to the *Excise Tax Act*, the Regulations and CRA publications for assistance. Further assistance may be required from the CRA rulings department or a sales tax specialist.

The HST place-of-supply rules are very complex and require the supplier to pay particular consideration to the characterization, nature and relationships of the supply.

Remember, all GST registrants are automatically registered for HST and are required to collect the HST according to the HST place-of-supply rules.

A misunderstanding these rules can lead to a significant audit exposure if a lower tax rate is charged and remitted.

6.1 Tangible Personal Property

Slides discussed in this section: Slide 6-9 to 6-9

The HST place-of-supply rule for goods supplied by way of sale requires the supplier to determine where the goods are delivered or made available to the recipient (purchaser) of the supply.

This is a destination-based tax but there is a deeming provision that will be discussed later.

The below example is from TIB B103, Example 4:

- A company in New Brunswick sells a good to a company in Ontario. The Ontario company picks up the good at the New Brunswick company's premises using its own truck and then transports it to Ontario. Legal delivery of the good occurs at the New Brunswick company's premises.
- The good is delivered to the purchaser in New Brunswick. Therefore, the supply is made in New Brunswick and is subject to HST at a rate of 15%.

The HST place-of-supply rule for goods supplied by way of rental, lease, license or similar arrangement for 3 months or less requires the supplier to determine where the goods are delivered or made available to the recipient (purchaser) of the supply.

This is a destination-based tax but there is a deeming provision that will be discussed later.

The below example is from TIB B103, Example 20:

- A consumer rents and takes possession of a vehicle in British Columbia to use while travelling on a trip throughout Canada. The rental agreement is for a one-month period.
- The lease of the vehicle to the consumer is made in British Columbia and is subject to GST at a rate of 5% because the consumer is leasing the vehicle for a period that does not exceed three months and takes delivery of the vehicle in British Columbia.

The HST place-of-supply rule for goods supplied by way of rental, lease, license or similar arrangement for more than 3 months requires the supplier to determine where the goods are delivered or made available to the recipient (purchaser) of the supply at the beginning of each lease interval (payment period) or the mutually agreed ordinary location of the goods. The CRA does not generally require a supplier to track the movement of the goods after the initial delivery of the goods to the recipient. The special rule for specified motor vehicles uses the province where the vehicle is registered to be the province of supply.

The below example is from TIB B103, Example 19:

- Pursuant to a five-year lease, a national leasing company based in Quebec leases equipment to a construction company operating in Ontario. The monthly lease payments are due and paid at the beginning of each month. The construction company takes delivery of the equipment in Ontario. The equipment is usually stored and maintained at the construction company's facilities in Ontario. However, at the end of the last month of the third year of the lease, the construction company expands its operations to Quebec and, with the agreement of the Quebec Company, the equipment is relocated to the company's new facilities in Quebec.

- The supply of the leased equipment is made in Canada since the construction company is given possession of the equipment in Ontario. A supply of the equipment is deemed to be made for each lease interval. In this case, the supplies of the equipment to which the lease payments for the first three years relate are made in Ontario and are subject to HST at a rate of 13% since the equipment is ordinarily located in Ontario during that time. The supplies of the equipment to which the lease payments relate for the remaining two years are made in Quebec and subject to GST at a rate of 5% since the equipment is ordinarily located in Quebec during that time.

The GST place-of-supply rules focused on legal delivery of goods to determine if the supply is made inside or outside Canada.

In contrast, the HST place-of-supply rules focuses on legal delivery plus a special deemed delivery rule that is used for HST purposes only. The HST deeming provision is an override rules that basically states if the supplier ships property to a province specified in a contract for carriage that province will be the province of supply. For example, if the supplier negotiates a freight carrier contract to have goods delivered to the recipient of a taxable supply the province where the goods are delivered is considered to be the province of supply (it does not matter who actually pays the freight carrier - it is based on who negotiates the freight contract – 'retain a common carrier').

The below example is from TIB B103, Example 2:

- Supplier in Alberta sells a good to a purchaser in Ontario. Based on the terms of delivery in the agreement for the supply, legal delivery of the good to the purchaser occurs in Alberta. However, the supplier also hires a common carrier to ship the good to the purchaser in Ontario. Ontario is specified as the destination in the contract for carriage of the good. The carrier invoices the supplier for the freight service. The supplier pays the amount to the carrier and invoices the purchaser for the amount.
- Although legal delivery of the good to the purchaser occurs in Alberta, delivery of the good to the purchaser occurs in Ontario because the supplier ships the good to Ontario. Therefore, the supply of the good is made in Ontario and is subject to HST at a rate of 13%.

For further reference, see GST New Memoranda Series chapter 3-3, *Place of supply*, it contains numerous examples.

The HST place-of-supply rules are contained in Technical Information Bulletin B-103, *Place of Supply Rules for Determining Whether a Supply is Made in a Province.*

The special rule for specified motor vehicles supplied other than by way of sale for more than 3 months is based on the province where the vehicle is registered to be the province of supply. See GST/HST Info Sheet, GI-119, Harmonized Sales Tax-New Place of Supply Rule For Sales Of Specified Motor Vehicles.

The below example is from TIB B103, Example 21:

- A company in Ontario enters into a lease agreement to supply a railway car to a company in Quebec. The Quebec Company takes delivery of the railway car in Ontario.
- The supply of the railway car throughout the period covered by the lease is made in Ontario because the railway car is delivered to the recipient in Ontario. As a result, the lease payments for the railway car are subject to HST at a rate of 13%.
- The rule for rolling stock supplied other than by way of sale for more than 3 months is based on where the goods are first delivered or made available to the recipient (purchaser).

The below example is from TIB B103, Example 18:

- A car leasing company located in British Columbia leases a vehicle to a person pursuant to a four-year lease requiring monthly lease payments. The lessee picks the vehicle up at the dealer's location in British Columbia and is required to register the vehicle in British Columbia at that time. At the end of the fourth month of the first year of the lease, the lessee moves to Ontario and is required to register the vehicle in Ontario.
- The supplies of the vehicle that relate to each of the lease payments for the first four months of the lease are made in British Columbia and are subject to GST at a rate of 5% because the vehicle is required to be registered in British Columbia at the beginning of those lease intervals. The supplies of the vehicle that relate to each of the lease payments for the remaining months of the lease are made in Ontario and are subject to HST at a rate of 13% because the vehicle is required to be registered in Ontario at the beginning of those lease intervals.

6.2 Services

Slides discussed in this section: Slide 6-10 to 6-22

The HST place-of-supply rules for services were revised effective May 1st, 2010.

There are rules for specific services in all other services fall under the general service rule. Audit exposures in this area are due to suppliers using the general service rule and ignoring the specific service rules. These rules require the supplier or practitioner helping a client to understand the true nature and characterization of the service being provided.

There is a special deeming rule for services that are never performed. The tax rate is based on the rules as if the service had been performed.

For ongoing services, each billing period is considered to be a separate supply and each supply may be subject to HST at a different rate to the extent that the service may be deemed made in a different province based on the place-of-supply rules for services.

If there is no specific rule for a particular service then the general service rule may be used to determine the province of supply and tax rate.

Depending on the circumstances these are 3 rules that must be applied in sequence to determine the province of supply.

The first rule asks the supplier if it in the ordinary course of doing business does the supplier obtains the address or addresses from the recipient (purchaser). If the address is obtained the above decision tree can be used in if no address is obtained then the supplier must go to Rule 2.

Slide 6-13 has been over-simplified for illustration purposes

These examples illustrate how to use the billing address to determine the province of supply.

Here is an example is from TIB B103, Example 84:

- A supplier in Quebec agrees to design the Web site of a company in Ontario. The service is performed entirely in Quebec. The only business address of the recipient obtained by the supplier in the ordinary course of its business is in Ontario.
- Since the only business address of the recipient in Canada that the supplier obtains in the ordinary course of its business is in Ontario, the supply of the service is made in Ontario and subject to HST at a rate of 13%.
- In this example, if the purchaser were situated in British Columbia, the supply would be deemed to be made in British Columbia. Therefore, the supply would be subject to 5% GST.

For example, #2 described in the above slide, when determining the province of supply, the address that is most closely connected with the supply which is basically the address of the recipient who hired the supplier or the physical location of the person who entered into the agreement with the supplier.

Refer to Technical Information Bulletin B103 for more information.

Since no Canadian address was obtained, Rule 2 requires the supplier to determine the province where the service is performed.

If more than 50% of the service is performed in a non-HST province, then 5% GST will apply. Otherwise, the supplier must determine in what HST province or HST provinces the greatest portion of the service was performed. Where the service is performed equally in more than one HST province Rule 3 will determine the tax rate.

When the service provider does not obtain an address of its clients. This may include obtaining an address outside Canada. If the service is supplied provided to a non-resident of Canada, the supply may be zero-rated.

This example is from TIB B103, Example 97:

An online service provider located in Ontario that specializes in the provision of document editing and translation services, provides these services to clients electronically over the Internet. A client in Saskatchewan sends its original documents by e-mail to the e-mail address of the service provider who returns the resulting edited or translated documents to the client's e-mail address. The services are performed by employees of the service provider from its business address in Ontario.

The Canadian element of the service is performed primarily in the participating provinces and the participating province in which the greatest proportion of the Canadian element of the service is performed is Ontario. Therefore, the supply is made in Ontario and subject to HST at a rate of 13%.

If the service or a portion of the service is performed in Canada, then the whole supply is deemed to be made inside of Canada. For example, if a Canadian company agrees to provide consulting services to a US company and the consultant travels to the US to do most of the research and report but spends some time doing final report while back in Ontario, Canada, then this service is deemed to be made in Canada. Since the supplier did not obtain a Canadian billing address, the place of supply will be the province where the work is primarily performed which in this example would be Ontario. Therefore, 13% HST may apply, if there is no zero- rating provision available.

Specific services that are provided in Canada may not be subject to GST or HST if they qualify for the zero-rating provision (to be discussed in Module 7).

If the purchaser is a non-resident and provided an address outside Canada, the tax rate is based on this rule. Also, consider there may be a zero-rating provision available if the conditions are met. See Module 8, Export Issues for more information.

Slide 6-15 has been over-simplified for illustration purposes.

This example illustrates how to determine the province of supply when no billing address is obtained.

Since the supplier does not obtain the customers billing address in Canada, the place of supply is based on where the service is provided.

This example illustrates how to determine the province of supply when no billing address is obtained, and the service is performed in more than one Canadian province.

This example illustrates how to determine the province of supply when no billing address is obtained and the service is performed in more than one Canadian province. The place of supply is the province with the highest HST rate.

