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For discussion purposes only

Draft GST/HST technical information bulletin, *The GST/HST Rebate for Pension Entities.*

This publication is being disseminated by the Canada Revenue Agency in draft form for comments.

Comments or suggestions should be sent by November 30, 2010 to:

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Draft

The GST/HST Rebate for Pension Entities

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

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

The information contained in this version of this bulletin is based upon the relevant legislation contained in Bill C-9, the *Jobs and Economic Growth Act*, S.C. 2010, c. 12, which received Royal Assent on July 12, 2010. Also considered in this document are relevant provisions of the draft *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, released on June 30, 2010, which describe how listed financial institutions, including pension plans, must account for the HST.

All legislative references in this bulletin are to the *Excise Tax Act* unless otherwise stated.

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Introduction

Under the *Excise Tax Act*, GST/HST rebates have been available to trusts governed by a multi-employer pension plan (MEPP), other than to those in respect of which 10% or more of the employer contributions to the MEPP are made by listed financial institutions.

On January 26, 2007, the Department of Finance announced a proposal to provide for a new pension entity rebate intended to ensure that GST/HST relief on pension plan expenses accrues to all pension entities. The rules governing the pension entity rebate is contained in Bill C-9, the *Jobs and Economic Growth Act*, S.C. 2010, c. 12, which received Royal Assent on July 12, 2010.

The new rules apply for fiscal years of employers, and to a pension entity's rebate claim periods beginning on or after September 23, 2009. The MEPP rebate is still available for periods to which the new rules do not apply (i.e., for periods beginning before September 23, 2009).

For example, a MEPP having claim periods January 1–June 30 and July 1–December 31 could not claim the pension entity rebate for claim periods beginning before January 1, 2010, but would instead apply for a MEPP rebate for those periods. It would file claims for the pension entity rebate for its claim periods falling after December 31, 2009, and would no longer be entitled to claim MEPP rebates for periods after that time.

The new rules have the effect of deeming all of the GST/HST on pension-related expenses incurred by employers participating in a pension plan to have been paid by the relevant pension entity. The pension entity would then be entitled to claim a rebate equal to 33% of the GST/HST it has actually paid, as well as the GST/HST deemed to have been paid under the legislation. The rebate would be available irrespective of the nature of the plan arrangements or whether the pension entity is registered for the GST/HST.

To recognize that employers may be responsible for payment of a portion of expenses related to their pension plan, an election is available such that a pension entity and all participating employers of the pension plan could jointly elect to transfer some or all of the entity's rebate entitlement to some or all of the plan's participating employers that are GST/HST registrants. The election permits these participating employers to make a deduction in determining their net tax in respect of the transferred rebate amount.

Similar to the MEPP rebate, the only pension entities that are not eligible for the pension entity rebate are pension entities of pension plans where 10% or more of the contributions to the pension plan are made by listed financial institutions. However, a pension entity of such a plan and the participating employers of the plan would be permitted to make a joint election to allow the participating employers to make a deduction in determining their net tax in respect of what would otherwise have been the pension entity's rebate entitlement. This deduction would be limited by the particular employer's share of the total pension contributions and its tax recovery rate.

Part I – Definitions

Active member

The term "active member" has the meaning assigned by subsection 8500(1) of the *Income Tax Regulations*, which states:

> "active member" of a pension plan in a calendar year means a member of the plan to whom benefits accrue under a defined benefit provision of the plan in respect of all or any portion of the year or who makes contributions, or on whose behalf contributions are made, in relation to the year under a money purchase provision of the plan.

Claim period

A "claim period" has the meaning assigned by subsection 259(1). A claim period is

- a reporting period if the pension entity is a registrant; or
- the first two or last two fiscal quarters of a fiscal year if the pension entity is not a registrant.

Eligible amount

An "eligible amount" of a pension entity for a claim period of the pension entity is an amount described by paragraphs a) and b) below but cannot include a "recoverable amount", which is an amount that

- is included in determining an input tax credit (ITC) of the pension entity for the claim period;
- the pension entity was entitled to recover through a rebate, refund or remission; and
- could reasonably be regarded as having been included in an amount adjusted, refunded or credited in favour of the pension entity for credit notes received or debit notes issued.

Eligible amounts include GST/HST incurred directly by the pension entity. Specifically, this includes GST/HST that:

a) became payable by the pension entity during the claim period, or was paid by the pension entity during the claim period without having become payable, in respect of a supply, importation or bringing into a participating province of property or a service that the pension entity acquired, imported or brought into the participating province, as the case may be, for consumption, use or supply in respect of a pension plan, other than the following:

- amounts of tax deemed to have been paid by the pension entity under Part IX (for example, deemed tax paid resulting from a change-in-use of capital property or in respect of employee allowances and reimbursements);

  Note: A special rule applies for amounts of tax deemed to have been paid for a residential complex, an addition to a multiple unit residential complex, or land under section 191. These amounts will only be excluded from being an "eligible amount" if the pension entity was entitled to claim a GST/HST new residential rental property rebate in respect of the deemed amounts (or would be so entitled after paying the deemed amounts) pursuant to section 256.2. On the other hand, if the pension entity was not entitled to claim that rebate, the deemed tax under section 191 may be included as an eligible amount in Line A of Part C of Form RC4607, *GST/HST Pension Entity Rebate Application and Election*.

- amounts of tax that were payable under subsection 165(1) by the pension entity for a taxable supply to the pension entity of a residential complex, addition to a residential complex or land if, in respect of that supply, the pension entity was entitled to claim a GST/HST new residential rental property rebate under section 256.2 or would be so entitled after paying the tax payable for that supply;
- amounts of tax that became payable, or were paid without having become payable, by the pension entity at a time when it was entitled to claim a rebate under section 259 (section 259 provides for rebates to charities, substantially government-funded non-profit organizations and other public services bodies, i.e. universities, public colleges, school authorities, hospital authorities and municipalities);
- if the pension entity is a selected listed financial institution (SLFI) throughout the claim period, amounts of tax that are payable in respect of the provincial part of HST (i.e., under any of subsection 165(2), sections 212.1 and 218.1, and Division IV.1).

Eligible amounts also include the GST/HST deemed to have been paid by the pension entity on certain deemed taxable supplies made by an employer (these deemed supplies are discussed in Part IV, "Deemed taxable supplies by employers"). Specifically, this includes the GST/HST that:

b) is deemed to have been paid by the pension entity under section 172.1 during the claim period (as discussed later, a pension entity that is an SLFI throughout the claim period will only be deemed to have paid amounts under that section in respect of the federal part of the GST/HST).

Listed financial institution

A "listed financial institution" is a person referred to in paragraph 149(1)(a). This includes a bank, a corporation that is 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, an investment or insurance broker, a credit union, an insurer, a segregated fund of an insurer, the Canada Deposit Insurance Corporation, a person whose principal business is the lending of money, an investment plan, a tax discounter, or a corporation that has made an election for exempt supplies under section 150 and that election is in effect. For more information, refer to GST/HST Memorandum 17.6, *Definition of "Listed Financial Institution"*.

Non-qualifying pension entity

A "non-qualifying pension entity" is a pension entity that is not a "qualifying pension entity".

Participating employer

A "participating employer" of a pension plan is generally an employer that has made, or is required to make, contributions to the plan or payments thereunder in respect of the employer's employees or former employees. A participating employer also 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 will remain a participating employer in respect of that pension plan even if it does not currently make contributions.

Pension contribution

A "pension contribution" is a contribution by a person to a pension plan that may be deducted by the person under paragraph 20(1)(q) of the *Income Tax Act* in computing their income.

Pension entity

A "pension entity" of a pension plan is an entity of the plan that is a person referred to in paragraph (a) of the definition of "pension plan", a corporation referred to in paragraph (b) of that definition, or a prescribed person. Essentially, a pension entity is either a trust described in paragraph 149(1)(o) of the *Income Tax Act*, a corporation described in paragraph 149(1)(o.1) of that Act, or a prescribed person, which could, for example, be a person that is deemed to be a trust or a corporation for the purposes of those paragraphs.

Pension plan

A "pension plan" is a registered pension plan (as defined in subsection 248(1) of the *Income Tax Act*)

(a) that governs a person that is a trust or that is deemed to be a trust for the purposes of that Act;

(b) in respect of which a corporation is

  (i) incorporated and operated either

    (A) solely for the administration of the registered pension plan, or

    (B) for the administration of the registered pension plan and for no other purpose other than acting as trustee of, or administering, a trust governed by a retirement compensation arrangement (as defined in subsection 248(1) of that Act), where the terms of the arrangement provide for benefits only in respect of individuals who are provided with benefits under the registered pension plan, and

  (ii) accepted by the Minister, under subparagraph 149(1)(o.1)(ii) of that Act, as a funding medium for the purpose of the registration of the registered pension plan; or

(c) in respect of which a person is prescribed for the purposes of the definition "pension entity".

With certain exceptions detailed in subsection 147.1(3) of the *Income Tax Act*, a pension plan may be deemed to be a "registered pension plan" for purposes of subsection 248(1) of that Act, while other plans, such as pending pension plans and deferred profit sharing plans, are not considered to be "registered pension plans". For information, contact Registered Plans Directorate at www.cra-arc.gc.ca/tx/rgstrd/cntct-eng.html).

Pension rebate amount

A "pension rebate amount" of a pension entity for a claim period of the pension entity is the amount determined by the formula

$$A \times B$$

where

A is 33%; and

B is the total of all amounts each of which is an "eligible amount" of the pension entity for the claim period.

Provincial attribution percentage

The term "provincial attribution percentage" is relevant for pension entities that are SLFIs. SLFIs are required to calculate adjustments to their net tax for each reporting period using the special attribution method (SAM) formula in section 225.2. For more information, refer to Guide RC4050, *GST/HST Information for Selected Listed Financial Institutions*.

The "provincial attribution percentage" is represented by Element C of the SAM formula, and must be calculated for each participating province (i.e., British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia and Ontario).

There are two formulas that a pension entity might use to calculate the provincial attribution percentage for each participating province: one for defined contribution plans and another for defined benefit plans. The percentage calculated by the pension entity is in turn used to calculate its "provincial pension rebate amount".

For **defined contribution plans**, the provincial attribution percentage of the pension entity for a particular participating province is determined by dividing the value of the pension assets reasonably attributable to plan members resident in the province by the value of the total pension assets reasonably attributable to plan members resident in Canada.

For **defined benefit plans**, the provincial attribution percentage for a particular participating province is determined by dividing the actuarial liabilities of the pension plan reasonably attributable to plan members resident in the province by the total actuarial liabilities of the pension plan reasonably attributable to plan members resident in Canada.

The SLFI pension entity enters the provincial attribution percentage for each participating province in Column B of Part G of Form RC4607, *GST/HST Pension Entity Rebate Application and Election*. This will be the same provincial attribution percentage that the entity reports for each province on Form GST494, *Goods and Services Tax/Harmonized Sales Tax Final Return for Selected Listed Financial Institutions*, were it required to complete that form.

Example 1 – Calculation of "provincial attribution percentage"

A **defined contribution pension plan** has total assets attributable to plan members resident in Canada valued at $30,000,000. The plan has active members resident in Manitoba, Ontario, New Brunswick and Nova Scotia. The value of plan assets attributable to active members residing in each participating province is set out in the chart below with the respective provincial attribution percentages calculated for each province. Since Manitoba is not a participating province, no provincial attribution percentage is calculated for Manitoba.

Participating province **A**	Value of assets attributable to active members **B**	Provincial attribution percentage (Column B ÷ $30,000,000) **C**
Ontario	$10,000,000	33%
New Brunswick	$3,000,000	10%
Nova Scotia	$6,000,000	20%

Provincial pension rebate amount

The term "provincial pension rebate amount" is relevant for SLFIs that elect to share their pension rebate with qualifying employers under any of subsections 261.01(5), (6) or (9) (this is discussed under Part III, "Elections"). If a pension entity is not an SLFI throughout a claim period of the pension entity, its "provincial pension rebate amount" for the claim period is zero.

Specifically, a "provincial pension rebate amount" of an SLFI pension entity for a claim period of the pension entity in a fiscal year that ends in a taxation year of the pension entity means the amount equal to:

(a) in the case **where the pension entity is an SLFI throughout the claim period**, the total of all amounts, each of which is determined for a particular participating province, by the formula

$$A \times B \times C/D$$

where

A is the pension rebate amount of the pension entity for the claim period;

B is the pension entity's "provincial attribution percentage" (for the particular participating province for the taxation year for the purposes of Element C of the formula in subsection 225.2(2));

C is the tax rate for the particular participating province; and

D is the tax rate set out in subsection 165(1); and

(b) in any other case, zero.

