



## Changes to the Definition of Financial Service

**NOTE:** This GST/HST Technical Information Bulletin replaces the publications listed under Cancelled publications.

The information in this bulletin does not replace the law found in the *Excise Tax Act* (the 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 Act or appropriate regulation, or contact a Canada Revenue Agency (CRA) GST/HST rulings office for more information. A ruling should be requested for certainty in respect of any particular GST/HST matter. Pamphlet RC4405, *GST/HST Rulings – Experts in GST/HST Legislation* explains how to obtain a ruling and lists the GST/HST rulings offices. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

Reference in this publication is made to supplies that are subject to the GST or the HST. The HST applies in the participating provinces at the following rates: 13% in Ontario, New Brunswick, and Newfoundland and Labrador, 15% in Nova Scotia, and 12% in British Columbia. The GST applies in the rest of Canada at the rate of 5%. 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-103, *Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province*.

If you are located in Quebec and wish to make a technical enquiry or obtain a ruling related to the GST/HST, please contact Revenu Québec at 1-800-567-4692. You may also visit their Web site at [www.revenu.gouv.qc.ca](http://www.revenu.gouv.qc.ca) to obtain general information.

### Cancelled publications:

This GST/HST Technical Information Bulletin replaces the following publications:

- GST/HST Notice No. 250, *Proposed Changes to the Definition of Financial Services*;
- GST/HST Policy 119, *Trailer Commission Servicing Fees*; and
- GST/HST Policy 239, *Meaning of the Term “Arranging for” as Provided in the Definition of “Financial Service”*.

This GST/HST Technical Information Bulletin provides information on the meaning of the term “arranging for” in the definition of “financial service” and the legislative amendments set out in Bill C-9, the *Jobs and Economic Growth Act*, clarifying the application of the goods and services tax/harmonized sales tax (GST/HST) in respect of the definition of “financial service”. Bill C-9 received Royal Assent on July 12, 2010.

The examples in this bulletin provide general guidance and are intended to illustrate how the amendments apply in respect of the provision of certain services and property in the context of the definition of financial service. The application of these changes may vary depending on the specific facts and circumstances of a particular transaction. If you require guidance with respect to a particular case please contact the CRA for a ruling or interpretation.

### Table of Contents

|   |   |
|---|---|
| Introduction.....                         | 2 |
| Legislative changes.....                  | 2 |
| Asset management services.....            | 2 |
| Management or administrative service..... | 2 |
| Coming into force.....                    | 3 |
| Credit management services.....           | 4 |
| Coming into force.....                    | 4 |
| Preparatory services.....                 | 5 |
| Coming into force.....                    | 5 |

La version française de la présente publication est intitulée *Modifications apportées à la définition de service financier*.



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|  |    |
|--|----|
| Property delivered or made available in conjunction with rendering a financial service ..... | 5  |
| Coming into force.....   | 6  |
| Reassessment by the Minister of National Revenue .....                                       | 6  |
| Determining whether a supply is a financial service .....                                    | 6  |
| Examples .....   | 7  |
| Asset management .....   | 7  |
| Credit management and preparatory services.....  | 10 |
| Property in conjunction with rendering a financial service .....                             | 16 |

## **Introduction**

Financial services are defined in subsection 123(1) of the *Excise Tax Act* (the Act) and are generally exempt. A service is a financial service where it is included in any of paragraphs (a) to (m) of the definition of “financial service” and is not then excluded by any of paragraphs (n) to (t) of the definition. Services in the nature of management, administration, marketing or promotional activities are intended to be taxable as they are not themselves financial services. The legislative changes contained in Bill C-9, the *Jobs and Economic Growth Act* reaffirm this longstanding policy intent and provide certainty with respect to the application of GST/HST by specifically excluding these services from the definition of financial service under the Act.

## **Legislative changes**

The legislative changes specify that the following services are **not** financial services:

- asset management services;
- credit management services; and
- certain services that are preparatory to or provided in conjunction with a financial service.

### ***Asset management services***

New paragraph (q.1) has been added to the definition of “financial service” to clarify that asset management services are excluded from that definition.

A definition of “asset management service” has been added to subsection 123(1) of the Act. An asset management service includes a full range of investment portfolio management and administration activities rendered by one person in respect of the assets or liabilities of another person, such as:

- managing or administering the assets or liabilities with or without discretionary authority granted by the other person to manage those assets or liabilities.
- providing research, analysis, advice or reports in respect of those assets or liabilities;
- determining which assets or liabilities are to be acquired or disposed of; and
- acting to realize performance targets or other objectives in respect of the assets or liabilities.

An asset management service does not include a prescribed service for the purpose of that definition. Currently, no services are prescribed or proposed to be prescribed.

### ***Management or administrative service***

A definition of “management or administrative service” has been added to subsection 123(1) of the Act. A management or administrative service is defined to include an asset management service as defined in that same subsection. This term is used in paragraph (q) of the definition of financial service and in regulations prescribing a service for the purposes of paragraph (q).

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Although paragraph (q) of the definition of financial service is not directly amended, its scope is clarified by the addition of new definitions of the terms “asset management service” and “management or administrative service”.

Paragraph (q) excludes from the definition of “financial service” a management or administrative service or any other service (other than a prescribed service), provided by a person to a recipient that is either an investment plan [as defined in subsection 149(5)] or any corporation, partnership or trust whose principal activity is the investing of funds, where the person is providing such management or administrative services to the recipient.

Examples of investment plans include a trust governed by:

- a registered pension plan (RPP);
- a registered retirement savings plan (RRSP);
- a registered retirement income fund (RRIF);
- a registered education savings plan (RESP); and
- a mutual fund trust.

The following services are currently prescribed for the purposes of paragraph (q):

- the issuance of, or the transfer of ownership of a financial instrument from the supplier to the person;
- the operation or maintenance of a savings, chequing, deposit, loan, charge or other account that the person has with the supplier; and
- if the person is a trust governed by a self-directed RRIF or a self-directed RRSP, the arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument of a person.