In situations where the service is performed equally in more than one HST province in the HST provinces have the same tax rate; the province of supply is the province that is most closely connected with the supply or the province closest in proximity to the supplier.

Slide 6-19 has been over-simplified for illustration purposes.
This example illustrates how to determine the province of supply when no billing address is obtained, and the service is performed equally in two or more HST provinces with the same HST rate.

Suppliers and practitioners must overcome the temptation to use the general service rule when a particular service has a specific rule. In some situations, the tax rate outcome may be the same but in other situations using the wrong rule to determine the province of supply may lead to a significant audit exposure.

Technical Information Bulletin B103 uses the term *primarily*. Primarily means more than 50%. The CRA does not provide any guidance when deciding where a service performed. Therefore, the supplier must establish its own method to determine where a service is primarily performed, and that this method must be fair, reasonable and used consistently for other service determinations. It is recommended to retain a written copy of this determination to provide to an auditor if questioned during an audit.

Similarly, a supplier may have to measure the *greatest portion* of where a service is performed. It is recommended to ensure this method is fair, reasonable and used consistently along with a written copy of calculations and assumptions retained for audit purposes.

Technical Information Bulletin B103 contains numerous examples that should be studied and reviewed when determining the place of supply for services.

The managing of addresses seems to be a problem for some suppliers. A home or business address generally is not a PO box or a data processing address (location or address where cheques are sent for processing).

When determining the province of supply, the address that is most closely connected with the supply which is basically the address of the recipient who hired the supplier or who entered into the agreement with the supplier. Refer to Technical Information Bulletin B103 for more information.

6.3 Intangible Personal Property

Slides discussed in this section: Slide 6-23 to 6-30

The HST place-of-supply rule for intangible personal property again is based on a business or home address in some circumstances. This rule is further complicated by the fact that some intangible personal property may be related to goods, services, real property or passenger transportation.

This rule is based on where the intangible personal property can be used and this determination can only be made based on a review of the contract or agreement.

Since each situation is different review all the facts surrounding the use of the intangible personal property before making a determination for the province of supply.

These rules are very complex, and they must be applied in sequence from rule 1 to rule 4.

Rule 1 requires the supplier to determine where the intangible personal property can be used.

If the intangible personal property can *only* be used in a non-HST province the 5% GST rate will apply. If the intangible personal property can be used in an HST province or provinces then the supplier must go to Rule 2.

For example, the purchase of a right to use a logo 100% in Alberta.

Slide 6-25 has been over-simplified for illustration purposes.

Rule 2 requires the supplier to determine in which HST province or HST provinces the intangible personal property can be used. Notice the rule is based on *primary use*, which means more than 50%.

If the intangible personal property can be used primarily in one HST province, that province will be deemed the province of supply. For example, the purchase of a right to use a logo 100% in Ontario.

If the intangible personal property cannot be used primarily in one HST province Rule 2.2.A must be used. For example, the purchase of a right to use a logo 50% in Ontario and 50% in Newfoundland.

If the intangible personal property can used without restriction throughout Canada, the supplier must use Rule 3.

Slide 6-26 has been over-simplified for illustration purposes.

Rule 2.2.A requires the consideration for the intangible personal property to be $300 or less.

If the consideration for the supply is $300 or less and the supply of the intangible personal property is made at a specified location of the supplier (for example, at a permanent establishment or vending machine of the supplier) and the intangible personal property can be used in that province, the specified location will be deemed the province of supply.

For example, the purchase of a $250 membership at a gym in Prince Edward Island and the membership allows the member to use gyms in Prince Edward Island only (rule 2.2.A).

For example, the purchase of a $250 membership online and the membership allows the member to use gyms across the Maritime Provinces. The province of supply is purchaser's billing address (rule 2.3). If no billing address is obtained supplier must use highest HST rate.

If the intangible personal property is not acquired at a specific location and the supplier obtains a Canadian address of the recipient and intangible personal property can be used in that province indicated by the address that address will determine the deemed province of supply. If no address is obtained the supplier must use Rule 2.4.

If the consideration is greater than $300 the supplier must use Rule 2.3. Notice that if the supplier does not obtain an address from a recipient, then the supplier is required to charge the highest HST rate, which is currently 15% (Rule 2.4).

Slide 6-27 has been over-simplified for illustration purposes.

Rule 3 is used where the intangible personal property can be used equally in and outside the HST provinces.

If the consideration is $300 or less, the specified location of the supplier is deemed the province of supply where the intangible personal property can be used in that province.

Where the consideration is greater than $300, the supplier must use Rule 2.3. Rule 2.3 states the supplier is required to use the Canadian address of the recipient as the deemed province of supply as long as the intangible personal property can be used in the province. If no address is obtained, the province of supply is deemed the province that has the highest HST rate.

For example, the purchase of a $500 Canadian gym membership online. The province of supply is purchaser's billing address Rule 2.3.

Slide 6-28 has been over-simplified for illustration purposes.

Rule 3.1.A is used when the intangible personal property can be used across Canada without restriction. If the intangible personal property is sold for $300 or less and at a specified location of the supplier where the intangible personal property can be used, the province of supply will be deemed the province where the recipient purchased the intangible personal property.

If the intangible personal property was not purchased a specified location of the supplier, then the supplier must use the address of the recipient as the deemed province of supply. Where no address is obtained, the place of supply will be deemed the province with highest HST rate.

For example, the purchase of a $250 membership at a gym in Prince Edward Island and the membership allows the member to use gyms across Canada (rule 2.1.A). Province of supply is physical location of supplier.

For example, the purchase of a $250 membership online and the membership allows the member to use gyms across Canada (rule 2.1.A). Province of supply is based on the purchasers billing address.

If the sale is provided to a non-resident of Canada, there may be a zero-rating provision available. Refer to Module 8 for more information.

Slide 6-29 has been over-simplified for illustration purposes.

The final rule is where the province of supply is in two HST provinces with same HST. The province of supply is deemed the province where the business address of the supplier that is most closely connected with the supply is located or the province that is closest in proximity to the address of the supplier.

For example, the purchase of a $250 membership online and the membership allows the member to use gyms across Canada (rule 2.1.A). If the supplier does not obtain the purchaser's billing address, the province of supply is the province with the highest HST rate.

Slide 6-30 has been over-simplified for illustration purposes.

6.4 Real Property

Slides discussed in this section: Slide 6-31

A supply of real property by way of sale, lease, license or similar arrangement is deemed to be made in the province where the property is situated.

If the real property is situated in more than one province, each portion of real property is deemed to be a separate supply.

Slide 6-31 has been over-simplified for illustration purposes.

6.5 Illustration

Slides discussed in this section: Slide 6-32 to 6-33

Module 7
Import Issues

7.1. Imported Goods

-Slides discussed in this section: Slide 7-1 to 7-4

Division III, sections 212 – 216 impose tax on goods imported into Canada.

The importation of goods into Canada is administered by the Canada Border Services Agency (also known as Canada Customs). GST/HST is collected at the same time as customs duties and excise taxes when goods clear customs. It is the importer of record that pays the tax at the border

Imported goods are classified as either commercial or non-commercial goods because the tax treatment can be different.

Commercial goods imported into Canada are subject to 5% GST. There are exceptions for goods that are considered to be non-taxable importations. Where commercial goods are brought into an HST province for use or consumption where the recipient cannot claim a full input tax credit, self-assessment of the provincial part of the HST may be required.

Non-commercial goods imported into Canada are generally subject to the 5% GST plus the provincial portion of the HST if the person bringing the goods into Canada is a resident of an HST province.

Imported goods may be subject to tax twice – once upon importation under Division III and again on the supply in Canada under Division II. This can occur where a Canadian purchaser acts as the importer of record but does not take delivery from a non-resident GST/HST registrant supplier until after the goods have been released by Customs in Canada.

A GST/HST registrant using the goods in its commercial activity is eligible to recover both the Division II and III GST/HST by way of an ITC where the recipient of the supply can meet the documentation requirements; the double taxation can be fully or partially recovered by claiming an input tax credit. Double taxation can be problematic for those who cannot recover the full amount of tax paid. Therefore, the shipping terms should be revised to ensure tax will only apply once.

Non-taxable importations are listed in ETA Schedule VII, the *Non-Taxable Imported Goods (GST/HST) Regulations, the Value of Imported Goods (GST/HST) Regulations* (does not make goods non-taxable but does reduce the tax that applies), and various remission orders, such as the *Commercial Samples Remission Order*.

Under the United States-Mexico-Canada Agreement (USMCA), the de minimus threshold for goods imported into Canada has increased from $20 to $150 before attracting **both** Canadian duties and taxes effective July 1, 2020. Imported goods valued below the $40 threshold will enter Canada duty and tax-free. Imported goods valued above $40 will attract GST/HST only and will be duty free. Imported goods valued above $150 will attract both GST/HST and duty.

Refer to new section 7.01: Goods (other than goods prescribed for the purposes of section 7) transported by courier

a) that are imported from Mexico or the United States, as determined in accordance with the Customs Tariff; and
b) that have a value, determined under paragraph 215(1)(a) of the Act, of not more than $40.

For more information see Customs Notice 20-18, *Implementation of the Canada-United States-Mexico Agreement (CUSMA) De Minimis Thresholds with Respect to Customs Duties and Taxes for Courier Imports.*
Goods that are temporarily imported into Canada the full or partial tax relief.

Additional information is found in the *Temporary Importation Regulations* under the Customs Act.

Some relief is available for persons unable to recover the GST/HST paid at the border on imported goods if certain conditions have been met. Most of these claims must be made within 2 years.

There is a special rebate available to unregistered non-residents selling goods that become installed to real property in Canada. The installer providing the installation services hired by the unregistered non-resident can give the non-resident a full GST/HST rebate of the tax. See subsection 252.41 for more information.

7.2. Imported Non-Goods

Slides discussed in this section: Slide 7-5

Services and intangible personal are not taxed at the border but are taxed under Division IV (sections 217 – 220). Taxable services and intangible personal property that are acquired outside Canada and used in Canada by a person that is unable to fully claim an input tax credit or the supply acquired is not an input to the recipient's commercial activities is required to self-assess the GST/HST. Therefore, this rule does not require small suppliers to self-assess on business related imports.

Generally, there are very few self-assessment rules for GST or HST purposes. However, there are some situations that require a purchaser to self-assess. Such as, when a purchaser is not able to fully recover the GST/HST paid on taxable inputs to its commercial activities and the purchaser acquires taxable supplies without incurring a tax liability.

The most common self-assessment requirement occurs when a person imports services or intangible personal property from an unregistered non-resident for consumption or use in Canada.

