GST/HST Notice

No. 255 July 2010

Elections for Certain Selected Listed Financial Institutions under the HST

This notice describes the elections that are proposed to be available to certain selected listed financial institutions (SLFIs) under new rules introduced as part of the changes to the harmonized sales tax (HST) that would require these elections to be filed with the Minister of National Revenue (the Minister). It also briefly discusses elections that are proposed to be available to certain SLFIs under new rules introduced as part of the changes to the HST that would not be required to be filed with the Minister. The new rules will be enacted as part of the *Provincial Choice Tax Framework Act*, which received Royal Assent on December 15, 2009, and Regulations which may be issued pursuant to that Act. The proposed changes are described in the Backgrounder entitled, *Financial Institution Rules for the Harmonized Sales Tax (HST)*, issued by the Department of Finance on May 19, 2010 (May 19 Backgrounder), and the additional Backgrounder entitled, *Harmonized Sales Tax Rules for Financial Institutions, Interment Rights and Streamlined Accounting Methods* (June 30 Backgrounder) and draft Regulations entitled, *Draft Regulations Amending Various GST/HST Regulations, No. 2* (Draft Regulations) issued by the Department of Finance on June 30, 2010. The information contained in this notice is based on the information set out in the May 19 and June 30 Backgrounders and the Draft Regulations. The proposed changes would generally apply in respect of any reporting period of an SLFI that ends after June 2010.

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General background information on selected listed financial institutions

SLFIs

A financial institution would be considered to be an SLFI throughout a reporting period in a fiscal year that ends in a particular taxation year of the financial institution, if the following two tests are met:

1. LFI test — the financial institution is a listed financial institution (LFI) described in any of subparagraphs 149(1)(a)(i) to (x) of the *Excise Tax Act* (the Act) at any time during the particular taxation year; and

La version française de la présente publication est intitulée *Choix prévus en vertu du régime de la TVH pour certaines institutions financières désignées particulières*.

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2. PE test — the financial institution has a permanent establishment (PE) in a participating province and a PE in any other province, at any time during the taxation year (based on a proposed expanded definition of what would constitute a PE).

The term "province" means a province or territory in Canada. Participating provinces are those provinces in which the HST applies. The participating provinces are Nova Scotia, New Brunswick and Newfoundland and Labrador. Ontario and British Columbia are also participating provinces effective July 1, 2010.

Please refer to GST/HST Memorandum 17.6, *Definition of "Listed Financial Institution"* for additional information on LFIs described in subparagraphs 149(1)(a)(i) to (x) of the Act.

Please refer to the May 19 and June 30 Backgrounders and the Draft Regulations for additional information on the PE test.

Special attribution method

An SLFI is required to use a special attribution method (SAM) to calculate the provincial part of the HST for a participating province, based on a formula approach. If the amount determined as a liability for the provincial part of the HST under the SAM formula for a participating province for a reporting period of an SLFI is less than the provincial part of the HST for the province that is actually paid or payable by the SLFI in the period (i.e., under the general place of supply rules), the SLFI will be entitled to a deduction in the calculation of its net tax. Conversely, if the amount determined as a liability for the provincial part of the HST under the SAM formula is more than the actual provincial part of the HST for the province that is paid or payable by the SLFI in the period, the SLFI will be required to add that difference in the calculation of its net tax.

The SAM formula (below) is used to calculate the above net tax deduction or addition for the provincial part of the HST for a reporting period for each participating province:

$$[(A - B) \times C \times D/E] - F + G$$

Where:

(A – B) serves to measure the unrecoverable GST and the federal part of the HST for the period. In general terms, A is the GST and the federal part of the HST paid or payable by the SLFI in that period across Canada; and B is the total of input tax credits (ITCs) claimed in that period by the SLFI in respect of its GST and the federal part of the HST paid or payable;

C is the attribution percentage determined for the participating province, based on the type of SLFI (e.g., a bank);

D/E is the ratio of the tax rate in the province to the GST rate where D is the tax rate for the particular participating province and E is the tax rate for the GST (e.g., 8/5 for Newfoundland);

F is, in general terms, the provincial part of the HST for the province paid or payable by the SLFI in that period;

G is used for adjustments for the provincial part of the HST specific to certain situations and is the total of all amounts each of which is a positive or negative prescribed amount.

