Welch LLP

You can drive your dealership's savings by understanding GST & HST rules

Deciding whether to charge clients GST, HST or QST can be confusing, especially when clients are residents of Quebec buying a car in Ontario, or if clients are First Nations and qualify as Status Indians. You can save time and money for your business and your clients by understanding which tax should be charged in a given situation.

Since its introduction in Ontario effective July 1, 2010, the HST has given rise to many changes for businesses involved in the retail automobile industry. This publication highlights certain GST/HST rules that would be of specific interest to dealers in the automotive industry, such as place of supply, restricted input tax credits, point-of-sale exemptions for Ontario's First Nations, insurance, private transfers of used motor vehicles, electronic filing of returns, as well as tax for fuel consumption and tax credit for fuel conservation.

Place of Supply

Although it's been over two years since HST has been adopted in Ontario, there is still uncertainty with respect to the correct rate of tax to apply when a portion of the transaction occurs in a province other than Ontario. When this occurs, the Place of Supply rules can help in determining what rate of tax applies.

All supplies made in Canada are subject to either GST or HST. If the supply is made in a participating province, HST at the rate in effect for the province will apply. Alternatively, if the supply is made in a non-participating province, GST at 5% applies. (Please see Appendix A for applicable provinces and rates.) The rules that determine where a supply has taken place depend on the nature of the supply.

Place of Supply for Goods

The place of supply for goods, such as cars and car parts, is deemed to be the place where the good is either delivered or made available to the purchaser.

Thus if the car or car part is delivered to the customer, the place of supply will be the province where the customer is located. Similarly, if the customer picks up the car or car part at the vendor's location the place of supply will be the province where the vendor is located.

Special rules have been introduced where vehicles are licenced to customers located in another province from the province in which the dealer is located and the vehicle is delivered. For example, often Ontario dealers sell cars to Quebec residents. The Ontario dealers have been obtaining Quebec plates for the automobiles and have been paying QST at the Quebec licence bureau. However, since the customers are picking up the automobiles in Ontario, the vehicles would normally also be subject to HST.

This issue has been addressed by the Department of Finance Canada who has introduced regulatory changes to rectify the situation. Thus, the sale of a specified motor vehicle is deemed to occur in the province where the vehicle is registered as long as it is registered within seven days if its purchase. These new rules have been applied by CRA retroactively to July 1, 2010.

Further information can be obtained from Canada Revenue Agency's GST/HST Info Sheet GI-119 which can be viewed at http://www.cra-arc.gc.ca/E/pub/gi/gi-119/gi-119-e.pdf

Place of Supply for Services

The place of supply for services such as car maintenance and repair is the location where the service is rendered. Therefore, if the customer has the car maintained or repaired at the vendor's location, the place of supply will be the province where the vendor is located. An exception to this rule would be in the case where a customer brings a car in to one location for repair and that car is sent to another location by the repair shop and is then sent back to the original province after the repair is completed. In that case, the place of supply is the province where the car came from and not the province where the repair was completed.

Restricted Input Tax Credits

Large businesses whose annual taxable sales (including those of associated companies) exceed $10 million are subject to the restricted input tax credit (RITC) rules. These rules are in place to temporarily restrict large businesses from claiming input tax credits on certain classes of expenditures. The restrictions apply only to the provincial portion of the HST and have been in place since July 1, 2010. They are to remain in place until June 30, 2015 after which they will be gradually phased out during the following three years.

The restrictions apply to the following classes of expenditures;

- Road vehicles weighing less than 3,000 kg (including fuel, and parts and certain services acquired in respect of the vehicles within the first 12 months of acquisition but excluding routine maintenance and repair)
- Telecommunications
- Energy
- Meals and entertainment

Vehicles purchased for resale are not subject to the restriction. However, where the automobile is used prior to sale (for example as a demonstrator) a partial restriction of the input tax credit applies. In Ontario, the restriction applies at a rate of 8% multiplied by 2% of the cost of the vehicle for each month or part month of use. The calculation is to be reported on the final GST return for each fiscal year. For example, on a $40,000 car, the restriction to be added back would be $64 per month.

