



## Anti-avoidance Rules

This version replaces GST Memorandum 500-6-9 dated June 7, 1991.

This memorandum explains the application of the anti-avoidance rules in respect of the GST/HST.

### Disclaimer

The information in this publication 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 any GST/HST rulings centre for additional information. A ruling should be requested for certainty in respect of any particular GST/HST matter. GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service*, explains how to obtain a ruling and lists the GST/HST rulings centres.

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, 14% in Prince Edward Island and 15% in Nova Scotia. 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, see 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 request a ruling related to the GST/HST, please contact Revenu Québec at 1-800-567-4692. You may also visit the Revenu Québec website at [www.revenuquebec.ca](http://www.revenuquebec.ca) to obtain general information.

**Exception:** Since January 1, 2013, the CRA has been administering the GST/HST and the Québec sales tax (QST) for listed financial institutions that are selected listed financial institutions (SLFIs) for GST/HST and/or QST purposes whether or not they are located in Quebec. If you wish to make a technical enquiry on the GST/HST related to SLFIs by telephone, please call 1-855-666-5166.

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### General

1. The anti-avoidance rules are intended to prevent persons from benefitting from transactions undertaken primarily for the purpose of avoiding, reducing, or deferring the payment of tax, or increasing a refund or rebate or other amount, where no other anti-avoidance provision is applicable.

La version française de la présente publication est intitulée *Règles anti-évitement*



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2. The anti-avoidance rules do not apply in respect of a transaction where it may reasonably be considered that the transaction would not result, directly or indirectly, in a misuse of the provisions of the Act or in an abuse of the Act as a whole.

3. If a transaction is such that it is a misuse or abuse of the relevant provisions of the Act, then the anti-avoidance rules would apply. Transactions that rely upon the strict wording of a provision in the Act to gain a tax benefit where none was intended and, therefore, defeat the purpose of the provision, would be a misuse or abuse of the legislation.

4. The anti-avoidance rules will override other provisions of the Act in order to maintain the spirit and intent of the legislation.

## **General anti-avoidance provision**

5. Section 274 of the Act provides a general anti-avoidance rule (GAAR) that applies to all persons.

6. For purposes of section 274, the following expressions are defined in subsection 274(1):

- “tax benefit” means a reduction, an avoidance or a deferral of tax or other amount payable under Part IX or an increase in a refund or rebate of tax or other amount under Part IX;
- “tax consequences” to a person means the amount of tax, net tax, input tax credit, rebate or other amount payable by, or refundable to, the person under Part IX, or any other amount that is relevant to the purposes of computing that amount;
- “transaction” includes an arrangement or event.

7. Where an avoidance transaction is undertaken, subsection 274(2) provides that the tax consequences will be determined as is reasonable in the circumstances in order to deny the tax benefit that, but for this section, would have resulted, directly or indirectly, from that transaction or from a series of transactions that include that transaction.

8. Pursuant to subsection 274(3), an avoidance transaction is a transaction that alone, or as part of a series of transactions, would result, directly or indirectly, in a tax benefit were it not for section 274, unless the transaction can reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

9. Pursuant to subsection 274(4), subsection 274(2) does not apply in respect of a transaction where it may reasonably be considered that the transaction would not result, directly or indirectly, in a misuse of the provisions of Part IX or in an abuse of Part IX as a whole. Tax planning or transactions that are carried out for purposes other than obtaining tax benefits but which minimize the payment of tax, as compared to other transactions which would achieve the same purpose but which would result in higher tax liability, may not be considered to be avoidance transactions.

10. Pursuant to subsection 274(5), where subsection 274(2) applies, the following actions, without restricting the generality of subsection 274(2), may be taken into account in determining the tax consequences to a person that are reasonable in the circumstances in order to deny the tax benefits resulting from an avoidance transaction:

- any input tax credit or any deduction in computing tax or net tax payable may be allowed or disallowed, in whole or in part;
- any credit or deduction may be allocated, in whole or in part, to another person;
- the nature of any payment or other amount may be recharacterized; and

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- the tax effects that would otherwise result from the application of other relevant provisions of Part IX may be ignored.