Filing and remittance requirements

The reporting period of an SLFI that is a registrant is a fiscal year, unless an election is made to have a fiscal month or a fiscal quarter as a reporting period. The reporting period of an SLFI that is not a registrant is a calendar month. An SLFI is required to file returns and remit net tax for each reporting period.

An SLFI is required to complete and file a final return, Form GST494, *Goods and Services Tax/ Harmonized Sales Tax Final Return for Selected Listed Financial Institutions*. The filing due-date for Form GST494 is extended to six months after the end of the fiscal year for fiscal years beginning after September 23, 2009. Where an SLFI's reporting period is a fiscal year, this is the only return that the SLFI has to file related to its net tax calculation. Where an SLFI's reporting period is a fiscal month or fiscal quarter, the SLFI is required to also file an interim return for the fiscal month or fiscal quarter within one month of the end of the period using Form GST34, *Goods and Services Tax/Harmonized Sales Tax Return for Registrants*.

Many of the proposed new elections are for certain investment plans and segregated funds that are SLFIs.

Investment plans and segregated funds

Segregated funds and investment plans are described in subparagraphs 149(1)(a)(vi) and (ix) respectively of the Act. Therefore, a person who meets the definition of investment plan or segregated fund at any time during the fiscal year in which the reporting period ends would be an LFI and would meet the first test to be considered an SLFI.

The term "segregated fund" of an insurer is defined in subsection 123(1) of the Act to mean a specified group of properties that is held in respect of insurance policies all or part of the reserves for which vary in amount depending on the fair market value of the properties. A segregated fund of an insurer is deemed to be a trust and the insurer is deemed to be the trustee of that trust under section 131 of the Act.

The term "investment plan" is defined in subsection 149(5) of the Act and includes mutual fund trusts, unit trusts, trusts governed by a registered retirement savings plan (RRSP) or a registered retirement income fund (RRIF), and other entities that are generally flow-through entities for income tax purposes, such as mutual fund corporations and mortgage investment corporations.

While investment plans and segregated funds, as LFIs, would generally be considered to be SLFIs where they have met the PE test, the following exception should be noted:

- A "qualifying small investment plan" which is an investment plan (other than a distributed investment plan) with unrecoverable GST and the federal part of the HST (i.e., (A – B) in the SAM formula) of less than $10,000 in the immediately preceding fiscal year, would not be subject to the SLFI rules, unless it elects to be treated as an SLFI. The qualifying small investment plan rule would not apply to mutual fund trusts, mutual fund corporations, unit trusts, mortgage investment corporations, investment corporations, non-resident-owned investment corporations and segregated funds of an insurer as these types of entities are all included in the definition of "distributed investment plan" in the Draft Regulations.

Investment plans and segregated funds that are SLFIs would be required to have calendar years as their fiscal years.

References in this publication to the term "investment plan" should be interpreted to mean an LFI described in subparagraph 149(1)(a)(vi) (i.e., a segregated fund of an insurer) or (ix) (i.e., an investment plan) of the Act, other than a trust governed by an RRSP, a RRIF or a registered education savings plan unless otherwise indicated.

New proposed elections to be filed with the Minister

Elections and revocations of elections that are to be filed with the Minister are to be made in prescribed form containing prescribed information and filed in prescribed manner.

Based on the June 30 Backgrounder, it is proposed that the Minister will be provided discretion with respect to the deadlines for filing these elections.

Election for qualifying small investment plan to be an SLFI

If a qualifying small investment plan satisfies the LFI and PE tests in a particular fiscal year of the plan, it would be permitted to make an election to be an SLFI for the fiscal year for the purposes of the Act.