The self-assessment rules basically require persons that cannot claim full input tax credits or are not using the supplies in their commercial activities to self-assess. Generally, these rules apply to supplies imported for personal use or for use by a person involved in exempt activities.
Section 217 lists the conditions that must be met for the self-assessment rules to apply. You will notice that the recipient of the supply must generally be resident in Canada but does not have to be a GST registrant.

As previously mentioned, a small supplier in Canada is not required to self-assess tax on imported services and intangible personal property used in its commercial activities.

When the drop-shipment rules have been used to allow a supply of goods to be made without tax in Canada under Division IV, the purchaser may be subject to the self- assessment rules if the goods are not used exclusively in the course of its commercial activities.

Generally, it is public service bodies that are subject to the self-assessment rules;

- Charities
- Non-Profit Organization
- MUSH (Municipalities, Universities (and public colleges), School
- Authorities, and Hospital Authorities)

The self-assessment rules for financial institutions are under section 218.1

7.2. Imported Services and Intangibles

Slides discussed in this section: Slide 7-6

Services and intangible personal are not taxed at the border but are taxed under Division IV. Imported taxable services and intangible personal property used in Canada by a person unable to fully claim input tax credits is required to self-assess the GST/HST.

Refer to Form GST59, *GST/HST Return for Imported Taxable Supplies, Qualifying Consideration, and Internal and External Charges* for a list of the situations that require self-assessment.

If a person is required to self-assess (under sections 218 or 218.1(1) and 219) it is required to report the tax as follows

- A GST registrant self-assesses on line 405 of its GST return and
- Non-registrant may use Form *GST59, GST/HST Return for Imported Taxable Supplies, Qualifying Consideration, and Internal and External Charges.*

For non-registrants, the tax is due by the end of the month following the calendar month in which the amount for the services or IPP was paid or became payable.

An unregistered small supplier is not required to self-assess tax under these rules when acquiring taxable services or IPP that are used in its commercial activities from an unregistered non-resident supplier.

Additional information is in GST/HST Policy Statement P-125, *Input Tax Credit Entitlement for Tax on Imported Goods and Guide RC4022, General Information for GST/HST Registrants.*

7.3. Imports into HST Provinces

Slides discussed in this section: Slide 7-7

Due to a variety of HST rates, self-assessment rules are also imposed when property or services are purchased in one GST or HST province and consumed in an HST province with a higher HST rate.

These rules only apply where the recipient of the supply cannot recover the full amount of GST/HST paid as an input tax, in other words, the GST registered recipient is not exclusively involved in commercial activities. Small suppliers are required to self-assess.

Frequent audit assessments arise when public services bodies do not self-assess the provincial portion of the HST related to the purchase of imported supplies.

Further information is available in GST Notice 266, Self-assessing the provincial part of HST on property and services brought into a participating province provides and it provides the below example to illustrate the self-assessment rules as it impacts businesses and consumers. Example 1 from GST Notice 266 provides the following example:

- An individual who lives in Ontario and is visiting Manitoba purchases a laptop computer for $500 (which is also equal to its fair market value) for personal use from a Manitoba retailer. The individual picks up the computer at the retailer's premises in Manitoba and is required to pay GST at a rate of 5% in respect of the purchase to the supplier.
- When the individual returns to Ontario with the computer with the intent to use the computer in Ontario, the tax becomes payable by the individual on the purchase price. The amount of tax that the individual is required to self-assess is equal to $40 (8% (8% Ontario provincial portion of HST less 0% Manitoba provincial portion of HST) × $500 (value of the consideration for the supply)).

7.4. Who Pays Tax

Slides discussed in this section: Slide 7-8 to 7-9

Under Division IV.1, self-assessment of the provincial part of the HST is required where property and services are brought into an HST province for consumption, use or supply in an HST province after having been supplied in a province with a lower provincial rate (if the province in which the supply is made is a non-participating province, the provincial rate is equal to 0%), or where taxable personal property is imported from outside of Canada into a participating province with a provincial rate that is higher than the provincial rate that was payable in respect of the importation of the property.

Subsection 220.09(1) requires a person to report and pay tax that becomes payable under Division IV.1. How the tax is paid will depend on whether the person is a GST/HST registrant or not.

If the person is a registrant, the person must pay the tax by the due date of the registrant's regular GST/HST return for the reporting period in which the tax became payable and must report the tax in that return by its due date.

In any other case, by the last day of the month following the calendar month in which the tax became payable, the person must pay the tax to the Receiver General and file a return in respect of the tax in prescribed form containing prescribed information. The prescribed return in this case is Form GST489, *Return for Self-Assessment of the Provincial Part of Harmonized Sales Tax (HST)*.

There are two exceptions to these rules.

- Subsection 220.09(2) states if the tax is payable by a person under Division IV.1 in respect of a specified motor vehicle then that person is required to register under the motor vehicle registration laws of a participating province, the person must pay the tax to the provincial licensing authority in its capacity as agent of Her Majesty in right of Canada on the earlier of the day on which the vehicle is registered by the person and the day by which the vehicle is required to be registered by the

person. The person in this case is not required to report the tax in a return nor file a return in respect of the tax.

- Subsection 220.09(4) states if an amount of tax that a person is required to pay under subsection 220.09(1) is nil, the person is not required to file a return under Division IV.1.

7.5. Section 180 Flow Through Provisions

Slides discussed in this section: Slide 7-10

This provision is available for organizations that are entitled to an input tax credit, rebate for charity exports (s 260) or a public service body rebate.

Section 180 allows the unregistered non-resident to flow the tax paid to a Canadian resident where an unregistered non-resident pays the GST/HST on the importation or the supply of the goods:

- That the non-resident supplies to the registrant and delivers, or makes available, in Canada to the registrant before they are used in Canada by or on behalf of the non- resident, or
- The physical possession of which the non-resident causes to be transferred in Canada to the registrant for the registrant to make a taxable supply of a commercial service in respect of the goods to the non-resident.

To claim the tax recovery Form B3, Canada Customs Coding Form showing that the tax was paid on the importation of the goods, or any supporting documentation issued by the supplier to the non-resident showing the tax paid in respect of the supply must be obtained and retained by the Canadian recipient.

Refer to this publication for more detailed information of the application of the flow through provision, GST New Memoranda Series chapter 3-3-1, *Drop-Shipments and Policy P-125R, Input Tax Credit Entitlement for Tax on Imported Goods*.

Module 8
Export Issues

8. Exports

Slides discussed in this section: Slide 8-1

Direct exports or supplies made outside Canada under subsection 142(2) are outside the scope of the GST/HST since they are not taxed by subsection 165(1) or 165 (2). For example, a supplier delivers goods to its customer outside Canada. No GST or HST is applicable because the supply is not made in Canada. Refer to the GST place-of-supply rules in Module 4.

There are special zero-rating provisions for taxable supplies made in Canada where the goods or services or intangible personal property is used or consumed outside Canada. For example, the legal delivery of goods occurs in Canadian and the supplier arranges to have the goods shipped to a location outside Canada may be zero-rated under the export provisions.

The zero-rating provisions should not be confused with the GST place-of-supply rules that deem a supply to be made outside Canada and not subject to GST or HST.

Significant exposures for non-collection of tax can arise if these rules are misunderstood.

8.1. Exports – Goods

Slides discussed in this section: Slide 8-2 to 8-3

The zero-rating provisions are comprised of a set of rules that must be followed by the supplier before a supply can be zero-rated.

The zero-rating rules are used for supplies made in Canada where the property or service is for use and consumption outside Canada.

The exposure of zero-rating (non-collection of tax) a supply rests with the supplier. Therefore, it is important for the supplier to ensure all the conditions have been met before zero-rating a supply.

Refer GST New Memoranda Series chapter 4-5-2, Exports, *Tangible Personal Property* for more information.

The sale of goods may qualify as a zero-rated export if the goods are made available to the recipient in Canada (for example, picked up by a courier or freight carrier in Canada (142(1)(a))) but are shipped to a destination outside Canada as specified in a freight contract, or delivered to a common carrier retained by the supplier on behalf of the recipient to ship the goods outside Canada, or couriered or mailed directly out of Canada by the supplier (Schedule VI, Part V, section 12).

During an audit, the auditor may ask to review the freight invoices and customs documents to support the goods were exported.

Where the supplier ships goods to a location within Canada where the recipient is going to export the goods, the onus is on the supplier to obtain proof from the recipient that the goods were exported. GST New Memoranda Series chapter 4-5-2 contains additional information with respect to the documentation requirements to verify export.

There have been instances over recent years where suppliers delivered goods to Canadian airports and border crossings to their customers believing the export rules were met but during an audit examination it was determined the goods were not considered to be delivered outside Canada.

Escape Trailer Industries Inc. v. R., 2019 GSTC 3 - supplier drove trailer to Canada-US border and possession of trailer was transferred to the purchaser in Canada. Zero-rating conditions were not met.

Montecristo Jewellers Inc. v. R., 2019 TCC 31 - Montecristo arranged to deliver the goods to the customer as they were leaving Canada at the Airport. Montecristo took the jewelry and the customer to the Canada Customs to get a record that the goods were being exported (Form E15 confirmed export). The Customs form was not sufficient proof on its own to prove export for GST/HST. The Act requires the goods be physically delivered by the supplier outside Canada or sent by mail or courier outside Canada to a purchaser.

8.2. Exports – Services

Slides discussed in this section: Slide 8-4 to 8-5

Some services may be zero-rated under Schedule VI, Part V. The zero-rating provisions are very specific depending on the situation. You must look at all the facts of a particular situation and review the rules and conditions to determine if a supply can be zero-rated.

For additional information, see GST/HST Technical information bulletin B-090, *GST/HST and Electronic Commerce* and GST New Memoranda Series chapter 4-5-3, *Export — Services and intellectual Property*.

Some services are excluded from the zero-rating provision if the individual is in Canada and has contact with the supplier. Do your research and examine all facts before making a determination.

CRA's position is stated in July 1997 Department of Finance Technical Notes to Sch VI, Part V paragraph 7(a.1), which gives the example of an employee attending a management training program in Canada as a service being "rendered" to an individual and taxable.

8.3. Exports – Intangible Personal Property

Slides discussed in this section: Slide 8-6

Intangible personal property may be zero-rated under Schedule VI, Part V, sections 10 and 10.1.

Characterization of the supply is the *key* for understanding the zero-rating provisions for IPP. Review the definitions of intellectual property versus intangible property. You must know what you are supplying to be able to apply these rules correctly.

See GST/HST Info sheet GI-034, *Exports of Intangible Personal Property* for additional information.

8.4. Exports

Slides discussed in this section: Slide 8-7

Before zero-rating a service rendered or IPP to a non-resident or an unregistered non-resident, it is important to ensure that all the zero-rating conditions have been met for the specific service or IPP and the documentation requirements have been obtained.

