



Registered Pension Plans

NOTE: This bulletin replaces the version dated June 8, 1993.

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, 15% in Nova Scotia, and 12% in British Columbia. The GST applies in the rest of Canada at the rate of 5%. If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province*.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec at 1-800-567-4692. You may also visit the Revenu Québec Web site to obtain general information.

INTRODUCTION

This bulletin outlines the administrative position of the Canada Revenue Agency (CRA) as to how the GST/HST applies to transactions carried out in the course of the administration of a registered pension plan. Details of the CRA's administrative position, which was originally published on June 8, 1993, are provided in this bulletin under the heading "Administrative position".

As a result of recent jurisprudence, where the parties to a particular pension plan did not follow the administrative position consistently, the CRA may apply the normal rules applicable to the claiming of input tax credits (ITCs) as set out in section 169 of the *Excise Tax Act* (the Act). This is CRA's interpretive position, which is outlined in the next section of this bulletin under the heading "Interpretive position".

Both the administrative position provided later in this bulletin and the interpretive position below apply to registered pension plans of a single employer until the new rules contained in Bill C-9, the *Jobs and Economic Growth Act*, S.C. 2010, c. 12, which passed into law on July 12, 2010, take effect. These new rules apply for claim periods beginning on or after September 23, 2009.

For more information please consult the Department of Finance news release dated September 23, 2009, and GST/HST Notice257, *For discussion purposes only: The GST/HST Rebate for Pension Entities*.

INTERPRETIVE POSITION

Based on recent jurisprudence and for periods beginning **before** September 23, 2009 (i.e., the employer's fiscal years beginning before September 23, 2009), in addition to the administrative position provided later in this bulletin, the CRA may apply the interpretive position outlined in this section where the administrative position has not been followed on a consistent basis by the parties to the pension plan or where the pension plan is not a single employer pension plan.

Generally, where a person who is a registrant acquires or imports property or a service and the GST/HST in respect of the property or service becomes payable or is paid by the person without having become payable, that person is eligible to claim an ITC in respect of the tax to the extent the property or service is acquired or imported for consumption, use or supply in the course of the person's commercial activities. All of the conditions for claiming an ITC under section 169 of the Act have to be met.

For purposes of claiming ITCs, an expense related to the pension plan may be incurred by an employer (i.e., the person liable to pay the consideration under the agreement for the supply). The employer would, in such circumstances, be entitled to claim an ITC provided that all of the conditions of section 169 of the Act are met.

Where pension related expenses incurred by the employer (i.e., the person liable to pay the consideration under the agreement for the supply) have been paid for out of trust assets because of the following situations, the CRA generally considers the payment made by the plan trust to be consideration for a supply of property or services made by the employer to the plan trust:

- the plan trust paid the third party supplier directly,
- the employer invoiced the plan trust for the costs of the inputs, and/or
- the plan trust reimbursed the employer.

In such circumstances, the employer would generally be considered to be making a supply of property or services to the plan trust. If the employer is a GST/HST registrant, it would be required to charge, collect and remit GST/HST on the supply to the plan trust where the supply is not exempt. However, as explained above, the employer would be entitled to claim an ITC in respect of the acquisition or importation of the property or service being acquired or imported for supply to the plan trust, provided that all of the conditions of section 169 of the Act are met.

If the plan trust is a GST/HST registrant, it is entitled to claim ITCs in respect of the GST/HST to the extent that the property or service has been acquired or imported by the plan trust for consumption, use or supply by the plan trust in the course of its commercial activities. Otherwise the plan trust may not claim ITCs.

ADMINISTRATIVE POSITION

Registered pension plans

A pension plan may generally be described as an arrangement between an employer and its employees for providing pension benefits to the employees on retirement. Pension plans are regulated by federal and/or provincial legislation.

There are two basic types of pension plans, as follows:

- money-purchase plans, where the employer contributes a specified amount to the plan each period, usually a percentage of the employees' salaries. The employees may also contribute to the plan. The contributions are invested, and the pension benefit that the employees will receive is dependent upon the total amount of contributions and the yield on the investments; and
- defined benefit plans, where the employer and/or the employees contribute to the plan. The pension benefit that the employees will receive is a stated amount, usually a percentage of the average salary of the employees.

Other pension plans may contain elements of a money-purchase plan and a defined benefit plan.

A registered pension plan is a pension plan that has been accepted by the Minister of National Revenue for registration for purposes of the *Income Tax Act*, and whose registration has not been revoked.