The effect of the new definitions is to clarify and reaffirm the longstanding policy intent that asset management services, provided to an investment plan, or any corporation, partnership or trust whose principal activity is the investing of funds, are considered to be management or administrative services and therefore excluded from the definition of “financial service”.

### **Coming into force**

These amendments related to asset management services and management or administrative services are deemed to have come into force on December 17, 1990 except when certain conditions are met. Specifically, the amendments do not apply where, under a written agreement:

- all of the consideration for the supply became due or was paid on or before December 14, 2009;
- the supplier did not, on or before December 14, 2009, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply; and
- the supplier did not, on or before December 14, 2009, charge, collect, or remit any amount as or on account of tax under Part IX of the Act in respect of any other supply that is made under the agreement and that includes the provision of a service or property referred to in paragraphs (q), (q.1) and (r.3) to (r.5) of the definition of financial service.

The above exception does not apply for purposes of Division IV of Part IX of the Act. For purposes of Division IV, the amendments related to asset management services are effective as of December 17, 1990 in all cases.

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**Example – Consideration paid after December 14, 2009**

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ServiceCo and InvestCo, registrants for GST/HST purposes, enter into an agreement on March 24, 2008. Under that agreement ServiceCo agrees to provide InvestCo with asset management services in Canada. ServiceCo will be paid 0.4% of the net asset value of the portfolio managed. On July 2, 2010, ServiceCo issues an invoice to InvestCo in the amount of \$4,000 for services provided from April 1, 2010 through June 30, 2010. As consideration for the supply of the asset management services is due after December 14, 2009, GST/HST applies to the supply.

**Example – Consideration paid before December 14, 2009**

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An investment manager, a registrant for GST/HST purposes, enters into an agreement with an investor on October 27, 2008. Under that agreement the investment manager agrees to provide asset management services in Canada to the investor. The investment manager invoices the investor quarterly and indicates on the invoices that GST/HST is payable on the services. The investor pays the total amount on each invoice as well as the GST/HST. The investment manager remitted the GST/HST collected. In June 2009, the investment manager stopped collecting GST/HST from the investor and has not remitted any GST/HST with respect to its supply of asset management services since that date. In such a case, the investment manager would still be required to collect GST/HST and has to remit GST/HST in respect of the consideration that became due or was paid by the investor for the asset management services provided prior to December 14, 2009 as well as in respect of the consideration that became due or was paid after December 14, 2009.

**Example – Division IV**

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NonResCo, a non-resident corporation, and InvestCo enter into an agreement on March 24, 2008. NonResCo is not registered for GST/HST purposes and does not carry on business in Canada. Under that agreement, NonResCo agrees to provide InvestCo asset management services. NonResCo will be paid based on the net asset value of the portfolio managed. On July 2, 2009, NonResCo issues an invoice to InvestCo in the amount of \$5,000 for services provided from April 1, 2009 through June 30, 2009. Tax is payable by InvestCo under Division IV on the consideration for the supply of the asset management services.

***Credit management services***

New paragraph (r.3) has been added to the definition of “financial service” to clarify that credit management services are excluded from that definition.

Paragraph (r.3) provides that a service (other than a prescribed service) of managing credit in respect of credit cards, charge cards, credit accounts, charge accounts, loan accounts or accounts in respect of any advance, where the service is supplied by one person to another person that is granting, or potentially granting, credit in respect of those cards or accounts is excluded from the definition of “financial service”.

A service of managing credit includes:

- checking, evaluating or authorizing credit;
- making decisions on behalf of the person relating to a grant, or an application for a grant, of credit;
- creating or maintaining records for the person relating to a grant, or an application for a grant, of credit or in relation to the cards or accounts; or
- monitoring another person’s payment record or dealing with payments made, or to be made by the other person.

Currently, no services are prescribed or proposed to be prescribed for the purposes of paragraph (r.3).

**Coming into force**

The amendment to add paragraph (r.3) to the definition of financial service is deemed to have come into force on December 17, 1990, except when certain conditions are met. Specifically, the amendment does not apply where, under a written agreement:

- all of the consideration for the supply became due or was paid on or before December 14, 2009;

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- the supplier did not, on or before December 14, 2009, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply; and
  - the supplier did not, on or before December 14, 2009, charge, collect, or remit any amount as or on account of tax under Part IX of the Act in respect of any other supply that is made under the agreement and that includes the provision of a service or property referred to in paragraphs (q), (q.1) and (r.3) to (r.5) of the definition of financial service.

The above exception does not apply for purposes of Division IV of Part IX of the Act. For purposes of Division IV, paragraph (r.3) is effective as of December 17, 1990 in all cases.

### ***Preparatory services***

New paragraph (r.4) has been added to the definition of “financial service” to clarify that certain services that are preparatory to or provided in conjunction with a financial service are excluded from that definition.

Paragraph (r.4) excludes from the definition of financial service, a service (other than a prescribed service) that is preparatory to the provision or the potential provision of a service referred to in any of paragraphs (a) to (i) and (l) of the definition of “financial service”, or that is provided in conjunction with a service referred to in any of those paragraphs, that is:

- 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.

Currently, no services are prescribed or proposed to be prescribed for the purposes of paragraph (r.4).

### **Coming into force**

The amendment to add paragraph (r.4) to the definition of financial service is deemed to have come into force on December 17, 1990, except when certain conditions are met. Specifically, the amendment does not apply where, under a written agreement:

- all of the consideration for the supply became due or was paid on or before December 14, 2009;
- the supplier did not, on or before December 14, 2009, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply; and
- the supplier did not, on or before December 14, 2009, charge, collect, or remit any amount as or on account of tax under Part IX of the Act in respect of any other supply that is made under the agreement and that includes the provision of a service referred to in paragraphs (q), (q.1) and (r.3) to (r.5) of the definition of financial service.

The above exception does not apply for purposes of Division IV of Part IX of the Act. For purposes of Division IV, paragraph (r.4) is effective as of December 17, 1990 in all cases.