During an audit it is not uncommon for the auditor to ask for proof of the non-resident's status. It is good practice to always ask a non-resident to provide written proof of status before zero-rating a supply for export purposes.

Module 9
General Recovery Rules

9. GENERAL RECOVERY RULES

Slides discussed in this section: Slide 9-1

Typically, the GST/HST should not be an expense or cost to many businesses. The *Excise Tax Act* contains an input tax credit (ITC) mechanism allowing most businesses to recover the GST/HST paid or payable on eligible purchases and expenses related to their commercial activities.

In this section, we are going to discuss a variety of recovery issues.

During an audit, inadequate or missing documentation to support GST or HST recoveries is the most common exposure. This area continues to be problematic for registrants.

GST registrants are not automatically entitled to recover tax paid. Before an input tax credit may be claimed there are a number of conditions that must be met.

First, only a registrant may claim an input tax credit. As previously mentioned, in some instances a person is a registrant without actually being registered.

The recovery amount is limited to the actual GST/HST paid or payable on property or services acquired or imported to the extent the acquisitions are inputs in a registrant's commercial activity (subsection 141(1)). Commercial activity is a defined term found in the ETA in subsection. 123(1).

The documentation requirements refer to information that must be included on a supplier invoice or in an agreement. This information is listed in the regulations and will be discussed later in this module.

The recipient of the supply is generally defined as the person who is liable for payment of the consideration for the supply or the person who actually receives the property or service.

As previously discussed, the purchaser is not entitled to claim an input tax credit before the date of the invoice or the date the tax became payable. The ITC must be claimed in a return filed no later than 4 years from the due date of the return in which the ITC could have first been claimed (specified persons (defined

in the ETA subsection 123(1) have a two-year claim). Caution should be exercised around year-end if accruing input tax credits as accruals.

Finally, some purchases or acquisitions of property and services are subject to restrictions and limitations that generally follow the *Income Tax Act*.

9.1. Claiming Input Tax Credit Documentation

Slides discussed in this section: Slide 9-2

The 2021 federal budget proposed to increase the documentation requirements thresholds effective April 20, 2021, as illustrated in the table above.

Businesses often believe the documentation requirements are optional but this is not true. The documentation requirements are mandatory.

All GST audits include a review of invoices to support ITC claims and at times an auditor may be very narrow-minded about what constitutes a supporting document. Auditors may expect the required information to be stated on an invoice from the supplier. However, the Tax Court of Canada has confirmed, multiple times, that the supporting information can be accumulated from multiple documents such as invoices, contracts, emails from the supplier, and other business records. Registrants must ensure all supporting documents be issued or signed by the supplier.

A document created by the ITC claimant such as a purchase order (unless signed by the supplier) is not considered to be a supporting document during an audit. Therefore, any document created or issued by the supplier related to the supply may be used as a part of the supporting documentation.

Special attention should be made at year-end when accruals are being recorded. No ITCs should be recorded unless an invoice or contract meets the documentation requirements and it is available and dated to support the recovery claim for the year-end date.

Even when the documentation requirements have been met some expenses are subject to ITC restrictions, such as, annual golf club memberships and meals and entertainment.

The information describing the prescribed acquired to claim an input tax credit is located in subsections 169(4) and (5) and *Input Tax Credit Information (GST/HST) Regulations.* Refer to GST New Memoranda Series chapter 8-4, *Documentary Requirements for Claiming Input Tax Credits* for additional information.

GST registration numbers can be verified on the CRA GST online registry. However, the online registry only verifies the supplier's name up to the first 10 digits. As a result, incorrect confirmations can be obtained. In situations where a supplier's registration number is questionable, it is advisable to contact the CRA for a written confirmation.
9
The following two CRA publications provide information on books and records: GST New Memoranda Series chapter 15-1, *General Requirements for Books and Records* and GST New Memoranda Series chapter 15-2, *Computerized Records.*

The 2021 federal budget proposed a revision to add billing agents to the definition of an intermediary for purposes of meeting the documentation requirements.

The documentation requirements rules require either the supplier or an intermediary (i.e., a person that causes or facilitates the making of a supply on behalf of the supplier) must provide its business name and, depending on the amount paid or payable in respect of the supply, its GST/HST registration number, on the supporting documents.

A billing agent generally is an agent of the supplier that collects consideration and tax on behalf of a supplier but does not otherwise cause or facilitate a supply.

Previously, an intermediary did not include a billing agent. Billing agents therefore could not provide their GST/HST registration number and/or business name as part of the required ITC information to a recipient. Instead, the recipient of the supply was obligated to obtain the business name and registration number of the true supplier.

The proposed change will add a billing agent who has an agency agreement with the supplier to the definition of an intermediary. This will allow billing agents to issue invoices with their name and GST registration to recipients and allow the recipient to meet the documentation requirements necessary to claim an input tax credit.

9.2. General Recovery Rules

Slides discussed in this section: Slide 9-4 to 9-6

There are many special rules for public service bodies. The above table provides the recovery percentages that some public service bodies may use to recover a portion of the tax paid. For example, a qualifying non-profit organization (receives at least 40% government funding) can recover 50% of the 5% GST and if it resides in Ontario, it can also recover 82% of the 8% provincial component of the HST. Note the rate in PEI is proposed to increase from 35% to 50% as of January 1, 2023.

This course does not deal with public sector bodies due to time limitations. However, most of the information contained in this course is relevant to determine if a public service body is required to be registered for GST and to understand the recovery rules for those public service bodies that are registered for GST.

Facility operator means a charity, a public institution or a qualifying NPO (other than a hospital authority) that operates a qualifying facility. The public service bodies' rebate applies to property or services consumed, used, or supplied in activities engaged in by the person in the course of operating a qualifying facility for use in making facility supplies, or of making facility supplies, ancillary supplies, or home medical supplies.

Public sector bodies are divided into public service bodies and government.

Public service bodies are further divided into non-profit organizations and income tax registered charities or public institutions. It is important to understand these distinctions especially for charities and non-profit organizations because many of the rules for providing exempt supplies are different.

There are lots of reference materials for charities and NPOs, below are some that may be of interest

- CPA provides a full-day course on GST/HST and Public Service Bodies.
- Guide RC4034, GST/HST *Public Service Bodies' Rebate*
- Guide RC4049, GST/HST *Information for Municipalities*
- Guide RC4081, GST/HST *Information for Non-Profit Organizations*
- Guide RC4082, GST/HST *Information for Charities*
- Guide RC4058, *Quick Method of Accounting for GST/HST*
- Guide RC4247, *The Special Quick Method of Accounting for Public Service Bodies*
- GST/HST Info Sheet GI-066, *How a Charity Calculates the Net Tax to be Reported on its GST/HST Return*

Even when the documentation requirements have been met, some expenses are subject to ITC restrictions, under subsection 170(1), when the expense has a personal-use component, such as, annual golf club memberships or meals and entertainment.

These restrictions typically originate from the *Income Tax Act* (ITA). These restricted expenses are normally processed by accounts payable as direct supplier invoices or payments to an employee paid as an allowance or expense reimbursement.

No ITCs are allowed for tax paid on property or services purchased for the exclusive personal use of an employee by a business. The ITA also denies these expenses as a deduction for income tax purposes.

The meals and entertainment restriction and the automobile restriction will be discussed on the next slides.

The temporary large business restrictions will be discussed in Module 10.

To determine if an input tax credit is restricted, please refer to these materials: GST New Memoranda Series chapters:

- 8-1, *General Eligibility Rules*
- 8-2, *General Restrictions and Limitations*
- 8-3, *Calculating Input Tax Credits*
- 8-4, *Documentary Requirements for Claiming Input Tax Credits*
- 8-6, *Input Tax Credits for Holding Corporations and Corporate Takeovers*

9.3. ITC Restrictions and Limitations

Slides discussed in this section: Slide 9-7 to 9-10

ITCs related to meals and entertainment expenses subject to the 50% income tax restriction are also restricted to 50% of the GST or HST charged.

Exposures in this area often occur because the definition of meals and entertainment is not fully understood. The list of expenses above is often ignored and a full ITC for a restricted meals and entertainment expense results in the ITC being over claimed.

Special rule for long haul truck drivers is only available for periods of travel that are more than 24 hours or greater than160 km.

Refer to GST New Memoranda Series chapter 8-2 *General Restrictions and Limitations*

Refer to IT518R ARCHIVED - *Food, Beverages and Entertainment Expenses*.

The restriction is technically a 50% clawback of full ITCs previously recovered that relate to meals and entertainment expenses. However, to simplify the administration of this restriction, the CRA allows registrants to claim a 50% ITC on an invoice basis or claim full ITCs during the year and make a 50% clawback adjustment at year-end.

Before the large business restrictions were completely phased-out, large businesses subject to the recaptured ITC rules were required to clawback all or a portion of the provincial component of the HST and report the amount as a recaptured input tax credit in Schedule B.

These limitations are announced annually by the Department of Finance.

Where a GST registrant purchases a passenger vehicle and it is used a capital property, ITCs are limited to a prescribed amount of the GST/HST paid. If the purchase price exceeds the maximum amount deductible under paragraph 13(7)(g) or (h) of the *Income Tax Act* (the base amount to calculate capital cost allowance or depreciation for income tax purposes), the ITC is subject to the same limitations pursuant to section 201 of the ETA.

In addition, where a GST registrant leases a passenger vehicle, ITCs may be claimed in the normal manner. However, if the lease cost exceeds the maximum amount deductible under section 67.3 of the ITA, the ITC is subject to recapture pursuant to section 235 of the ETA.

A passenger vehicle (an automobile) excludes taxis, inventory of a car dealership or the leasing vehicles of a leasing company, funeral hearses and ambulances and some trucks. The exception to the rule for pick-up trucks requires the truck seating capacity at the time of purchase is not for more than the driver and two passengers and exclusive use (i.e., 90% or more) of the truck must be to transport goods/equipment/passengers in the course of producing income. Refer to GST New Memoranda Series chapter 8-2, *Input Tax Credits - General Restrictions and Limitations*.

The 2019 federal budget announced new temporary vehicle classes which result in an increased GST/HST recovery opportunity. The increased threshold is in respect of only zero-emission passenger vehicles acquired after March 18, 2019. These limits are provided under the income tax system. The treatment of leased zero-emission vehicles will have its maximum monthly limit increased from $800 to $900.