The election would have to set out the first fiscal year of the qualifying small investment plan during which the election is to be in effect and be filed on or before the first day of the first fiscal year in which the election is to become effective.

Where a qualifying small investment plan makes an election to be treated as an SLFI for a fiscal year, the election would remain in effect for all subsequent fiscal years of the plan until the election is revoked or the plan ceases to meet the conditions of the election.

The election would have to be in effect for a minimum of three years before the qualifying small investment plan could revoke it. It is also proposed that the Minister will have the discretion to revoke an election prior to the end of the three year period upon application by the plan.

A notice of revocation of this election would have to be filed not later than the day the revocation is to become effective, which is the first day of the fiscal year for which the revocation applies.

Please refer to the Draft Regulations for further details regarding this election and its revocation.

Until the election form is available in prescribed form, a qualifying small investment plan may file a letter of intent with the Minister, including the following information:

- the name, business number and contact information (telephone number and mailing address) of the investment plan;
- a statement of intent to file the election for a qualifying small investment plan to be an SLFI;
- the first fiscal year of the investment plan for which the election is to be effective; and
- signature of an authorized signatory of the investment plan.

The letter of intent should be sent to:

Summerside Tax Centre
275 Pope Road
Summerside, PE C1N 6A2

It is important to note that once the election form is prescribed, the small qualifying investment plan would be required to file the election with the Minister, in prescribed form and manner, in respect of the period for which the letter of intent was filed.

Elections relating to reporting, filing and net tax

In order to facilitate compliance with filing and remittance obligations for investment plans that are SLFIs, the following three new elections have been proposed: the reporting entity election, the consolidated filing election and the tax adjustment transfer election. The elections are to be made jointly between an investment plan and the manager of the investment plan, and affect the relationship between them. In order to be eligible to make any of these elections an investment plan is required to register for purposes of the GST/HST.

References in this publication to an "investment plan manager" should be interpreted to mean, in the case of a pension entity of a pension plan, the administrator of the pension plan (as defined in subsection 147.1(1) of the *Income Tax Act*); and in any other case, the person who has ultimate responsibility for the management and administration of the assets and liabilities of the investment plan.

The time frames and other requirements with respect to these elections are set out in section (vi) below.

(i) Reporting entity election

Under the reporting entity election, an investment plan that is an SLFI and the investment plan manager would jointly elect to have the investment plan manager file the GST/HST returns on behalf of the investment plan.

If a consolidated filing election has not been made, discussed in section (ii) below, for filing the investment plan's GST/HST returns, the investment plan manager would be required to file the GST/HST returns of the investment plan using the investment plan's own GST/HST registration number. This would be different from the GST/HST registration number of the investment plan manager.

(ii) Consolidated filing election

Where the reporting entity election has been made and is in effect in respect of two or more investment plans that are SLFIs, it is proposed that a consolidated filing election could also be made. Under this election, the investment plan manager would jointly elect with two or more investment plans, with which the investment plan manager has made the reporting entity election, to allow the investment plan manager to file a single consolidated GST/HST SLFI return for the investment plans.

This election can only be made if the beginning and ending of the respective fiscal years of those investment plans coincide and the beginning and ending of the respective reporting periods of those investment plans in those fiscal years of the investment plans coincide.

The liability for the provincial part of the HST and all elements of the SAM formula (i.e., attribution percentage for each participating province and unrecoverable GST and the federal part of the HST) determined for each series of units for all investment plans under consolidation would be aggregated on a single SLFI return. The term "series", in respect of a trust, means a class of units of the trust and in respect of a corporation, a class of the capital stock of the corporation. The investment plan manager would be required to maintain detailed records of the calculations in its books and records.

It is proposed that where an election for consolidated filing is made, an investment plan manager would be permitted to use a single GST/HST registration number for the consolidated filing. This would be different from the GST/HST registration number of the investment plan manager. The particular investment plans, in respect of which a single GST/HST registration number is assigned for purposes of consolidated filing, would then be relieved of the obligation to register separately for GST/HST purposes.