### ***Property delivered or made available in conjunction with rendering a financial service***

New paragraph (r.5) has been added to the definition of “financial service” to clarify that property (other than a financial instrument or prescribed property) is excluded from the definition of a “financial service” when it is delivered or made available to a person in conjunction with the rendering by the person of a service referred to in any of paragraphs (a) to (i) and (l) of that definition.

Currently, no property is prescribed or proposed to be prescribed for the purposes of paragraph (r.5).

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## Coming into force

The amendment to add paragraph (r.5) to the definition of financial service is deemed to have come into force on December 17, 1990, except when certain conditions are met. Specifically, the amendment does not apply where, under a written agreement:

- all of the consideration for the supply became due or was paid on or before December 14, 2009;
- the supplier did not, on or before December 14, 2009, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply; and
- the supplier did not, on or before December 14, 2009, charge, collect, or remit any amount as or on account of tax under Part IX of the Act in respect of any other supply that is made under the agreement and that includes the provision of a service or property referred to in paragraphs (q), (q.1) and (r.3) to (r.5) of the definition of financial service.

The above exception does not apply for purposes of Division IV of Part IX of the Act. For purposes of Division IV, paragraph (r.5) is effective as of December 17, 1990 in all cases.

## Reassessment by the Minister of National Revenue

In respect of all the amendments discussed above, the Minister of National Revenue may assess, reassess or make an additional assessment of any amount payable or remittable by a person in respect of a supply of a service or property referred to in any of paragraphs (q), (q.1) and (r.3) to (r.5) of the definition of financial service at any time on or before the later of:

- July 12, 2011 (which is the day that is one year after the day on which the *Jobs and Economic Growth Act* containing these amendments received Royal Assent); and
- the last day of the period otherwise allowed under section 298 of the Act for making the assessment, reassessment or additional assessment.

However, the amendments do not affect any case that has been subject to a final determination by the courts before December 14, 2009.

## Determining whether a supply is a financial service

Where an agreement provides for the provision of a number of services or property and services, it must first be determined whether a single supply or multiple supplies are being provided under the agreement. This distinction is important in cases where a combination of services and or property is supplied by a person under an agreement, some of which would be taxable and some of which would be exempt if supplied separately. In this type of situation it is a question of fact whether the person is making a single supply or multiple supplies. GST/HST Policy Statement P-077R2, *Single and Multiple Supplies*, provides additional information on determining whether a single supply or multiple supplies are being provided.

If it is determined that multiple supplies are being provided by a person the possible application of sections 138 and 139 should be considered.

If it is determined that a single supply is being provided, then the predominant element of that supply must be established to determine the nature of the supply. If the predominant element of the single supply is determined to be a financial service, then the supply as a whole will be considered a financial service. This determination will be generally based on written agreements, between the person providing the service and the person's client, detailing the actions, responsibilities and obligations of the person in connection with the supply.

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In determining whether an intermediary is providing a supply of a financial service under paragraph (l), of “arranging for” a service referred to in any of paragraphs (a) to (i) and not referred to in any of paragraphs (n) to (t), it must first be determined whether an “arranging for” service is provided and whether it is the predominant element of the supply.

The term “arranging for” is generally intended to include intermediation activities that are normally performed by financial intermediaries described in subparagraph 149(1)(a)(iii), such as agents, brokers and dealers in financial instruments or money. In determining if an intermediary’s service is included in paragraph (l), all the facts surrounding the transaction, including the following factors, must be considered:

- the degree of direct involvement and effort of the person in the provision of a financial service referred to in any of paragraphs (a) to (i);
- the time expended by the intermediary in the provision of a financial service referred to in any of paragraphs (a) to (i);
- the degree of reliance of either or both the supplier and the recipient on the intermediary in the course of providing a financial service referred to in any of paragraphs (a) to (i);
- the intention of the intermediary to effect a supply of a financial service referred to in any of paragraphs (a) to (i); and
- the normal activities of an intermediary in a given industry (including whether the intermediary is engaged in a business of providing financial services).

Where an intermediary provides a number of services including services described by any of paragraphs (n) to (t) as part of an agreement to arrange for a supply of a financial service, the single supply of the bundled services may be a supply of a financial service of arranging for, depending on the facts surrounding the transaction, the above listed factors, and the predominant element of the supply.

## **Examples**

The following examples provide general guidance and are intended to illustrate how the amendments apply in respect of the provision of certain services and property in the context of the definition of financial service. The application of these changes may vary depending on the specific facts and circumstances of a particular transaction. If you require guidance with respect to a particular case please contact the CRA for a ruling or interpretation.

### ***Asset management***

#### **Example 1**

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An individual enters into an agreement with an investment manager. The investment manager is registered under provincial legislation as a portfolio manager and as an investment dealer (i.e., a person engaged in the business of trading in securities). The investment manager is authorized to provide advice to clients with respect to investing in, buying or selling any type of security, with or without discretionary authority.

Based on the agreement:

- The individual retains the services of the investment manager for the management of the individual’s assets held in an account with the individual’s appointed custodian.
- The account under management will consist of cash, securities and other assets that the individual places under the supervision of the investment manager. Any dividends, interest and other income earned by the account will be retained for reinvestment.
- The investment manager is required to analyze and appraise the assets in the account, provide research and analysis on which securities to buy and sell as may become necessary from time to time, in the investment manager’s opinion, to reach the targeted return on investment.

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- The investment manager is granted full discretionary power and authority to buy, sell, exchange, convert and otherwise effect transactions in any stocks, bonds and other securities. The investment manager will exercise this authority in accordance with the objectives agreed to by the individual.
  - The investment manager is authorized to execute securities transactions directly and is also authorized to select brokers or dealers through which the securities transactions will be executed.
  - In performing these obligations, the investment manager must exercise the degree of care, diligence and skill which is expected of a reasonable and prudent investment counsel to avoid undue risk of loss and to obtain a reasonable return.
  - The investment manager is to provide the individual with quarterly reports on the portfolio of assets under management, and advice of each security transaction effected.
  - The investment manager will be paid a fee quarterly, based on the total market value of the assets under management.

