

Tax memo

Canadian tax updates



Changes to GST/HST rules for pension plans

Pension plan tax compliance could be simplified by proposals in the 2013 federal budget.

March 26, 2013

The 2013 federal budget introduced changes to the GST/HST rules for pension plans. Businesses, pension plan administrators and advisors have awaited measures that would help simplify the rules and ease the compliance burden for employers and pension plans.

Two budget measures provide some relief:

- A proposed election will allow an employer to avoid having to charge GST/HST on actual supplies that the employer makes to the pension entity if the employer “accounts for and remits tax on the deemed taxable supplies” made between the parties. This election will allow the employer to avoid the complicated procedures related to the adjustment of its net tax (i.e., the issuance of Tax Adjustment Notes).
- A proposed change will permit an employer participating in a registered pension plan to be fully or partially relieved from accounting for tax on deemed taxable supplies if the employer’s pension plan-related activities fall below certain thresholds.

These new rules, discussed in more detail below, could provide relief to two main categories of employers:

- those currently reporting the amount of actual tax collected from their pension plan in their GST/HST returns on an ongoing basis; and
- those administering a small pension entity.

Before implementing the changes and/or making the election, employers and pension entities must examine the new measures carefully to assess their effect on current and future years.

Background

An employer that participates in a registered pension plan is required to account for GST/HST under the general GST/HST rules on actual taxable supplies that it makes to a pension entity (i.e., pension trust or corporation). However, on an annual basis, the employer is also required to account for tax on deemed taxable pension supplies. The employer is deemed to have made a taxable supply and to have collected GST/HST to the extent that the employer has acquired property or services for use in activities related to the pension plan.

An employer that is required to account for GST/HST twice (i.e., on both the actual taxable supply and the deemed taxable supply) is permitted to make a tax adjustment in respect of its net tax to ensure that:

- tax is remittable on only one supply; and
- the pension entity will realize the benefit of a GST/HST rebate only for the tax on one of the supplies.

Election to not account for GST/HST on actual supplies

It is proposed that a participating employer and a pension entity may jointly elect to treat an actual taxable supply by the employer to the pension entity as being made for no consideration, if the employer accounts for and remits tax on the deemed taxable supply.

This measure should simplify compliance for employers, because they would not have to:

1. account for tax on the actual taxable supply;
2. issue a Tax Adjustment Note to the pension entity; and
3. make a consequent tax adjustment to their net tax.

The election remains in effect until it is jointly revoked by the employer and the pension entity or by the Canada Revenue Agency (CRA).

The CRA has the power to cancel the election if it has evidence that the employer has failed to remit tax on the deemed taxable supplies made in the fiscal year that relate to actual taxable supplies made to the pension entity. The CRA must then issue a Notice of Intent to the employer and the pension entity. The employer, once in receipt of the Notice of Intent, is given time to refute the claim that it failed to remit the tax. After 60 days, if the CRA is still not satisfied that the employer properly accounted for the tax, it may send the employer a Notice of Revocation, specifying the date of revocation (effective from the beginning of a particular fiscal year of the employer).

As a consequence of the enforced revocation, the CRA may assess the employer for tax on deemed taxable supplies and actual taxable supplies made after the election was cancelled, plus applicable interest.

This measure will apply to supplies made after March 21, 2013.

PwC comments

According to the interpretative position issued by the CRA in August 2011, there is an actual supply when pension-related expenses incurred by an employer are paid out of a pension entity. Identifying actual supplies is easy when the employer invoices the pension entity for the costs of the inputs. However, identifying an actual supply is more difficult when the pension entity directly paid the third-party supplier or reimbursed the employer. In practice, these actual supplies are sometimes reported once a year instead of on an ongoing basis, as they should be.

The proposed election therefore would eliminate the uncertainty with respect to the obligation to remit tax on these types of transactions and the timing of that remittance.

The election is not available to actual supplies made to a master trust because, under the CRA's current position, a master trust does not qualify as a pension entity. This is another consideration when assessing the pros and cons of this election.

Relief from accounting for tax on deemed taxable supplies

An employer that participates in a registered pension plan is required to account for and remit GST/HST under the deemed taxable supply rules. A proposed measure will allow a participating employer to be fully or partially relieved from the obligation to account for tax on deemed taxable supplies if the employer's pension plan-related activities fall below certain thresholds.

This relief will apply in respect of any fiscal year of an employer that begins after March 21, 2013.

Full relief

The employer will be fully relieved from applying the deemed taxable supply rules for a fiscal year when the amount of the GST (and the federal part of HST) that the employer was required to account for and remit under those rules in the preceding fiscal year is less than both:

- \$5,000; and
- 10% of the total net GST (and the federal part of HST) paid by all pension entities of the pension plan in that preceding fiscal year.

An employer is not permitted to benefit from the full relief proposed under this measure for deemed taxable supplies made in a fiscal year of the employer if the employer has a joint election in effect to not account for tax on actual taxable supplies made in that fiscal year.

Relief limited to “internal pension activities”

Limited relief would be available even when an employer has a joint election in effect to not account for tax on actual supplies in that fiscal year. This relief is restricted to the employer’s “internal pension activities” (e.g., time spent by employees of the employer on pension-related activities).

A participating employer would be relieved from the deemed taxable supply rules with respect to its internal pension activities if the amount of GST (and the federal part of HST) that the employer was required to account for and remit in the preceding fiscal year, under the deemed taxable supply rules in respect of those activities only, was below both the \$5,000 and 10% thresholds noted above.

PwC comments

The 2013 federal budget does not clearly explain how to calculate the 10% threshold. For instance, if a pension entity is eligible for a 33% pension plan rebate, when assessing whether the threshold is reached, should the rebate be deducted from the

amount of net GST or federal HST paid by the pension plan?

It appears that the employer will retain its obligation to estimate its fully loaded internal costs related to pension activities and to satisfy some additional calculation tests to determine whether it has to remit the deemed tax. It is questionable whether this new rule will always simplify and ease the compliance burden for employers and pension plans.

We can help

For more information, please contact your local PwC indirect tax advisor or any of the individuals listed on the next page.

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1. Member of PwC's Canadian National Tax Services (see www.pwc.com/ca/cnts).

More 2013 budgets are coming!

PwC will keep you up-to-date on tax changes in Canada's federal and provincial budgets.

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