(iii) Tax adjustment transfer election under consolidated filing

It is proposed that where an investment plan that is an SLFI and the investment plan manager have made the reporting entity election and the consolidated filing election, they could also make a joint tax adjustment transfer election.

The investment plan manager is required to charge and collect the provincial and federal part of the HST on management fees. Normally, the provincial part of the HST paid by the investment plan throughout the year would be subtracted from the provincial part of the HST otherwise determined under the SAM formula, resulting in a refund or tax liability (referred to as the "net tax adjustment amount") for the investment plan. This

could create cash flow issues as the investment plan may have to pay a significant tax liability at year end or wait more than a year to get a refund.

Where these three elections are in effect, the net tax adjustment amount of the investment plan would be transferred to the investment plan manager on an aggregated basis. Generally, the tax adjustment transfer amount would be the positive or negative net tax adjustment amount determined by the application of the SAM formula to each series of the investment plan.

As a practical matter, a tax adjustment transfer could be made at the time the tax is charged to the investment plan. If there is a positive net tax adjustment (i.e., an amount owed by the investment plan), the investment plan manager would be required to remit the liability with respect to the provincial part of the HST of the investment plan upon filing its GST/HST return, and this liability would be reflected as an adjustment to be added when determining the net tax of the investment plan manager. If there is a negative net tax adjustment (i.e., the investment plan would be eligible for a refund), the investment plan manager would be permitted to credit/refund that amount of the provincial part of the HST to the investment plan, and this credit/refund would be reflected as an adjustment to be deducted when determining the net tax of the investment plan manager. These tax adjustment transfers would also be reflected on a consolidated basis on the consolidated Form GST494, *Goods and Services Tax/ Harmonized Sales Tax Final Return for Selected Listed Financial Institutions*.

The reporting periods of the investment plan manager and the investment plan would not have to coincide for purposes of the tax adjustment transfer election in these circumstances (e.g., the investment plan manager could be a monthly filer and the investment plan could be an annual filer).

(iv) Tax adjustment transfer election with reporting entity election but no consolidated filing election

It is proposed that where an investment plan that is an SLFI and the investment plan manager have made the reporting entity election but not the consolidated filing election, the investment plan and the investment plan manager could still make a joint tax adjustment transfer election, allowing the investment plan manager to credit/refund amounts of the provincial part of the HST to the investment plan and assume liabilities of the investment plan for the provincial part of the HST, as described above.

(v) Tax adjustment transfer election with no reporting entity election

It is also proposed that an investment plan that is an SLFI and the investment plan manager would be able to make a joint tax adjustment transfer election without making a reporting entity election. In these circumstances, the amount of the provincial part of the HST that would be allowed to be transferred to the investment plan manager would generally be limited to the provincial part of the HST in respect of management or administrative services provided by the investment plan manager to the investment plan.

(vi) Filing requirements for elections discussed in (i) to (v) above

For each of the elections discussed in (i) to (v) above, the following rules would apply:

- the election would be required to be made jointly by an investment plan and the investment plan manager and the parties would be jointly and severally liable for any tax amounts assessed in connection with the election or any related obligations;
- the election would have to set out the first fiscal year of the investment plan(s) during which the election is to be in effect; and
- the election would have to be filed before the first day of that first fiscal year or such later day as the Minister may allow.

The elections would cease to have effect if the underlying requirements of the election are no longer met.

(vii) Revocation requirements for elections discussed in (i) to (v) above

An election discussed in (i) to (v) above may be revoked not later than the day on which the revocation is to become effective:

- in the case of a reporting entity election, discussed in section (i) above, the investment plan may revoke the election effective on the first day of a fiscal year of the investment plan;
- in the case of a consolidated filing election, discussed in section (ii) above, the investment plans that have jointly made a consolidated filing election may jointly revoke the election effective on the first day of a fiscal year of the investment plans; and
- in the case of a tax adjustment transfer election, discussed in sections (iii) to (v) above, the investment plan manager or the investment plans may revoke the election effective on the first day of a fiscal year of the investment plan.