Based on the services that the investment manager is licensed to provide and the responsibilities of the investment manager under the agreement, viewed as a whole, the investment manager is being hired to administer assets with a required degree of diligence and skill, in order to obtain a reasonable rate of return. The investment manager has various responsibilities and is authorized to perform various functions that enable the manager to meet the objectives under the agreement, including the execution of trades, but also providing research, analysis, appraisals and reports. Based on these factors, the supply provided under the agreement by the investment manager would be characterized as an asset management service as that term is defined in the amendments. Specifically, except for the authorization to execute securities transactions, all activities that the investment manager is authorized to undertake under the agreement are set out in the definition of asset management service (i.e. the managing or administering of assets or liabilities of the individual, providing research and analysis, determining which assets or liabilities to acquire or to dispose of and acting to realize performance targets or other objectives). Paragraph (q.1) clarifies that asset management services are excluded from the definition of financial service.

## Example 2

A corporation engaged in commercial activities sets up a registered pension plan governed by a trust for its employees. The contributions to this plan are invested and the corporation, in its capacity as plan administrator, enters into an agreement with an investment manager to manage the investments. The investment manager is registered under provincial legislation as a portfolio manager and as an investment dealer, i.e. a person engaged in the business of trading in securities. The investment manager is authorized to provide advice to clients with respect to investing in, buying or selling any type of security, with or without discretionary authority granted by clients to manage their portfolios.

Based on the agreement:

- The corporation retains the services of the investment manager for the management of the investments of the corporation's pension fund.
- The corporation is responsible for setting up an account at a financial institution to be held by an appointed custodian.
- The investment manager has full discretion to purchase or sell securities, to retain such securities in trust, to purchase, hold and generally deal in any contractual manner for the immediate or future delivery of financial instruments and to convert monies into various currencies. This discretion is limited by investment guidelines established by the investment committee of the corporation which are reviewed annually.
- In performing these obligations, the investment manager must exercise the degree of care, diligence and skill which is expected of a reasonable and prudent investment counsel to avoid undue risk of loss and to obtain a rate of return that meets specified benchmarks.
- The investment manager reports to the corporation monthly on the performance of the investments, including portfolio valuations. This performance is one of the factors taken into consideration in determining whether the investment manager will be replaced. The investment manager is also responsible for regulatory filings.
- The investment manager is authorized to execute securities transactions directly and is also authorized to select brokers or dealers through which the securities transactions will be executed.
- The investment manager will be paid a fee quarterly, based on the total market value of the assets under management.

Based on the services that the investment manager is licensed to provide and the responsibilities of the investment manager under the agreement, viewed as a whole, the investment manager is being hired to manage the pension plan assets with a required degree of diligence and skill, in conformity with investment guidelines provided by the corporation, in order to obtain a rate of return that meets specified benchmarks. The investment manager has various responsibilities and is authorized to perform various functions that enable the manager to meet the objectives under the agreement, including the execution of trades, but also research, analysis, portfolio valuations, and reports. The structure of the investment manager's remuneration, which is based upon the value of assets that the investment manager is responsible for managing, and the fact that the manager's continued tenure depends on the portfolio's performance, also reflect the nature of the service that is being provided. Based on these factors, the supply provided under the agreement by the investment manager would be characterized as an



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asset management service as that term is defined in the amendments. Specifically, except for the authorization to execute securities transactions, all of the activities that the investment manager is authorized to undertake under the agreement are set out in the definition of asset management service (i.e. the managing or administering of assets or liabilities of the registered pension plan, providing research and analysis, determining which asset or liabilities to acquire or to dispose of and acting to realize performance targets or other objectives). Paragraph (q.1) clarifies that an asset management service is excluded from the definition of a financial service.

### **Example 3**

An investor enters into an agreement with a full service broker. The broker is registered as an investment dealer, i.e. a person engaged in the business of trading in securities, but not as a portfolio manager or advisor.

The agreement between the full service broker and the investor provides as follows:

- the broker agrees to provide brokerage services, and to open an account for the investor;
- more specifically, the broker is to act as the investor's agent to buy, sell and otherwise deal with securities according to the investor's trading instructions;
- the broker does not have authority to purchase and sell securities without the client's prior authorization;
- the broker is to open an account for the investor, to supervise the investor's account and to ensure that the investor's investments are suitable and consistent with their investment objectives as developed with the broker;
- the broker is to provide trade execution, settlement, custody of cash and bookkeeping services; and
- the broker is to be paid a fee per trade.

The full service broker is licensed to fulfill the role of an intermediary, i.e. a dealer in financial instruments, and pursuant to the agreement with the investor, viewed as a whole, the full service broker's most important responsibility is to open an account and execute trades according to the investor's instructions. Although the full service broker assists the investor in the development of an investment plan and goals, and these elements could be characterized as providing advice, information, or customer assistance [as referred to in paragraphs (p), (q.1) and (r.4)], based on all of the surrounding circumstances and the agreement viewed as a whole, the service provided by the full service broker in these circumstances is still predominantly one of execution of trades. The broker's service in this case constitutes "arranging for" a financial service, as provided under paragraph (l) and would not be excluded from the definition of financial service by paragraphs (n) through (t) including paragraphs (q.1) and (r.3) to (r.5).

### **Example 4**

A mutual fund manager agrees to distribute and sell units of a mutual fund through persons who are registered, under provincial laws, as mutual fund dealers and engage in the business of trading mutual fund securities.

