

# Tax Memo

## GST Rebate for Registered Pension Plan Trusts

On September 23, 2009, the Department of Finance announced plans for a GST rebate for pension entities (i.e., plan trusts and corporations that administer pension plans). This announcement follows a proposal released in January 2007. The rebate is intended to “replace the complex system of legislative and administrative rules that currently apply to different employer-sponsored registered pension plan trust structures with a new, uniform GST rebate system that will apply fairly and equitably to all such structures.”

The newly announced rebate is substantially similar to the 2007 proposal, but has much more detail. Briefly, under the new proposal, all pension-related expenses incurred by employers participating in a pension plan are deemed to be resupplied to the relevant pension entity. The pension entity would then be entitled to claim a rebate of 33% of the GST it has paid (or is deemed to have paid) on deemed supplies from participating employers. The rebate would be available regardless of whether the pension entity is registered for the GST. As in the 2007 proposal, there are restrictions for pension plans for which 10% or more of the contributions to the plan are made by Listed Financial Institutions (LFIs).

A key difference from the 2007 proposal is that the new plan permits pension entities and participating employers to jointly elect to transfer some or all of the pension entity’s rebate entitlement to the plan’s participating employers that are GST registrants. This would enable the employers to make a deduction in determining their net tax in respect of the transferred rebate amount. When all the participating employers are exclusively engaged in commercial activities, the pension entity and the employers would be allowed to allocate the rebate entitlement as they choose. However, if any of the participating employers are not engaged exclusively in commercial activities, the maximum proportion of the rebate entitlement transferable to an employer would be in proportion to that employer’s share of the total pension contributions.

Importantly, the deduction for an employer not engaged exclusively in commercial activity would be further limited by the employer’s tax recovery rate, taking into account both input tax credits and rebates (if applicable) for public service bodies. Consequently, the allocation of the rebate to employers could reduce the total rebate claimable.

### **Restrictions for Pension Plans with $\geq 10\%$ of Contributions from LFIs**

As in the 2007 proposal, if 10% or more of a pension plan’s contributions are made by LFIs, the pension plan would not be eligible for the rebate. However, the new proposal would permit a pension entity of this plan and the plan’s participating employers to make the joint election to allocate the rebate to the respective employers. Consequently, although the pension entity would be ineligible for the rebate, LFIs would be entitled to a partial recovery of the taxes incurred.

Another change from the 2007 proposal is that, in determining the tax rate applicable to the deemed supply to the pension entity by the employer, a composite tax rate is used. This composite is based on a "provincial factor" determined by taking into account the split of pension contributions and the number of participants of the plan located in participating and non-participating provinces.

No effective date had been specified for the 2007 proposals, leading to some uncertainty regarding the government's intention. The new proposal clarifies that the rebate is to be effective for fiscal years beginning after September 23, 2009.

This proposal is an important step in reducing the uncertainty regarding the tax treatment of pension plan expenses following the **General Motors**<sup>1</sup> decision. That said, the treatment of input tax credit claims preceding the effective date of the rebate and the potential application of GST to what might be viewed as a resupply from the employer to the pension plan remain areas of substantial uncertainty and debate.

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1. **The Queen v. General Motors of Canada Limited** (issued April 16, 2009), Federal Court of Appeal, affirming **General Motors of Canada Limited v. The Queen** [2008] ETC 28881 (Tax Court of Canada).

## For More Information

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