To be eligible under Class 54 or Class 55, the zero-emission vehicle must meet all the following criteria:

- Acquired a zero-emission vehicle after March 18, 2019
- Assistance has not been paid by the Government of Canada under the federal purchase incentive
- The vehicle has not been used, or acquired for use, for any purpose before it was acquired
- The vehicle is essentially a motor vehicle designed or adapted for use on streets and highways (excluding a trolley bus or a vehicle designed or adapted to be operated only on rails)
- Is a plug-in hybrid with battery capacity of at least 7kWh or is fully: Electric or powered by hydrogen.
- These new classes will be in effect from March 18, 2019, and then will be phased out as follows:
    i. 100% after March 18, 2019, and before 2024
    ii. 75% after 2023 and before 2026
    iii. 55% after 2025 and before 2028

This restriction does not apply to those claiming public service body rebates. Therefore, a charity for example may use the full amount of the GST paid multiplied by the rebate recovery percentage under section 259 of ETA (subparagraph 201(b)(B)(i)) to calculate the rebate to recover some of the tax paid.

9.4. Apportionment Rules

Slides discussed in this section: Slide 9-11 to 9-15

The apportionment rules are used to determine what portion of the GST/HST paid on a taxable supply is related to commercial activities of a business. The percentage of commercial use is used to calculate the input tax credit based on the GST/HST paid.

The allocation rules are contained in Section 141.01 and the administrative policies set out in the CRA's GST New Memoranda Series chapters 8-1, *General Eligibility Rules* and 8-3, *Calculating Input Tax Credits* describes the different apportionment rules based on the type of supply acquired. This publication also provides a good review of the apportionment rules - RC4022, *General Information for GST/HST Registrants.*

The following slides provide an oversimplified overview of the various apportionment rules.

These rules are discussed in more detail in the CPA course, GST/HST - Recovery Rules.

9.5. Section 186 Holdco Rules

Slides discussed in this section: Slide 9-16

Shares are defined to be a "financial instrument" and, accordingly, their purchase or sale will constitute the provision of a financial service, which is an exempt supply under Schedule V. The general rule is that no ITC is available in respect of exempt activities.

Subsection 186(1) enables registrant corporations, partnerships and trusts (i.e., the parent) that are resident in Canada to claim an ITC for GST/HST paid/payable in respect of property purchased or services incurred relating to the shares or indebtedness of a related corporation provided that all or substantially all of the related corporation's property is property that was acquired or imported for consumption, use or supply by that corporation exclusively in the course of its commercial activities. Subsection 186(1) deems costs incurred in these activities to have been costs incurred with respect to the parent's commercial activities.

No ITC is available for the parent's expenses if the related company is engaged in mixed taxable and exempt activities. Similarly, no ITC is available if the entities are not related. This includes costs incurred to acquire or increase a holding such that the investee becomes related. For example, Holdco owns 25% of Opco. Costs to acquire the additional 75% are not eligible for ITC.

For ITC purposes, the subsidiary company need only be related for Income Tax purposes; it does not have to meet the more restrictive "closely related" test required for the subsection 156(1) Nil Consideration election.

Generally, a person is not able to claim ITCs for GST/HST paid/payable related to the acquisition of shares of a corporation since shares are a financial instrument. Subsection 186(2) provides an exception to this general rule. Where criteria is met, any property or service that the purchasing corporation acquires in the course of the takeover or attempted takeover are deemed to have been acquired in the course of commercial activity.

Subsection 186(3) provides a look-through rule where, a parent may be entitled to ITCs subsidiaries are engaged in commercial activities, where criteria is met.

Refer to GST/HST memorandum 8.6: *Input Tax Credits for Holding Corporations and Corporate Takeovers* for detailed information on the application of the Holdco rules. This memorandum provides some guidance on the application of section 186; specifically, what expenditures are "in relation to the shares or indebtedness of a related corporation".

The Courts appear to take a broader view of this provision, [*Stantec Inc. v. The Queen (2008)* and *Miedzi Copper Corporation v. The Queen (2015)*]. The Courts have stated where the parent has no activities (included exempt activities), and the only activity it has is the holding, buying, selling, managing, fund loaning, etc., in relation to the subsidiaries, then everything the parent does should be considered in relation to those shares or loans. Note that the legislative amendments were introduced after the cases referenced above which impacts their utility.

Module 10

Employee Reimbursements And Allowances And Other Payments

10. Employee Reimbursements

Slides discussed in this section: Slide 10-1 to 10-3

Special deeming provisions under sections 174 and 175 of the ETA allow employers, partnerships, charities or public institutions[1] that reimburse employee paid expenses or give allowances to employees, partners and volunteers[2] to be the recipient of those supplies related to business activities.

These provisions enable the employer who is eligible to claim ITCs, under section 169 (subject to section 170 restrictions) or rebates under section 259, to recover the tax paid by the employee as if the employer had purchased the supply directly from the supplier. The employer is deemed to have paid tax on the day the reimbursement is paid to the employee (this is important to know if you are a large business required to report the temporary restricted input tax credits). Without these special deeming provisions, the employer would not be able to recover the tax paid by employees because they would not be the recipient of the supply. These deeming provisions are not extended to non-employees such as retirees returning as consultants or subcontractors.

1. This group is commonly referred to as the “employer”
2. This group is commonly referred to as the “employee”

There are two GST/HST tax recovery methods available for employee expense reimbursements. A choice of recovery method may be selected for each expense report category (for example, meals, airfare or accommodations). Once the method is selected, it must be used by all employees for the full fiscal year.

The actual method requires full documentation requirements be met before claiming an ITC on employee reimbursements. This means that a credit card slip will probably not meet the documentation requirements because it lacks specified information, such as the suppliers GST registration number.

The simplified factor method is an administrative concession. It is the preferred method for the recovery of GST/HST for employee expense reimbursements where it is difficult to always meet the documentation requirements, since it relaxes the documentation requirement rules. If this method is selected and an invoice is missing the supplier’s GST registration number, an ITC may still be claimed. However, this

method still requires an employee to produce some evidence that an expense was incurred, such as the credit card receipt.

Additional information can be found in GST New Memoranda Series chapters 9-3, *Allowances* and 9-4, *Reimbursements*.

The simplified factor method recognizes that the total expense may include gratuities, provincial sales tax and other amounts not subject to the GST/HST. The prescribed factor may be applied to various expense categories within an expense report or to the entire report.

Registrants must use of the factor consistently throughout the fiscal year once a person decides upon a suitable approach by selecting which expense report categories will be subject to the actual method and which will use the simplified factor method.

In addition, ITCs may only be calculated using the factor method on reimbursements that were incurred in Canada or if the ITC is being calculated on the entire expense report, where at least 90% of the underlying expenses are subject to the GST/HST and not zero-rated.

Regardless of the method selected, ITC amounts for GST/HST paid on meals and entertainment is restricted by 50% and if incurred in Ontario (until June 30, 2018) or Prince Edward Island by a large business, the temporary large business restrictions may apply.

10.1 Employee Allowances

Slides discussed in this section: Slide 10-4 to 10-9

An allowance is any periodic or other payment received from an employer, partnership, charity, or public institution given to an employee, partner or volunteer in addition to salary or wages, without having to account for how it is spent. This is in the opposite of an employee reimbursement where receipts are required to support the expense incurred.

Section 174 states an employer is deemed to have paid tax on a reasonable allowance paid to an employee in respect of supplies that are subject to GST or HST. Hence, the employer may be entitled to claim an ITC. ITCs for employee allowances are calculated using the prescribed factors presented in table above when the allowance is

- paid in respect of supplies which are all or substantially all (90% or more) taxable (other than zero-rated) and acquired in Canada;
- deductible for income tax purposes (subparagraphs 6(1)(b)(v), (vi), (vii.1), (x), and (xi) of the *Income Tax Act* describe a reasonable allowance); considered reasonable by the employer or partnership at the time of payment.

Typical allowances may include safety shoe/equipment allowances, meal allowances (subject to the 50% M&E restriction), and mileage/car allowances (subject to the large business restrictions).

T4130, *Employers' Guide – Taxable Benefits and Allowances* states the following*:* If you give your employee an allowance for cellular phone or Internet services, the allowance must be included in the employee's income. The CRA *has taken the position that a cell phone allowance* is a taxable benefi*t* as in stated in T4130. On the other hand, if an employee receives a reimbursement of all or part of the cost of a basic cellular phone plan from its employer and the primary purpose of the cell phone is to perform duties of employment, the reimbursement would generally not be considered a taxable benefit when all of the following conditions are met:

- the plan's cost is reasonable
- the plan is a basic plan with a fixed cost
- your employee's personal use of the service does not result in charges that are more than the basic plan cost

Consequently, if an employer pays an amount to an employee related to business cell phone use, it may be beneficial to classify the amount paid (even if it is a fixed monthly amount) as a reimbursement and have the employee provide the employer with a copy of the phone bill each time it is paid to the employee.

Each year (usually in December) the Department of Finance Canada announces the income tax deduction limits and expense benefit rates.

A mileage allowance is eligible for an ITC only if the following conditions are met: The allowance is based solely on business kilometres driven.

The rate per kilometre is reasonable.

- The 2023 tax-deductible rate announced by the Department of Finance was $.68 per kilometer for the first 5,000 kilometres driven, and to 62 cents per kilometre for each additional kilometre. For the Northwest Territories, Nunavut and Yukon, the tax-exempt allowance is 4 cents higher.

The recipient of a typical per km car allowance cannot be reimbursed in whole or in part for any other automobile expenses (payments in addition to the allowance for the same business travel). If there are additional reimbursements then the entire reimbursement amount plus all the allowances payments become a taxable benefit.

It is important to have a written company policy stating if the allowance includes or excludes any specific expenses.

For example, if you calculate the allowance or state the allowance excludes charges for toll/ferry fees or supplementary business insurance, then these expenses can be reimbursed to the employee without triggering a taxable benefit.

A fixed flat rate vehicle allowance is any payment that employees receive from an employer for using their own vehicle in connection with or in the course of their office or employment without having to account for its use. The amount is paid to the employee in addition to their salary or wages. This allowance is generally considered taxable income unless it is based on a reasonable per-kilometre rate.

Once the methods are selected, they must be used for at least one entire fiscal year consistently by all employees.

The general restrictions apply to employee expense reimbursements, such as the 50% meals and entertainment restriction.

Large businesses were required to report the temporary restricted input tax credits (RITCs) for the provincial portion of the HST paid for specified property and services regardless of the recovery method selected for employee reimbursements and allowances.

In example slide 10-7, the employee provides the employer with an invoice for the meal that meets the full documentation requirements.

In example slide 10-8, the employer has made the decision as the beginning of the fiscal year to use the Simplified Factor method for the recovery of GST and HST on meal and entertainment expenses. The employee provides the employer with a credit card receipt to support the amount paid for the meal. The receipt does not meet the full documentation requirements.

In example slide 10-9, the employee is required to calculate the business mileage traveled in each provide and provide the employer with the information for calculating the GST and HST recovery.