Example 2 – Calculation of "provincial pension rebate amount"

Using the same facts and amounts of example 1 and assuming that the pension rebate amount (Element A of the above formula) is $1,993 (see example 5, Part B), the following table demonstrates the calculation of the pension entity's "provincial pension rebate amount" for the defined contribution pension plan described in example 1.

Participating province	Pension rebate amount ($) **A**	Provincial attribution percentage **× B**	Provincial tax rate **× C**	GST rate **÷ D**	Total ($)
Ontario	1,993	33%	8%	5%	1,052.30
NB	1,993	10%	8%	5%	318.88
NS	1,993	20%	10%	5%	797.20
Total					2,168.38

The "provincial pension rebate amount" of the SLFI pension entity is therefore $2,168.38.

Transitional rule for introduction of the HST in British Columbia and Ontario

A transitional rule applies as a consequence of the introduction of the HST in British Columbia and Ontario effective July 1, 2010. This transitional rule applies for the claim period of a pension entity that begins before July 2010 and ends on or after July 1, 2010. The effect of this rule is that the formula must be modified to include a transitional factor. The transitional factor is calculated as the number of days in the claim period falling after June 30, 2010, divided by the total number of days in the period. For claim periods ending before July 2010, the transitional factor will be "zero".

Specifically, where the pension entity is an SLFI throughout the claim period, the provincial pension rebate amount of the pension entity for the claim period is the total of all amounts, each of which is determined for a particular participating province, by the formula

$$A \times B \times C/D \times (E - F)/E$$

where

A is the pension rebate amount of the pension entity for the claim period;

B is the pension entity's "provincial attribution percentage" for the particular participating province for the taxation year for the purposes of Element C of the formula in subsection 225.2(2);

C is the tax rate for the participating province;

D is the tax rate set out in subsection 165(1);

E is the number of days in the claim period; and

F is

- where the participating province is British Columbia or Ontario, the number of days in the claim period after June 2010; and
- in any other case, zero.

Transitional rule for increase in the provincial part of the HST in Nova Scotia

As of July 1, 2010, the HST in Nova Scotia changed from 13% to 15% due to an increase in the provincial part of the HST from 8% to 10%. As a result, a proposed additional transitional rule is necessary to take into account the prevailing provincial tax rates in Nova Scotia before July 2010 (8%) and after June 30, 2010 (10%). For claim periods beginning before July 2010 and ending after June 30, 2010, this will entail calculating two provincial pension rebate amounts for Nova Scotia: one at the 8% rate and another at the 10% rate. The amount calculated at the 8% rate must then be multiplied by the percentage determined by dividing the number of days in the claim period occurring before July 2010 by the total number of days in the claim period. Conversely, the amount calculated at the 10% rate must be multiplied by the percentage determined by dividing the number of days in the claim period occurring after June 30, 2010 by the total number of days in the claim period.

Qualifying employer

A "qualifying employer" of a pension plan for a calendar year is a participating employer of the pension plan that is a registrant and that

(a) made pension contributions to the pension plan in the immediately preceding calendar year; and

(b) in any other case, was the employer of one or more active members of the pension plan in the immediately preceding calendar year.

Qualifying pension entity

A "qualifying pension entity" means a pension entity of a pension plan other than a pension plan in respect of which

(a) listed financial institutions made 10% or more of the total pension contributions to the pension plan in the last preceding calendar year in which pension contributions were made to the pension plan; or

(b) it can reasonably be expected that listed financial institutions will make 10% or more of the total pension contributions to the pension plan in the next calendar year in which pension contributions will be required to be made to the pension plan.

Recoverable amount

A "recoverable amount" in respect of a claim period of a person is an amount of tax

a) that is included in determining an ITC of the person for the claim period;

b) for which it can reasonably be regarded that the person has obtained or is entitled to obtain a rebate, refund or remission under any other section of the *Excise Tax Act* or under any other Act of Parliament; or

c) that can reasonably be regarded as having been included in an amount adjusted, refunded or credited to or in favour of the person for which a credit note referred to in subsection 232(3) has been received by the person or a debit note referred to in that subsection has been issued by the person.

Selected listed financial institution (SLFI)

Under the definition contained in subsection 123(1), a selected listed financial institution (SLFI) means, at any time, a "listed financial institution" that meets the criteria set out in subsection 225.2(1).

Pension entities of pension plans having one or more members residing in a particular HST province and one or more members residing in any other province would generally be considered to be an SLFI. However, an exception to this rule is provided where a pension entity is a qualifying small investment plan for a fiscal year of the pension entity. In this case, the pension entity would not be an SLFI for the fiscal year unless the pension entity has made an election to be an SLFI and the election is in effect for the fiscal year.

A pension entity would generally be a qualifying small investment plan for a fiscal year if the total of its "unrecoverable tax amounts" for all of its reporting periods in its immediately preceding fiscal year (or in the fiscal year where that fiscal year is the first fiscal year of the pension entity) is equal to or less than $10,000 on an annualized basis. The pension entity's unrecoverable tax amount for a reporting period of the fiscal year is generally the sum of the GST that became payable by the pension entity (or was paid without having become payable) during the reporting period minus ITCs of the pension entity claimed in its return filed for the reporting period.

A pension entity that is an SLFI would be required to be registered for the purposes of the GST/HST if it makes any of the three reporting elections (i.e., the reporting entity election, the consolidated filing election and the tax transfer adjustment election) provided for in sections 54 to 58 of the draft *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*. This requirement to register is in addition to the existing requirement to register under subsection 240(1). Pension entities that have jointly made the consolidated filing election would be permitted to use a single registration number. For a detailed discussion of the reporting elections, refer to GST/HST Notice 255, *Elections for Certain Selected Listed Financial Institutions under the HST*.

As discussed under the definition of "provincial attribution percentage", SLFIs are required to use the SAM formula provided under section 225.2 and the draft *Selected listed Financial Institutions Attribution (GST/HST) Regulations* to determine their net tax. The CRA will publish a GST/HST notice that will explain those rules. SLFIs are also subject to specific rules with respect to the pension entity rebate.

The rules in section 225.2 should not be confused with the HST place-of-supply rules which are explained in GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province*. The place-of-supply rules would in fact apply normally; however, an SLFI pension entity would be required to determine its provincial tax liability using the SAM formula in section 225.2 and the draft *Selected listed Financial Institutions Attribution (GST/HST) Regulations*. If the amount determined using the formula is less than the provincial tax actually paid or payable, the SLFI may deduct this amount from its net tax. Conversely, if the amount determined using the formula is more than actual provincial tax paid or payable, the SLFI may be required to add this amount to its net tax. The CRA will publish a GST/HST notice that will explain those rules.

Example 3 – HST rules for SLFIs

A taxable supply of $100,000 is made to a pension entity located in Ontario. The pension entity has a "provincial attribution percentage" of 60% for Ontario.

If the supply is made in Ontario based on the HST place-of-supply rules, the pension entity would actually pay $8,000 ($100,000 × 8%) with respect to the provincial part of the HST in Ontario, but would deduct from its net tax $3,200 ($5,000 × 60% × (8% ÷ 5%) – $8,000) through the SLFI formula in subsection 225.2(2). The pension entity's net Ontario provincial tax liability would therefore be $4,800 ($8,000 – $3,200) (assuming that it is not eligible for ITCs and no other adjustments are made).

If the place of supply had been Manitoba, the pension entity would be charged only GST since there is no HST in Manitoba. However, it would be required to calculate the Ontario provincial attribution percentage and add an amount to its net tax. In this example it would add $4,800 ($5,000 × 60% × (8% ÷ 5%) – 0) to its net tax as a result of the formula in subsection 225.2(2).

These rules would negate any HST incentive for the pension entity to move from Ontario to Manitoba. Note that the SLFI rules would be separate from the place-of-supply rules and would not impact on the tax charged to the pension entity.

Tax recovery rate

A qualifying employer's tax recovery rate is relevant for elections made under subsections 261.01(6) and (9) which are discussed in Part III, "Elections". The tax recovery rate limits the tax adjustment that may be made by a participating employer under either of those subsections.

The "tax recovery rate" of a person for a fiscal year is generally the percentage of tax paid by a person during a fiscal year of the person that is recovered in the year as an ITC or a public service body rebate under section 259. Specifically, the "tax recovery rate" of a person for a fiscal year of the person means the lesser of

(a) 100%; and

(b) the amount (expressed as a percentage) determined by the formula

$$(A + B)/C$$

where

A is the total of all amounts, each of which is

(i) if the person is an SLFI at any time in the fiscal year, an ITC of the person for a reporting period included in the fiscal year in respect of an amount of tax under any of subsection 165(1) and sections 212, 218 and 218.01, and

(ii) in any other case, an ITC of the person for a reporting period included in the fiscal year,

B is the total of all amounts, each of which is

(i) if the person is an SLFI at any time in the fiscal year, a rebate to which the person is entitled under section 259, in respect of an amount of tax under any of subsection 165(1) and sections 212, 218 and 218.01, for a claim period of the person included in the fiscal year, and

(ii) in any other case, a rebate to which the person is entitled under section 259 for a claim period included in the fiscal year, and

C is the total of all amounts, each of which is

(i) if the person is an SLFI at any time in the fiscal year, an amount of tax under any of subsection 165(1) and sections 212, 218 and 218.01 that became payable, or was paid without having become payable, by the person during the fiscal year, and

(ii) in any other case, an amount of tax that became payable, or was paid without having become payable, by the person during the fiscal year.

Part II – Pension entity rebate

As mentioned in the introduction, the new pension entity rebate replaces the multi-employer pension plan rebate for claim periods beginning on or after September 23, 2009.

Under amended section 261.01, a 33% rebate is available to pension entities that are qualifying pension entities on the last day of a particular claim period of the entity. The rebate that may be claimed by a qualifying pension entity for a claim period is equal to the otherwise unrecoverable tax paid by the pension entity that qualifies as an "eligible amount", less the sum of any amounts passed on to qualifying employers as a result of an election between the pension entity and employers.

Pension entities, where more than 10% of the contributions to the pension plan are made or will be made by listed financial institutions, will be ineligible for the rebate. Refer to the definition of "qualifying pension entity" to determine if this limitation applies.

Where the **pension entity is not an SLFI** throughout the claim period, the rebate is calculated on all "eligible amounts", which generally includes the GST/HST paid by the pension entity on its own purchases of goods and services as well as deemed tax paid on deemed supplies made by the employer to the pension entity under section 172.1 (the provisions of section 172.1 are described in Part IV, "Deemed taxable supplies by employers").

On the other hand, where the **pension entity is an SLFI** throughout the claim period, the "eligible amount" upon which the rebate is calculated would only include amounts of GST (or the federal part of the HST) that are paid by the pension entity on its own purchases of goods and services, as well as the federal part of the HST that is deemed to have paid under section 172.1. This is because SLFIs are not permitted to claim a rebate on amounts that can reasonably be regarded as being the provincial part of the HST. As a result, a pension entity that is an SLFI may only claim a rebate in respect of GST or the federal part of HST.

Example 4 – "eligible amounts"

A qualifying pension entity that is a non-registrant and **not an SLFI**, has a fiscal year ending on November 30. The first claim period for the pension entity is the first two quarters of its fiscal year, December 1, 2010 to May 31, 2011. During that period, the pension entity pays GST/HST of $10,300 on management fees and other expenses that is not otherwise recoverable. The $10,300 is an eligible amount.

However, had the pension entity been **an SLFI**, it would have been necessary to separately identify the federal parts of the GST/HST paid on the particular expenses, since only the federal part would qualify as an "eligible amount". For example, if the $10,300 GST/HST is made up of $3,962 GST or federal part of HST and $6,338 of the provincial part of HST, only the $3,962 GST or federal part of HST would be an eligible amount.

Note: If the participating employer's fiscal year-end is also November 30, no tax will yet be deemed to be paid by the pension entity under section 172.1 since this will only occur on the last day of the employer's fiscal year. As such, any deemed tax paid under section 172.1 will be included in the rebate calculation for the final claim period encompassing June 1 to November 30, 2011.

How to calculate the pension rebate amount

The amounts described below form the basis of the rebate calculation, and correspond to the line items set out in Part C of Form RC4607, *GST/HST Pension Entity Rebate Application and Election*.