The RITCs must be reported separately on the GST/HST return as a reduction of input tax credits claimed. Thus, 100% of the HST incurred for all inputs is reported on the monthly GST/HST return. A separate field has been provided on the return where the amounts subject to the restriction are then added back to cause a reduction of input tax credits claimed. The monthly returns are required to be filed electronically.

Point-of-sale Exemptions for Ontario's First Nations

Effective September 1, 2010, point of sale exemptions for the provincial portion of the HST are available to eligible First Nations people. Those who qualify for the exemption are;

- Status Indians who are Ontario residents
- Status Indians who are Canadian residents and resident on the Akwesasne reserve
- An Indian band or council of a band of an Ontario First Nations reserve (including the Akwesasne reserve).

The sale, maintenance and repair of new and used vehicles sold off reserve qualify for the exemption however, the 5% GST continues to apply to these off reserve transactions. The rule with respect to the exemption from GST/HST for sales of automobiles delivered on reserve continues to apply and is subject to documentation rules. The vendor is responsible for maintaining adequate evidence that sales for which no GST/HST was payable were made to Indians, Indian bands or band-empowered entities. Further information can be obtained by consulting the following government publications:

- CRA's GST/HST Technical Information Bulletin B-039 which details the documentation requirements as well as other information pertaining to the application of the GST/HST to Indians. The publication can be found at http://www.cra-arc.gc.ca/E/pub/gm/b-039/README.html
- Canada Revenue Agency's (CRA) GST/HST Info Sheet GI-106. The Info Sheet can be found on CRA's website at http://www.cra-arc.gc.ca/E/pub/gi/gi-106/README.html
- Ontario Guide 80: http://www.rev.gov.on.ca/en/guides/hst/pdf/80.pdf

Insurance

The 8% PST on certain types of insurance continues to apply. This tax is neither GST nor HST and thus is not eligible for input tax credits. The exemption from PST for automobile insurance continues to apply as do all previous exemptions with respect to insurance under the Ontario Retail Sales Tax Act.

Further information with respect to collecting PST on insurance premiums is available via the following link. http://www.rev.gov.on.ca/en/taxtips/hst/04.html

Private Transfers of Used Motor Vehicles

Private transfers of used motor vehicles in Ontario are exempt from GST and HST but are subject to a retail sales tax of 13% payable at the motor vehicle license bureau. This tax is not eligible for input tax credit. The sale of used motor vehicles in Ontario by GST registrants is subject to HST at the rate of 13% and is subject to the normal input tax credit rules.

Electronic Filing of Returns

Registrants whose annual sales exceed $1.5 million are required to file their GST/HST returns electronically as of July 1, 2010. A notice from CRA was sent to qualified registrants with the details of the requirement. In addition, each qualified registrant was sent a document containing a "web access code" to be used in filing the GST/HST return. Registrants will receive a new "web access code" in respect of each GST/HST filing period.

During the electronic filing process, large businesses subject to the restricted input tax credits should answer "yes" to the question on the login screen pertaining to recapturing input tax credits for the provincial portion of the HST. This will launch a special return thus enabling the large business to report ITCs to be recaptured.

Failure to file GST/HST returns electronically can result in a penalty of $100 for the first failure and $250 for each subsequent failure.

Arranging for Financial Service

There have been recent legislative changes to the definition of "Financial Services" under the Excise Tax Act that can result in changes in the tax treatment of finance and insurance related fees.

Under the former rules, fees earned in respect of arranging for financing of the purchase of an automobile were for the most part exempt from GST/HST and therefore were not subject to the tax. However, based on the new rules, the tax status of these services will depend on the degree of involvement of the auto dealership in arranging financing as well as the extent to which the lending institution relies on the auto dealer's recommendation to accept the loan application.

Where the involvement is extensive, the service will be considered an exempt financial service and will be exempt from GST/HST. However, where the involvement is limited to preparatory type services such as;

- a service of collecting, collating or providing information, or
- a market research, product design, document preparation, document processing, customer assistance, promotional or advertising service or similar service;

the service will be considered to not be a financial service and therefore will be subject to GST/HST.

