

# GST/HST pension plan compliance obligations

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## In brief

This *Tax Insights* discusses Goods and Services Tax/Harmonized Sales Tax (GST/HST) compliance issues relevant to employers that have registered pension plans.

## In detail

### Deemed collection of GST/HST from pension plan

For fiscal years commencing after September 23, 2009, most employers that have a registered pension plan (RPP) are required to remit GST/HST relating to expenses they incur and 'in-house' activities they perform in respect of their RPPs.

Section 172.1 of the *Excise Tax Act* (ETA) deems a 'participating

employer' that is a GST registrant to have made a taxable supply to a 'pension entity' of a RPP in the three situations outlined in the table below.

### Implications

When the deemed supply rules apply, the employer:

- is deemed to have collected GST/HST on the last day of the employer's fiscal year, on the fair market value of the supply

- must:
  - analyze the 'employer resources' (e.g. salary costs, overhead costs and any other relevant costs that relate to pension activities) that were consumed or used in relation to pension activities
  - remit the applicable GST/HST that it is deemed to have collected in its GST/HST return that includes the last day of its fiscal year

	Activity	Why undertaken	Subsection
A 'participating employer' of a RPP is deemed to have: <ul style="list-style-type: none"> <li>• made a taxable supply</li> <li>• collected GST/HST on the deemed supply, if it:</li> </ul>	Acquired certain property and services (referred to as a supply of a 'specified resource')	For purposes of making a supply of all or part of the specified resource to the pension entity for consumption, use or supply by the pension entity in the course of pension activities	172.1(5)
	Consumes or uses its own property, labour or resources (referred to as an 'employer resource')	For purposes of making a supply of property or service (referred to as being both a 'pension supply' and an 'employer resource supply')	172.1(6)
	Acquires, consumes or uses an employer resource in the course of pension activities	Not for purposes of making a supply of property or services to the pension entity	172.1(7), a catch-all provision

### A warning to employers

The Canada Revenue Agency (CRA) regularly audits the GST/HST issues that relate to RPPs. In particular, it confirms that the employer is remitting an appropriate amount of GST/HST with respect to:

- deemed supplies that are made to the RPP
- any resupply to the RPP when there is a recharge of expenses or amounts paid out of the RPP

### Tax adjustment notes

Employers should also consider whether they must collect and remit GST/HST under the regular charging provisions. An employer that directs the RPP to pay a particular expense or that recharges an expense to the RPP, may have an obligation to charge, collect and separately remit GST/HST, even if it is deemed to have collected GST/HST on deemed supplies.

To eliminate double taxation, 'tax adjustment note' (TAN) rules allow the employer to take a net tax deduction (refund) equal to the amount specified in the TAN for the reporting period in which the TAN was issued.

The amount of the TAN generally equals the lesser of:

- the amount of deemed tax paid under section 172.1
- the actual amount of GST/HST that became payable under the regular charging rules

The employer can take the net tax adjustment only if the TAN is issued. Therefore, it is beneficial for the employer to issue the TAN before its fiscal year end, so as to offset its remittance obligations.

### Election to eliminate double tax

The TAN process is extremely complex and administratively cumbersome. Newly enacted section 157 of the ETA provides relief by allowing the employer and the RPP to elect (Form RC4615) to deem every taxable supply that is made by the employer to the RPP to be made for no consideration.

The election eliminates both double taxation and the requirement for employers to issue TANs. Generally, it must be filed before the first day of the employer's fiscal year (later if permitted by the CRA).

### Pension plan rebates

Most RPPs can claim a rebate that, subject to certain deductions resulting from certain elections made with a 'qualifying employer,' equals the 'pension rebate amount.' A 'qualifying pension entity' is a 'pension entity' of a 'pension plan.'

The 'pension rebate amount' equals 33% of all amounts that constitute an 'eligible amount,' which is calculated as follows:

		Eligible amount
Is RPP a 'selected listed financial institution'?	No	Generally, the unrecoverable federal and provincial/territorial components of GST/HST that were paid
	Yes	The unrecoverable federal component of GST/HST that became payable by the pension entity during the claim period

The pension rebate is claimed by filing an application. There is generally a two-year limit.

### Selected listed financial institution (SLFI) rules

Most RPPs will be considered SLFIs and thus will be subject to additional reporting requirements.

A RPP is a SLFI if some members are resident in an HST province and others are resident in non-HST provinces, unless the plan either:

- is a 'qualifying small investment plan'
- meets a de minimis threshold with regard to its members that are resident in HST provinces

### Special attribution method (SAM) formula

Subsection 225.2(2) of the ETA requires a SLFI to adjust its net tax in accordance with the special attribution method (SAM) formula.

In a round-about way, the SAM formula results in RPPs paying an effective rate of GST/HST that is based on the pension plan's provincial attribution percentage (PAP).

The rules for determining the PAP of a RPP are in the SLFI Regulations and are summarized below.

Plan	PAP is based on	
Defined contribution	Value of pension plan's assets	that are reasonably attributable to a plan member
Defined benefit	Total value of actuarial liabilities	who is a resident of an HST province on the 'attribution point'
Hybrid	N/A (other rules apply)	

A SLFI pension plan that is GST/HST registered must adjust its net tax in accordance with the SAM formula by filing an annual SLFI return that is due by June 30 of the following year.

Because a RPP that is a SLFI cannot claim a rebate for the provincial portion of the HST paid, this portion is recovered as part of the ‘SAM’

calculations in the reporting period in which the federal portion of the rebate is received by the pension plan.

### ***Let's talk***

For help identifying your obligations, minimizing the amount of unrecoverable GST/HST that is payable and completing the requisite filings and calculations on a cost-effective basis, please contact any of the following:

Brent Murray\*  
+1 (416) 947 8960  
[brent.f.murray@ca.pwc.com](mailto:brent.f.murray@ca.pwc.com)

Lloyd McMaster  
+1 (416) 687 8125  
[lloyd.w.mcmaster@ca.pwc.com](mailto:lloyd.w.mcmaster@ca.pwc.com)

Tariq Nasir  
+1 416 941 8383 ext. 16255  
[tariq.nasir@ca.pwc.com](mailto:tariq.nasir@ca.pwc.com)

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