Step 1: Calculate amount A – tax paid or payable by the pension entity

The first step in calculating the rebate is to add together all "eligible amounts", as described in paragraph (a) of that definition. As previously discussed, where the **pension entity is not an SLFI**, these amounts include the GST/HST actually paid or payable by the pension entity. However, where the **pension entity is an SLFI** throughout the particular claim period, GST or the federal part of the HST actually paid or payable by the pension entity qualifies as an eligible amount.

An "eligible amount" is not necessarily determined at the time that a supply is made. To be an eligible amount, tax must have become payable by the pension entity during the claim period or have been paid by the pension entity during the claim period without having become payable.

Step 2: Calculate amount B – tax deemed to be paid by the pension entity

Paragraph (b) of the definition of "eligible amount" includes tax deemed to have been paid by the pension entity pursuant to section 172.1. Very briefly, section 172.1 deems an employer, at the end of its fiscal year, to have made deemed taxable supplies on which the pension entity will be deemed to have paid GST/HST. While the pension entity would not actually pay any tax to the employer on the deemed supply, the deemed tax paid is nevertheless an eligible amount for purposes of calculating the rebate. As previously mentioned, if the pension entity is an SLFI at the time the supplies are deemed to have been made, section 172.1 will only deem the pension entity to have paid the federal part of the HST in respect the supplies.

A complete explanation of the rules pertaining to the deemed tax paid under section 172.1 is included in Part IV, "Deemed taxable supplies by employers".

Step 3: Calculate amount C – total tax paid, payable, or deemed paid by the pension entity

Amount C is simply the sum of amount A, GST/HST paid or payable by the pension entity, and amount B, total GST/HST deemed by section 172.1 to have been paid by the entity.

Step 4: Calculate amount D – total of all "recoverable amounts"

The definition of "eligible amount" excludes "recoverable amounts". As such, an adjustment must be made to amount C to remove any recoverable amounts. Amount D is the sum of these amounts.

A "recoverable amount" is generally an amount of tax that is included in determining an ITC of the pension entity for the claim period. It is also an amount for which it can reasonably be regarded that the pension entity has obtained or is entitled to claim another rebate, refund or remission, or an amount that can be reasonably regarded as having been included in an adjustment resulting from the issuance of debit notes or the receipt of credit notes.

For example, if the pension entity is a GST/HST registrant and is involved in commercial real estate management as part of its investment activities, it may be claiming ITCs in respect of that activity. If so, the amount of those ITCs must be removed from amount C since they would have been included as an "eligible amount" in amount A. These ITCs would be included in amount D.

Step 5: Calculate amount E

Amount E is the difference between amount C and amount D.

Step 6: Calculate amount F – "pension rebate amount"

Amount F is simply amount E multiplied by 33%, the rebate percentage. This represents the pension rebate amount available to the pension entity. The amount of the rebate claimed by a qualifying pension entity may be subject to any elections made with qualifying employers to share this amount. This is discussed in Part III, "Elections".

Example 5 – Calculation of "pension rebate amount"

Part A – Where the pension entity is not an SLFI

A qualifying pension entity that is not an SLFI pays $10,300 of GST/HST on its purchases of goods and services during a claim period. No actual supplies are made by the employer to the pension entity and the total GST/HST deemed to be paid by the pension entity under section 172.1 to the employer is $6,700. Adjustments to GST/HST as a result of credit notes received during the claim period amount to $500. The pension rebate amount is calculated as:

A + B = C ($10,300 + $6,700 = $17,000)

C – D = E ($17,000 – $500 = $16,500)

E × 33% = F ($16,500 × 33% = **$5,445**)

The above variables correspond to the line items in Part C of Form GST4067, *GST/HST Pension Entity Rebate Application and Election*.

Part B – Where the pension entity is an SLFI

When a pension entity is an SLFI, only the GST or the federal part of the HST paid or deemed paid on the purchases would qualify as an "eligible amount" in amount A and amount B.

Using the previous example, the $10,300 GST/HST paid or payable by the pension entity is made up of $3,962 GST or federal part of HST and $6,338 of the provincial part of HST. In that case, only the $3,962 GST or federal part of HST would be included in amount A.

Similarly, amount B could contain only the "federal part" of the deemed tax payable under section 172.1. (Note that the latter amount is calculated using the relevant formulas described in subsection 172.1(5), (6) or (7). These formulas are discussed in Part IV, "Elections".) In this example, assume that the GST or federal part of amount B is $2,577 and that the $500 credit note relates exclusively to GST or the federal part of the HST.

Using these amounts, the pension rebate amount would be calculated as:

A + B = C ($3,962 + $2,577 = $6,539)

C – D = E ($6,539 – $500 = $6,039)

E × 33% = F ($6,039 × 33% = **$1,993**)

The above variables correspond to the line items in Part C of Form RC4607, *GST/HST Pension Entity Rebate Application and Election*.

Where no elections have been made between the employer and the pension entity to share any portion of the pension rebate amount, the full amount of the rebate will be claimed by the pension entity.

Election to share pension rebate amount with qualifying employers

A pension entity that is entitled to a rebate may elect to transfer some or all of the rebate amount to some or all of the qualifying employers of the pension plan. Three different elections are available, each of which is described under Part III, "Election". The transferred amount would reduce the pension entity's rebate entitlement, and would allow a qualifying employer to reduce its net tax on its GST/HST return.

The final step in the rebate calculation is, therefore, to deduct from amount F any amount of the rebate that the pension entity has agreed to share with qualifying employers of the pension plan, as evidenced by the election. Where an election is made to share the amount with the qualifying employers, the pension entity must reduce its rebate entitlement by the shared amount, and the employers will be able to make a corresponding adjustment to reduce their net tax on their regular GST/HST return.

Even when a pension entity is not a qualifying pension entity on the last day of a claim period and is not eligible for a rebate, the entity may still calculate the "pension rebate amount" in Part C of Form RC4607 if it wishes to allocate that amount to its qualifying employers pursuant to an election under subsection 261.01(9). If so, the qualifying employer would be allowed to deduct an amount in respect of the pension rebate amount (as well as the "provincial pension rebate amount") in determining its net tax for the reporting period that includes the day on which the election is filed. This is described in detail in Part III, "Elections".

Time limitations

Under subsection 261.01(3), if the qualifying pension entity is a registrant, a rebate for a claim period must be filed within two years after the filing due date for the GST/HST return for that claim period. If it is not a registrant, it must file the rebate claim within two years after the end of the claim period. The pension entity cannot make more than one application for a rebate for any claim period.

Part III – Elections

As mentioned earlier, a pension entity that is entitled to a rebate will be able to make an election (which must be made jointly with all the participating employers of the pension plan) to transfer some or all of the entity's rebate entitlement to qualifying employers. A non-qualifying pension entity may also elect to transfer to qualifying employers amounts that would have been available to the entity as a rebate had it been a qualifying pension entity. The qualifying employer would then be able reduce its net tax in respect of the transferred amount.

Types of election

Section 261.01 provides for three different types of elections that may be made:

Type I: Subsection 261.01(5) allows a qualifying pension entity to make an election with qualifying employers of the pension plan who are each **engaged exclusively in commercial activities** throughout the claim period. The essential effect of this election is to allow pension entities whose participating employers are exclusively engaged in commercial activities to transfer the rebate entitlement in the proportions that they choose. The amount transferred may be deducted from the electing employer's net tax calculation on its regular GST/HST return.

Meaning of "engaged exclusively in commercial activities":

For purposes of subsection 261.01(5), a qualifying employer is engaged exclusively in commercial activities throughout a claim period of a pension entity of a pension plan if

- in the case of a qualifying employer that is a financial institution at any time in the claim period, all of the activities of the qualifying employer for the claim period are commercial activities; and
- any other case, all or substantially all of the activities of the qualifying employer for the claim period are commercial activities.

Type II: Subsection 261.01(6) allows a qualifying pension entity to make an election with qualifying employers of the pension plan who are **not all engaged exclusively in commercial activities** throughout the claim period. For elections made under subsection 261.01(6), the maximum proportion of the rebate transferable to an employer is relative to that employer's share of the total pension contributions or ratio of active members (i.e., its "degree of participation" in the pension plan). The electing employers would be allowed to make a net tax deduction in respect of the transferred amount on their regular GST/HST returns.

Type III: Subsection 261.01(9) provides that even where there is a **non-qualifying pension entity** for which no rebate is available, there is still an election available to allow qualifying employers to make a deduction from their net tax on their regular GST/HST returns. Again, the maximum proportion of the rebate transferable to an employer is relative to that employer's degree of participation in the pension plan.

For Type II and Type III elections, the amount of the net tax deduction by the qualifying employer is further limited by the employer's "tax recovery rate". The calculation of the tax recovery rate for Type II and Type III elections is described in detail under their respective headings. Generally, however, the "tax recovery rate" of an employer that is not an SLFI is the percentage determined by dividing the total of ITCs and public service bodies rebates that the employer is entitled to by the employer's total tax paid. Where the employer is an SLFI, its tax recovery rate is essentially the percentage determined by dividing the total of ITCs and public service bodies rebates, in respect of the GST or the federal part of the HST, to which the employer is entitled by the employer's total GST, or federal part of the HST, paid.

The specific conditions required for each of the three types is detailed below, along with the calculations necessary to determine an employer's net tax adjustment.

Type I election – Qualifying employer involved exclusively in commercial activities

(subsection 261.01(5) and Part E of Form RC4607)

A pension entity may make a Type I election to transfer all or a portion of its pension rebate amount for a claim period of the pension entity to some or all of the employers of the pension plan if

- the pension entity is a "qualifying pension entity" on the last day of the claim period;

- the election is made jointly by the pension entity and all the employers that are, for the calendar year that includes the last day of the claim period, "qualifying employers" of the plan;
- each of those qualifying employers of the pension plan is engaged exclusively in commercial activities throughout the claim period; and
- the employers to whom all or part of the pension rebate amount is to be transferred are all, for the calendar year that includes the last day of the claim period, "qualifying employers" of the plan.

The election must be filed by the pension entity at the same time that it files its rebate application for the particular claim period. As such, the election is subject to the same time constraints as the rebate application, described in subsection 261.01(3). The rebate application and election must be submitted together using Form RC4607, *GST/HST Pension Entity Rebate Application and Election*.

Calculation of employer's net tax deduction

Where those conditions are met, the amount that a qualifying employer may deduct in determining its net tax is equal to the sum of the **pension rebate amount** (amount F as described in Step 6 in Part II, "Pension entity rebate") and the **provincial pension rebate amount**, multiplied by the percentage of the rebate that the pension entity has elected to share with the employer (the **specified percentage**). The specified percentage can range from 0 to 100%, as long as the total of the specified percentages attributable to all electing employers does not exceed 100%.

Where the **pension entity is not an SLFI**, the "pension rebate amount" is calculated with reference to the GST/HST incurred by the pension entity by following Steps 1 through 6 in Part II, "Pension entity rebate", while the "provincial pension rebate amount" would be zero.

However, where the **pension entity is an SLFI**, the "pension rebate amount" must be calculated with reference to the GST or the federal part of HST only; i.e., "eligible amounts" contained in amount A and amount B in Step 1 and Step 2 cannot contain a provincial part of HST. As such, when a pension entity that is an SLFI makes an election to share its rebate, the shared amount is only in respect of the GST or the federal part of HST. To allow qualifying employers of an SLFI pension entity to realize a corresponding amount in respect of the provincial part of the HST, the pension entity must calculate its "provincial pension rebate amount". The "provincial pension rebate amount" would be added to the "pension rebate amount" and the sum of those amounts multiplied by the employer's specified percentage. The resulting amount may then be taken by the qualifying employer as a net tax deduction on its GST/HST return for the period in which the pension entity files the election.

The "provincial pension rebate amount" is never included in a pension entity rebate. It is an amount that is only used to calculate the total amount that the employer may take as a net tax deduction on its GST/HST return when it makes an election under subsection 261.01(5), (6) or (9).

Calculation of rebate payable to a pension entity

Where an election is made under subsection 261.01(5), the rebate amount payable to the pension entity, if any, is calculated as simply the pension entity's rebate entitlement (i.e., Step 6 and Line F of Part C of Form RC4607) less the sum of all portions that the pension entity elects to share with its employers. The total of all elected shared portions is reported in Line G of Part C and in Part E of Form RC4607.

Example 6 – Type I election: calculation of employer's net tax deduction and pension entity's net rebate amount

Part A – Where the pension entity is not an SLFI

In example 5, the "pension rebate amount" for the non-SLFI pension entity was $5,445. Where an election is made under subsection 261.01(5), the next step is to calculate any shared portions of the pension rebate amount for which an election is made. In Part C of Form RC4607, the total of all elected shared amounts is shown on Line G.