11. Pursuant to subsection 274(6), where the GAAR applies to a particular transaction under subsection 274(2) and a notice of assessment, reassessment, or additional assessment has been sent to a person, any other person may, within 180 days after the sending of the first notice, request in writing an assessment, reassessment, or additional assessment under subsection 274(2) regarding the same avoidance transaction.

12. Pursuant to subsection 274(7), notwithstanding any other provision of Part IX, the determination of the tax consequences to any person, resulting from the application of section 274, will only be made through a notice of assessment, reassessment, or additional assessment. A person cannot use subsection 274(2) to revise their tax payable, or any other amount, without requesting an adjustment under the procedure outlined in subsection 274(6).

13. Pursuant to subsection 274(8), upon receipt of a request by a person under subsection 274(6), the Minister will consider the request and assess, reassess, or make an additional assessment with respect to the person to the extent that the assessment, reassessment, or additional assessment relates to the avoidance transaction of another person. The Minister is not restricted to the four-year time limit in subsections 298(1) and (2) when considering a request under subsection 274(6).

## **Anti-avoidance rules respecting rate change**

### ***Variation of agreement – 2006 rate reduction***

14. Section 274.1 provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service is entered into before July 1, 2006 between a supplier and a recipient;
- the agreement is subsequently (on or after May 2, 2006), either directly or indirectly, varied or altered, or terminated and one or more agreement(s) are entered into at a later time with each other or with other persons;
- the supplier and recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the agreement is entered into or at the later time;
- under the original agreement, GST would have been calculated at the rate of 7% on all or part of the value of the consideration for the supply;
- under the varied, altered, or new agreement(s), GST, in the absence of section 274.1, would be calculated at the rate of 6% on any part of the value of the consideration for the supply; and
- it may not reasonably be considered that these varied, altered, or new agreement(s) have been undertaken or arranged primarily for *bona fide* purposes other than to benefit in any manner from the rate change.

15. If the above conditions are satisfied, the GST in respect of the supply made under the varied, altered, or new agreement(s) will be calculated at the rate of 7% on any part of the consideration attributable to any part of the property or service. This applies whether the supplier and recipient enter into one or more new agreements with each other, or with other persons, if the supplier supplies and the recipient receives all or substantially all the same property or service.

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## **Variation of agreement – 2008 rate reduction**

16. Section 274.11 provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service is entered into before January 1, 2008 between a supplier and a recipient;
- the agreement is subsequently (on or after October 30, 2007), either directly or indirectly, varied or altered, or terminated and one or more agreement(s) are entered into at a later time with each other or with other persons;
- the supplier and recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the agreement is entered into or at the later time;
- under the original agreement, GST would have been calculated at the rate of 6% or 7% (as the case may be) on all or part of the value of the consideration for the supply;
- under the varied, altered, or new agreement(s), GST, in the absence of section 274.11, would be calculated at the rate of 5% on any part of the value of the consideration for the supply; and
- it may not reasonably be considered that these varied, altered, or new agreement(s) have been undertaken or arranged primarily for *bona fide* purposes other than to benefit in any manner from the rate change.

17. If the above conditions are satisfied, the GST in respect of the supply made under the varied, altered, or new agreement(s) will be calculated at the rate of 6% or 7% (as the case may be) on any part of the consideration attributable to any part of the property or service. This applies whether the supplier and recipient enter into one or more new agreements with each other, or with other persons, if the supplier supplies and the recipient receives all or substantially all the same property or service.

## **Anti-avoidance rules – rate changes**

18. Section 274.2 contains an anti-avoidance rule to prevent persons from improperly taking advantage of a change in the rate of tax imposed under Part IX.

19. For purposes of section 274.2, the following expressions are defined in subsection 274.2(1):

- “person” does not include a consumer (that is, an individual who receives property for personal use or consumption and not for business use);
- “rate change” means any change in any rate of tax imposed under Part IX;
- “tax benefit” means a reduction, an avoidance or a deferral of tax or other amount payable under Part IX, or an increase in a refund or rebate of tax or other amount under Part IX;
- “transaction” includes an arrangement or event.

