GST/HST Technical Information Bulletin

B-108 February 2014

Changes to GST/HST Rules for Pension Plans – New Section 157 and Amendments to Section 172.1

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 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, 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, 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 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 to obtain general information.

Budget 2013, tabled by the Minister of Finance on March 21, 2013, included legislative amendments to simplify GST/HST pension plan rules for employers. Bill C-60, which included those changes, received Royal Assent on June 26, 2013. This GST/HST Technical Information Bulletin (TIB) explains those changes. Definitions of the specific terminology used in this notice can be found in GST/HST Notice257, *The GST/HST Rebate for Pension Entities*. All legislative references in this publication refer to the *Excise Tax Act* unless otherwise indicated.

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La version française de la présente publication est intitulée *Modifications aux règles de la TPS/TVH relatives aux régimes de pension – Nouvel article 157 et modifications à l'article 172.1*.

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Deemed taxable supplies by participating employers

A GST/HST registrant that is a "participating employer" of a pension plan is generally deemed to have made a taxable supply where,

- under subsection 172.1(5), the employer acquires a particular property or a service (i.e., a "specified resource") for the purpose of making a supply of some or all of that property or service to a pension entity for consumption, use or supply by the pension entity in the course of pension activities of the pension plan;
- under subsection 172.1(6), the employer consumes or uses an "employer resource" (as defined in subsection 172.1(1)) for the purpose of making a supply of property or a service to a pension entity for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan; and
- under subsection 172.1(7), the employer consumes or uses an "employer resource" in the course of pension activities of the pension plan and the consumption or use is not for the purpose of making a supply of property or a service to the relevant pension entity.

The acquisition, use or consumption of a specified resource or an employer resource that is an "excluded resource" as defined in subsection 172.1(2) would not trigger the above deemed taxable supply rules.

An employer that is deemed to have made a taxable supply under subsection 172.1(5), (6) or (7) is also deemed to have collected tax in respect of the deemed taxable supply, meaning that the employer must self-assess tax equal to the deemed tax collected. An explanation of these rules and the corresponding calculations are included in GST/HST Notice257, *The GST/HST Rebate for Pension Entities*.

For the purposes of subsections 172.1(5), (6) and (7), a participating employer of a pension plan is generally an employer that has made, or that is required to make, contributions or payments to the plan in respect of the employer's employees or former employees. A participating employer includes an employer prescribed under subsection 8308(7) of the *Income Tax Regulations* which describes certain cases where an employee of one employer renders services to, and receives remuneration from, another employer. An employer that made pension contributions to a pension plan in the past remains a participating employer in respect of that pension plan even if it does not currently make contributions.

A participating employer may be required to account for the GST/HST under subsections 172.1(5) and (6) even where it is required to account for the GST/HST on an actual taxable supply to the pension entity in respect of the same resource. Where the employer is required to account for tax twice (i.e., for both an actual supply and a deemed supply), the employer is generally allowed to issue a tax adjustment note (TAN) to make an adjustment to reduce its net tax by the amount of the TAN issued in respect of the deemed taxable supply.

The amendments discussed in this bulletin eliminate the need to account for tax twice in certain situations. Specifically, under amendments made to subsections 172.1(5), (6) and (7), certain employers that would otherwise have been required to account for tax under those provisions are not required to do so. Alternatively, as explained later in the bulletin, employers and pension entities that have an election in effect pursuant to section 157 would generally not be required to account for tax on actual supplies made by the employer to the pension entity. If an employer is relieved from having to account for tax on an actual or deemed supply, this eliminates the need for the employer to issue a TAN.

The amendments to section 172.1 apply in respect of fiscal years of an employer beginning after March 21, 2013, whereas new section 157 applies to supplies made after that date.