Under an agreement between the mutual fund dealer and a person who agrees to act as a mutual fund salesperson, the dealer authorizes the salesperson to carry on the following activities on behalf of the dealer:

- solicit persons to open accounts to hold units;
- introduce persons to the dealer and affiliates of the dealer to encourage them to become clients;
- assist investors in purchasing, redeeming and exchanging units held in accounts;
- provide service with respect to accounts by
  - regularly meeting with or contacting the client to review the status of the account and the appropriateness of the units held in the account in light of the investor's financial needs and investment objectives;
  - ensuring that the client fully understands the nature of the units held in the account and all of the implications of holding the units;
  - answering any questions that the client may have regarding the account, or the units held in the account;
  - recommending any appropriate change in the account or in respect of the units held in the account; and
  - assisting a client in exercising any right or privilege in respect of the account or the units held in the account.
- act as agent of the dealer for the purpose of marketing units; and
- obtain and maintain any licences, registrations or certificates that are required by law to engage in the business carried on by the salesperson.

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A commission is paid to the salesperson by the dealer at the time mutual fund units are purchased by the client. The dealer is paid a trailing commission by the mutual fund manager in respect of the value of the units of the funds that are held in the accounts. The dealer pays the salesperson a percentage of the dealer's trailing commission on a monthly basis on each account that is serviced by the salesperson, based upon the value of all of the units held in the accounts serviced by the salesperson.

The mutual fund salesperson is a financial intermediary as described in subparagraph 149(1)(a)(iii). The buying and selling of mutual fund units are supplies of financial services. In the course of providing services to clients and to the dealer, the mutual fund salesperson agrees to assist investors in purchasing, redeeming and exchanging units held in accounts. While the salesperson provides some services that are preparatory to a supply of a financial service, such as customer assistance, information and advice, the nature of the business and the degree of reliance by the dealer and the investor on the salesperson in effecting a supply of a financial service indicate that the services provided by the salesperson go beyond those that are merely preparatory. The services provided by the salesperson in these circumstances would be included in paragraph (l) as arranging for a financial service and not excluded by any of paragraphs (n) to (t) including paragraphs (q.1) and (r.3) to (r.5).

It would be a question of fact as to whether the services provided in any particular case are considered to be a single supply that is made only in consideration of the commission on the purchase of the units or a combination of the commission on the purchase and the trailing commission. The facts and circumstances of each transaction would have to be considered on their own merits.

### ***Credit management and preparatory services***

#### **Example 5**

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A bank enters into an agreement with ServiceCo to manage the bank's credit card portfolio.

Based on the agreement:

- The bank is in the business of providing credit and related financial services to cardholders.
- ServiceCo is engaged in business process outsourcing, including providing customer relationship management, contact centre services and back-office services for the banking and credit card industry.
- ServiceCo agrees to provide the following services to the bank with respect to the bank's credit card accounts:
  - Receive and process applications and authorize the issuance of credit cards, in accordance with the criteria established by the bank.
  - Provide new account processing services, including credit bureau checks, pre-screening applications for evidence of fraud, data entry of applications, initiating account set-up, card ordering and decline letters.
  - Perform credit analysis for credit limit increases for existing cardholders, including review of account history, verification of account information, review of credit bureau reports and making a decision based on the bank's credit policy.
  - Handle cardholder telephone, e-mail and mail inquiries including credit limit increase requests, balance inquiries, card activation, statement reprints, name and address change and authorization for issuance of replacement cards.
  - Provide fraud management services including initial set-up and management of specialized system, fraud performance reporting and fraud investigation.

ServiceCo is engaged in the business of process outsourcing. While some of ServiceCo's activities under the agreement, such as the pre-screening of applications, assist the card applicant and the bank in the provision of a financial service of granting credit to a cardholder and may on their own be included in paragraph (l) of the definition of financial service, all activities undertaken by ServiceCo are described in paragraphs (r.3) and (r.4) (e.g., checking credit, making decisions on behalf of the person in relation to a grant, or an application for a grant of credit or in relation to cards or accounts, customer assistance, document processing and collecting or providing information). As clarified by paragraphs (r.3) and (r.4), the services provided by ServiceCo to the bank are services of managing credit or services that are preparatory to the supply of a financial service and would therefore be excluded from the definition of financial service.

#### **Example 6**

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A merchant who operates a chain of clothing stores enters into a co-branded credit card agreement with a bank.

Based on the agreement, the merchant and the bank desire to develop, market and introduce a co-branded credit card. The bank agrees to be the issuer of the card and agrees to provide card applications. The merchant agrees to undertake the following activities:

- Promote the card in the merchant's stores, online and through print media. Specifically, the merchant will provide an ongoing presence in store, and through direct mail, internet and e-mail.
- Distribute the applications to customers and verify the identity of each applicant.

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- Perform data entry of applications at the store.
  - Store the documentation related to applications.
  - Market the card through customer mailing lists.

In these circumstances, the merchant is engaged in promoting the co-branded credit card. While some of the merchant's activities, such as the verification of the identity of the applicant, assist the bank in providing a financial service of granting credit to an applicant and may on their own be included in paragraph (l) of the definition of financial service, the merchant is also providing promotion and advertising, customer assistance, collection and storage of information. The services provided by the merchant are described in paragraphs (r.3) and (r.4). As clarified by these paragraphs, such services would be excluded from the definition of financial service.

### **Example 7**

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Company A enters into an agreement with a financial institution to provide marketing and advertising services for the financial institution's credit card.

Based on the agreement:

- The financial institution is in the business of issuing credit cards.
- The financial institution agrees to retain Company A to promote its credit cards.
- Company A will:
  - design and produce advertising material including print, audio, video, Web site and other electronic formats;
  - design and emboss the credit cards;
  - distribute advertising materials to households and other locations in a specified city;
  - provide information on the credit card offered by the financial institution as well as answer questions;
  - collect applications from potential customers; and
  - be paid a percentage of the fees charged by the financial institution to the cardholders for its services.

Company A is engaged in providing promotional services. In these circumstances, Company A is not directly involved in the provision of a financial service of granting credit to a cardholder. The activities that Company A carries out are not activities included in paragraph (l) of the definition of financial service and all of the services provided in these circumstances are described in paragraphs (r.3) and (r.4). As clarified by paragraphs (r.3) and (r.4), the services provided by Company A to the financial institution would be excluded from the definition of financial service.