20. Subsection 274.2(2) provides that the amount of tax, net tax, input tax credit, rebate, or other amount payable by, or refundable to, any of the persons involved in the transactions or series of transactions, or any other amount relevant to computing that amount, is to be determined by the Minister in order to deny the tax benefit to any of those persons, where the following conditions are met:

- a transaction, or a series of transactions, involving property is made between two or more persons not dealing at arm's length at the time any of the transactions are made;
- the transaction, any transaction in the series of transactions, or the total series of transactions would, in the absence of section 274.2, result directly or indirectly in a tax benefit to one or more of the persons involved in the transaction or series of transactions; and

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- it may not reasonably be considered that the transaction, or series of transactions, has been undertaken or arranged primarily for *bona fide* purposes, other than to obtain a tax benefit arising from a change in tax rates for any of the persons involved in the transaction or series of transactions.

21. Pursuant to subsection 274.2(3), despite any other provision of Part IX, a tax benefit will only be denied under subsection 274.2(2) through an assessment, reassessment, or additional assessment.

22. Pursuant to subsection 274.2(4), where the anti-avoidance rule applies to a particular transaction under subsection 274.2(2) and a notice of assessment, reassessment, or additional assessment has been sent to a person, any other person may, within 180 days after the sending of the first notice, request in writing an assessment, reassessment, or additional assessment under that subsection regarding the same avoidance transaction.

23. Pursuant to subsection 274.2(5), upon receipt of a request by a person under subsection 274.2(4), the Minister will consider the request and assess, reassess, or make an additional assessment with respect to the person to the extent that the assessment, reassessment, or additional assessment relates to the avoidance transaction of another person. The Minister is not restricted to the four-year time limit in subsections 298(1) and (2) when considering a request under subsection 274.2(4).

## **Anti-avoidance rules relating to harmonization – Part 2 of the *New Harmonized Value-Added Tax System Regulations***

### ***Application***

24. Pursuant to section 34 of the *New Harmonized Value Added Tax System Regulations* (the regulations), the anti-avoidance rules in Part 2 of the regulations apply despite any provision of the Act.

### ***Variation of agreement – new harmonized province***

25. Section 35 of the regulations provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service is entered into between a supplier and a recipient at any time before the harmonization date of a participating province;
- the agreement is subsequently, either directly or indirectly, varied or altered, or terminated and one or more agreement(s) are entered into at a later time with each other or with other persons;
- the supplier and recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the agreement is entered into or at the later time;
- under the original agreement, the provincial part of the HST would have been calculated at the tax rate of the participating province on all or part of the value of the consideration for the supply;
- under the varied, altered, or new agreement(s), the provincial part of the HST, in the absence of section 35, would not apply to, or would be calculated at a lesser rate on, any part of the value of the consideration for the supply; and
- it may not reasonably be considered that these varied, altered, or new agreement(s) have been undertaken or arranged primarily for *bona fide* purposes other than to, directly or indirectly, reduce, avoid, or defer tax.

26. If the above conditions are satisfied, the provincial part of the HST in respect of the supply made under the varied, altered, or new agreement(s) will be calculated at the tax rate of the participating province that would have been calculated in respect of the supply made under the original agreement on any part of the consideration attributable to any part of the property or service. This applies whether the

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supplier and recipient enter into one or more new agreements with each other, or with other persons, if the supplier supplies and the recipient receives all or substantially all the same property or service.

27. Section 35 of the regulations applies to any agreement varied or altered, or terminated on or after March 26, 2009 and to any new agreement entered into on or after that date.

### ***Variation of agreement – change in tax rate***

28. Section 36 of the regulations provides an anti-avoidance rule where:

- an agreement for a taxable supply of property or a service is entered into between a supplier and a recipient at any time before the particular date on which a change in the tax rate for a participating province applies;
- the agreement is subsequently, either directly or indirectly, varied or altered, or terminated and one or more agreement(s) are entered into at a later time with each other or with other persons;
- the supplier and recipient and, where applicable, the other persons are not dealing with each other at arm's length at the time the agreement is entered into or at the later time;
- under the original agreement, the provincial part of the HST would have been calculated on all or part of the value of the consideration for the supply attributable to the property or service at the tax rate (higher rate) that is the greater of the tax rate that applies immediately before the particular date, and the tax rate that applies on the particular date;
- under the varied, altered, or new agreement(s), the provincial part of the HST, in the absence of section 36, would not apply to, or would be calculated at a rate lesser than the higher rate on any part of the value of the consideration for the supply; and
- it may not reasonably be considered that these varied, altered, or new agreement(s) have been undertaken or arranged primarily for *bona fide* purposes other than to, directly or indirectly, reduce, avoid, or defer tax.