Relief from accounting for tax on deemed taxable supplies

As explained earlier in the bulletin, under subsection 172.1(5), a GST/HST registrant that is a participating employer of a pension plan is deemed to have made a taxable supply where, at any time in a fiscal year of the employer, the employer acquires a particular property or a service for the purpose of making a supply of some or all of that property or service to a pension entity for consumption, use or supply in the course of pension activities of the pension plan.

Similarly, under subsection 172.1(6), a GST/HST registrant that is a participating employer of a pension plan is deemed to have made a taxable supply where the employer consumes or uses an employer resource for the purpose of making a supply of property or a service to a pension entity for consumption, use or supply in the course of pension activities in respect of the pension plan.

However, the amendments to subsections 172.1(5) and (6), generally relieve the employer from having to self-assess under the deemed taxable supply rules if the employer is a selected qualifying employer.

Selected qualifying employer

Subsection 172.1(9) sets out conditions for determining whether a particular participating employer of a pension plan is a selected qualifying employer of the pension plan for a particular fiscal year of the employer. Where a participating employer is a selected qualifying employer of a pension plan for a fiscal year of the employer, subsections 172.1(5) and (6) do not apply to the employer in respect of the pension plan for the fiscal year. As a selected qualifying employer, the employer is also considered for that fiscal year and for purposes of subsection 172.1(10) to be a qualifying employer. An employer that is a qualifying employer (explained later in this bulletin) for a particular fiscal year is also relieved from the deeming provisions of subsection 172.1(7).

An employer that is not a selected qualifying employer may nevertheless be a qualifying employer if the requirements of subsection 172.1(10) are met. While a qualifying employer would not be relieved from the deemed taxable supply rules of subsections 172.1(5) and (6), it would nevertheless be relieved from the deeming provisions of subsection 172.1(7).

To determine whether a participating employer of a pension plan is a selected qualifying employer of the plan for a particular fiscal year of the employer, the employer must meet four conditions under subsection 172.1(9):

- The employer must not have an election in effect in the particular fiscal year under subsection 157(2) with any pension entity of the pension plan to treat actual taxable supplies as having been made for no consideration. This election is explained later in this bulletin.
- The employer must not have become a participating employer of the pension plan in the particular fiscal year. If it did, subsection 172.1(11), as explained later in this bulletin, requires the employer to use reasonable expectations of tax amounts for the particular year rather than actual tax amounts for the preceding year to determine if it is a selected qualifying employer.
- The amount determined for element A (described below) for the employer in respect of the pension plan for the preceding fiscal year must be less than $5,000.
- The amount, expressed as a percentage, determined by the formula A/(B–C) (described below) must be less than 10%.

The calculation of the $5,000 and 10% thresholds described in the last two points above is described in subsection 172.1(9). Under that subsection, the 10% threshold is calculated using the formula

A/(B–C)

The aforementioned $5,000 threshold is the amount determined for element A of the formula.

Each of the elements in this formula includes certain tax amounts pertaining to the preceding fiscal year of a participating employer. For this purpose, the preceding fiscal year is the fiscal year of the employer immediately preceding the one for which it is determining if it is a selected qualifying employer.

The term "specified supply" is used for the purpose of describing certain amounts that must be included in calculating elements A, B and C of the above formula. The term "specified supply" is defined in subsection 172.1(1) and refers to a taxable supply deemed to have been made by a participating employer under subsections 172.1(5), (6) or (7).

Element A

The amounts to be included in element A are described in subsection 172.1(9) in paragraphs (a) through (f) of that element. These amounts essentially consist of the GST or the federal part of the HST that the particular participating employer and any other participating employers that are related to the particular participating employer are required to account for under paragraphs 172.1(5)(c), (6)(c) and (7)(c) in their preceding fiscal year. These amounts are calculated with reference to the federal part of the deemed tax collected as represented by element A in each of paragraphs 172.1(5)(c), 6(c) and 7(c) and referred to below as "federal amounts". An explanation of the calculation of deemed tax collected is included in sections 1, 2 and 3 of Part IV of GST/HST Notice 257, *The GST/HST Rebate for Pension Entities*.