Although there are many types of pension plans, there are generally at least three main elements in a pension plan arrangement:

- the plan sponsor or the employer,
- the plan itself, and
- the funding medium or the “fund”.

The comments in this bulletin apply to a pension plan where the funding medium is a trust resident in Canada.

A trust is a person for GST/HST purposes. A trust governed by a registered pension plan qualifies as an investment plan by virtue of subparagraph 149(5)(a)(i) of the Act, and is included as a listed financial institution under subsection 149(1). The terms “plan trust” and “employer” will be used in the remainder of this bulletin to refer to the two separate persons involved in a pension plan arrangement. Where arrangements differ from this basic model, the applicable principles may be similar as long as the funding medium is an entity that is a “person” for GST/HST purposes, separate from the employer.

An essential function of a plan trust is to hold funds for investment purposes. Most services provided by a plan trust are normally financial services and are exempt from the GST/HST. The contribution of funds to the plan trust by the members of the plan and by the employer is a financial service and exempt from the GST/HST. Similarly, the distribution of funds to the beneficiaries by the plan trust is also an exempt financial service.

Registration for purposes of the GST/HST

A plan trust will not be required to be registered for purposes of the GST/HST if it makes only exempt supplies, such as the investment of funds in financial instruments. However, as a listed financial institution resident in Canada, the plan trust may voluntarily apply to be registered for purposes of the GST/HST.

If a plan trust also carries on commercial activities in the year (generally making taxable supplies) and the total consideration from taxable supplies (other than supplies by way of sale of capital property and generally supplies of zero-rated financial services) made by the plan trust for the preceding

12 months did not exceed \$30,000, usually it is still not required to be registered for purposes of the GST/HST.

Input tax credits

Normally, a plan trust will not qualify for ITCs since it may only make exempt supplies (e.g., receipt of interest or dividends). However, if the plan trust is a registrant and if, in addition to the provision of the exempt supplies, it also makes taxable supplies (e.g., rentals of commercial real property), the plan trust will be able to claim an ITC for any GST/HST paid or payable on property or services to the extent they are acquired or imported by it for consumption, use or supply in the course of its commercial activities.

Employer expenses and plan trust expenses

It is the CRA's administrative position that certain property or services that are acquired or imported in respect of the pension plan are required for the operation of the employer's business (referred to in this bulletin as "employer expenses") while other property or services that are acquired or imported in respect of the pension plan are required for the operation of the plan trust (referred to in this bulletin as "plan trust expenses"). The CRA's administrative position on which property or services are employer expenses and which property or services are plan trust expenses is set out below. Only the employer, and not the plan trust, is entitled to claim an ITC on employer expenses to the extent that they are acquired or imported by the employer for consumption or use in the course of its commercial activities, and the GST/HST on the employer expenses is paid or payable by the employer. Similarly, only the plan trust, and not the employer, is entitled to claim an ITC on the plan trust expenses to the extent that they are acquired or imported by the plan trust for consumption or use in the course of its commercial activities, and the GST/HST on the plan trust expenses is paid or payable by the plan trust.

Employer expenses

The following list includes examples of activities that relate to the establishment or administration of the pension plan. In general, these activities are specified as the employer's responsibilities in the pension plan agreement or under the applicable pension legislation. Hence, any property or services that are for use in such activities will be regarded as for use in the course of the employer's business, and considered as employer expenses:

- the establishment or subsequent amendment of the pension plan or the plan trust;
- the administration in relation to the collection of pension contributions and payment of pension benefits;
- the retention of the trustee for the plan trust;
- the appointment of an investment manager for the plan trust;
- the preparation and filing of actuarial reports, financial reports and other information for the pension plan pursuant to statutory requirements;
- the appraisal of the plan trust investment performance; and
- the general pension plan administration, such as the maintenance of records, benefit calculations, pension adjustment calculations, etc.

Plan trust expenses

For GST/HST purposes, the plan trust is a separate person from the employer. Assets vested in the plan trust will become the property of the plan trust and, accordingly, are not the property of the

employer. The very purpose for creating the plan trust is to ensure that ownership of the assets is separated from the employer.