### **Example 8**

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A financial institution enters into an agreement with PromoCo whereby PromoCo agrees to promote the financial institution's credit card to university students. PromoCo is in the business of providing promotional services for various products.

Based on the agreement:

- The financial institution is a credit card issuer.
- The financial institution agrees to retain PromoCo to promote its credit cards.
- PromoCo distributes credit card applications to students at various university events, through direct mail, campus take-one dispensers, bookstore displays, campus bulletin boards and freestanding poster units.
- PromoCo screens and reviews completed application forms. The screening activities include making sure the applicant is over 18 years of age and whether the applicant is employed. If the applicant does not meet these criteria the application is not sent to the financial institution.
- If there is missing information that is required to process the application, PromoCo will call the applicant to obtain the missing information.
- PromoCo agrees to be responsible for distributing applications, processing, and forwarding correctly completed applications to the financial institution for credit approval.
- For each completed application sent to the financial institution, PromoCo receives a fee regardless if the credit card application is approved.

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PromoCo is engaged in the business of providing promotional services. While some of the activities of PromoCo, such as the screening of applications, assist the financial institution in providing a financial service of granting credit to an applicant and may on their own be included in paragraph (l) of the definition of financial service, when considered as a whole PromoCo's activities are predominantly collecting information and providing such information to the financial institution, customer assistance, promotion and advertising, which are all described in paragraphs (r.3) and (r.4). As clarified by these paragraphs, the services provided by PromoCo to the financial institution would be excluded from the definition of financial service.

#### **Example 9**

MBCo is a broker authorized under provincial legislation to deal in mortgages. MBCo enters into a mortgage broker agreement with a lender whereby MBCo agrees to participate in the preparation and submission of residential mortgage loan applications to the lender and assist the mortgage applicant in securing a mortgage loan. Specifically, MBCo will provide to the lender correct and complete applications for mortgage loans, disclose any or all information that may affect the lender's approval decision, and provide all documentation that is required to complete funding. In turn, to assist MBCo the lender will provide MBCo with promotional material and product information regarding the lender's products.

The lender agrees to pay MBCo a commission fee for each mortgage loan that is funded. Under the agreement, MBCo represents and warrants that under no circumstances will it represent to any mortgage applicant that it can guarantee approval of any mortgage loan by the lender. Also, MBCo does not have authority to bind or obligate the lender in any manner, and may not make any representation on behalf of the lender without the lender's prior approval.

The nature of the business is that of a financial intermediary described in subparagraph 149(1)(a)(iii), and the normal business activity of MBCo is to assist mortgage applicants in obtaining a mortgage loan from a lender. MBCo has a high degree of involvement in the supply or potential supply of the mortgage loan and the intention of MBCo is to effect a supply of a mortgage loan. Both the lender and the mortgage applicant have a high degree of reliance on MBCo in performing these activities. Considering all of these factors, the services provided by MBCo in these circumstances, viewed as a whole, go beyond mere preparatory services described in paragraph (r.4). The services are of arranging for a mortgage loan and are described in paragraph (l). The services, in these circumstances, would not be excluded from the definition of financial service by any of paragraphs (n) to (t) including paragraphs (q.1) and (r.3) to (r.5).

#### **Example 10**

Consultant A has entered into a mortgage referral program agreement with MBCo whereby MBCo will compensate Consultant A for each mortgage referral made to MBCo, packaged by MBCo, and subsequently approved by a lender resulting in a fully advanced first or second mortgage on an owner-occupied residential property. As set out in the agreement, in order for Consultant A to earn the referral fee it must perform the following duties and responsibilities:

- complete MBCo's worksheet and all other forms on behalf of the mortgage applicant;
- ensure that the paperwork is correct and duly executed by the mortgage applicant; and
- submit the paperwork electronically to MBCo.

Once the paperwork is submitted by Consultant A to the MBCo, Consultant A has no further contact with the mortgage applicant nor does it make any attempts to find suitable lenders. MBCo will review the paperwork and if additional information is needed, MBCo will contact the mortgage applicant directly. MBCo will deal directly with lenders and forward completed application packages to lenders. When the mortgage is approved by a lender, MBCo will send to the mortgage applicant a letter confirming the amount and conditions of the mortgage as well as any other document or certificate that the lender wishes to provide relating to the mortgage. Consultant A receives a copy of this letter from MBCo for reference purposes only.

Some of Consultant A's activities, such as completion and checking of the paperwork, assist the mortgage applicant and MBCo in the provision of a financial service of arranging for the lending of money. Consultant A's services are, however, limited to collecting information from the mortgage applicant and preparing the worksheet and all other forms for submission to MBCo for processing by MBCo with suitable lenders and, as such, are not included in paragraph (l) of the definition of financial service. Consultant A's services to MBCo are predominantly those described in paragraphs (r.3) and (r.4) (i.e., collecting and providing information and document processing). The services would be excluded from the definition of financial service by paragraphs (r.3) and (r.4).

#### **Example 11**

An individual enters into an agreement with DistributionCo, whose purpose is to distribute insurance policies for InsuranceCo, a life insurance company authorized under the laws of Canada to carry on a life insurance business. The individual is self-employed and is licensed to carry on business as an insurance agent, which is the individual's sole business. Under the agreement with DistributionCo, the individual solicits and obtains applications for insurance policies on behalf of DistributionCo. Specifically, the individual is required to identify and solicit potential

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clients, market and distribute insurance policies to the public as DistributionCo's agent, provide information to the potential client, establish client insurance coverage and ensure appropriate forms and other requirements are completed.

The completed forms are then passed to DistributionCo. Once an insurance policy is approved and issued by InsuranceCo, the individual is also required to maintain an ongoing relationship with the policyholder to ensure the insurance policy is kept in force, meet regularly with the policyholder to review the coverage and ensure the appropriateness of the coverage, answer any questions concerning the insurance policy and assist the policyholder in exercising its rights under the policy including assistance in making a claim under the policy. The individual is paid a commission that is based on the premium paid for the insurance policy when the policy is issued and will continue to receive a commission on an ongoing basis while the policy remains in effect based on the continuing premiums. DistributionCo may make adjustments to the commission payable if, for example, the premium is refunded or the agent is no longer responsible for performing services with respect to the particular insurance policy.

