



Trusts

The information in this bulletin does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the *Excise Tax Act* or its Regulations, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, [Canada Revenue Agency GST/HST Rulings Centres](#). A ruling should be requested for certainty in respect of any particular GST/HST matter.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec by calling 1-800-567-4692. For general information, please visit their Web site at www.revenu.gouv.qc.ca.

Reference in this publication is made to supplies taxable at 5% (the rate of the GST) or 13% (the rate of the HST). The HST applies to supplies made in Nova Scotia, New Brunswick, and Newfoundland and Labrador (the “participating provinces”). If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-078, [Place of Supply Rules Under the HST](#).

Table of contents

Introduction.....	1
Types of trust.....	2
Inter vivos trust.....	2
Testamentary trust.....	2
Personal trust	2
Bare trust.....	2
Financial institutions	3
Exclusion	3
General requirements and entitlements.....	3
Residence	3
Operation of a trust.....	4
Liability of a trustee.....	4
Activities of a trustee	4
Supply of services	5
Interest in a trust.....	5
Settlement on an <i>inter vivos</i> trust.....	5
Settlement of financial instruments.....	5
Settlement of money.....	6
Distribution by trust.....	6

Introduction

This bulletin explains the treatment of trusts under the *Excise Tax Act** (the Act) for purposes of the GST/HST. It does not apply to trustees in bankruptcy or to receivers, who are subject to the rules found in sections 265 and 266 of the Act.

Pursuant to subsection 123(1), the term “person” means an individual, a partnership, a corporation, the estate of a deceased individual, a trust, or a body that is a society, union, club, association, commission, or other organization of any kind. A trust is included in this definition, and therefore is a person for GST/HST purposes.

* All legislative references in this bulletin refer to the *Excise Tax Act* (the Act) unless otherwise indicated.

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As such, a trust is generally subject to the legislative provisions of the Act in the same manner as any other person, even though at common law a trust is not a legal entity in its own right.

In addition to the general provisions of the Act, a trust is also subject to the requirements specific to the following:

- the settling of property on an *inter vivos* trust by a person, which is considered to be a supply made to the trust for GST/HST purposes. Where the supply is a taxable supply, the trust is required to pay the GST/HST in respect of the supply.
- the distribution of property by the trust, which is considered to be a supply made by the trust for GST/HST purposes. Where the supply is a taxable supply, the trust is required to collect and account for the GST/HST in respect of the supply.

The settling and distribution of property are discussed later in this bulletin under the headings, “Settlement on an *inter vivos* trust” and “Distribution by trust”.

The Act does not contain a definition of what constitutes a trust for GST/HST purposes. Consequently, a valid trust under the general law is a trust for purposes of the Act.

Types of trust

Inter vivos trust

An *inter vivos* trust is a trust that is created and becomes effective during the life of the settlor (i.e., the person creating the trust). Pursuant to subsection 123(1), the term “*inter vivos* trust” means a trust other than a testamentary trust. This definition is relevant for purposes of section 268 of the Act, which addresses the settling of property into a trust, and for the purposes of the definition of personal trust in subsection 123(1).

Testamentary trust

The term “testamentary trust” has the meaning assigned by subsection 248(1) of the *Income Tax Act* (ITA), which in turn refers to the definition in subsection 108(1) of that same Act. Pursuant to subsection 108(1) of the ITA, the term “testamentary trust” means a trust or estate arising as a consequence of the death of an individual, with certain exceptions. Any trust that does not meet the definition of testamentary trust as found in the ITA is considered and treated as an *inter vivos* trust for GST/HST purposes. The definition of a testamentary trust is relevant for purposes of the definition of personal trust and for purposes of the exempting provisions for real property in Part I of Schedule V to the Act.

Personal trust

The term “personal trust” means a testamentary trust or an *inter vivos* trust that is a personal trust under subsection 248(1) of the ITA, provided that all of the beneficiaries, other than contingent beneficiaries, are individuals and all of the contingent beneficiaries, if any, are individuals, charities or public institutions. The definition of personal trust is relevant for purposes of the exempting provisions for real property in Part I of Schedule V, section 190 which generally applies to the conversion of real property to residential purposes, and the definition of commercial activity in subsection 123(1) of the Act.

Bare trust

A bare trust exists where a person (i.e., the trustee) is merely vested with the legal title to the property held in trust and has no other duty to perform or powers to exercise as trustee. Someone other than the trustee (e.g., the beneficiary) carries on the activity that relates to the property. The beneficiary and not the bare trustee is regarded as being the owner of the property for GST/HST purposes, and is required to register in respect of any commercial activity carried on that relates to the property held in trust.

Detailed information on the application of the Act to bare trusts is available in GST/HST Policy Statement P-015, *Treatment of Bare Trusts Under the Excise Tax Act* and GST/HST Technical Information Bulletin B-068, *Bare Trusts*.