A revocation made by one or more persons who are parties to a joint election would only be effective if one of those parties notifies all other parties before the day on which the revocation is to come into effect.

(viii) Interim procedures related to elections discussed in (i) to (v) above

Until the elections discussed in (i) to (v) above are available in prescribed form, the parties to a particular election can file a letter of intent with the Minister, including the following information:

- the legal name, business number and contact information (telephone number and mailing address) of the investment plan manager;
- the name, business number and contact information (telephone number and mailing address) of the investment plan;
- the first day of the fiscal year to which the election would apply;
- a statement from each party to the election(s) confirming the party's intent to make the particular election(s); and
- signatures of authorized signatories of each party to the election.

The letter of intent should be sent to the following address:

Summerside Tax Centre
275 Pope Road
Summerside, PE C1N 6A2

Where the investment plans and the investment plan manager are making a reporting entity election and a consolidated filing election, the letters of intent should be sent together with the letter of intent to register a group of investment plans (discussed below).

It is important to note that once the applicable election forms have been prescribed, the parties to a particular election would be required to file the election(s) with the Minister in the prescribed form and manner, in respect of the period for which the letter of intent was filed.

Please refer to the Draft Regulations for further details regarding the above elections or the revocation of the elections.

(ix) Group GST/HST registration related to election in (ii) above

In order to facilitate consolidated filing where the related elections have been made, it is proposed that the investment plan manager be permitted to use a single GST/HST registration number for the group of investment plans that have made the consolidated filing election.

Until the registration form for this purpose is prescribed, a letter of intent should be filed.

The letter of intent to register a group of investment plans should contain the following information:

- the legal name and contact information for the investment plan manager (telephone number and mailing address) with respect to the group being registered;
- the name and address of the investment plans in respect of which the group registration would apply;
- the effective date of the intended registration;
- the name of the group based on the following standardized naming convention: Consolidated SLFI group – legal name of investment plan manager – unique name to identify the group; and
- signature of an authorized signatory of the investment plan manager.

The letter of intent should be sent to:

Summerside Tax Centre
275 Pope Road
Summerside, PE C1N 6A2

It is important to note that once the registration form is prescribed, the investment plan manager would be required to file the registration form with the Minister in prescribed form and manner.

As a group registration would only be appropriate where the reporting entity election and consolidated filing election are being made, these elections must accompany the registration form. Similarly, the letters of intent for a reporting entity election and consolidated filing election should accompany the letter of intent for group registration.

Election to exclude non-residents from the calculation of the provincial attribution percentage

As discussed in the June 30 Backgrounder, it is proposed to include non-residents in the calculation of the provincial attribution percentages of an investment plan where the non-residents are treated as residents for GST/HST purposes by the investment plan with respect to the non-resident investment holdings in the plan. This means that the investment plan would be subject to the same rules in its dealings with both residents and non-residents. The ITC restrictions and other obligations imposed under the Act, such as self-assessment of the GST for imported taxable supplies, that generally may not have applied in its dealings with non-residents would now apply with these proposed changes.

It is also proposed that the investment plan would be permitted to elect not to have this rule apply by filing an election with the Minister which would effectively exclude non-residents from the provincial attribution calculation and allow the investment plan to claim ITCs. Also, where an election is made, non-residents holding investments in the plan would not be treated as residents.

The investment plan would be allowed to revoke the election after five years, or at an earlier date if approved by the Minister, in which case ITC restrictions and other obligations, as discussed above, imposed under the Act would apply.

Until the election form is prescribed, an investment plan can file a letter of intent with the Minister, including the following information:

- the name, business number and contact information (telephone number and mailing address) of the investment plan;
- a statement of intent to file the election to exclude non-residents from the calculation of the provincial attribution percentage;
- the first day the election would be in effect; and
- signature of an authorized signatory of the investment plan.

The letter of intent should be sent to:

Summerside Tax Centre
275 Pope Road
Summerside, PE C1N 6A2

It is important to note that once the election form is prescribed, the investment plan would be required to file the election with the Minister in prescribed form and manner, in respect of the period for which the letter of intent was filed.