An employer that was a selected qualifying employer or a qualifying employer (explained later in this bulletin) in the preceding fiscal year (and thus relieved from accounting for tax under the deemed taxable supply rules in that year) must also include in the calculation any amounts that would have been included in element A had the employer not been a selected qualifying employer or a qualifying employer in that year.

Specifically, element A described in subsection 172.1(9) paragraphs (a) through (f) of that element is the total of the following amounts:

- The federal amount that the particular participating employer is deemed to have collected under any of paragraphs 172.1(5)(c), (6)(c) or (7)(c) (i.e., element A in the formula in each of these paragraphs) during the preceding fiscal year of the particular participating employer.
- The federal amount that the particular participating employer would have been deemed to have collected under any of paragraphs 172.1(5)(c), (6)(c) and (7)(c) for its preceding fiscal year, had the employer not been a selected qualifying employer or qualifying employer (whichever applies) of the pension plan for that preceding fiscal year.
- The federal amount deemed to have been collected under any of paragraphs 172.1(5)(c), (6)(c) or (7)(c) in the preceding fiscal year of another participating employer of the pension plan that is related to the particular participating employer. This amount would be added to element A if
    - the other participating employer were related to the particular participating employer during the preceding fiscal year of the participating employer, and
    - the related employer makes a specified supply in a fiscal year of the related employer that ends in a fiscal year of the participating employer.
- The federal amount that would have been deemed to have been collected under any of paragraphs 172.1(5)(c), (6)(c) or 7(c) by another participating employer that is related to the particular participating employer of the pension plan had the related employer not been a selected qualifying employer or a qualifying employer (whichever applies) of the plan for a fiscal year that ends in the particular employer's preceding fiscal year. This amount would be added to element A if
    - the other participating employer were related to the particular participating employer during the preceding fiscal year of the particular participating employer, and

- the related employer makes a specified supply in a fiscal year of the related employer that ends in a fiscal year of the particular participating employer.

Subsection 126(1) states that persons are related to each other for purposes of Part IX of the Excise Tax Act (ETA) where they are related to each other by reason of subsections 251(2) to (6) of the *Income Tax Act* (ITA).

Element B

The amounts to be included in element B are described in subsection 172.1(9) in paragraphs (a) through (c) of that element. These amounts essentially consist of the GST and the federal part of the HST that the pension entities of the pension plan actually paid or were deemed to have paid under section 172.1, as well as certain amounts that must be added to the net tax of a pension entity when it receives a TAN from the employer. An explanation on TANs is included in Part V of GST/HST Notice 257, *The GST/HST Rebate for Pension Entities*.

More specifically, element B is the total of the following amounts:

- Amounts of GST or of the federal part of the HST that all pension entities of the pension plan actually paid in a fiscal year that ends in the preceding fiscal year of the pension entity, but only to the extent that the amount is an "eligible amount" (as defined in subsection 261.01(1)) for a claim period of the pension entity. Note that an eligible amount does not include a "recoverable amount" (as defined in subsection 261.01(1)). Generally, a recoverable amount of the pension entity is:
  - an amount included in determining an ITC of the pension entity;
  - a rebate, refund or remission that the pension entity is entitled to obtain or has obtained under the ETA or any other federal legislation; and
  - GST/HST amounts adjusted, refunded or credited in favor of the pension entity as the result of a credit note received or a debit note issued under subsection 232(3).
- Federal amounts deemed to have been collected under subsection 172.1(5), (6) or (7) by all participating employers of the pension plan (including the particular participating employer) in respect of a specified supply made during a fiscal year of the participating employer that ends in the preceding fiscal year of the particular participating employer.
- An amount required to be added to the net tax of any pension entity of the pension plan under paragraph 232.01(5)(b) or 232.02(4)(b) for a reporting period of the pension entity that ends in the preceding fiscal year of the particular participating employer. These amounts are in respect of an ITC that must be "repaid" by the pension entity as a result of the issuance of a TAN by a participating employer of the plan. An explanation of these amounts is included in Part V of GST/HST Notice 257, *The GST/HST Rebate for Pension Entities*.