The individual insurance agent is a financial intermediary described in subparagraph 149(1)(a)(iii) as the agent's principal business is as a salesperson of financial instruments (insurance policies). The agent is licensed to solicit insurance policies. The agent is directly involved with both the insurer and the potential policy holder, is highly relied on by both and the agent's intention is to effect a supply of an insurance policy in that the agent is generally the only contact the potential policy holder will have with the insurer. Although the agent provides information, document preparation or processing, or customer assistance that would be preparatory to the provision of a financial service; the services provided by the agent are not limited to these preparatory services. The services provided by the agent in these circumstances are services described in paragraph (l), of arranging for supplies of insurance policies. In these circumstances the services would not be excluded from the definition of financial service by paragraphs (n) through (t) including paragraphs (q.1), (r.3) to (r.5).

### **Example 12**

InsuranceCo provides specialized group insurance coverage for members affiliated with particular organizations such as banks, large retailers, or associations (the group policyholder). A group insurance master policy is issued by InsuranceCo to a large retailer, the group policyholder, who makes the coverage available to its members (certificate holders) under the terms and conditions of the master policy. The group policyholder offers access to specialized insurance coverage at a reduced rate to its members in order to enhance the value of the membership relationship. The group insurance policy between the insurer and the group policyholder is marketed to and purchased by members of the policyholder's group; however, the purchase by the member of this insurance coverage is entirely discretionary.

InsuranceCo is required by contract with the retailer to conduct the necessary insurance coverage-placing activities with members and is usually permitted to use a telemarketing agency for this purpose. TeleMarketCo is contracted by InsuranceCo to make members aware of the coverage available. During the marketing process, a predetermined script is jointly prepared by InsuranceCo and TeleMarketCo which is approved and monitored by the retailer and InsuranceCo.

Based on the agreement between TeleMarketCo and InsuranceCo:

- Following the predetermined script, a representative from TeleMarketCo contacts the member by telephone, presenting themselves as calling on behalf of InsuranceCo and the retailer.
- TeleMarketCo will explain the insurance coverage available, answer questions regarding the insurance coverage and screen the eligibility of the person (e.g., age eligibility of the insured).
- If a member wishes to acquire the insurance TelemarketCo will prepare the member's application (e.g. will confirm name and address) and forward the completed applications to InsuranceCo for processing and approval.
- Where InsuranceCo grants final approval, it underwrites and issues the insurance to the member.
- TeleMarketCo is compensated on a per-hour basis.

The activities undertaken by TeleMarketCo, based on the agreement with InsuranceCo, are for the promotion of insurance policies as well as the processing of applications. TeleMarketCo is not engaged in the business of providing financial services and has very limited involvement with respect to the provision of a financial service by InsuranceCo. While some of TeleMarketCo's activities, such as screening the eligibility of applicants, assist InsuranceCo in the provision of a financial service of issuing an insurance policy to a member and, as such, are activities that may be included in paragraph (l) of the definition of financial service, on the whole, the activities undertaken by TeleMarketCo are predominantly preparatory activities of collecting information, customer assistance, document preparation, and document processing. These activities would be excluded from the definition of financial service under paragraph (r.4).

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**Example 13**

An automobile sales and leasing dealership, that has a captive financing and leasing segment of a business, assists customers in obtaining financing. The arranging for financing by way of loan is considered by the dealer as an additional activity that is separate from the lease of automobiles. For every successful loan arranged, the dealership receives a commission from the financing company. The employees of the dealership perform the following activities with respect to loans:

- obtaining credit information from the customer;
- explaining to the customer the different loan terms and interest rates available;
- helping the customer select the type of loan which best suits the customer's needs;
- completing a loan application form;
- verifying that all required information is included in the loan application, making a recommendation on acceptance or rejection of the application and forwarding it for final approval to the financing company which will grant the credit. The financing company relies on the recommendation of the dealership on acceptance or rejection of the loan application; and
- negotiating the terms of the loan and in some cases agreeing that the loan will be on a full or partial recourse basis.

The activities undertaken by the dealership in respect of leases of vehicles would be taxable activities and any consideration received by the dealership for arranging the lease would be considered to be consideration for a taxable supply.

However, the activities undertaken in respect of financing that is provided by way of a loan from the financing company could be included in paragraph (l) of the definition of financial service. Considered as a whole, the activities of the dealership in relation to financing (other than by way of lease) in these circumstances would be predominantly financial in nature and, given the degree of involvement of the car dealership in providing financing or arranging for financing for its customers, would go beyond the services described in paragraphs (r.3) and (r.4).

**Example 14**

An independent automobile dealership assists customers in obtaining financing for their purchase of an automobile by referring them to a financial institution. Under an agreement with a particular financial institution, the dealership receives a referral fee from the financial institution for every successful loan. In the process of assisting customers to arrange for the financing, an employee of the dealership may perform one or more of the following activities:

- explaining to the customer the different financing options and financial institutions that could help the customer get financing;
- explaining to the customer the different loan terms and interest rates available;
- providing the customer with a loan application and assisting the customer in the completion of a loan application form;
- verifying the information entered on the application; and
- forwarding the loan application to the financial institution and referring the customer to that institution.

In these circumstances, some of the activities undertaken by the dealership, such as assisting with the loan application, may fall within paragraph (l) of the definition of financial service. However, as clarified by paragraph (r.4), most of the services being provided by the automobile dealership in these circumstances would be excluded from the definition of financial service.

NOTE: Financing arrangements may vary among car dealerships across Canada. Whether a particular activity is arranging for a financial service within paragraph (l) of the definition of financial service (and not excluded from that definition by the amendments) would depend upon the particular facts and circumstances.