Total tax recovery election

During the initial implementation of the HST in Ontario and British Columbia, large businesses, generally businesses making taxable supplies in Canada worth more than $10 million annually and certain LFIs, are required to repay or recapture the ITCs available to them in respect of the provincial part of the HST paid or payable in respect of certain specified property and services. For detailed information on the recapture of ITCs, please refer to GST/HST Technical Information Bulletin B-104, *Harmonized Sales Tax – Temporary Recapture of Input Tax Credits in Ontario and British Columbia*.

LFIs that are also SLFIs are not subject to the general ITC recapture rules, and will instead recapture ITCs in respect of the provincial part of the HST for Ontario and British Columbia through an adjustment based on the SAM formula. This approach is taken as SLFIs are generally not permitted to claim ITCs in respect of the provincial part of the HST but instead recover all of the provincial part of the HST paid or payable through the SAM formula.

These ITC recapture rules for SLFIs would apply for a reporting period of an SLFI only if the SLFI is a GST/HST registrant, is not a public service body and either

- made more than $10 million in taxable supplies in the last fiscal year ending before the reporting period (referred to as the "RITC threshold amount"); or
- is one of the following LFIs (or a person related to one of the following LFIs other than the Canada Deposit Insurance Corporation): a bank, a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee, a credit union, an insurer or any other person whose principal business is providing insurance under insurance policies, a segregated fund of an insurer, an investment plan (as defined in subsection 149(5) of the Act) or the Canada Deposit Insurance Corporation.

The total tax recovery election relates to the tax recovery rate of an SLFI to be used in calculating an adjustment to the SLFI's net tax relating to specified property or services of the SLFI for the purpose of determining the recaptured ITCs in respect of the provincial part of the HST for British Columbia and Ontario, from the first day of the first reporting period of the financial institution throughout which it is a SLFI, and which ends after June 2010.

The total tax recovery election results in the adjustments to net tax in respect of specified property being calculated using a tax recovery rate based on all ITCs of the SLFI and all GST paid or payable across Canada. If the election is not made within the required time frame, or is revoked, the tax recovery rate is calculated based on ITCs and GST paid or payable only with respect to specified property or services.

This election is required to be filed on or before the day on which the election is to come into effect, or on such later date as the Minister may allow.

The total tax recovery election may be revoked by filing a notice of revocation not later than the day that the revocation is to become effective. Once a total tax recovery election has been revoked, the financial institution cannot make this election again.

Please refer to the Draft Regulations for further information related to this election.

Until the election form is prescribed, an SLFI can file a letter of intent with the Minister, including the following information:

- the legal name, business number and contact information (telephone number and mailing address) of the SLFI;
- a statement of intent to file the total tax recovery election;
- the first day of the period for which the election would apply; and
- signature of an authorized signatory of the SLFI.

The letter of intent should be sent to:

Summerside Tax Centre
275 Pope Road
Summerside, PE C1N 6A2

It is important to note that once the election form is prescribed, the SLFI would be required to file the election with the Minister in prescribed form and manner, in respect of the period for which the letter of intent was filed.

New proposed elections not required to be filed with the Minister

The May 19 and June 30 Backgrounders and the Draft Regulations also discuss various other proposed elections in connection with proposed changes to the HST (e.g., elections related to provincial attribution percentage calculation for investment plans), which are not required to be filed with the Minister. Please refer to the May 19 and June 30 Backgrounders and to the Draft Regulations for additional information on these elections and the revocation of these elections.

Until the particular election form is prescribed, an SLFI can keep a document in its books and records evidencing its intent to make a particular election. The document should include the following information:

- the name of the SLFI;
- a statement of intent to make the particular election;
- the first day of the period for which the election would apply; and
- signature of an authorized signatory of the SLFI.

It is important to note that once the election form is prescribed, the SLFI would be required to make the election in prescribed form and manner, in respect of the period for which the document setting out its intent was made and keep the election in its books and records.

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.