Element C

The amounts to be included in element C are described in subsection 172.1(9) in paragraphs (a) and (b) of that element. These amounts essentially consist of the following:

- The federal amount of a TAN issued under either subsection 232.01(3) or 232.02(2) by any participating employer of the pension plan to a pension entity of the plan during a fiscal year of the pension entity that ends in the preceding fiscal year of the particular participating employer. This amount is represented by paragraph (a) in subsection 232.01(4) or 232.02(3), respectively.
- The federal component of a "recoverable amount" (as defined in subsection 261.01(1)) of all pension entities of the pension plan for each entity's claim period ending in a fiscal year of the pension entity that ends in the preceding fiscal year of the particular participating employer. The federal component

is calculated with reference to amounts determined for element A under subsections 172.1(5), (6) and (7) for deemed tax paid by the pension entity for purposes of section 261.01.

Summary

In summary, a participating employer of a pension plan that is a selected qualifying employer is relieved from having to account for tax on deemed taxable supplies made under subsections 172.1(5) and (6) above. In addition, since a selected qualifying employer also meets the conditions of a qualifying employer (as explained below), it is also relieved from the requirement to account for tax under the deemed taxable supply rules of subsection 172.1(7).

A participating employer that is not a selected qualifying employer is subject to the deeming rules of subsections 172.1(5) and (6). However, if the employer is a qualifying employer, it may nevertheless be relieved from the deeming rules of subsection 172.1(7).

Qualifying employer

As previously explained, a GST/HST registrant that is a participating employer of a pension plan is generally deemed to have made a taxable supply and to have collected tax under subsection 172.1(7) where the employer consumes or uses an "employer resource" in the course of pension activities of the pension plan and the consumption or use is not for the purpose of making a supply of property or a service to the relevant pension entity. Subsection 172.1(7) has been amended such that it will not apply to a participating employer of a pension plan in respect of the pension plan for a fiscal year of the employer if the employer is a qualifying employer of the pension plan for the fiscal year.

Subsection 172.1(10) sets out the conditions for determining whether a particular participating employer of a pension plan is a qualifying employer of the plan for a particular fiscal year of the employer. To be considered as a qualifying employer of a pension plan, the following conditions must be met:

- The employer must not have become a participating employer of the pension plan in the fiscal year. If it did, under subsection 172.1(11) as explained later in this bulletin, the employer would use its reasonable expectations of tax amounts for the particular year rather than actual tax amounts for the preceding year to determine if it is a qualifying employer.
- The amount determined for element A (as explained below) for the employer in respect of the pension plan for the preceding fiscal year must be less than $5,000.
- The amount, expressed as a percentage, determined by the formula A/(B–C) (as explained below) must be less than 10%.

An employer that is a qualifying employer and thus relieved from the deeming provisions of subsection 172.1(7) may, subject to section 157 (as explained later in this bulletin), treat actual supplies as being made for no consideration if it has made an election with any pension entity of the pension plan under subsection 157(2) and the election is in effect for the particular fiscal year.

The 10% threshold described in the last point above is described in subsection 172.1(10). Under that subsection, the 10% threshold is calculated using the formula A/(B–C), whereas the $5,000 threshold is measured by element A of that formula.

A/(B–C)

Element A

The amounts to be included in element A are described in subsection 172.1(10) paragraphs (a) through (d) of that element. The calculation of element A is similar to that calculated for element A of subsection 172.1(9) above, except that that the amounts are calculated with reference only to the federal amount of deemed tax collected under subsection 172.1(7).