29. If the above conditions are satisfied, the provincial part of the HST in respect of the supply made under the varied, altered, or new agreement(s) will be calculated at the higher rate of the participating province that would have been calculated in respect of the supply made under the original agreement on any part of the consideration attributable to any part of the property or service. This applies whether the supplier and recipient enter into one or more new agreements with each other, or with other persons, if the supplier supplies and the recipient receives all or substantially all the same property or service.

30. Section 36 of the regulations applies to any agreement varied or altered, or terminated on or after April 6, 2010 and to any new agreement entered into on or after that date.

### ***Harmonized event – transactions***

31. Section 37 of the regulations contains an anti-avoidance rule to prevent persons from improperly taking advantage of a harmonization event.

32. For purposes of section 37 of the regulations, the following expressions are defined in subsection 37(1):

- “harmonization event” means the transition by a province to the new harmonized value-added tax system or any change referred to in paragraph 277.1(3)(a) of the Act as “provincial tax policy flexibility”;
- “person” does not include a consumer (that is, an individual who receives property for personal use or consumption and not for business use);

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- “tax benefit” means a reduction, an avoidance or a deferral of tax or other amount payable under Part IX or an increase in a refund or rebate of tax or other amount under Part IX;
  - “transaction” includes an arrangement or event.

33. Subsection 37(2) of the regulations provides an anti-avoidance rule in respect of the provincial part of the HST where:

- a transaction, or a series of transactions, involving property, is made between two or more persons, not dealing at arm’s length, at the time any of the transactions are made;
- the transaction, any transaction in the series of transactions, or the total series of transactions would, in the absence of section 37, result directly or indirectly in a tax benefit to one or more of the persons involved in the transaction or series of transactions; and
- it may not reasonably be considered that the transactions have been undertaken or arranged primarily for *bona fide* purposes, other than to obtain a tax benefit arising from a harmonization event, for one or more of the persons involved in the transaction or series of transactions.

34. If the above conditions are satisfied, the amount of tax, net tax, input tax credit, rebate, or other amount payable by, or refundable to, any of the persons involved in the transactions or series of transactions, or any other amount relevant to computing that amount, is to be determined by the Minister in order to deny the tax benefit to any of those persons.

35. Section 37 of the regulations applies to any transaction made on or after March 26, 2009.

36. Pursuant to subsection 37(3) of the regulations, a tax benefit will only be denied under subsection 37(2) through an assessment, reassessment, or additional assessment under Part IX.

37. Pursuant to subsection 37(4) of the regulations, where the anti-avoidance rule applies to a particular transaction under subsection 37(2) and a notice of assessment, reassessment, or additional assessment has been sent to a person, any other person may, within 180 days after the sending of the first notice, request in writing an assessment, reassessment, or additional assessment under that subsection regarding the same avoidance transaction.

38. Pursuant to subsection 37(5) of the regulations, upon receipt of a request by a person under subsection 37(4), the Minister will consider the request and assess, reassess, or make an additional assessment with respect to the person to the extent that the assessment, reassessment, or additional assessment relates to the avoidance transaction of another person. The Minister is not restricted to the four-year time limit in subsections 298(1) and (2) of the Act when considering a request under subsection 37(4) of the regulations.

### **Further information**

All GST/HST technical publications are available on the CRA website at [www.cra.gc.ca/gsthstech](http://www.cra.gc.ca/gsthstech).

To make an enquiry on the GST/HST by telephone, call one of the following numbers:

- for general enquiries, call the Business Enquiries line at 1-800-959-5525;
- for technical enquiries, call 1-800-959-8287.

If you are located in Quebec, contact Revenu Québec at 1-800-567-4692 or visit their website at [www.revenuquebec.ca](http://www.revenuquebec.ca).

If you are a selected listed financial institution (whether or not you are located in Quebec) and require information on the GST/HST or QST, call one of the following numbers:

- for general enquiries, call 1-800-959-5525;
- for technical enquiries, call 1-855-666-5166.