Further information can be obtained from Canada Revenue Agency's GST/HST Technical Information Bulletin B-105 which can be viewed at http://www.cra-arc.gc.ca/E/pub/gm/b-105/b-105-e.pdf.

Tax for Fuel Consumption (TFFC) and Tax Credit for Fuel Conservation (TCFFC)

Both of the above mentioned programs were legislated under the Ontario Retail Sales Tax Act and both programs no longer apply as of July 1, 2010. The programs have been replaced by a purchase rebate applicable for consumers who purchase electric vehicles. The rebate will be available to the first 10,000 applicants only.

Common Tricks and Traps

Here is a list of common tricks and traps we have found in our practice among our auto dealership clients;

- Erroneous claiming of input tax credits with respect to PST that is charged on insurance premiums.

GST/HST does not apply to insurance premiums. However, PST does continue to apply even post Ontario's adoption of the HST effective July 1, 2010. PST is a cost that is born by the consumer and therefore is not eligible to be claimed as an input tax credit.

- Application of old PST self-assessment rules to the GST/HST

Under the old Ontario PST rules, a self-assessment of PST was required for any parts or supplies used in-house since these parts and supplies were usually purchased exempt from PST. We have seen instances where clients assumed that these same rules apply to the GST/HST and have erroneously remitted GST/HST with respect to parts and supplies used in-house.

- Failure to report recapture of ITC on demo vehicles

At the end of each fiscal year, auto dealers are required to recapture the provincial portion of the HST with respect to vehicles purchased for resale but used prior to sale (for example as a demonstrator).The calculation is performed once a year and is based on a factor of 8% multiplied by 2% of the cost of the automobile for each month or partial month of use.

- Failure to file GST/HST returns electronically

Only charities are exempted from the mandatory electronic filing requirements applicable to GST/HST registrants with over $1.5 million of annual taxable revenues. Furthermore, revenues of associates must be considered in the determination of taxable revenues for the purpose of this requirement. Failure to file a return electronically is subject to a penalty of $100 for the first failure and $250 for each subsequent failure.

- Improper documentation on hand to support ITC claim

When a GST/HST registrant claims an input tax credit they are required to have supporting documentation with respect to the credit. The documentation must be on hand at the time the claim is made. Furthermore, it is important that the supporting documentation is in the name of the company claiming the credit. Otherwise, in the event of a CRA audit the claim may be challenged.

APPENDIX A

Participating and Non-Participating Provinces and Applicable GST/HST Rates **before** April 1, 2013.

Participating Provinces	Applicable Tax	Rate
British Columbia	HST	12%
Ontario	HST	13%
Newfoundland and Labrador	HST	13%
New Brunswick	HST	13%
Nova Scotia	HST	15%

Non-Participating Provinces	Applicable Tax	Rate
Yukon	GST	5%
Northwest Territories	GST	5%
Nunavut	GST	5%
Alberta	GST	5%
Saskatchewan	GST	5%
Manitoba	GST	5%
Quebec	GST	5%
Prince Edward Island	GST	5%

Participating and Non-Participating Provinces and Applicable GST/HST Rates **after** April 1, 2013.

Participating Provinces	Applicable Tax	Rate
Ontario	HST	13%
Newfoundland and Labrador	HST	13%
New Brunswick	HST	13%
Nova Scotia	HST	15%
Prince Edward Island	HST	14%

Non-Participating Provinces	Applicable Tax	Rate
Yukon	GST	5%
Northwest Territories	GST	5%
Nunavut	GST	5%
Alberta	GST	5%
Saskatchewan	GST	5%
Manitoba	GST	5%
Quebec	GST	5%
British Columbia	GST	5%

For more information about how HST can affect your business, please contact Mona Tessier at: mtessier@welchllp.com or by phone at: 613.236.9191

By Mona Tessier, CA, CA.IT, Manager

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