

# Tax Memo

## Ontario Sales Tax Harmonization —Input Tax Credit Restrictions

On November 16, 2009, Ontario Finance Minister Dwight Duncan issued a new publication, *Ontario's Tax Plan for Jobs and Growth*. The publication provides details on the special restriction on input tax credits (ITCs) for the 8% provincial portion of the HST paid by large businesses for selected purchases made during the first eight years after harmonization. Small and medium-sized businesses will not be affected by these special ITC restrictions.

A "person" will be considered to be a large business if:

- the total consideration for taxable supplies (including zero-rated supplies):
  - made in Canada by the person, or by associates of the person; and
  - paid or payable in the previous fiscal year, exceeded \$10 million; or
- the person is, or is related to, one of the following financial institutions:
  - a bank;
  - a trust company;
  - a credit union;
  - an insurer;
  - a segregated fund of an insurer; or
  - an investment plan.

Specific rules would apply to selected listed financial institutions.

The following table outlines the treatment of supplies for purposes of calculating the \$10 million threshold.

<b>Supplies that need not be included:</b>	<b>Supplies that must be included:</b>
<ul style="list-style-type: none"><li>• financial services;</li><li>• exempt supplies;</li><li>• real property that is capital property; and</li><li>• goodwill of a business for which GST is not payable.</li></ul>	<ul style="list-style-type: none"><li>• zero-rated exports;</li><li>• made outside Canada through a permanent establishment in Canada; and</li><li>• supplies deemed to have been made for nil consideration pursuant to a joint election with a closely related entity.</li></ul>

The \$10 million threshold must be adjusted for fiscal years shorter than 365 days. Special rules will apply when there is an acquisition of control, an amalgamation or any other reorganization that would potentially affect the threshold calculation.

The ITC restrictions will not apply to persons that are public service bodies under the GST/HST legislation, such as school authorities, hospital authorities, public colleges, universities, municipalities, charities and non-profit organizations.

When a partnership is a large business, the ITC restrictions will also apply to any partner (other than an individual) that acquires restricted items for consumption or use in the activities of the partnership. Similarly, if a participant in a joint venture is a large business that has made a joint-venture election with the operator of the joint venture, the ITC

restrictions will also apply to any purchases of restricted items by the operator on behalf of the participant for use in the joint venture's activities.

The ITC restrictions generally will apply to the following restricted items:

- Electricity, gas, combustibles (other than fuels to power a propulsion engine) or steam (energy). However, energy used to produce goods for sale, or for the design or production of equipment used to produce goods for sale would generally not be subject to the restrictions. Energy for air conditioning, lighting, heating or ventilation generally will be restricted.
- Most telecommunication services, such as telephone services, voicemail, conference and long distance calls. However, internet access, web hosting and toll-free numbers would not be subject to the restrictions.
- Road vehicles weighing less than 3,000 kilograms that are required to be registered for use on public highways. This would include most cars, minivans and pick-up trucks, but not trailers or semi-trailers.
- Fuel (other than diesel fuel) to power a vehicle described above and any parts and services acquired for such a vehicle within the first 12 months following the date of acquisition (other than parts and services acquired for routine maintenance during that time).
- Food, beverages and entertainment that are only 50% deductible under the *Income Tax Act* (which give rise to only a 50% ITC for the 5% federal GST).

After the first five years of HST implementation, the restrictions will be phased out as follows:

	ITC
6	25%
7	50%
8	75%
9	100%

The Ontario government announced that additional details regarding restricted ITCs will be released in an upcoming information notice. For further information, please contact the following individuals or your local PwC Indirect Tax adviser.

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