The amounts generally consist of the GST or the federal part of the HST that the particular participating employer (and any other participating employer that is related to the particular participating employer) is required to account for under paragraph 172.1(7)(c) in the preceding fiscal year of the employer (referred to below as "federal amounts"). This is calculated with reference to the federal part of the deemed tax collected as represented by element A in paragraph 172.1(7)(c). An explanation of the calculation of deemed tax collected is included in sections 1, 2 and 3 of Part IV of GST/HST Notice 257, *The GST/HST Rebate for Pension Entities.* Similarly, an employer that was a qualifying employer in the preceding fiscal year (and thus relieved from accounting for tax under subsection 172.1(7) in that year) must also include in the calculation any amounts that would have been included in element A had the employer not been a qualifying employer in that year.

Specifically, element A is the total of the following amounts described in paragraphs (a) through (d) of that element:

- The federal amount deemed to be collected under paragraph 172.1 (7)(c) (i.e., element A in the formula in that paragraph) by the particular participating employer in respect of a specified supply of the particular participating employer to the pension plan during the preceding fiscal year of the particular participating employer.
- The federal amount that the particular participating employer would have been deemed to have collected as determined for element A under paragraph 172.1 (7)(c) in respect of a specified supply for its preceding fiscal year, had the employer not been a qualifying employer of the pension plan for that preceding fiscal year. In other words, paragraph (b) includes an amount that would have been included in paragraph (a) for the particular participating employer for that preceding fiscal year had the employer not been a qualifying employer of the pension plan for that preceding fiscal year.
- The federal amount deemed to have been collected under element A of paragraph 172.1(7)(c) in the preceding fiscal year of another participating employer of the pension plan that is related to the particular participating employer. This amount would be added to element A if:
    - the other participating employer were related to the particular participating employer during the preceding fiscal year of the particular participating employer, and
    - the related employer were to have made a specified supply in a fiscal year of the related employer that ends in a fiscal year of the particular participating employer.
- The federal amount that would have been deemed to have been collected under element A of paragraph 172.1(7)(c) by another participating employer of the pension plan that is related to the particular participating employer had the related employer not been a qualifying employer of the plan for a fiscal year that ends in the particular employer's preceding fiscal year. This amount would be added to element A if
    - the other participating employer were related to the particular participating employer during the preceding fiscal year of the particular participating employer, and
    - the related employer were to have made a specified supply in a fiscal year of the related employer that ends in a fiscal year of the particular participating employer.

Elements B and C have the same meaning as elements B and C for selected qualifying employer under subsection 172.1(9), as explained earlier.

A participating employer of a pension plan that meets the above conditions is a qualifying employer and is relieved from having to account for tax on deemed taxable supplies made under subsection 172.1(7).

If an employer is a participating employer of more than one pension plan for a fiscal year of the employer, the employer must determine for each of its pension plans whether it is a selected qualifying employer or a qualifying employer of that pension plan for the fiscal year. The employer could be determined to be so for one of its pension plans but not for another plan.

Example 1: Full relief

A registrant participating employer of a pension plan has pension activity in its preceding fiscal year consisting of:

- the purchase of computers for $70,000 for supply to a pension entity of the pension plan; and
- consumption and use of $10,000 of its employer resources that are not for supply to the pension entity.

For purposes of the formula A/(B–C), assume that the sum of the constituent items in element B, net of the sum of the constituent items in element C, is $100,000.

The employer's deemed GST of $4,000 [($70,000 + $10,000) × 5%] in its preceding fiscal year is less than both $5,000 and 10% of $100,000 (i.e., the denominator in the above formula). As a result, the employer qualifies for full relief as a selected qualifying employer of the pension plan for the current fiscal year of the employer and is relieved from accounting for tax in respect of all of its deemed supplies under subsections 172.1(5), (6) and (7) for that fiscal year. The employer is required to account for actual tax on any actual supplies to the pension entity in the current fiscal year.