10.2 Reimbursements to Non-Employees

Slides discussed in this section: Slide 10-10 to 10-11

The recovery of tax in respect of reimbursements made to non-employees is a very common audit exposure. Non-employees may include consultants, independent contractors, employees from related companies, contractors, retirees, part-timers, relatives of employees who provide property and services. They generally issue an invoice and are not paid or included on the company payroll.

The rules under sections 174 and 175 that deems expenses paid by employees to have been incurred by an employer for the recovery of GST/HST, do not apply to non-employees.

Where a GST-registered non-employee provides a taxable supply of property or services and includes a charge for the reimbursement of out-of-pocket expenses (including allowances, such as mileage), the charge for the reimbursement or allowance is considered additional consideration directly related to the original supply. The non-employee is required to clearly charge GST/HST on the total amount of the out-of-pocket expenses using the same tax rate as it applied to the original supply. As a result, the recipient of the supply may be eligible to recover the tax paid subject to meeting the documentation requirements and adhering to the general expense restrictions.

Typically, a retiree or relative (or for example any other person not listed on the payroll) providing services to a business are classified as a non-employee. Most of these persons are not registered for GST. The supply of property or services and any charges for reimbursement related to out-of-pocket expenses are not subject to tax because the person is not registered for GST. Consequently, the recipient (or purchaser) of the supply is not entitled to recover any of the GST/HST paid by the person when acquiring the reimbursable expenses. No tax recovery is available because the non-employee is the true recipient of the supply in respect of the reimbursable expenses or out-of-pocket expenses and as a non-registrant, they cannot recover tax paid or flow the tax to its customers

It is good business practice for GST registrants to charge reimbursable expenses net of any tax recovery (deduct amounts for claimed input tax credits from all taxable expenses charged to a customer). For example, if a meal expense is $100 plus $5 GST. The input tax credit recoverable is $5 because the meal is resupplied. Therefore, the reimbursable amount charged on an invoice is $100 (the GST/HST/HST must be charged on a separate line).

For non-GST registered consultants, the GST and HST paid on reimbursable expenses is not an input tax credit and is not recoverable by either the consultant or the recipient of the supply (purchaser).

10.3 Company Credit Cards

Slides discussed in this section: Slide 10-12

Expenses incurred by an employee using a company credit card are considered to be a direct expense incurred by the employer and not the employee. Thus, the Simplified Factor Method (previously discussed for calculating the recovery of GST/HST on an employee expense report) cannot be used by a GST registrant to calculate the GST/HST recovery. All GST/HST recoveries must be supported by full documentary evidence supporting the payment of tax, see Module 9, section 9.1.1.

The CRA does provide an exception to this rule where a master credit card agreement holds the employer and the employee jointly and severally liable for the payment of the charges made on the card. If the employer/employee jointly and severally liability clause is evident, the payment of the credit card liability may be treated as an employee reimbursement. Thus, allowing the employer to use of the Simplified Factor Method when determining its ITC entitlement. Additional information can be obtained in CRA Policy statement P-184, *Credit Card Expenses and the Registrant's Use of Factors for Claiming Input Tax Credits* and GST New Memoranda Series chapter 9-4, *Reimbursements.*

Module 11
Reporting Net Tax Overview

11. Filing a GST Return

Slides discussed in this section: Slide 11-1

Sometimes filing a GST return is not as simple as one may think. There are various methods to calculate the net tax owing or in some cases a refund. In addition, misreported information can lead to filing frequency errors and in some cases can even trigger an audit.

Care should be taken when completing a GST return to avoid negative consequences.

11.1 Calculating Net Tax

Slides discussed in this section: Slide 11-2 to 11-4

Registrants are required to calculate their tax liability and/or refund from the federal government each reporting period by completing a GST/HST return.

For many persons the calculation is relatively straightforward. Under the Regular Method, the GST/HST liability is calculated on every taxable sale and recoveries are calculated on every eligible purchase and expense.

Alternatively, to assist certain small businesses reduce costs and administration, some can elect to use the Quick Method of accounting to calculate their GST/HST remittance. Under the Quick Method, the GST/HST paid or payable is calculated based on a prescribed percentage. The Quick Method is described in Guide RC4058, Quick *Method of Accounting for GST/HST*. Remember, the Quick Method is not available for bookkeepers and accountants.

The Simplified Method for claiming input tax credits (if annual worldwide revenues from taxable goods and services (including associates) are 1 million dollars or less in the last fiscal year) is an alternative way for

eligible registrants to calculate ITCs. This method does not require the tax paid on each purchase or expense be tracked, however, the documents to support ITC claims must be retained in case of an audit. Refer to RC4022 *General Information for GST/HST Registrants* for more information.

Selected listed financial institutions use the special attribution method (SAM) to calculate their net tax under section 225.2. Refer to Guide RC4050, GST/HST Information *for Selected Listed Financial Institutions*.

Public service bodies (other than a charity that is not a designated charity) should refer to Guide RC4247, The Special Quick Method of Accounting for Public Service Bodies.

The Special Net Tax Calculation Method must be used by **GST registered** charities for reporting the GST/HST.

An election may be filed to use another method (Simplified Method or regular method) if certain conditions are met.

Designated charity means a charity that has been designated by the Minister of National Revenue to have certain exempt services it provides to registrants made taxable. Designated charities cannot use the Special Net Tax Calculation Method but may use the Special Quick Method of accounting for public service bodies.

Refer to Guide RC4082, *GST/HST Information for Charities*.

11.2 Filing Frequency

Slides discussed in this section: Slide 11-5

A GST registrant's filing frequency may be on a monthly, quarterly or annual basis. GST registrants have the option to choose a *filing frequency* based on their taxable sales in Canada threshold amount (this amount excludes zero-rated exports and sales of capital real property but includes other zero-rated sales and taxable sales from associated persons). Refer to section 249 and GST Memorandum 500-*2-1, Authorized fiscal periods and reporting periods or are assigned filing frequency* by the CRA that requires the least frequent filing of GST returns, which is determined by annual sales and revenues of taxable property and services, as indicated on the GST registration form, pursuant to sections 246, 247, and 248.

Registrants are allowed to change their filing frequency to a more or less frequent basis by filing election form GST20, *Election for GST/HST reporting period* with the CRA (refer to the election form to determine when the election must be filed). Registrants expecting frequent refunds may find a greater filing frequency advantageous. Once a reporting frequency has been selected, it is in effect for at least one year.

Effective for reporting periods ending on or after July 1, 2010, many registrants are required to file their GST/HST return electronically. The CRA provides an on-line questionnaire to determine if you are required to file electronically.

The *Electronic Filing and Provision of Information (GST/HST) Regulations* (SOR/2010-150) specify which registrants are required to file electronically:

- GST/HST registrants with greater than $1.5 million in annual taxable supplies (except for charities)
- All registrants required to recapture input tax credits for the provincial component of the HST on certain taxable supplies acquired in Ontario, Prince Edward Island or British Columbia
- Builders affected by the transitional housing measures announced by Ontario, Prince Edward Island and British Columbia

Refer to *Government of Canada announces new electronic filing requirements for GST/HST registrants and GST/HST Notice 249, Questions and Answers on the New Reporting Requirements for GST/HST Registrants* for more information.

11.3 Instalment Payments

Slides discussed in this section: Slide 11-6

Annual filers are required to make quarterly installment payments when their net tax is $3,000, based on either the previous fiscal year or the current. Each installment must be equal to a quarter of the net tax from the previous fiscal year. These payments must be made on time and in full, otherwise, installment interest will be charged at the end of the fiscal year.

Installment interest (under subsection 237(1)) is calculated at the 1st day after the installment was due and ending on the earlier of the following dates

- the day the overdue installment amount and any accrued interest is paid or
- the day net tax owing for the year is due (remember interest still applies if there is an overdue balance on the GST/HST return)

Instalment interest is equal to the prescribed interest rate plus 4%.

Special rules apply to instalment payments for selected listed financial institutions. For more information, see Guide RC4050, *GST/HST Information for Selected Listed Financial Institutions*.

11.4 Completing the GST Return

Slides discussed in this section: Slide 11-7 to 11-8

Refer to working copy of a GST return provided at end of this module.

Two of the most common errors made with respect to GST filings (other than ITC errors) related to the amount reported on line 101 and claiming the bad debt adjustment.

Most registrants mistakenly report only the taxable amount of their sales on *line 101* whereas all revenue, including zero-rated and exempt supplies are supposed to be reported on this line.

The CRA compares the sales reported on line101 to a taxpayer's income tax filing. A difference may trigger an audit or trigger the CRA to ask the taxpayer to explain the difference.

When electronically filing the GST three additional lines are available.

- Line 90 is used to report a registrant's taxable supplies made in Canada (including zero-rated supplies other than exported supplies, refer to GST point-of-sale rebates for made in Canada rules).
- Line 91 is used to report exempt supplies, zero-rated exports and other non-taxable supplies.
- Line 102 has also been introduced to report taxable supplies made in Canada by associates. This will assist CRA in identifying the correct reporting frequency for registrants. Registrants whose taxable supplies made in Canada, including those made by associated persons, exceed $6,000,000 annually are required to file monthly. Many registrants are mistakenly set up with a quarterly or annual filing period based on their supplies only.

11.5 Common Filing Mistakes

Slides discussed in this section: Slide 11-9 to 11-11

GST registrants act as tax collectors for the Crown and they are required to remit tax when due in the proper reporting period, even if they have not yet collected the funds from the customer or recipient of the supply.

Where a GST registered supplier is unable to collect the consideration and/or tax from the recipient on a taxable supply, the ETA section 231 allows a registrant to claim an adjustment for the uncollected GST/HST component, provided the debtor and creditor deal at arm's length with each other. The adjustment is based on a formula to prorate the portion of the consideration and tax (other than provincial taxes) that became a bad debt.

If a debt that was written off is subsequently collected (in full or part), the amount collected is deemed to include GST/HST and the tax portion must be reported on line 104 and remitted.

Section 231 lists certain requirements that must be met before a bad debt adjustment can be make:

- The supplier must be dealing at arm's length with the recipient.
- The bad debt must have been written off.
- The amount must consist of consideration and tax.
- The tax collectible is included in determining the net tax indicated in the return that the supplier filed for the period during which the tax became collectible.
- The deduction must be filed within four years of the filing for the period in which the bad debt was written off.
- The bad debt formula is as follows provided the person reports the tax collectible in respect of the supply in the person's return under this Division for the reporting period in which the tax became collectible and remits all net tax, if any, remittable as reported in that return. :
    i. (A X B) / C where
    ii. A is the tax in respect of the supply;
    iii. B is the total of the consideration, tax and applicable provincial tax remaining unpaid in respect of the supply that was written off at that time as a bad debt; and
    iv. C is the total of the consideration, tax and applicable provincial tax in respect of the supply.