Financial institutions

A trust may be a financial institution for purposes of the Act. A trust that falls within section 149 is a financial institution, and therefore is subject to the rules for financial institutions in addition to the rules for trusts under the Act. Detailed information regarding financial institutions is available in Chapter 17, *Special Sectors – Financial Institutions*, of the GST/HST Memoranda Series.

Exclusion

Trusts are excluded from the definition of non-profit organization in subsection 123(1). As a result, a trust may not claim GST/HST rebates related to non-profit organizations. In addition, the GST/HST exemptions that apply to non-profit organizations do not apply to trusts.

General requirements and entitlements

Unless a trust is a bare trust, any commercial activity carried out with respect to the trust property is a commercial activity of the trust. A trust that makes a taxable supply in Canada in the course of commercial activity carried on in Canada by the trust must register for the GST/HST, with the exception of a trust that is

- a small supplier,
- a person whose only commercial activity is making supplies of real property by way of sale otherwise than in the course of a business, or
- a non-resident person not carrying on any business in Canada.

Where a trust is a personal trust, any business or adventure or concern in the nature of trade carried on by the trust must have a reasonable expectation of profit in order for the activity to be considered a commercial activity. Unless there is a reasonable expectation of profit, a personal trust is generally not permitted to register for the GST/HST.

Residence

Generally, the residence of a trust is determined by reference to the residence of the trustee (i.e., a trust is resident in the place where the trustee who manages and controls the trust is resident). Where there is more than one trustee with management and control of the trust, the trust is resident where the majority of the trustees are resident. Further information on the residence of a trust is available in the Interpretation Bulletin IT447, *Residence of a Trust or Estate*.

Where a trust makes taxable supplies while it is a registrant, or makes taxable supplies by way of sale of real property at any time, it is generally required to collect and account for the GST/HST payable in respect of the supplies unless subsection 221(2) (exceptions) applies.

Where a trust acquires, imports, or brings into a participating province, property or services for consumption, use or supply in the course of its commercial activity, the trust is entitled to claim input tax credits (ITCs) in respect of the tax paid or payable on the property or services, provided all the requirements under the Act relating to the claiming of ITCs are met.

A trust that is a registrant is required to file GST/HST returns and calculate its net tax for a particular reporting period. Where the net tax is a positive amount, the amount must be remitted to the Receiver General, and where the net tax is a negative amount, the amount is a net tax refund payable to the trust by the Minister.

Detailed information on a registrant's obligations and entitlements under the Act is available in the guide RC4022, *General Information for GST/HST Registrants*.

Operation of a trust

Liability of a trustee

Pursuant to subsection 267.1(2), each trustee is liable to satisfy every obligation imposed on the trust under Part IX of the Act, whether the obligation was imposed during or before the period that the person acts as trustee of the trust. For example, each trustee is liable to satisfy the trust's obligation to file GST/HST returns, collect tax on taxable supplies made by the trust, and disclose the tax status of its taxable supplies. However, the satisfaction of that obligation by one of the trustees removes the liability from all other trustees of the trust.

Under subsection 267.1(3), a trustee of a trust is jointly and severally liable with each of the other trustees of the trust, and with the trust itself, for the payment or remittance of all GST/HST amounts that became payable or remittable by the trust while the trustee acts as trustee of the trust. In addition, the liability extends to periods before the trustee began acting as a trustee of the trust, but only to the extent of the property and money of the trust under the control of the trustee. The payment or remittance by the trust or the trustee of an amount in respect of the liability discharges the joint liability to the extent of that amount.

Activities of a trustee

Pursuant to paragraph 267.1(5)(a), anything done by a person in the capacity of trustee of a trust is deemed to have been done by the trust and not by the person. Therefore, where a trustee acting as such contracts to acquire property or services for the trust, the trust is considered to have contracted for the property or services. Where a trustee of the trust contracts to make a supply of trust property, the trust is considered to have contracted to supply the property.

Accordingly, a trust will account for tax on taxable supplies made by the trustee acting as trustee of the trust. In addition, a trust is entitled to claim ITCs in respect of the acquisition, importation, or bringing into a participating province, of property or services by the trustee of the trust acting as such, where the requirements under section 169 and the other provisions of the Act relating to claiming ITCs are met.

Pursuant to subsection 123(1), the term "officer" means a person who holds an office. The definition of office in the Act has the meaning assigned by subsection 248(1) of the ITA. However, specifically excluded from the definition in the Act are:

- the position of a trustee in bankruptcy;
- the position of receiver, including a receiver within the meaning assigned by subsection 266(1) of the Act; or
- the position of trustee of a trust or personal representative of a deceased individual, where the trustee or the personal representative is entitled to an amount for acting in that capacity and that amount is included in computing the trustee's or personal representative's income (business income if an individual) under the ITA.