Note: This relief does not apply to the employer if the employer has made a section 157 election (as explained below) with any pension entity of the pension plan that is in effect for the employer's current fiscal year. If the employer does have an election under section 157 in effect in its current fiscal year with a pension entity of the pension plan, the employer would still be a qualifying employer (since deemed GST in respect of the employer resources of $500 [$10,000 × 5%] is less than both $5,000 and $100,000) and will not have to account for deemed tax under subsection 172.1(7) for the employer resources in its current fiscal year.

Example 2: Partial relief

A registrant participating employer of a pension plan has pension activity in its preceding fiscal year consisting of:

- the purchase of computers for $110,000 for supply to a pension entity of its pension plan; and
- consumption and use of $10,000 of its employer resources that are not for supply to the pension entity.

For purposes of the formula A/(B–C), assume that the sum of the constituent items in element B, net of the sum of the constituent items in element C, is $100,000.

Since the employer's deemed GST of $6,000 ($120,000 × 5%) in the preceding year is more than $5,000, the employer does not qualify for relief as a selected qualifying employer for the current year even though $6,000 is less than 10% of $100,000.

However, the employer would qualify under subsection 172.1(10) as a qualifying employer and therefore would not have to account for deemed tax under subsection 172.1(7) in respect of its employer resources in its current fiscal year because its deemed GST in respect of its employer resources that are not for supply to the pension entity is $500 ($10,000 × 5%) which is less than both $5,000 and 10% of $100,000.

As well, the employer is eligible to treat actual taxable supplies as being made for nil consideration if it has a section 157 election in effect with a pension entity of the pension plan. This election is explained later in this bulletin.

New participating employer

Subsection 172.1(11) applies in the case where a person becomes a participating employer of a pension plan in a fiscal year of the person. In such a case, the employer would not be able to determine its status as a selected qualifying employer or a qualifying employer under subsection 172.1(9) or (10) respectively, since it would not have an immediately preceding fiscal year in which it was a participating employer of the plan.

Instead, for the fiscal year of the person in which it becomes a participating employer, the person would apply the $5,000 and 10% threshold tests using the formulae contained in each of subsections 172.1(9) and (10) above, using current-year figures that are based on reasonable expectations of the tax amounts rather than a preceding-year test that is based on actual amounts.

Mergers and amalgamations

The rules of section 271 generally apply where a new corporation is formed on a merger or amalgamation of two or more predecessor corporations. Under this provision, the new corporation is generally treated as being a person separate from each of the predecessor corporations. However, the new corporation is essentially considered to be the same corporation as, and a continuation of, each of the predecessor corporations with respect to the property of those predecessors and for purposes of the provisions relating to bad debts. Also, when determining the reporting periods of the new corporation, the threshold amounts as determined under section 249 are generally calculated with reference to supplies made by its predecessor corporations.

Where there is a merger or amalgamation of two or more predecessor corporations, any of which are participating employers of a pension plan, to form a new corporation that is a participating employer of the plan, it is necessary to determine the status of the new corporation as a qualifying employer and/or a selected qualifying employer. To make this determination, subsection 172.1(12) deems certain rules to apply for purposes of subsections 172.1(9), (10) and (11). These rules apply despite the provisions of section 271. They are as follows:

- The new corporation is deemed to have a fiscal year of 365 days immediately preceding the first fiscal year of the corporation (referred to below as the “prior fiscal year”).
- Any tax deemed to have been collected under subsection 172.1(5), (6) or (7) by any predecessor corporation, (or any tax that would have been deemed to have been collected had they not been a selected qualifying employer or a qualifying employer), during the new corporation’s prior fiscal year is deemed to have been collected by the new corporation on the last day of its prior fiscal year. These amounts are combined when determining the status of the new corporation as a qualifying employer or a selected qualifying employer under subsections 172.1(9), (10) and (11). At the same time, each of these amounts is deemed not to have been collected by a predecessor. In addition, any specified supply by a predecessor corporation in respect of a deemed taxable supply made under subsection 172.1(5), (6) or (7), or that would have been made had it not been a selected qualifying employer or a qualifying employer during the new corporation’s prior fiscal year, is deemed to be a specified supply of the new corporation, and not of the predecessor.
- the new corporation is not deemed to have become a participating employer of the pension plan. This rule ensures that the rules in subsection 172.1(11) above would not apply where a merger or amalgamation occurs.