Assuming that there is only one qualifying employer in the pension plan and that the pension entity agrees to share 55% of the pension rebate amount, the total of all elected shared portions (Line G) would be calculated as:

$5,445 × 55% = $2,994.75

This calculation would be performed in Part E of Form RC4607, and the total of all elected shared portions would be entered on Line G of Part C. Since we are dealing with a non-SLFI pension entity, the "provincial pension rebate amount" is, by definition, zero, and therefore does not appear in the above calculation. The net rebate payable to the pension entity is simply the "pension rebate amount" less the total of all elected shared portions:

$5,445 – $2,994.75 = $2,450.25

The net rebate amount payable to the pension entity is therefore $2,450.25. This amount is reported on Line H of Part C of Form RC4607. On the other hand, the qualifying employer to whom the shared portion was transferred will be able to claim a **net tax deduction** of $2,994.75 on its return for the reporting period in which the pension entity files the election.

Part B – Where the pension entity is an SLFI

In example 5, the "pension rebate amount" of a pension entity that is an SLFI was calculated to be $1,993. Using the same facts as in Part A, the elected shared portion would be calculated as:

$1,993 × 55% = $1,096.15

Therefore, the net rebate amount payable to the pension entity is calculated as:

$1,993 – $1,096.15 = $896.85

The **net tax deduction** that may be claimed by the qualifying employer on its GST/HST return is the sum of the "pension rebate amount" and "provincial pension rebate amount", multiplied by the employer's "specified percentage" (55% in this example). Using the facts and amounts described in examples 1 and 2, the "provincial pension rebate amount" would be $2,168.38. The **net tax deduction** would then be calculated as:

($1,993 + $2,168.38) × 55% = $2,288.76

In Form RC4607, the federal and provincial shared portions that form this net tax deduction are calculated separately. The federal elected shared portion would be calculated in Part E, while the provincial elected shared portion would be calculated using Part G.

Type II Election – Employers not engaged exclusively in commercial activities

(subsection 261.01(6) and Part F of Form RC4607)

A pension entity may make an election under subsection 261.01(6) to transfer all or a portion of its pension rebate amount for a claim period of the pension entity to some or all of the employers of the pension plan if

- the pension entity is a qualifying pension entity on the last day of the claim period of the pension entity;
- the election is made jointly by the pension entity and all the employers that are, for the calendar year that includes the last day of the claim period, "qualifying employers" of the plan;
- any of those qualifying employers of the pension plan are not engaged exclusively in commercial activities throughout the claim period; and
- the employers to whom all or part of the pension rebate amount is to be transferred are all, for the calendar year that includes the last day of the claim period, "qualifying employers" of the plan.

As in subsection 261.01(5), the Type II election must be filed by the pension entity at the same time that it files its rebate application for the particular claim period. The election is therefore subject to the same time constraints as the rebate application, as described in subsection 261.01(3). The rebate application and election must be submitted together using Form RC4607.

Similar to elections made under subsection 261.01(5), a qualifying employer may make a net tax deduction in respect of the pension rebate amounts that the pension entity elects to share with the qualifying employer. This amount may be deducted in determining the net tax of the qualifying employer for the reporting period that includes the day on which the election is filed. The total of all deductions made by the employer(s) cannot exceed the pension rebate amount otherwise claimable by the pension entity.

It is important to note that, unlike a Type I election, the net tax deduction that a qualifying employer may take for a Type II election is further limited by its "degree of participation" in the pension plan and the employer's "tax recovery rate". For this purpose, the "**degree of participation**" is expressed as

1. the percentage of all pension plan contributions made by the particular employer in the calendar year prior to the one in which the rebate claim period occurs;
2. if there are no such contributions, the percentage of active members of the pension plan that are employees of the particular employer in that year; or
3. if there are no such contributions or active members, zero.

The formula for calculating a qualifying employer's "degree of participation" is presented in item B of the "shared portion" formula of Element X below.

Calculation of employer's net tax deduction

The employer's net tax deduction resulting from an election under subsection 261.01(6) is determined by first adding the "**shared portion**" to the "**provincial shared portion**" (both of these terms are defined next). The sum of these amounts is then multiplied by the "**tax recovery rate**" of the qualifying employer **for the fiscal year that ended on or before the last day of the claim period**. The employer's net tax deduction can therefore be expressed as:

$$(X + Y) \times Z$$

where

X is the "shared portion" in respect of the qualifying employer;

Y is the "provincial shared portion"; and

Z is the "tax recovery rate" of the qualifying employer for its fiscal year ending on or before the last day of the claim period.

Element X: shared portion

The **shared portion** is determined by a formula, the purpose of which is to establish the maximum portion of the pension entity's "pension rebate amount" that an electing employer may share in. An important factor determining this maximum is the employer's "degree of participation".

The maximum that could be transferred to an electing employer is determined by multiplying the "pension rebate amount" by the employer's degree of participation. However, similar to a Type I election, the parties to the election must also specify the percentage of this maximum that the pension entity has elected to transfer to the particular employer. This is the "**specified percentage**" in item C of the formula. The specified percentage can range from 0 to 100%.

The "shared portion" will be calculated for each electing employer using Part F of Form RC4607. The formula governing this calculation is described next. Again, one must bear in mind that if the pension entity is an SLFI, the "pension rebate amount" will be calculated with reference to the GST or the federal part of HST only. On the other hand, a pension entity that is not an SLFI would include in the "pension rebate amount" all eligible amounts of GST/HST.

The "shared portion" is calculated using the formula

$$A \times B \times C$$

where

A is the "pension rebate amount" of the pension entity for the claim period;

B is the qualifying employer's "degree of participation", determined as:

(i) in the case where pension contributions were made to the pension plan in the calendar year that immediately precedes the calendar year that includes the last day of the claim period (in this paragraph referred to as the "preceding calendar year"), the amount determined by the formula

$$D/E$$

where

D is the total of all amounts, each of which is a pension contribution made by the qualifying employer to the pension plan in the preceding calendar year, and

E is the total of all amounts, each of which is a pension contribution made to the pension plan in the preceding calendar year,

(ii) where (i) does not apply (i.e., no pension contributions were made to the pension plan in the preceding calendar year) and one or more qualifying employers of the pension plan was the employer of one or more "active members" in the preceding calendar year, the amount determined by the formula

$$F/G$$

where

F is the total number of employees of the qualifying employer in the preceding calendar year who were active members of the pension plan in that year, and

G is the sum of the total number of employees of each of those qualifying employers in the preceding calendar year who were active members of the pension plan in that year, and

(iii) if no pension contributions were made to the pension plan in the preceding calendar year and no employer had employees who were active members of the plan in that year, the percentage for each qualifying employer is zero; and

C is the "specified percentage" for the qualifying employer in the election.

Element Y: provincial shared portion

The **provincial shared portion** is determined by a formula similar to that of the "shared portion". The purpose of the formula is to establish the maximum portion of the pension entity's "provincial pension rebate amount" that an electing employer may share in. As previously stated, the calculation of the "provincial pension rebate amount" is performed only by pension entities that are SLFIs. By definition, the "provincial pension rebate amount" of a pension entity that is **not** an SLFI is zero. The remaining variables in this formula (the "degree of participation" and "specified percentage") are the same as described under "shared portion". The "provincial shared portion" is calculated for each electing employer using Part G of Form RC4607.

The formula governing this calculation is:

$$D \times E \times F$$

where

D is the "provincial pension rebate amount" of the pension entity for the claim period;

E is the "degree of participation" determined for item B in "Element X"; and

F is the "specified percentage" for the qualifying employer in the election.

Element Z: tax recovery rate

The final step in calculating an electing employer's net tax deduction is to multiply the sum of the shared portion and provincial shared portion by the employer's "tax recovery rate". An employer's "tax recovery rate" is calculated for the fiscal year of the qualifying employer that ended on or before the last day of the pension entity's claim period. It is basically the percentage of tax paid by the employer during a fiscal year that is recovered in the year as an ITC or a public service body rebate under section 259.

It is the amount (expressed as a percentage) determined by the formula

$$(A + B)/C$$

where

A is the total of all amounts, each of which is an ITC of the employer for a reporting period included in the fiscal year;

B is the total of all amounts, each of which is a rebate to which the employer is entitled under section 259 for a claim period included in the fiscal year; and

C is the total of all amounts, each of which is an amount of tax that became payable, or was paid without having become payable, by the person during the fiscal year.

Where the employer is an SLFI throughout the reporting period, only the GST or the federal part of the HST, or ITCs or rebates in respect of the GST or the federal part of the HST, are included in elements A, B and C. Where the employer is not an SLFI throughout the reporting period, all GST/HST is included in those elements.

Calculation of net rebate payable to a pension entity

Where the pension entity shares its "pension rebate amount" with a qualifying employer, the amount of the rebate payable to the entity is reduced by the total of all "shared portions" calculated in Element X. This calculation is performed on Form RC4607 by adding all Lines E in Part F and deducting that total in Line G of Part C. The net amount of the rebate payable to the pension entity, if any, will be reported in Line H of Part C.

Example 7 – Type II election: calculation of employer's net tax deduction and pension entity's net rebate amount

A particular pension plan has two employers, Employer K and Employer L, and a Type II election is made with the pension entity. The "pension rebate amount" of the pension entity for the relevant claim period was calculated using the same amounts as in example 5.

The total of all pension contributions to the pension plan in the preceding calendar year is $400,000 and Employer K's and Employer L's contributions to the pension plan in the preceding calendar year are $150,000 and $250,000 respectively. Since both employers have made pension contributions in the preceding calendar year, they are both "qualifying employers" and will use the formula in Element B(i) of the "shared portion" formula to calculate their "degree of participation".

Also, the parties to the election have agreed that the "specified percentage" for Employer K is 50%, while the "specified percentage" for Employer L is 70%.

Part A – Where the pension entity is not an SLFI

An employer's net tax deduction is determined by adding the **shared portion** and **provincial shared portion**, then multiplying that sum by the employer's **tax recovery rate**. However, where a pension entity is not an SLFI throughout the relevant claim period, the "provincial pension rebate amount" is zero. Accordingly, there would be no provincial shared portion. Where a pension entity is not an SLFI, it is therefore only necessary to determine the shared portion before applying the tax recovery rate.

In accordance Element B(i) of the "shared portion" formula, **Employer K's shared portion** is calculated as:

$$A \times B(i) \times C$$

This calculation would be performed in Part F of Form RC4607. In example 5, the "pension rebate amount" for the non-SLFI pension entity was calculated to be $5,445. Using this amount, the shared portion would be calculated as:

$$\$5,445 \times (\$150,000 \div \$400,000) \times 50\% = \$1,020.94$$

Employer K's tax recovery rate is the lesser of 100% and the amount determined using the formula for Element Z. Assume that Employer K's total ITCs for reporting periods included in the relevant fiscal year are $8,000 and that it is not entitled to any rebate under section 259 in the fiscal year. Also assume that the total tax that became payable or was paid without becoming payable during the fiscal year is $30,000. **Employer K's tax recovery rate** would then be:

$$(\$8,000 + 0) \div \$30,000 = 27\%$$

Employer K's net tax deduction is calculated as its shared portion multiplied by its tax recovery rate:

$$\$1,020.94 \times 27\% = \$275.65$$

Employer K may therefore take a net tax deduction of $275.65 in its return for the reporting period in which the pension entity files the Type II election.

Employer L will perform similar calculations to determine the amount of its net tax deduction. Using the variables pertaining to Employer L, its shared portion would be calculated as:

$$\$5,445 \times (\$250,000 \div \$400,000) \times 70\% = \$2,382.19$$

Employer L's tax recovery rate is 42%. Therefore, **Employer L's net tax deduction** would be:

$$\$2,382.19 \times 42\% = \$1,000.52$$

Lastly, the **pension entity's net rebate claim** is calculated by adding the total of Employer K's and Employer L's elected shared portions and subtracting this sum from the pension rebate amount. The sum of the elected shared portions is $3,403.13 ($1,020.94 + $2,382.19). This amount would be entered on Line G of Part C of Form RC4607. The difference between the pension rebate amount and the sum of the elected shared portions is $2,041.87 ($5,445 – $3,403.13). This is the net rebate payable to the pension entity, and is entered on Line H of the form.

Part B – Where the pension entity is an SLFI

Where the pension entity is an SLFI, Employer K's net tax deduction under a Type II election would be calculated by adding the **shared portion** and the **provincial shared portion**, then multiplying that sum by its **tax recovery rate**.