According to paragraph 267.1(5)(b), where the trustee is not an officer of the trust, the trustee is deemed to supply a service to the trust. Any amount to which the trustee is entitled for acting as a trustee of the trust that is included in computing the trustee's income under the ITA, or where the trustee is an individual, the individual's business income, is deemed to be consideration for the supply of that service.

Supply of services

The application of the GST/HST to fees charged by a trustee may vary depending upon the nature of the services provided by the trustee to the trust. For example, where a trust company is the trustee of a trust, the fees in respect of the following services rendered by the trustee to the trust are generally subject to the GST/HST:

- custodial services, including the safekeeping of securities,
- consulting services, including actuarial services,
- services for the preparation of documents such as tax returns, and
- services in respect of the maintenance and administration of the trust property (e.g., the collection of rent from commercial property held by the trust).

Services rendered by trust companies as trustees may fall within the definition of financial service in subsection 123(1), and may be exempt supplies.

For a list of financial products and services that may be supplied by trust companies and their corresponding tax status under the Act, refer to GST/HST Technical Information Bulletin B-057, [*List of Products and Services of Trust Companies*](#).

Interest in a trust

Any interest in a trust, or any right in respect of an interest in a trust, is a financial instrument pursuant to paragraph (d) of the definition of financial instrument in subsection 123(1). It is the CRA's position that, for GST/HST purposes, an interest in a trust or a right in respect of an interest in a trust is an interest or right with respect to the trust itself and does not represent an interest or right in respect of the property held by the trust.

Under paragraph (d) of the definition of financial service in subsection 123(1), the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument is a financial service. Generally, a supply of a financial service, with certain exceptions, is an exempt supply pursuant to Part VII of Schedule V. Accordingly, the supply of an interest in a trust, or any right in respect of that interest, is the supply of a financial service, which generally is an exempt supply. For example, the trustee of an oil and gas trust sells units in the trust to the general public, and each unit represents a fractional undivided interest in the trust. For GST/HST purposes, the sale of the units is a supply by the trust of a financial service, which generally is an exempt supply. In addition, where a beneficiary such as a unit holder of units in an oil and gas trust sells or transfers units owned in the trust to another individual, the sale or transfer is a supply of a financial service, which is generally an exempt supply.

Settlement on an *inter vivos* trust

Pursuant to section 268, the settlement of property on an *inter vivos* trust by a settlor is a supply for GST/HST purposes. The person who settles property on an *inter vivos* trust is deemed to have made, and the trust is deemed to have received, a supply of the property by way of sale. Where the deemed supply by way of sale of the property is a taxable supply, the GST/HST will apply. The consideration for the supply is deemed to be equal to the amount determined under the ITA to be the proceeds of disposition of the property. Therefore, where the settling of the property is a taxable supply, the settlor, if a registrant, is generally required to collect the GST/HST, and the trust is required to pay the GST/HST payable, which is calculated on a value equal to the proceeds of disposition for purposes of the ITA.

Settlement of financial instruments

Where the property being settled on trust is a financial instrument (e.g., shares of a corporation), the GST/HST does not apply since the transfer of ownership of a financial instrument is within the meaning of financial service in subsection 123(1), and is generally an exempt supply.

Settlement of money

Money is specifically excluded from the definition of property in subsection 123(1), and therefore there are no GST/HST consequences on the settlement of money into a trust.

Distribution by trust

Section 269 applies to all trusts, including testamentary trusts. The distribution of trust property by a trustee of a trust is a supply for GST/HST purposes.

Where the trustee of a trust distributes property held in trust to one or more persons (e.g., the beneficiary or other persons), the distribution is deemed to be a supply of the property made by the trust at the place at which the property is delivered or made available to the person. The consideration for the deemed supply of the property is deemed to be equal to the amount determined under the ITA to be the proceeds of disposition of the property. Therefore, if the distribution of the trust property (i.e., the deemed supply) is a taxable supply, the GST/HST will apply on the amount determined under the ITA to be the proceeds of disposition where the trust is a registrant and/or the trust property is real property and the deemed supply is by way of sale.

The GST/HST does not apply to the distribution of the trust property where the deemed supply is an exempt supply. For example, the distribution of a financial instrument falls within the definition of financial service in subsection 123(1), and is generally an exempt supply.

Money is not property for GST/HST purposes. Therefore, there are no GST/HST consequences in respect of the distribution of money from a trust.

Enquiries by telephone

Technical enquiries on the GST/HST: 1-800-959-8287.

General enquiries on the GST/HST: 1-800-959-5525 (Business Enquiries)

If you are located in the province of Quebec: 1-800-567-4692 (Revenu Québec)

All technical publications related to the GST/HST published to date are available on the CRA Web site at www.cra.gc.ca/gsthstech.