Winding-up

The rules of section 272 generally apply when a subsidiary corporation is wound up into another corporation owning at least 90% of the issued shares of each class of the capital stock of the subsidiary. In this case, the transfer of assets to the parent corporation is treated as not being a supply. With respect to such property, the parent corporation is treated as being the same corporation as, and a continuation of, the subsidiary corporation. In addition, taxable supplies made by the subsidiary are treated as having been made by the parent for the purpose of the bad debt provisions and of determining the parent's threshold amount and its entitlement to a quarterly or annual reporting period.

Where the subsidiary corporation is a participating employer of a pension plan and is wound up into a parent corporation that is also a participating employer of the plan in circumstances where section 272 applies, subsection 172.1(13) must be considered to determine whether the parent corporation is, subsequent to the wind-up, a "selected qualifying employer" or a "qualifying employer" of the pension plan under subsections 172.1(9) and (10) for the relevant fiscal year of the parent corporation.

Subsection 172.1(13) only applies to the parent corporation. This provision does not affect the selected qualifying employer or qualifying employer status of the subsidiary.

For the purposes of specified supply and for the purposes of determining whether the parent corporation is a selected qualifying employer or a qualifying employer, the parent corporation is deemed to be the same corporation as, and a continuation of, the subsidiary despite the provisions of subsection 172.1(11) pertaining to new participating employers and despite the GST/HST rules for winding-up under section 272. Under subsection 172.1(13), the deemed tax of the subsidiary is added together with that of the parent corporation to determine if the combined deemed amount is below both the $5,000 and 10%thresholds described in subsections 172.1(9) and (10).

Election to not account for tax on actual taxable supplies

Under section 157, a participating employer of a pension plan may jointly elect with a pension entity of the plan to treat certain actual taxable supplies by the employer to the pension entity as being made for no consideration for purposes of the GST/HST. Employers and pension entities that have an election in effect pursuant to section 157 would generally not be required to account for tax on actual supplies made by the employer to the pension entity. If an employer is relieved from having to account for tax on an actual or deemed supply, this eliminates the need for the employer to issue a TAN.

Also, an employer having an election in effect must account for tax under the deemed taxable supply rules of subsections 172.1(5) and (6). This is because an employer that makes an election is excluded from the definition of selected qualifying employer and therefore must account for and remit tax on all taxable supplies deemed to have been made under subsections 172.1(5) and (6). However, an employer that has an election in effect may also be relieved from the deemed taxable supply rules of subsection 172.1(7) if it is a qualifying employer for purposes of that subsection. This is discussed in further detail below.

Actual supplies not subject to GST/HST

Specifically, where a participating employer of a pension plan and a pension entity of the pension plan make an election under subsection 157(2), most taxable supplies made by the employer to the pension entity while the joint election is in effect, are deemed to have been made for no consideration. In that case, the pension entity would not generally have to pay tax on the supply, nor would the employer be responsible for collecting any tax. However, subsection 157(3) provides certain exceptions to this rule. Specifically, even if an election is in effect, the employer would have to account for tax payable by the pension entity on the following:

- A supply deemed to have been made by the participating employer under section 172.1.
- A supply of property or of a service that is not acquired by the pension entity for consumption, use or supply by the pension entity in the course of a pension activity. "Pension activity", in respect of a pension plan, is defined in subsection 172.1(1) to mean an activity (other than an excluded activity) that relates to:
    - the establishment, management or administration of the pension plan or a pension entity of the pension plan; or
    - the management or administration of assets in respect of the pension plan.