In accordance with the "shared portion" formula, **Employer K's shared portion** is calculated as:

$$A \times B(i) \times C$$

This calculation is made in Part F of Form RC4607. Given that the pension entity is an SLFI, only the GST or the federal part of the HST can be included in the calculation of the "pension rebate amount". In example 5, the "pension rebate amount" for the SLFI pension entity was calculated to be $1,993. Using this amount, the **Employer K's shared portion** would be calculated as:

$$\$1,993 \times (\$150,000 \div \$400,000) \times 50\% = \$373.69$$

Employer K would calculate its **provincial shared portion** in a similar manner. Using the pension entity's "provincial pension rebate amount" as calculated in example 2 ($2,168.38), Employer K would perform the following calculation:

$$\$2,168.38 \times (\$150,000 \div \$400,000) \times 50\% = \$406.57$$

Employer K's tax recovery rate is the lesser of 100% and the amount determined using the formula for Element Z. Assume that Employer K's total ITCs claimed in reporting periods during its fiscal year is $3,080 and that it is not entitled to any rebate under section 259 in the fiscal year. Also, assume that the total tax that became payable or was paid without becoming payable during the fiscal year is $11,540. **Employer K's tax recovery rate** would then be:

($3,080 + 0) ÷ $11,540 = 27%

Employer K's net tax deduction is therefore calculated as:

($373.69 + $406.57) × 27% = $210.67

This is the amount that Employer K may deduct from its net tax on its regular GST/HST return.

Employer L's net tax deduction would be calculated in a similar manner. Its **shared portion** is:

$1,993 × ($250,000 ÷ $400,000) × 70% = $871.94

Given that the pension entity's "provincial pension rebate amount" is $2,168.38 (from example 2), Employer L's **provincial shared portion** would be:

$2,168.38 × ($250,000 ÷ $400,000) × 70% = $948.67

Employer L's net tax deduction is therefore calculated as the sum of the above totals multiplied by Employer L's tax recovery rate. Employer L's tax recovery rate is 42%. Therefore, the net tax deduction would be:

($871.94 + $948.67) × 42% = $764.66

This is the amount that Employer L may deduct from its net tax on its regular GST/HST return.

Lastly, the **net rebate payable to the pension entity** is determined by adding together Employer K's and Employer L's elected shared portions (Lines E of Part F of Form RC4607) and entering that sum on Line G of the form. This amount is then subtracted from the pension rebate amount calculated by the pension entity (Line F of Part C of the form). This would be calculated as:

$1,993 – ($373.69 + $871.94) = $747.37

This is the net rebate payable to the pension entity, and is entered on Line H of Form RC4607.

Type III Election – Pension entity does not qualify for a rebate

(subsection 261.01(9) and Part F of Form RC4607)

A Type III election essentially allows a non-qualifying pension entity to share the pension rebate amount that it would have been entitled to had it been a qualifying pension entity. While a non-qualifying pension entity could not claim a rebate, a Type III election would allow some or all of the qualifying employers of the pension plan to make a net tax deduction on their GST/HST return in respect of the pension rebate amount, as well as a "provincial pension rebate amount".

Type III elections are available pursuant to subsection 261.01(9). Under this provision, a pension entity may elect to transfer all or a portion of its "pension rebate amount" for a claim period of the pension entity to some or all of the employers of the pension plan if:

- the pension entity is a non-qualifying pension entity on the last day of the claim period of the entity;
- the election is made jointly by the pension entity and all the employers that are, for the calendar year that includes the last day of the claim period, "qualifying employers" of the plan; and
- the employers to whom all or part of the pension rebate amount is to be transferred are all, for the calendar year that includes the last day of the claim period, "qualifying employers" of the plan.

If the non-qualifying pension entity is a registrant, the election must be filed within two years after the filing due date for its GST/HST return for that claim period. If it is not a registrant, the election must be filed within two years after the end of the claim period. The pension entity cannot file more than one election for any particular claim period.

The election must be filed by the pension entity at the same time that it files its rebate application for the particular claim period. The election is therefore subject to the same time constraints as the rebate application, as described in subsection 261.01(3). The rebate application and election must be submitted together using Form RC4607.

As mentioned above, qualifying employers may make a net tax deduction in respect of the elected amounts. These amounts may be deducted in determining the net tax of the qualifying employer for the reporting period that includes the day on which the election is filed. The total of all deductions made by the employer(s) cannot exceed the pension rebate amount calculated by the pension entity.

Calculation of employer's net tax deduction

The employer's net tax deduction resulting from an election under subsection 261.01(9) is determined by first adding the "**shared portion**" to the "**provincial shared portion**" (both of these terms are defined next). The sum of these amounts is then multiplied by the "tax recovery rate" of the qualifying employer for the fiscal year that ended on or before the last day of the claim period. The employer's net tax deduction can therefore be expressed as:

$$(X + Y) \times Z$$

where:

X is the "shared portion" in respect of the qualifying employer,

Y is the "provincial shared portion" and

Z is the "tax recovery rate" of the qualifying employer for its fiscal year ending on or before the last day of the claim period.

Element X: shared portion

The **shared portion** is determined by a formula, the purpose of which is to establish the maximum portion of the pension entity's "pension rebate amount" that an electing employer may share in. This maximum is determined with reference to the employer's "**degree of participation**". For this purpose, the "degree of participation" is expressed as:

1. the percentage of all pension plan contributions made by the particular employer in the calendar year prior to the one in which the rebate claim period occurs;
2. if there are no such contributions, the percentage of active members of the pension plan that are employees of the particular employer in that year; or
3. if there are neither such contributions nor active members, zero.

The formula for calculating a qualifying employer's "degree of participation" is described in detail in Element B of the "shared portion" formula, below.

The maximum that could be transferred to an electing employer is determined by multiplying the pension entity's "pension rebate amount" by the employer's degree of participation. Since the pension entity is not able to claim any of the pension rebate amount, the qualifying employer may use the entire amount (i.e., 100%) of this maximum in calculating its net tax deduction. In other words, the electing pension entity must transfer the entire

"pension rebate amount" to some or all of the qualifying employers when a Type III election is made. For this reason, each employer, when calculating its elected shared portion in Part F of Form RC4607, will enter 100% in Line D of that Part.

This stands in contrast to Type II elections: since the pension entities making those elections qualify for a rebate, the parties to the election need to specify the percentage of the employer's maximum that the pension entity elects to transfer to the particular employer, with the difference accruing to the pension entity.

The "shared portion" will be calculated for each electing employer using Part F of Form RC4607. The formula governing this calculation is described next. If the pension entity is an SLFI, the "pension rebate amount" will be calculated with reference to the GST or the federal part of HST only. On the other hand, a pension entity that is not an SLFI would include in the "pension rebate amount" all eligible amounts of GST/HST.

The "shared portion" is calculated using the formula

$$A \times B$$

where

A is the "pension rebate amount" of the pension entity for the claim period;

B is the qualifying employer's "degree of participation", determined as:

(i) in the case where pension contributions were made to the pension plan in the calendar year that immediately precedes the calendar year that includes the last day of the claim period (in this paragraph referred to as the "preceding calendar year"), the amount determined by the formula

$$D/E$$

where

D is the total of all amounts, each of which is a pension contribution made by the qualifying employer to the pension plan in the preceding calendar year, and

E is the total of all amounts, each of which is a pension contribution made to the pension plan in the preceding calendar year,

(ii) where (i) does not apply (i.e., no pension contributions were made to the pension plan in the preceding calendar year) and one or more qualifying employers of the pension plan was the employer of one or more "active members" in the preceding calendar year, the amount determined by the formula

$$F/G$$

where

F is the total number of employees of the qualifying employer in the preceding calendar year who were active members of the pension plan in that year, and

G is the sum of the total number of employees of each of those qualifying employers in the preceding calendar year who were active members of the pension plan in that year, and

(iii) if no pension contributions were made to the pension plan in the preceding calendar year and no employer had employees who were active members of the plan in that year, the percentage for each qualifying employer is zero.

Element Y: provincial shared portion

The **provincial shared portion** is determined by a formula similar to that of the "shared portion". The purpose of the formula is to establish the maximum portion of the pension entity's "provincial pension rebate amount" that an electing employer may share in. As previously stated, the calculation of the "provincial pension rebate amount" is performed only by pension entities that are SLFIs. By definition, the "provincial pension rebate amount" of a pension entity that is not an SLFI is zero. The "degree of participation" is calculated using the same formula as described in Element B in the shared portion formula. The "provincial shared portion" is calculated for each electing employer using Part G of Form RC4607.

The formula governing this calculation is as follows:

$$C \times D$$

where

C is the "provincial pension rebate amount" of the pension entity for the claim period; and

D is the "degree of participation" determined for item B in Element X.

Element Z: tax recovery rate

The final step in calculating an electing employer's net tax deduction is to multiply the sum of the shared portion and provincial shared portion by the employer's "tax recovery rate". An employer's "tax recovery rate" is calculated for the fiscal year of the qualifying employer that ended on or before the last day of the pension entity's claim period. It is basically the percentage of tax paid by the employer during a fiscal year that is recovered in the year as an ITC or a public service body rebate under section 259. It is the amount (expressed as a percentage) determined by the formula

$$(A + B)/C$$

where

A is the total of all amounts, each of which is an ITC of the employer for a reporting period included in the fiscal year;

B is the total of all amounts, each of which is a rebate to which the employer is entitled under section 259 for a claim period included in the fiscal year; and

C is the total of all amounts, each of which is an amount of tax that became payable, or was paid without having become payable, by the person during the fiscal year.

Where the employer is an SLFI throughout the reporting period, only amounts in respect of the GST and/or federal part of the HST are included in elements A, B and C. Where the employer is not an SLFI throughout the reporting period, all GST/HST is included in those elements.

Reconciling the "pension rebate amount" with the total of all "shared portions"

Where the non-qualifying pension entity transfers the "pension rebate amount" to its qualifying employer(s), the total of all "shared portions" calculated in Element X cannot exceed the pension rebate amount. In this regard, all elected shared portions calculated for each qualifying employer on Lines E in Part F of Form RC4607 should be added together and the total entered in Line G of Part C. The total in Line G cannot exceed the pension rebate amount on Line F.

Example 8 – Type III Election: calculation of employer's net tax deduction

A particular pension plan has two employers, Employer K and Employer L, and a Type III election is made with the pension entity. The "pension rebate amount" of the pension entity for the relevant claim period was calculated using the amounts calculated in example 5.

Assume that the total of all pension contributions to the pension plan in the preceding calendar year is $400,000 and that Employer K's and Employer L's contributions to the pension plan in the preceding calendar year are $150,000 and $250,000 respectively. Since both employers have made pension contributions in the preceding calendar year, they are both "qualifying employers" and will use the formula in Element B(i) to calculate their "degree of participation".

Part A – Where the pension entity is not an SLFI

An employer's net tax deduction is determined by adding the **shared portion** and **provincial shared portion**, then multiplying that sum by the employer's **tax recovery rate**. However, where a pension entity is not an SLFI throughout the relevant claim period, the "provincial pension rebate amount" is zero. Accordingly, there would be no provincial shared portion. Where a pension entity is not an SLFI, it is therefore only necessary to determine the **shared portion** before applying the tax recovery rate.

In accordance with the "shared portion" formula, **Employer K's shared portion** is calculated as:

A × B(i)

This calculation is made in Part F of Form RC4607. In example 5, the "pension rebate amount" for the non-SLFI pension entity was $5,445. Using this amount, the shared portion would be calculated as:

$5,445 × ($150,000 ÷ $400,000) = $2,041.87

Employer K's tax recovery rate is the lesser of 100% and the amount determined by the formula for Element Z. Assume that Employer K's total ITCs for reporting periods included in the relevant fiscal year are $8,000 and that it is not entitled to any rebate under section 259 in the fiscal year. Also, assume that the total tax became payable or was paid without becoming payable during the fiscal year is $30,000. **Employer K's tax recovery rate** would then be:

($8,000 + 0) ÷ $30,000 = 27%

Employer K's net tax deduction is calculated as its shared portion multiplied by its tax recovery rate:

$2,041.87 × 27% = $551.31

Employer K may therefore take a net tax deduction in its return for the reporting period in which the pension entity files the Type III election.

Employer L will perform similar calculations to determine the amount of its net tax deduction. Using the variables pertaining to Employer L, its shared portion would be calculated as:

$5,445 × ($250,000 ÷ $400,000) = $3,403.13

Employer L's tax recovery rate of 42%. Therefore, **Employer L's net tax deduction** would be:

$3,403.13 × 42% = $1,429.31

Part B – Where the pension entity is an SLFI

Where the pension entity is an SLFI, Employer K's net tax deduction under a Type III election would be calculated by adding the **shared portion** and the **provincial shared portion**, then multiplying that sum by its **tax recovery rate**.