It is the CRA's administrative position that all property and services that are acquired or imported for use in the activities relating to the plan trust assets, such as the holding or the investment of the assets, will be regarded as for the use in the plan trust's operation, and considered as plan trust expenses. In general, the CRA will consider the following related property or services as plan trust expenses:

- the investment advice regarding the plan trust assets;
- the brokerage, agents' charges and all other property or services relating to acquisition, utilization or disposal of the plan trust assets;
- the plan trust portfolio management;
- the custodial or nominee services for the plan trust assets; and
- certain legal, accounting or auditing services in respect of the plan trust assets.

Re-supplies

In many pension arrangements as they currently stand, property or services that are required for use in the operation of the plan trust may be invoiced to and paid for by the employer or vice versa. The comments below explain the CRA's administrative position where the related property or services that are required for use in the operation of one party are invoiced to and paid for by the other.

Plan trust expenses invoiced to and paid for by the employer

When the employer acquires or imports and pays for the plan trust expenses, since the related property or services are required by the plan trust for use in its operation, the CRA will consider that this property or these services are re-supplied by the employer to the plan trust. Therefore, where the employer is a registrant, it will be able to claim an ITC for the GST/HST paid or payable on the plan trust expenses that it re-supplied to the plan trust. The employer must also charge and remit the GST/HST based on the value of the consideration for the re-supply where it is a taxable supply. When the plan trust is a registrant, it may claim an ITC for the GST/HST paid or payable on the re-supply to the extent the related property or services are acquired for consumption or use in the course of its commercial activities. Due to the close relationship of the employer and the plan trust, if the employer charges the plan trust an amount less than what it was charged by the supplier for the plan trust expenses, the CRA will take the position that the re-supply by the employer cannot be said to have been made between persons dealing with each other at arm's length. In this case, if the amount charged is less than the fair market value of the related property or services, section 155 of the Act will apply unless the plan trust is a registrant who is acquiring the related property or services for consumption, use or supply exclusively in the course of its commercial activities. Section 155 of the Act will deem the value of the consideration for the re-supply to be equal to the fair market value of the related property or services.

If the employer invoices the plan trust for the re-supply for an amount equal to the amount it was charged by the original supplier, the CRA will generally accept that, for purposes of section 155 of the Act, the amount invoiced by the employer is an appropriate approximation of the fair market value of the related property or services.

Where the employer has established more than one plan trust and the employer acquires or imports and pays the plan trust expenses that are for use in the operation of these trusts, the employer may only invoice a plan trust for the re-supply of the related property or services that are for use by that

particular plan trust. If the total amount invoiced by the employer to all the plan trusts for the re-supplies is equal to the amount charged by the supplier to the employer, the CRA will generally accept that the amounts invoiced to the plan trusts are an appropriate approximation of the fair market value of the re-supplies made to the plan trusts. However, there must be a reasonable allocation of the amounts invoiced for the re-supplies among the plan trusts.

A plan trust may claim an ITC for the GST/HST paid or payable on the acquisition of the related property or services only to the extent that they are acquired by the plan trust for consumption or use in the course of its commercial activities.

Employer expenses invoiced to and paid for by the plan trust

If the plan trust acquires or imports and pays for the employer expenses, when the related property or services are acquired or imported for use in activities that are the responsibilities of the employer pursuant to the pension plan agreement or the applicable legislation, the CRA will consider that this property or these services are re-supplied by the plan trust to the employer. Therefore, where the plan trust is a registrant, it will be able to claim an ITC for the GST/HST paid or payable on the employer expenses that it re-supplied to the employer. The plan trust must also charge and remit the relevant GST/HST on the value of the consideration for the re-supply where it is a taxable supply. When the employer is a registrant, it may claim an ITC for the GST/HST paid or payable on the re-supply to the extent that the related property or services are acquired for consumption or use in the course of its commercial activities. For some pension plan arrangements, the employer's responsibilities regarding the pension plan are limited, and the related property or services will not be acquired or imported for use in activities that are the responsibilities of the employer pursuant to the pension plan agreement or the applicable pension legislation. In this case, there will not be a re-supply of the related property or services to the employer.

If there is a re-supply of the employer expenses by the plan trust to the employer and the amount charged for the re supply is less than what the plan trust was charged, the CRA will take the position that the re supply cannot be said to have been made between persons at arm's length. In this case, if the amount charged by the plan trust is less than the fair market value of the related property or services, section 155 of the Act will apply to deem the value of the consideration for the re-supply to be equal to the fair market value of the related property or services, unless the employer is a registrant who is acquiring the related property or services for use exclusively in the course of its commercial activities.