It is very important for suppliers to retain evidence supporting the actions taken to collect an account receivable account that led to a bad debt.

Unless a customer becomes bankrupt (clearly the debt is uncollectible) the CRA can deny a bad debt adjustment if the supporting documentation is not available. In this situation, it may be possible for the supplier to issue a credit

Many of the reporting errors are related to tax collected but not reported in the correct reporting period. For example, as previously discussed the tax liability for supplier is created in the earliest period in which the tax is paid or the tax is invoiced. Therefore, suppliers are not allowed to wait until their customers pay an invoice before reporting tax collected on a GST return. The tax is supposed to be reported in the same period in which that tax was invoiced (or became payable).

Most GST registrants understand that when they receive an invoice where tax is charged for a supply that is used in their commercial activities, they are able to claim an input tax credit to recover the tax paid. However, some registrants are hesitant to claim full input tax credits when the income tax matching principle does not apply. For GST purposes, as long as the ITC conditions and documentation requirements have been met, the income tax matching principle is not relevant when claiming an input tax credit.
The CRA has released a revised publication GST New Memoranda Series chapter 3-6, *Conversion of Foreign Currency* on July 24, 2018. It explains how the value of consideration for a supply is to be converted into Canadian currency for GST/HST purposes where the consideration is expressed in a foreign currency.

Generally, consideration expressed in foreign currency is to be converted to Canadian currency "on the day the tax is payable" (the invoice date), or other dates that are administratively acceptable to the Minister include the following

a) the day the consideration for the supply is paid;
b) the day the foreign currency was acquired; and
c) the average rate of exchange for the month in which tax is payable.

For GST/HST purposes the CRA has issued Policy Statement P-222, *Acceptable Exchange Rate Sources for Converting the Value of Consideration Expressed in Foreign Currency to a Value in Canadian Currency for Purposes of Section 159 of the Excise Tax Act*. The conversion factor for purposes of Part IX of the *Excise Tax Act* may be selected from one of the following (if one of these methods is selected it must be applied consistently for at least one year from the end of the reporting period in which the method was first used):

- the source used for an actual conversion (i.e., foreign currency is exchanged for Canadian dollars);
- the source the person typically uses for actual conversions;
- a Canadian chartered bank;
- the Bank of Canada; or
- the rate provided by the Canadian Border Services Agency for purposes of converting the value for duty of imported goods.

Any other method used to determine the value of the consideration of a supply in Canadian currency, other than the use of the exchange rate in effect on the day the tax is payable, and the methods listed in the above Memorandum, must be submitted in writing to the Minister for approval prior to its application.

11.6 Adjustments to Previously Filed Returns

Slides discussed in this section: Slide 11-12

Using the *My Business Account* available on the CRA website is the preferred method to amend a previously filed GST returns as well as accessing other on-line services.

Alternatively, a correction may be made by writing to the GST Returns Processing c/o your local CRA Tax Center.

An adjustment can be made only if there has been an error in reporting net tax or a rebate. The adjustment is not usually available to claim a missed recovery (input tax credit).

The definition of a specified person is found in subsection 225(4.1). Please note this definition is different to that of a "specified person" used in subsection 301(1), which applies to the filing of a Notice of Objection.

11.6 Sample Return

Slides discussed in this section: Slide 11-13

Module 12
Compliance Issues

12. Compliance

Slides discussed in this section: Slide 12-1 to 12-7

Audits are performed by the Canada Revenue Agency (CRA) to encourage businesses to comply with the rules contained in the *Excise Tax Act*. This ensures all businesses are playing by the same rules so no one has an unfair advantage.

An increase in GST/HST audit assessments indicates that many registrants and non-registrants continue to have a lack of understanding of GST and HST legislation.

The audit period is generally four years from the later of:

- The day that the return is filed
- The day on which the person is required to file a return

For example, a registrant files monthly returns. A February 2014 return is filed on the due date of March 31, 2014 must be assessed before April 2018. If the return was filed late on July 31, 2014, the CRA may assess that return any time before August 1, 2018. If the February 2014 return is never filed, there is no limitation period.

Where the auditor discovers non-compliance due to neglect, carelessness, willful default or fraud the time period may be extended and the audit period can be unlimited.

The auditor may ask for a waiver to be signed to extend the audit period. The decision to sign a waiver is dependent on the situation.

It is recommended a waiver only be signed when it is limited to a specific period of time and a particular issue(s).

- A waiver is revoked 6 months after the date Form GST146, *Notice of Revocation of Waiver* is filed with the CRA. In many instances, it is advisable to submit the Notice of Revocation of Waiver as soon as the waiver is signed.

Reference materials:

- RC4188, *What You Should Know About Audits*
- Form GST145, *Waiver in Respect of the Period for Assessment*
- Form GST146, *Notice of Revocation of Waiver*

A wash transaction provision applies where GST/HST is not collected on a taxable supply, but the recipient would have been entitled to claim a full input tax credit. Therefore, there is no revenue loss to the CRA from this error.

The auditor must confirm the recipient's registration status and verify that the recipient is involved in commercial activities before the wash transaction provision can be applied.

The wash transaction provision also applies within a closely related or associated group of persons where tax is collected and reported or input tax credits are claimed by the wrong entity.

Below is an excerpt from GST New Memoranda Series chapter 16-3-1, *Reduction of Penalty and Interest in Wash Transaction Situations* summarizing the conditions that must be met.

The CRA will consider waiving or cancelling the portion of the interest that is in excess of 4% of the tax not properly collected in a wash transaction where the following conditions are satisfied:

- It must be demonstrated that the taxable supply in question was made to a registrant who would have been entitled to a full ITC if the tax had been properly applied, or to a federal department, or to a participating provincial government entity; or where an ITC is claimed by the wrong member of closely related group, or an associated person, it must be demonstrated that the person properly entitled to claim the ITC is a registrant that would have been entitled to a full;
- The person being assessed must not have been previously assessed for the same mistake and must have a satisfactory history of voluntary compliance;
- The person being assessed must have remedied the situation to ensure that tax is collected and ITCs properly claimed on future supplies of a similar nature; and
- The person being assessed must not have been negligent or careless in the conduct of its affairs in ensuring that tax is properly collected and remitted on its taxable supplies and that it claimed ITCs only where properly entitled to do so.

This provision allows the auditor to waive interest and penalties payable related to unremitted GST/HST in excess of 4%.

A Notice of Objection may be filed using Form GST159, *Notice of Objection* (GST/HST). It must be sent to the chief of appeals for your designated appeals intake centre within 90 days of the day the CRA mailed your notice of assessment or notice of reassessment (date on assessment, NOT the date assessment is received, section 301). It is recommended the taxpayer keep the envelope to support the date mailed if it is different from the date printed on the assessment.

The deadline for filing the Notice of Objection may be extended if the deadline falls on a Sunday or a statutory holiday. See section 26 of the *Interpretation Act*. The deadline may be extended by up to one year in some circumstances.

Specified persons (listed financial institutions and non-charity large businesses) must describe each disputed issue, specify relief sought for each issue and provide facts and reasons for each issue. If this information is not provided to the Minister, it may request the missing information be remitted within 60 days. Following these requirements is very important because specified persons are not allowed to appeal to the Tax Court where these requirements have not been fulfilled.

The Appeals Division will do an independent impartial review of the assessment. If the chief of appeals agrees with the objection in whole or in part, a Notice of Decision and an adjusted notice of reassessment will be sent to the taxpayer.

Where the chief of appeals disagrees with the objection, a Notice of Decision confirming that the assessment was correct will be mailed to the taxpayer.

A person who has filed a Notice of Objection may appeal to the Tax Court of Canada to have the assessment reversed or a reassessment made if:

- The person disagrees with the decision issued by the Appeals Division, in which case the appeal must be filed within 90 days from the date the Notice of Decision was sent; or
- The CRA has not issued a Notice of Decision regarding the objection within 180 days from the day the person filed the Notice of Objection.

Reference materials:

- GST/HST Memorandum Series 31, *Objections and Appeals*
- Form GST159, *Notice of Objection (GST/HST)*

The Voluntary Disclosure Program was established in 2001 and it applied to both Income Tax and GST disclosures (see Information Circular IC 00-1R6) to encourage taxpayers to voluntarily correct non-compliance issues by allowing a waiver of penalties. For GST purposes, it is often used to rectify errors and avoid penalties or the loss of ITCs.

The CRA released GST New Memoranda Series chapter 16-5, *Voluntary Disclosures* which describes the new program. This publication also includes the VD program for excise tax, excise duty, softwood lumber products export charge and air travelers security charges.

Review the above-mentioned publication for a detailed description for each category and other important changes to this program.

The new VDP is seen as part of a crackdown on tax evasion and aggressive tax avoidance in Canada. The Minister is not required to grant relief automatically under this program. It will decide each request on its own merits based on the taxpayer's history of compliance and the nature of the matter being disclosed.

All requests must be made using form RC199 and may be submitted electronically through My Business Account or Represent a Client (go to submit documents), by fax (1888-452-8994) or by mail to the Voluntary Disclosures Program, Shawinigan National Verification and Collections Centre.

Added to the VD program, is a taxpayer's requirement to include payment for the estimated amount of tax owing with their VDP application. When a taxpayer is not able to make full payment, it may request that it be considered for special payment arrangements subject to approval from the CRA Collections department. Some payment arrangements may need to be supported by adequate security.

Refer to GST New Memoranda Series chapter 16-5, *Voluntary Disclosures* for more information.

The voluntary disclosure program has been substantially revised and taxpayers must consider whether the program will be beneficial to resolve their non-compliance situation(s). Before making a voluntary disclosure be sure to determine the amount of the exposure, the number of years of non-compliance, the sophistication of the taxpayer and how quickly the taxpayer took corrective action to resolve the exposure once it was discovered. All these factors will affect whether the CRA will accept an application and the VD relief category.

Since this is a relatively new program, we will have to wait to see how particular types of exposures are treated within each category.

The new VD program has eliminated the no-name disclosure process. During pre-disclosure discussions the taxpayer may be referred to a CRA officer in a specialized audit area for more complex issues. All discussions will be non-binding and whether a taxpayer is eligible to participate in the VDP program will be based on the facts after the taxpayer is named

Taxpayers are expected to remain compliant therefore; a person should only have to use the VDP once. However, if a second disclosure is necessary, the CRA will consider whether or not to accept the taxpayer's application.