In accordance with the "shared portion" formula, Employer K's **shared portion** is calculated as:

A × B(i)

This calculation would be performed in Part F of Form RC4607. Given that the pension entity is an SLFI, only the GST or the federal part of the HST can be included in the calculation of the "pension rebate amount". In example 5, the "pension rebate amount" for the SLFI pension entity is $1,993. Using this amount, the shared portion in the present example would be calculated as:

$1,993 × ($150,000 ÷ $400,000) = $747.37

Employer K would calculate its **provincial shared portion** in a similar manner. Using the pension entity's "provincial pension rebate amount" as calculated in example 2 ($2,168.38), Employer K would perform the following calculation:

$2,168.38 × ($150,000 ÷ $400,000) = $813.14

Employer K's tax recovery rate is the lesser of 100% and the amount determined by the formula for Element Z. In this example, Employer K is assumed to be an SLFI. Therefore, only the GST and/or the federal part of the HST are included in elements A, B and C of the tax recovery rate formula. Assume that the total ITCs pertaining only to the GST or the federal part of the HST for Employer K's reporting periods included in its fiscal year are $3,080. Also assume that Employer K is not entitled to any rebate under section 259 in the fiscal year and that the total tax that became payable or was paid without becoming payable during the fiscal year is $11,540. Using these amounts, the tax recovery rate would be:

($3,080 + 0) ÷ $11,540 = 27%

Employer K's net tax deduction is therefore calculated as:

($747.37 + $813.14) × 27% = $421.34

This is the amount that Employer K may deduct from its net tax on its regular GST/HST return.

Employer L's net tax deduction would be calculated in a similar manner. Its **shared portion** is:

$1,993 × ($250,000 ÷ $400,000) = $1,245.63

Given that the pension entity's "provincial pension rebate amount" is $2,168.38 (from example 2), Employer L's **provincial shared portion** would be:

$2,168.38 × ($250,000 ÷ $400,000) = $1,355.24

Employer L's net tax deduction is therefore calculated as the sum of the above totals multiplied by Employer L's tax recovery rate. Assuming that Employer L's tax recovery rate is 42%, the net tax deduction will be:

($1,245.63 + $1,355.24) × 42% = $1,092.37

This is the amount that Employer L may deduct from its net tax on its regular GST/HST return.

Joint and several liability

A pension entity is jointly and severally liable with an employer of a pension plan for any net tax deductions made by the employer resulting from any of the above-described elections where the employer or the pension entity knows or ought to have known that the employer was not entitled to the amount.

Example 9 – Joint and several liability

In example 6, a single employer pension plan transferred 55% of the pension rebate amount to the qualifying employer. The pension entity calculated a net rebate amount of $2,450.25 and the employer was entitled to a net tax deduction on its GST/HST return of $2,994.75.

If the employer is not actually entitled to the $2,994.75 adjustment and the pension entity knew or ought to have known the employer wasn't entitled to the full $2,994.75 (for example, because the pension entity included non-eligible amounts in the rebate calculation), then it would be jointly and severally liable for the amount of the employer's over-reported net tax deduction.

On the other hand, if the employer erroneously made a net tax deduction in excess of the $2,994.75 to which it was entitled, but the pension entity did not know or could not have known that the employer overstated the deduction, then it would not be jointly and severally liable for the overstated amount.

Part IV – Deemed taxable supplies by employers

In Part II, "Pension entity rebate", it was explained how to calculate the "pension rebate amount" of a pension entity. Step 2 of that calculation described the "eligible amounts" to be included in amount B of the rebate calculation. These amounts arise from certain supplies that are deemed to be made by an employer at the end of its fiscal year, pursuant to section 172.1. While the pension entity would not actually pay any GST/HST to the employer on these deemed supplies, section 172.1 deems the pension entity to have paid GST/HST in respect of the supply. This deemed tax may be included in amount B when the pension entity calculates its pension rebate amount.

Where the pension entity is an SLFI, it is considered under section 172.1 to have paid only the federal part of the deemed tax paid, and only that part of the deemed tax will be included as an "eligible amount" in Step 2 of the rebate calculation. On the other hand, if the pension entity is not an SLFI, both the federal and provincial parts of the deemed tax paid are included. However, the employer that is deemed to have made the supply is always deemed to have collected both the federal and the provincial parts of the deemed tax in respect of the supply, regardless of whether the pension entity is an SLFI.

The amount of tax calculated in Step 2 is determined through a series of deeming rules that are described in subsections 172.1(5), (6) and (7). These rules are described in detail in this part. Employers and pension entities will need to consider these rules at the end of each fiscal year of each employer of a pension plan beginning on or after September 23, 2009.

Before explaining section 172.1, there are a number of related definitions that should be considered.

Additional definitions

Employer resource

An "employer resource" is essentially anything acquired, created, developed and/or produced by the employer, and includes a "labour activity" that is required to do these things. Specifically, an employer resource of a person means:

- all or part of a labour activity of the person, other than the part of the labour activity consumed or used by the person in the process of creating, developing or bringing into existence property;
- all or part of property or a service supplied to the person, other than the part of the property or service consumed or used by the person in the process of creating, developing or bringing into existence property;
- all or part of property created, developed or brought into existence by the person; or
- any combination of the above items.

Excluded activity

An "excluded activity" is relevant to the definition of "pension activity". Excluded activities are not "pension activities". This is important when considering the deemed supply rules in subsections 172.1(5) to (7) since the acquisition of property or a service, or the consumption or use of employer resources exclusively for excluded activities will not be subject to these deeming rules.

The definition of "excluded activity" only applies to the deeming rules in subsections 172.1(5) to (7). It does not apply to an actual supply of property or service by an employer to a pension entity. Actual supplies are subject to normal GST/HST rules.

Specifically, an "excluded activity" is an activity undertaken exclusively for:

(a) 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;

(b) 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;

(c) evaluating the financial impact of the pension plan on the assets and liabilities of a participating employer of the pension plan;

(d) negotiating changes to the benefits under the pension plan with a union or similar organization of employees; or

(e) prescribed purposes.

Excluded resource

A supply of property or a service made to an employer is an "excluded resource" of the employer if no tax would have been payable had the supply instead been made directly to any pension entity of the pension plan in an arm's length transaction. (For clarity, if even one pension entity of the pension plan would have had to pay tax to the supplier, the supply **would not** be an excluded resource.)

It is important for an employer to identify "excluded resources" since these do not form part of the supplies deemed to have been made under subsections 172.1(5) through (7). Since excluded resources are not included in the deemed supplies, a pension entity is not able to include any GST/HST relating to the excluded resource when calculating its pension rebate amount (i.e., it cannot be included in amount B).

In determining whether no tax would have been payable by the pension entity, all of the provisions of the ETA relevant to the particular supply must be considered.

Also, tangible personal property supplied to an employer by another person is considered to be an "excluded resource" where the supply is made outside Canada and where the supply would not be an imported taxable supply (as defined in section 217) if the employer were a registrant not engaged exclusively in commercial activities. As a result, a supply of tangible personal property made outside Canada to the employer and transferred under a drop-shipment certificate will only be an excluded resource if the supply is not described in paragraph (b) of the definition of "imported taxable supply" in section 217 for reasons other than the employer not being a registrant or being engaged in commercial activities. For more information on imported taxable supplies and the drop shipment rules, refer to GST/HST Memorandum 3.1, *Liability for Tax*.

Time of acquisition for importations – subsection 172.1(3)

Subsection 172.1(3) provides that where property is supplied to a participating employer outside Canada and, at a later date, tax in respect of imported goods under section 212 becomes payable, the supply of the property to the participating employer is deemed, for the purposes of section 172.1 only, to have occurred at that later date and tax is deemed to have become payable in respect of the supply at that later date.

As a result, where a participating employer acquires property outside Canada **for consumption or use** in pension activities of the participating employer and, at a later date, the property is imported into Canada and subject to tax under section 212, that property will cease to be an excluded resource of the participating employer and, to the extent that the property is consumed or used in pension activities after the importation, the participating employer would be deemed to have made a taxable supply of the property subject to subsection 172.1(6) or (7).

Similarly, where property is acquired by a participating employer **for re-supply** to a pension entity of the participating employer's pension plan and where, at a later time, the property is imported into Canada and subject to tax under section 212, the property may be subject to the deemed supply rules contained in subsection 172.1(5) at the time it is imported into Canada.

Labour activity

For purposes of the definition of "employer resource", a "labour activity" of a person means anything done by an individual who is or agrees to become an employee of the person in the course of, or in relation to, the office or employment of that individual.

Pension activity

The definition "pension activity" is relevant for subsections 172.1(5) to (7). The acquisition of property or a service, or the consumption or use of an employer resource, in the course of a "pension activity" is subject to the deemed supply rules contained in those subsections. A "pension activity", in respect of a pension plan, means an activity (other than an excluded activity) that relates to:

(a) the establishment, management or administration of the pension plan or a pension entity of the pension plan; or

(b) the management or administration of assets in respect of the pension plan.

Provincial factor

The "provincial factor" is used in determining an amount of the provincial part of the HST that a participating employer may be deemed to have collected under any of subsections 172.1(5) through (7). The provincial factor takes into consideration each combination of a participating province, a participating employer, a pension plan of the participating employer and a fiscal year of the participating employer.

For example, a participating employer may have one provincial factor in respect of a particular participating province for one of its pension plans and for one of its fiscal years, while having another provincial factor in respect of another participating province for the same pension plan and for the same fiscal year.

Subsection 172.1(1) defines "provincial factor" as follows:

> "provincial factor" in respect of a pension plan and a participating province, for a fiscal year of a person that is a participating employer of the pension plan, means the amount (expressed as a percentage) determined by the formula
>
> $$A \times B$$
>
> where
>
> A is the tax rate for the participating province on the last day of the fiscal year; and
>
> B is
>
> (a) if the person made contributions to the pension plan during the fiscal year that may be deducted by the person under paragraph 20(1)(q) of the *Income Tax Act* in computing its income (in this paragraph referred to as "pension contributions") and the number of active members of the pension plan who were employees of the person on the particular day that is the last day of the last calendar year ending on or before the last day of the fiscal year is greater than zero, the amount determined by the formula
>
> $$[(C/D) + (E/F)]/2$$
>
> where
>
> C is the total of all pension contributions made to the pension plan by the person during the fiscal year in respect of employees of the person who were resident in the participating province on the particular day,
>
> D is the total of all pension contributions made to the pension plan by the person during the fiscal year in respect of employees of the person,
>
> E is the number of active members of the pension plan who were, on the particular day, employees of the person and resident in the participating province, and
>
> F is the number of active members of the pension plan who were, on the particular day, employees of the person;

(b) if paragraph (a) does not apply and the number of active members of the pension plan who were employees of the person on the particular day that is the last day of the last calendar year ending on or before the last day of the fiscal year is greater than zero, the amount determined by the formula

$$G/H$$

where

G is the number of active members of the pension plan who were, on the particular day, employees of the person and resident in the participating province, and

H is the number of active members of the pension plan who were, on the particular day, employees of the person; or

(c) in any other case, zero.

Example 10 – calculating the "provincial factor"

B Co, a manufacturing firm located in Newfoundland and Labrador (NL), employed 1,500 active members of a single employer pension plan in the 2010-2011 fiscal year. On December 31, 2010, 800 of its active members were residents of NL, 500 were residents of New Brunswick (NB), and the remaining 200 were residents of Prince Edward Island (PEI). B Co is eligible to deduct $8 million for pension contributions pursuant to paragraph 20(1)(q) of the *Income Tax Act*, of which $2.6 million and $4.3 million were attributable to contributions made for employees residing in NB and NL, respectively.

Two provincial factors must be calculated: one for each of the participating provinces of NB and NL. Since B Co has made pension contributions and employs active members, the formula in paragraph (a) of Element B of the "provincial factor" formula will be used to calculate the provincial factor.