If the plan trust invoices the employer for the re-supply for an amount equal to the amount it was charged by the original supplier, the CRA will generally accept that, for purposes of section 155 of the Act, the amount invoiced by the plan trust is an appropriate approximation of the fair market value of the related property or services.

To reduce the administrative burden to those plan trusts that are not registrants, the CRA takes the position that, if a non-registrant plan trust is invoiced and pays for the employer expenses and the related GST/HST, the employer will be considered to have acquired or imported the related property or services directly from the supplier and paid the applicable GST/HST. Therefore, the plan trust will not be required to include the value of the related property or services in determining its small supplier threshold. The plan trust will not be required to be registered for purposes of the GST/HST merely because it was invoiced and has paid for the employer expenses. The employer, if registered, may claim an ITC for the GST/HST charged by the supplier on the related property or

services to the extent that they are acquired or imported for consumption or use by the employer in the course of its commercial activities.

Where the employer or the plan trust has paid for the other's expenses, but does not invoice the other for the re-supply of the related property or services, the CRA will not seek to apply section 155 of the Act, provided that neither the employer nor the plan trust, as either supplier or recipient, claims an ITC with respect to the related property or services.

In-house supplies

In addition to the re-supply of property or services by an employer to the plan trust, there may be situations where the employer may make an "in-house" supply of property or services to the plan trust. For example, the staff of the employer's treasury department may provide an investment advice service to the plan trust in connection with the plan trust's investment activities. If the employer makes the supply for no consideration or for consideration less than the fair market value of the "in-house" property or services, the supply will be considered not to have been made between persons dealing with each other at arm's length. If the trust is not a registrant who is acquiring the property or services for consumption, use or supply exclusively in the course of its commercial activities, section 155 of the Act will apply to deem the supply to have been made for consideration equal to the fair market value of the property or services at that time. In general, the CRA will accept the costs to the employer in providing the in-house supply as the fair market value of the property or services as long as they include both direct and indirect costs. Where the supply is a taxable supply and the employer is a registrant, the employer should collect GST/HST from the plan trust on this value. There may also be cases where the plan trust may supply property or services to the employer, in which case the results will be the same as outlined above.

Imported taxable supplies

Where a taxable supply is made outside Canada to the employer or the plan trust, the supply will generally be subject to the GST/HST on a self-assessment basis under Division IV of the Act unless the supply was acquired for consumption, use or supply exclusively in the course of the commercial activities of the recipient, or unless the supply was of goods that are subject to GST/HST under Division III of the Act. If a taxable supply of a plan trust expense that is made outside Canada is invoiced to and paid by the employer for re-supply to the plan trust, or if a taxable supply of an employer expense that is made outside Canada is invoiced to and paid by the plan trust for re-supply to the employer, the imported supply will not be subject to the GST/HST under Division IV of the Act since it will be considered to have been acquired for supply exclusively in the course of commercial activities of the party who thereafter makes the re-supply. However, the re-supply of the related property or services in Canada will still be subject to the GST/HST based on the fair market value of the related property or services.

In the situation where a non-registrant plan trust is invoiced and pays for a taxable supply of employer expenses made outside Canada, the CRA will consider that the employer acquired the imported supply directly from the original supplier, and that there was no re-supply of the related property or services by the non-registrant plan trust. (Refer to the section of this bulletin entitled "Re-supplies".) However, the employer must self-assess the GST/HST under Division IV of the Act unless the supply was acquired for consumption, use or supply exclusively in the course of its commercial activities, or unless the supply was of goods that were subject to GST/HST under Division III of the Act.

Documentation

Subsection 169(4) of the Act sets out the general documentary and information requirements that a registrant must meet before filing a GST/HST return for the reporting period in which an ITC may be claimed. To satisfy these requirements, the employer or plan trust, as the case may be, that makes the supply must make an invoice or similar documentation as described in GST Memorandum G400-1-2, *Documentary Requirements*, to the other party to substantiate the making of the re-supply. Otherwise, the recipient of the re-supply will not be entitled to claim the appropriate ITC.

Where a non-registrant plan trust is invoiced and pays for the employer expenses and the employer is considered to have acquired the related property or services directly from the original supplier, an invoice issued by the supplier to the plan trust will generally be considered as sufficient evidence in determining the employer's ITC entitlement under subsection 169(4) of the Act, provided that the invoice meets the general requirements under the *Input Tax Credit Information (GST/HST) Regulations* to the Act.

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/gsthstech.