Reference materials:

- Form RC199, *Voluntary Disclosures Program (VDP) Taxpayer Agreement*
- Draft June 2017, Information Circular IC00-1R4, *Voluntary Disclosures Program*
- GST New Memoranda Series chapter 6-3-1, *Reduction of Penalty and Interest in Wash Transaction Situations*

The liability for directors for unremitted GST/HST and net tax refunds wrongly obtained is similar to that under the *Income Tax Act* with respect to unremitted source deductions.

Section 323 of the ETA makes directors joint and severally liable for any unpaid tax, wrongly obtained tax refunds, interest or penalties. In addition, directors cannot challenge the CRA assessment. Only the corporation can file a notice of objection or appeal in respect of an assessment.

Very few directors are successful with the due diligence defense unless they can prove they exercised a degree of care, diligence and skill to prevent the tax remittance failure or wrongly claimed refund.

The following excerpt is from Income Tax Information Circular IC 89-2R, *Directors Liability - Section 227.1 of the Income Tax* Act and Section 323 of the Excise Tax Act:

Rules for determining directors' liability

- The three basic rules of directors' liability are:
  1. the CRA must demonstrate its inability to recover the amounts directly from the corporation;
  2. the CRA must issue the assessment against the directors within two years from the time they last ceased to be directors; and
  3. the directors did not exercise the degree of care, diligence, and skill ("due diligence") required to prevent the failure to deduct, withhold, remit, or pay.

The CRA's obligation

- To demonstrate its inability to recover the amounts directly from the corporation, the CRA must:
  1. show that its execution of a writ against the corporation was returned unsatisfied;
  2. prove a claim against the corporation in dissolution or liquidation under corporate law; or
  3. prove a claim against the corporation in bankruptcy.

Limitation

- The CRA must issue the assessment against the directors within two years from the time they last ceased to be directors. Directors cease to be directors by resigning or by operation of law (e.g., they become personally bankrupt).
- Directors continue to be directors, although with reduced rights and powers, after a trustee, receiver, liquidator or other similar person, acting in a similar capacity, has been appointed to act on behalf of the company.

Types of directors

- The statutes do not distinguish between directors, whether active, passive, nominee , or outside directors. Therefore, their lack of involvement in the affairs of the company will generally not absolve them from liability. Directors who relinquish their responsibilities to co-directors, officers or employees may be held liable.

De facto directors

- Officers, employees, and others who are not legally appointed or elected as directors, but who perform the functions that directors would perform, may be liable.

Due diligence

- Directors should make sure that the corporation is properly withholding deductions. Also, a corporation and its directors must act responsibly. Directors must make every reasonable effort to ensure that source deductions, GST/HST, excise duty, and amounts charged under the ATSCA and the SLPECA are withheld, collected, remitted, and paid.
- Directors are not liable if they exercise due diligence, that is, the care that a reasonably prudent person would take in similar circumstances to make sure that the corporation deducts, withholds, collects, remits, or pays the amounts due. To do this, directors should use methods such as:
    1. establishing a separate account for withholdings from employees and remittances of source deductions and for remittances of GST/HST, excise duty, and amounts charged under the ATSCA and the SLPECA;
    2. calling on financial officers of the corporation to report regularly on the status of the account; and
    3. obtaining regular confirmation that withholdings, remittances, or payments have in fact been made during all relevant periods.

If the corporation is in receivership or bankrupt, one of the responsibilities of directors may include advising the receiver and manager or trustee in writing of the banking arrangements in place for paying the source deductions withheld, the GST/HST, excise duty, and charges under the ATSCA and the SLPECA.

To demonstrate that they exercised due diligence, directors must show that they took reasonable steps to prevent the failure to deduct, withhold, remit, or pay. In other words, the steps must be taken before the failure has occurred.

Directors are obliged to be aware of what is happening in the corporation that they are a director of. They must maintain effective lines of communication between them and the corporation's responsible employees.

Directors cannot claim that they were unaware of their obligations or the corporation's obligations under the statutes. A reasonably prudent person who knows that he or she is a director but is uncertain about his or her responsibilities must at least try to find out what is expected of him or her and to carry out that duty.

While directors may delegate their statutory responsibilities to other people, they remain responsible for ensuring that payroll deductions, GST/HST, excise duty, and charges under the ATSCA and the SLPECA are remitted.

An objective standard is applied when considering a due diligence defense. This does not mean that the director's particular circumstances are to be ignored. The circumstances must be considered against an objective standard of a “reasonably prudent person.”

A 2020 Tax Court of Canada case, Penate v. R. [Penate], involved a sole female director and shareholder of roofing company. The company failed to collect customer payments for contract work which was complicated by ongoing sexual harassment and discrimination. The company was assessed for unremitted net GST / HST, plus penalty and interest, for reporting periods from January 1, 2010 to December 31, 2012. Under the appeal Penate provided evidence her first priority was focused on paying the outstanding tax balance and there was no evidence that any GST / HST remittances were diverted to assist with business activities.

It was revealed the company's problems revolved around sexual harassment and racial discrimination. This case sheds light that harassment and discrimination can be relevant factors in assessing whether the CRA can hold a director liable for corporate tax delinquencies. The Tax Court judge stated:

- It is my view that this appeal contains "certain exceptional circumstances and facts" which allow me to conclude that Ms. Penate may avail herself of the due diligence defense. … The problems that this Company was encountering revolved around sexual harassment and racial discrimination. Both Ms. Penate and her office manager, Ms. Sibrian, attempted to deal with and circumvent
- these issues head on. This was an entirely male-dominated industry across Canada until Ms. Penate commenced her business. There is no evidence that any GST/HST remittances were diverted to assist with the business activities. It was simply a matter of not being able to collect from many contractors as a female-run subtrade unless Ms. Penate agreed to return sexual favours for payment of the Company's completed subcontracts.

In 2017, another director's liability case reinforced the CRA's position that there are no time limitations for directors that do not resign in Sud versus The Queen. In this case, Sud had not acted as a director of the corporation since 2005. Since the corporation had stopped filing provincial information returns in 2007, Sud thought the corporation which was dissolved would have the unremitted GST issue disappear within two-years. Since, Sud had not formally resigned, he was still considered to be a director by the Court. It should be noted that the Court speculated that it might not be possible for a sole director to resign.

12.1 Summary

Slides discussed in this section: Slide 12-8

The GST/HST is a very complex tax. As you have realized from the material today, there are no easy questions when it comes to sales tax.

In order to answer a question about the GST/HST, many questions need to be answered, such as

- Who's the supplier?
- What is being supplied?
- Who is the recipient?
- Where did the supply occur?
- How was it supplied?
- How was the property used prior to the sale? What is the consideration?

By answering these questions, you should be able to start your research and obtain an answer or ask for the assistance of a sales tax specialist.

CPA offers a variety of other GST/HST courses that can enhance your knowledge on other GST/HST related topics.

Appendix – Sample GST/HST Return

Goods and Services Tax / Harmonized Sales Tax (GST/HST) Return Working Copy

Do not use this working copy to file your return or to make payments at your financial institution.

Name	Business number
	R T
Reporting period From Year Month Day to Year Month Day	Due date Year Month Day

Working copy (for your records)

▶ Copy your Business number, the reporting period, and the amounts from the highlighted line numbers in this worksheet to the corresponding boxes in your GST/HST return.

Enter your total **sales and other revenue**. Do not include provincial sales tax, GST or HST. If you are using the Quick Method of accounting, include the GST or HST.	101	00

Net tax calculation

Enter the total of all **GST and HST amounts that you collected or that became collectible** by you in the reporting period.	103	
Enter the total amount of **adjustments** to be added to the net tax for the reporting period (for example, the GST/HST obtained from the recovery of a bad debt).	104	
Total GST/HST and adjustments for period (add lines 103 and 104) →	105	
Enter the GST/HST you paid or that is payable by you on qualifying expenses (**input tax credits – ITCs**) for the current period and any eligible unclaimed ITCs from a previous period.	106	
Enter the total amount of **adjustments** to be deducted when determining the net tax for the reporting period (for example, the GST/HST included in a bad debt).	107	
Total ITCs and adjustments (add lines 106 and 107) →	108	
Net tax (subtract line 108 from line 105)	109	

Other credits if applicable

Do not complete line 111 until you have read the instructions.

Enter any **instalment and other annual filer payments** you made for the reporting period. If the due date of your return is June 15, see the instructions.	110	
Enter the total amount of the GST/HST **rebates**, only if the rebate form indicates that you can claim the amount on this line. For filing information, see instructions.	111	
Total other credits (add lines 110 and 111) →	112	
Balance (subtract line 112 from line 109)	113 A	

Other debits if applicable

Do not complete line 205 or line 405 until you have read the instructions.

Enter the total amount of the **GST/HST due on the acquisition of taxable real property.**	205	
Enter the total amount of **other GST/HST to be self-assessed.**	405	
Total other debits (add lines 205 and 405) →	113 B	
Balance (add lines 113 A and 113 B)	113 C	

Line 114 and line 115: If the result entered on line 113 C is a negative amount, enter the amount of the refund you are claiming on line 114. If the result entered on line 113 C is a positive amount, enter the amount of your payment on line 115.

Refund claimed	Payment enclosed
114	115

Instructions

Line 110
Annual filer with a June 15 due date: If you are an individual with business income for income tax purposes and have a December 31 fiscal year-end, the due date of your return is June 15. However, any GST/HST you owe is payable by April 30. This payment should be reported on line 110 of your GST/HST Tax Return.

Line 111: Some rebates can reduce or offset your amount owing. Those rebate forms contain a question asking you if you want to claim the rebate amount on line 111 of your GST/HST Tax Return. Tick **yes** on the rebate form(s) if you are claiming the rebate(s) on line 111 of your GST/HST Tax Return. If you file your return electronically, send the rebate application by mail to the Prince Edward Island Tax Centre.

Line 205: Complete this line **only** if you purchased taxable real property for use or supply primarily (more than 50%) in your commercial activities and you are a GST/HST registrant (other than an individual who purchases a residential complex) or you purchased the property from a non-resident. If you qualify for an input tax credit on the purchase, include this amount on line 108.

Line 405: Complete this line **only** if you are a GST/HST registrant who has to self-assess GST/HST on an imported taxable supply or who has to self-assess the provincial part of HST.

Personal information is collected under the Excise Tax Act to administer tax, rebates, and elections. It may also be used for any purpose related to the administration or enforcement of the Act such as audit, compliance and the payment of debts owed to the Crown. It may be shared or verified with other federal, provincial/territorial government institutions to the extent authorized by law. Failure to provide this information may result in interest payable, penalties or other actions. Under the Privacy Act, individuals have the right to access their personal information and request correction if there are errors or omissions. Refer to Info Source at cra.gc.ca/gncyfp/infosrc/infsrc-eng.html, Personal Information Bank CRA PPU 241.