    An "excluded activity" is generally an activity that is normally carried on by an employer for purposes other than for administering a pension plan; accordingly, excluded activities are not considered pension activities. Specifically, an excluded activity is an activity undertaken exclusively for:
    - compliance by a participating employer of the pension plan (as an issuer, or prospective issuer of securities) with reporting requirements under a law of Canada or of a province in respect of the regulation of securities;
    - evaluating the feasibility or financial impact on a participating employer of the pension plan of establishing, altering or winding-up the pension plan, other than an activity that relates to the preparation of an actuarial report in respect of the plan required under a law of Canada or of a province;
    - evaluating the financial impact of the pension plan on the assets and liabilities of a participating employer of the pension plan; or
    - negotiating changes to the benefits under the pension plan with a union or similar organization of employees.

    Note that the election only applies to taxable supplies acquired by the pension entity that are consumed, used or supplied by the pension entity in the course of its pension activities. If the taxable supply acquired by the pension entity from the employer is not for these purposes, the supply is subject to tax in the normal manner; i.e., the employer is required to collect and remit tax calculated on the consideration for the supply, and the pension entity is required to pay that tax to the employer. Whether a particular resource falls within the definition of pension activity must be determined on a case-by-case basis. In making a determination, the CRA may look to the provisions of the relevant pension plan documents, pension legislation and related documents or agreements.
- All or part of a supply of property or a service made by a participating employer of a pension plan to a pension entity of the plan if, at the time the employer acquires the property or service for the purpose of making the supply, the employer is a selected qualifying employer and therefore not required to account for tax under the deemed taxable supply rules of subsection 172.1(5).
- A supply of property or service made by a participating employer of a pension plan to a pension entity of the plan if, at the time the employer consumes or uses an employer resource (defined in subsection 172.1(1)) for the purpose of making the supply, the employer is a selected qualifying employer and therefore not required to account for tax under the deemed taxable supply rules of subsection 172.1(6).

If the employer is a qualifying employer and therefore not required to account for tax under the deemed taxable supply rules of subsection 172.1(7), it would still treat actual taxable supplies made to a pension entity as being made for nil consideration if an election made under section 157 is in effect, subject to the provisions of that section.

Form of election and revocation

The above rules apply to all supplies made by the employer to the pension entity after March 21, 2013, where an election is in effect on the first day of the employer's fiscal year.

Form RC4615, *Election to Not Account for GST/HST on Actual Taxable Supplies and Notice of Revocation* must be filed by a participating employer with the Minister of National Revenue on or before the first day of the employer's fiscal year for which the election is to have effect.

The election remains in effect until the earliest of:

- the day on which the employer ceases to be a participating employer of the pension plan;
- the day on which the pension entity ceases to be a pension entity of the pension plan;
- the day on which the employer and pension entity jointly revoke an election (an election can only be revoked effective on the first day of a fiscal year of the employer); and
- the day specified in a notice of revocation sent by the Minister of National Revenue under new subsection 157(9) (discussed below).

Under subsection 157(9), the Minister may cancel the election, effective from the beginning of a fiscal year of the employer, if the employer has failed to account for tax on deemed taxable supplies made under subsections 172.1(5) and (6). To revoke an election, the Minister must issue a notice to the employer advising that he intends to revoke it. Upon receipt of such notice, the participating employer is required by subsection 157(8) to establish that the participating employer did not fail to account for the deemed tax. If after 60 days of issuing the notice the Minister is satisfied that the employer failed to account for the tax, he may revoke the election effective the first day of any particular fiscal year of the participating employer; however, the effective day of revocation may not be earlier than the day specified in the notice to the employer. Where an election is revoked, the election is deemed not to have been in effect on or after the day of the revocation.

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)
If you are a Selected Listed Financial Institution (SLFI), call **1-855-666-5166**.	

All technical publications on GST/HST are available on the CRA website at www.cra.gc.ca/gsthsttech.