The provincial factor for NB is calculated as follows:

1) ($2,600,000 ÷ $8,000,000) + (500 ÷ 1,500)
= .325 + .33
= .655

2) .655 ÷ 2
= .3275

3) .3275 × .08 (the tax rate in NB is 8%)
= **.0262**

The provincial factor for NL is calculated as follows:

1) ($4,300,000 ÷ $8,000,000) + (800 ÷ 1,500)
= .5375 + .5333
= 1.0708

2) 1.0708 ÷ 2
= .5354

3) .5354 × .08 (the tax rate NL is 8%)
= **.0428**

Specified pension entity

The term "specified pension entity" is defined in subsection 172.1(4), and is relevant in cases where, during the fiscal year of a participating employer, the employer consumes or uses its own resources for pension activities of the pension plan, but does not intend to make supplies to the particular pension entity (this is discussed later in this part under section 3, "Consumption or use of employer resource otherwise than for supply"). In that situation, only a "specified pension entity" will have been deemed to have paid tax, and would be able to claim a rebate for that amount.

For this purpose, where a participating employer of a pension plan has only one pension entity, that pension entity is the "specified pension entity" of the pension plan. If there are two or more pension entities, the employer and one of the pension entities may jointly elect for that pension entity to be the "specified pension entity" of the pension plan. A participating employer may, at a particular time, have only one "specified pension entity" for a pension plan, although each participating employer of a pension plan may have a different pension entity as its "specified pension entity".

Section 172.1: Deemed taxable supplies by employer

Under section 172.1, an employer that is a GST/HST registrant may be deemed to have made a taxable supply where, at any time in a fiscal year of the employer,

1) the employer acquires a particular property or a service for the purpose of re-supplying 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;
2) 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; and
3) the employer consumes or uses an employer resource of the employer in the course of pension activities 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 rules applicable to each of these situations are described next in sections 1 to 3.

Section 1 – Acquisition of specified resource for supply – subsection 172.1(5)

If a participating employer that is a GST/HST registrant acquires property or a service (referred to as a "specified resource") for the purpose of re-supplying all or part of it to the pension entity, the employer may be deemed to have made a taxable supply of the whole or part of that property or service, as the case may be. For this to occur, the specified resource cannot be an "excluded resource", and it must be for consumption, use or supply by the pension entity in the course of pension activities of the pension plan.

Where the above conditions are met, two significant events are considered to occur under subsection 172.1(5):

1. The employer is deemed to have made a taxable supply of the specified resource or part, on the last day of the fiscal year of the employer in which it acquired the specified resource.
2. Tax on that supply is deemed to have become payable, and the employer is deemed to have collected tax, on the last day of the fiscal year of the employer in which it acquired the specified resource. The tax must be calculated on the fair market value (FMV) of the whole or part of the specified resource supply at the time that the employer acquired it.

Because the employer has acquired the specified resource for re-supply to the pension entity, it will be able to claim an ITC for such acquisition as long as the employer has paid tax on the supply and the conditions for claiming ITCs in section 169 are met.

Subject to section 169, a person that is a registrant may be entitled to ITCs to the extent that a particular property or service is acquired for consumption, use or supply in the commercial activities of the person. A pension entity that is a registrant may therefore be eligible for ITCs, subject to the same rules.

Also, because the employer is deemed to have collected tax on the taxable supply of the specified resource, this tax must be included in calculating the employer's net tax for the period that includes its fiscal year end. This will be required even if the employer had already charged and collected tax in respect of an actual supply of the particular specified resource made to the pension entity at some point during the fiscal year.

Where the employer had already made an **actual taxable** supply of the specified resource, GST/HST would have been collected and remitted by the employer on that supply. In that case, an ITC would have been available to the employer for the GST/HST paid or payable on the original acquisition of the specified resource. However, there will be no additional ITC available for the deemed taxable supply made under subsection 172.1(5). This is because an ITC could not be claimed more than once in respect of the GST/HST paid on the original acquisition of the specified resource. Nevertheless, sections 232.01 and 232.02 provide rules that allow the employer to offset the deemed tax collected under subsection 172.1(5) where it issues a "tax adjustment note" to the pension entity. These provisions are described in Part V, "Tax adjustment notes".

Had the **actual** supply of the specified resource been an **exempt** supply, no ITC would have been available to the employer for any GST/HST paid on the original acquisition of the specified resource since, under section 169, ITCs are not available if a supply is not made in the course of a commercial activity. Notwithstanding that no ITC arises in respect of the actual supply, the employer could nevertheless claim an ITC in respect of the specified resource where subsection 172.1(5) deems the employer to have made a taxable supply of the specified resource.

Calculation of tax deemed collected by the employer

As mentioned above, the amount of tax deemed collected is calculated on the FMV of the specified resource at the time that the employer acquired it. However, the tax on this FMV must be calculated as the sum of federal and provincial parts of the GST/HST.

The **federal part** is the amount determined by multiplying the FMV of the specified resource or part by the tax rate set out in subsection 165(1), which is set at 5%.

The **provincial part** is the total of all amounts, each of which is determined for a participating province, by multiplying the FMV of the specified resource by the "provincial factor" in respect of both the pension plan and the particular participating province for the fiscal year in which the employer acquired the specified resource.

Transitional rule for introduction of the HST in British Columbia and Ontario

As mentioned previously, the HST was introduced in British Columbia and Ontario effective on July 1, 2010. For Ontario and British Columbia, the provincial part of the deemed tax collected in respect of a specified resource is calculated using the procedures described above; i.e., it will be necessary to multiply the FMV of the specified resource by the "provincial factor" calculated for British Columbia and/or Ontario, as the case may be. However, if the employer had acquired the specified resource for the purpose of re-supplying it before July 2010, the provincial part of the specified resource in respect of British Columbia and Ontario is considered to be zero.

Transitional rule for increase in the provincial part of the HST in Nova Scotia

As of July 1, 2010, the HST in Nova Scotia changed from 13% to 15% due to an increase in the provincial part of the HST from 8% to 10%. In calculating the provincial part of the deemed tax collected by the employer under subsection 172.1(5), if the employer acquired a specified resource for resupply to the pension entity before July 2010, the "provincial factor" for Nova Scotia will be calculated using the 8% rate. On the other hand, if the employer acquired the specified resource for re-supply to the pension entity after June 30, 2010, the "provincial factor" for Nova Scotia will be calculated using the 10% rate.

Example 11 – Calculating the deemed tax collected by an employer

Continuing from example 10, B Co acquired from a local supplier in St. John's a specified resource for re-supply having a FMV of $5,000. The tax deemed collected under the above provision is calculated with reference to both the GST rate of 5% and the provincial factors for each relevant participating province. The **federal part** is thus calculated as:

$5,000 × .05 = $250

Using the provincial factors calculated in example 10 (.0262 for NB and .0428 for NL), the **provincial part** is:

($5,000 × .0262) + ($5,000 × .0428) = $345

The tax deemed collected on the specified resource is the sum of the **federal and provincial parts**, calculated as:

$250 + $345 = $595

Calculation of deemed tax paid by the pension entity

To ensure that a pension entity may, where eligible, claim an ITC or a section 261.01 rebate in respect of the deemed taxable supplies made by the employer, subsection 172.1(5) deems the pension entity to have received a supply of the specified resource (or part, as the case may be) on the last day of the fiscal year of the employer. Also, the pension entity is deemed, for purposes of claiming an ITC or a section 261.01 rebate, to have paid tax on that day. The tax deemed to have been paid will form part of amount B of the pension entity's calculation of its pension rebate amount.

Where the pension entity **is not an SLFI**, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax that the employer is deemed to have collected; i.e., the sum of the federal and provincial parts of the GST/HST. However, where the pension entity **is an SLFI** at the time it is deemed to have received the supply, it is only deemed to have paid tax equal to the amount of the federal part of the tax that the employer is deemed to have collected.

Where the pension entity is an SLFI, both the federal and the provincial parts of the tax will factor into the determination of the pension entity's adjustments to its net tax under section 225.2 in respect of the provincial part of the HST. The CRA will publish a GST/HST notice that will explain this rule.

Example 12 – Calculation of amount B of a pension entity's "pension rebate amount"

As discussed in Part II, "Pension entity rebate", a pension entity that is an SLFI may only include the GST or the federal part of the HST in calculating its pension rebate amount. To ensure that only the federal part is included in amount B (see Step 2 in Part II), the tax deemed paid by the pension entity on the deemed supply by the employer cannot include the provincial part of the HST.

In example 11, if the deemed supply by the employer is made to a pension entity that is an SLFI, the **deemed tax paid** by the pension entity would only be in respect of the federal part of the HST, or $250. Only this amount could be included in amount B when calculating the entity's pension rebate amount.

On the other hand, if the pension entity were not an SLFI, the total of the federal and provincial parts of the HST would be included in amount B (i.e., the full $595).

Limitation on ITC claims by pension entity

Subject to section 169, a registrant may be entitled to ITCs to the extent that a particular property or service is acquired for consumption, use or supply in the commercial activities of the person. A pension entity that is a registrant may therefore be eligible for ITCs, subject to the same rules.

However, where the pension entity is deemed to have paid tax under subsection 172.1(5), the pension entity is deemed to have acquired the specified resource for consumption, use or supply in its commercial activities only to the extent that the employer originally acquired the specified resource for the pension entity's activities that are commercial activities.

As a result, if an employer acquires a specified resource for the exempt activities of the pension entity, the pension entity could not claim any ITCs on the deemed tax paid. However, the pension entity would be able to include that amount in the calculation of its pension rebate amount.

Example 13 – Application of subsection 172.1(5) deeming provisions

Continuing from example 11, the specified resource is computer hardware purchased from a supplier located in NL, for which B Co paid consideration of $5,000, plus 13% HST. Also, as the administrator of a single employer pension plan, B Co has acquired the hardware with the intention of supplying it to the pension entity, a trust, for use in the exempt pension activities of the trust. However, B Co had not yet made that supply before its fiscal year end.

There are a number of things to consider. First, where B Co acquired the hardware for re-supply and paid tax on the supply, it may claim an ITC for the tax paid on the supply, subject to section 169. This ITC may be claimed in the reporting period in which the tax was paid or became payable.

Second, since B Co acquired the hardware for supply to the trust, the deeming provisions of subsection 172.1(5) must be considered. B Co would, at its fiscal year end, be deemed to have collected tax that is deemed payable on a deemed taxable supply of the hardware. If the FMV of the hardware is $5,000, the deemed tax would be $595, which is the sum of federal and provincial parts of the HST calculated in example 11. This tax must be included in calculating B Co's net tax for the reporting period that includes its fiscal year end.

Lastly, subsection 172.1(5) deems the trust to have received a supply of the hardware on the last day of the fiscal year of the employer and to have paid tax on that supply at that time. As explained in example 12, if the trust were not an SLFI, it would be deemed to have paid tax equal to the amount that the employer was deemed to have collected ($595). However, if the trust were an SLFI, the deemed tax would only consist of the federal part of the HST ($250).

Since the hardware is for use in the exempt activities of the trust, it may include the deemed tax paid as an "eligible amount" in calculating amount B of the rebate formula, as explained in Part II ,"Pension entity rebate".

Section 2 – Consumption or use of employer resource for supply – subsection 172.1(6)

A participating employer that is a registrant and consumes or uses its own resources (i.e., "employer resources"), for the purpose of making what is commonly known as an "in-house" supply (referred to here as a "pension supply") to the pension entity, is subject to a set of rules similar to those set out in subsection 172.1(5).

Specifically, if the pension supply is for consumption, use or supply by the pension entity in the course of pension activities, and the employer resource is not an "excluded resource", the following rules will apply in respect of each underlying employer resource:

1. The employer is deemed to have made a taxable supply of the employer resource on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs.
2. Tax on the above supply is deemed to have become payable, and the employer is deemed to have collected the tax, on the last day of the fiscal year of the employer in which it consumed or used the employer resource.

Since the employer has acquired the employer resource for the purpose of making a pension supply to the pension entity, it will be able to claim an ITC for such acquisitions as long as the employer has paid tax on the supply and the conditions for claiming ITCs in section 169 are met.

Subject to section 169, a person that is a registrant may be entitled to ITCs to the extent that a particular property or service is acquired for consumption, use or supply in the commercial activities of the person. A pension entity that is a registrant may therefore be eligible for ITCs, subject to the same rules.

Calculation of tax deemed collected by the employer

The employer is deemed to have collected the GST/HST on the employer resource, which must be included in calculating the employer's net tax for the reporting period that includes its fiscal year end. This will be required even if the employer had already charged and collected tax from the pension entity on an actual pension supply at some point during the fiscal year. In such a case, however, section 232.02 provides rules to generally ensure that tax on the same supply is accounted for only once. These provisions are described in detail in section 2 of Part V, "Tax adjustment notes".

The amount of tax deemed collected must be calculated on the sum of the "federal part" and the "provincial part".