**Example 15**

An individual purchasing a vehicle from an automobile dealership enters into a loan agreement with the dealership. Based on the loan agreement, the dealership is the lender and the loan may be assigned to a third party. The dealership is not acting as agent or in any other capacity for any financial institutions. The dealership conducts various administrative activities that are provided in the normal course of its business of making a loan to a customer. The dealership negotiates a number of different financing variables with the customer, such as the amount to be financed, the term and the down payment.

The dealership has relationships with multiple alternative potential assignees to whom a loan could be sold/assigned (e.g. a finance affiliate of an automobile manufacturer; a bank and an independent finance company).

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The dealership reviews the loan and different criteria of a potential assignee to find the best terms. The dealership enters into an agreement with FinanceCo whereby the loan is assigned to FinanceCo. FinanceCo pays the dealership an amount calculated as a percentage of the sum financed as well as a fixed amount.

Paragraph (g) of the definition of financial service includes the granting of credit or the lending of money. The provision of the loan made by the dealership to the customer is a financial service. While the dealership may undertake activities such as customer assistance and document preparation that are included in paragraph (r.4), when considered as a whole, the service is predominantly the lending of money. As such, the provision of the loan would not be excluded from the definition of financial service. Furthermore, when the dealership assigns that loan (i.e. the sale of receivables which is a debt security) to FinanceCo, it is providing a financial service described in paragraph (d) of the definition of financial service which includes the transfer of ownership of a financial instrument (i.e. the debt security). None of the exclusionary paragraphs would apply to this service.

#### **Example 16**

As part of a reorganization of its business Company A wants to sell the business carried on by its subsidiary. Company A enters into an agreement with BBCo, a GST/HST registrant, whereby BBCo will provide a business broker service in order to facilitate the sale of Company A's subsidiary by means of a sale of the shares of Company A's subsidiary.

Based on the agreement, BBCo performs the following activities:

- obtains "listing" for the sale of the business;
- assists Company A in calculating the likely worth of the subsidiary and the price at which the subsidiary's shares will be offered;
- assists Company A in putting together financial and operating information sufficient to allow BBCo to solicit expressions of interest;
- advertises the subsidiary's business as being for sale;
- contacts likely purchasers and/or persons who might identify likely purchasers, such as lawyers, accountants and bankers;
- prepares or obtains an offer to purchase the subsidiary's business;
- acts as intermediary between Company A and the purchaser in negotiating the terms of purchase and sale;
- assists a purchaser in arranging financing and advising Company A on providing financing; and
- liaises with legal counsel for Company A, the purchaser or both in preparing sales documentation.

BBCo is a business broker and is not a financial intermediary described in subparagraph 149(1)(a)(iii). The intent of BBCo is to find a purchaser for the subsidiary's business. While some of BBCo's activities, such as preparing the sales documentation for the sale of shares, assist Company A in providing a financial service of selling the subsidiary's shares to a purchaser, BBCo's involvement in the supply of a financial service (the sale of shares) is limited. The activities undertaken by BBCo in relation to the supply of a financial service are predominantly those described in paragraph (r.4) (i.e. advertising, customer assistance, collecting or providing information, and document preparation). As clarified by paragraph (r.4), the services provided by BBCo in these circumstances would be preparatory to the provision or potential provision of a service referred to in paragraphs (a) to (i) and would therefore be excluded from the definition of financial service.

#### **Example 17**

CorpA requires additional capital for its business. CorpA enters into an agreement with FinderCo whereby FinderCo agrees to introduce potential investors to CorpA as a funding source through private placement of preferred shares of CorpA. FinderCo has a list of potential investors. FinderCo may conduct some research activities to find more potential investors.

Based on the agreement, FinderCo:

- identifies potential investors that would invest in CorpA through the purchase of preferred shares through a private placement;
- introduces potential investors to CorpA; and
- introduces the opportunity directly to certain potential investors.

A commission expressed as a percentage of the funds raised for CorpA is paid to FinderCo by CorpA upon the sale of preferred shares to an investor introduced by FinderCo.

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Although the service provided by FinderCo assists CorpA with the sale of its preferred shares to an investor (the sale of shares is a financial service), the service provided by FinderCo to CorpA is not in itself a financial service. FinderCo is not directly involved in the provision of the financial service of selling the preferred shares. CorpA and the investor do not heavily rely on FinderCo to effect the financial service. FinderCo's efforts are limited to identifying potential investors to invest in CorpA and introducing potential investors to CorpA and as such, this service is not included in paragraph (l) or in any of paragraphs (a) to (m) of the definition of financial service.

### ***Property in conjunction with rendering a financial service***

#### **Example 18**

A retailer (Licensor) enters into a licence agreement with a third party (Licensee) for the right to use space in the Licensor's store to place an automated banking machine owned and operated by the Licensee. The Licensee makes exempt supplies of financial services to its customers (the payment of money using the automated banking machine in the Licensor's store).

Based on the licence agreement:

- The Licensee is responsible for the installation, servicing, operation and maintenance of the automated banking machine.
- The Licensor is responsible for all store utility expenses (electrical, heat and air conditioning), janitorial services on and around the automated banking machine, as well as the installation, maintenance, restoration and repair of the communication lines used to operate the machine.
- The Licensee charges a surcharge fee to its customers for the use of the automated banking machine and pays a percentage of that fee to the Licensor as consideration for services provided by the Licensor to the Licensee under the agreement.

In these circumstances the Licensor is providing space and ancillary services for the automated banking machine located on its premises. The provision of installation, maintenance, communication lines and janitorial services, in respect of the automated banking machine, would not be included in any of paragraphs (a) to (m) of the definition of financial service. Also, the provision to the Licensee of a licence in respect of real property (i.e., the right to use the space) is not a financial service and is specifically excluded by paragraph (r.5), which clarifies that where property is provided to a person, in conjunction with the rendering by the person of a financial service, the provision of the property is excluded from the definition of financial service.

### **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 Quebec:** 1-800-567-4692 (Revenu Québec)

All technical publications related to the GST/HST are available on the CRA Web site at [www.cra.gc.ca/gsthsttech](http://www.cra.gc.ca/gsthsttech).