The **federal part** of the tax for the deemed supply of an employer resource is the amount determined by multiplying the following three elements:

1. the FMV of the employer resource;
2. the extent (expressed as a percentage) to which the employer (during times in the fiscal year when the employer was both a registrant and a participating employer) consumed or used the employer resource during the fiscal year for the purpose of making the pension supply; and
3. the rate of tax set out in subsection 165(1) (5%).

The **provincial part** of the tax for an employer resource is the total of all amounts, each of which is determined for a participating province by multiplying the following three elements:

1. the FMV of the employer resource;
2. the extent (expressed as a percentage) to which the employer (during times in the fiscal year when the employer was both a registrant and a participating employer) consumed or used the employer resource during the fiscal year for the purpose of making the pension supply; and
3. the "provincial factor" in respect of the pension plan for the particular participating province in respect of the fiscal year.

Calculation of FMV

If the employer resource was consumed during the fiscal year for the purpose of making the pension supply, the FMV of the employer resource is determined at the time the employer **began** consuming the employer resource in the fiscal year. However, where the employer resource is used but not consumed, the FMV must be calculated on the use, as determined on the **last day** of the fiscal year. For a discussion on the meaning "consumption" and "use", refer to GST/HST Memorandum 8.1, *General Eligibility Rules*.

Transitional rule for introduction of the HST in British Columbia and Ontario

A transitional rule applies as a consequence of the introduction of the HST in British Columbia and Ontario, which became effective on July 1, 2010. This transitional rule applies for the fiscal year of a participating employer that begins before July 2010, and ends on or after that day. The effect of this rule is that the provincial part of the deemed tax collected by the employer must be further multiplied by a transitional factor for British Columbia and/or Ontario (as the case may be). This transitional factor is equal to the number of days in the employer's fiscal year that fall after June 30, 2010, divided by the total number of days in the fiscal year.

Transitional rule for increase in the provincial part of the HST in Nova Scotia

As of July 1, 2010, the HST in Nova Scotia changed from 13% to 15% due to an increase in the provincial part of the HST from 8% to 10%. Therefore, in calculating the provincial part of the deemed tax collected by the employer, an additional transitional rule is necessary to take into account the prevailing provincial tax rates in Nova Scotia before July 2010 (8%) and after June 30, 2010 (10%).

This rule will essentially entail calculating two provincial factors for Nova Scotia for the fiscal year of the employer that includes July 1, 2010: one where Element A of the formula for the "provincial factor" is equal to 8% and another where Element A is equal to 10%. The provincial factor calculated at the 8% rate must then be multiplied by the percentage determined by dividing the number of days in the fiscal year before July 2010 by the total number of days in the fiscal year. Conversely, the provincial factor calculated at the 10% rate must be multiplied by the percentage determined by dividing the number of days in the fiscal year after June 30, 2010 by the total number of days in the fiscal year. The results of these two calculations would then be added together to form a single provincial factor for Nova Scotia.

Deemed tax paid by the pension entity

To ensure that a pension entity may, where eligible, claim an ITC or a section 261.01 rebate on the deemed taxable supplies made by the employer, subsection 172.1(6) deems the pension entity to have received a supply of the employer resource on the last day of the fiscal year of the employer. The pension entity is also deemed for the purposes of claiming an ITC or a section 261.01 rebate to have paid tax on that day. The tax deemed to have been paid will form part of amount B of the pension entity's calculation of its pension rebate amount.

Where the pension entity **is not an SLFI**, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax that the employer is deemed to have collected; i.e., the sum of the **federal and provincial parts**. However, where the pension entity **is an SLFI** at the time it is deemed to have received the supply, it is only deemed to have paid tax equal to the amount of the **federal part** of the tax that the employer is deemed to have collected.

Where the pension entity is an SLFI, both the federal part and the provincial part of the tax will factor into the determination of the pension entity's adjustments to its net tax under section 225.2 in respect of the provincial part of the HST. The CRA will publish a GST/HST notice that will explain those rules.

Limitation on ITC claims by pension entity

As mentioned above, a person that is a registrant may be entitled to ITCs to the extent that a particular property or service is acquired for consumption, use or supply in the commercial activities of the person, subject to section 169. A pension entity that is a registrant may therefore be eligible for ITCs, subject to the same rules.

However, where the pension entity is deemed to have paid tax under subsection 172.1(6), the pension entity is deemed to have acquired the employer resource for consumption, use or supply in its commercial activities only to the extent that the employer originally acquired the employer resource supplied in the pension supply for the pension entity's activities that are commercial activities. As a result, if an employer acquires an employer resource (to be supplied in a pension supply) for the exempt activities of the pension entity, the pension entity would not be able to claim any ITCs otherwise available on the deemed tax paid. However, the pension entity may be able to include that amount in the calculation of its pension rebate amount.

Section 3 – Consumption or use of employer resource otherwise than for supply – subsection 172.1(7)

Subsection 172.1(7) contains rules similar to those discussed in sections 1 and 2. It applies to participating employers who are registrants that neither re-supply a particular property or service to a pension entity, nor consume or use employer resources for the purpose of making a supply to the pension entity. If, at any time in the employer's fiscal year, an employer resource (other than an excluded resource) is consumed or used in pension activities but the employer does not intend to make a supply to the pension entity, the following rules apply:

1. The employer is deemed to have made a taxable supply of the employer resource or part, on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs.

2. Tax on this supply is deemed to have become payable, and the employer is deemed to have collected the tax, on the last day of the fiscal year of the employer in which it consumed or used the employer resource.
3. A particular "specified pension entity" is deemed to have received a supply of the employer resource on the last day of the fiscal year of the employer and to have paid tax on that day.

Since the employer is deemed to have made a taxable supply, it is considered to have consumed or used the employer resource in the course of its commercial activities and therefore can claim ITCs on the relevant employer resources if the conditions for claiming ITCs in section 169 are met. In determining its net tax, the employer will also have to include the tax in respect of the deemed tax collected on the deemed taxable supply.

Also, since the specified pension entity is deemed to have received and paid for the supply of the employer resource, the amount of tax deemed collected by the employer should be included in amount B of the entity's pension rebate calculation (refer to Part II, "Pension entity rebate"). As in subsections 172.1(5) and (6), the provincial part of this tax will only be included in amount B if the pension entity is not an SLFI. The amount of tax deemed collected on the deemed supply of the employer resource is calculated as the sum of the federal and provincial parts of the HST.

Where the pension entity is an SLFI, both the federal part and the provincial part of the tax will factor into the determination of the pension entity's adjustments to its net tax under section 225.2 in respect of the provincial part of the HST. The CRA will publish a GST/HST notice that will explain those rules.

Calculation of tax deemed collected by the employer

The **federal part** of the GST/HST is the amount determined by multiplying the following three elements:

1. the fair market value of the employer resource;
2. the extent (expressed as a percentage) to which the employer (during times in the fiscal year when the employer was both a registrant and a participating employer) consumed or used the employer resource during the fiscal year; and
3. the rate of tax set out in subsection 165(1) (5%).

The **provincial part** of the HST for an employer resource supply is the total of all amounts, each of which is determined for a participating province by multiplying the following three elements:

1. the fair market value of the employer resource;
2. the extent (expressed as a percentage) to which the employer (during times in the fiscal year when the employer was both a registrant and a participating employer) consumed or used the employer resource during the fiscal year; and
3. the provincial factor in respect of the pension plan for the particular participating province in respect of the fiscal year.

Calculation of FMV

If the employer resource was consumed during the fiscal year in the course of pension activities, the FMV of the employer resource is determined at the time the employer **began** consuming the employer resource in the fiscal year. However, where the employer resource is used (not consumed), the FMV must be calculated on the use, as determined on the **last day** of the fiscal year.

Transitional rule for introduction of the HST in British Columbia and Ontario

A transitional rule applies as a consequence of the introduction of the HST in British Columbia and Ontario, which became effective on July 1, 2010. This transitional rule applies for the fiscal year of a participating employer that begins before July 2010 and ends on or after that day. The effect of this rule is that the provincial part of the deemed tax collected by the employer must be further multiplied by a transitional factor for British Columbia and/or Ontario (as the case may be). This transitional factor is calculated as the number of days in the employer's fiscal year that fall after June 30, 2010, divided by the total number of days in the fiscal year.

Transitional rule for increase in the provincial part of the HST in Nova Scotia

As of July 1, 2010, the HST in Nova Scotia changed from 13% to 15% due to an increase in the provincial part of the HST from 8% to 10%. Therefore, in calculating the provincial part of the deemed tax collected by the employer, an additional transitional rule is necessary to take into account the prevailing provincial tax rates in Nova Scotia before July 2010 (8%) and after June 30, 2010 (10%).

This rule will essentially entail calculating two provincial factors for Nova Scotia for the fiscal year of the employer that includes July 1, 2010: one where Element A of the formula for "provincial factor" is equal to 8% and another where Element A is equal to 10%. The provincial factor calculated at the 8% rate must then be multiplied by the percentage determined by dividing the number of days in the fiscal year before July 2010 by the total number of days in the fiscal year. Conversely, the provincial factor calculated at the 10% rate must be multiplied by the percentage determined by dividing the number of days in the fiscal year after June 30, 2010 by the total number of days in the fiscal year. The results of these two calculations would then be added together to form a single provincial factor for Nova Scotia.

Prescribed information

If any of the deeming rules of subsections 172.1(5) to (7) apply to a particular employer, the employer is required to provide prescribed information, in prescribed form and manner, to the particular pension entity that is deemed to have paid tax under these rules.

Part V – Tax adjustment notes

As mentioned in Part IV, "Deemed taxable supplies by employers", where an employer is deemed to have made taxable supplies to the pension entity under subsection 172.1(5) or 172.1(6), but has also charged tax on an actual supply of the same property or service to the pension entity, sections 232.01 or 232.02 allow the employer to reduce its net tax when it issues a tax adjustment note (TAN) to the pension entity.

The purpose of sections 232.01 and 232.02 is twofold:

1. to ensure that an employer does not remit tax twice on a particular supply; and
2. to prevent a pension entity from realizing the benefit of a rebate or ITC on the same property or service twice.

The following example shows the general purpose and function of a TAN issued under sections 232.01 and 232.02.

Example 14 – Overview of purpose and function of a TAN

GST/HST consequences of an actual supply of a specified resource

Continuing from example 13, B Co supplied the hardware to the trust at cost ($5,000) before the end of its fiscal year. The normal GST/HST rules would apply to this supply: where the supply was made in NL, the trust would pay HST to B Co equal to 13% of the value of consideration for the supply, calculated as:

$5,000 × 13% = $650

B Co must collect and account for HST of $650 on its return for the reporting period in which it made the supply. B Co, having originally acquired the hardware for re-supply to the trust, would have been eligible for an ITC under section 169 for the HST paid on the acquisition.

From the perspective of the trust, the amount paid to B Co on the actual supply of the hardware is an "eligible amount" that may be included in amount A of the pension rebate calculation (see Part II, "Pension entity rebate").

GST/HST consequences of a deemed taxable supply made under subsection 172.1(5)

Since B Co originally acquired the hardware for re-supply to the trust, the effects of subsection 172.1(5) must also be considered. Specifically, subsection 172.1(5) would require B Co, at the end of its fiscal year, to account for tax on the hardware a second time: it will be deemed to have collected tax on a deemed taxable supply of the hardware. The deemed tax collected by B Co would be determined as the sum of the federal and provincial parts; i.e., $595, as calculated in example 11. This amount must be added to B Co's net tax for the reporting period that includes its fiscal year end. However, since subsection 172.1(5) does not deem B Co to have paid tax, it cannot claim an ITC in respect of the deemed taxable supply under subsection 172.1(5).

At the same time, the pension entity will be deemed **for the purposes of claiming an ITC or a section 261.01 rebate** to have received the supply and to have paid tax on the deemed taxable supply. The amount of tax deemed paid by the trust depends on whether or not it is an SLFI. If the trust is an SLFI, the deemed tax will be the federal part of the HST calculated in example 11 ($250). If the trust were not an SLFI, the deemed tax paid would be sum of the federal and provincial parts ($650). In any event, the deemed tax paid would be an "eligible amount" and included in amount B of the pension rebate calculation.

Role of TAN

B Co is required to account for tax on a supply of the hardware twice: once on the actual supply, for which it was able to claim an ITC, and again on the deemed supply, for which no ITC is available. On the other hand, the trust is able to include in its pension rebate calculation two "eligible amounts" in respect of the same hardware: once in amount A for the actual tax paid to B Co, and again in amount B for the deemed tax paid under subsection 172.1(5).

In order to allow B Co to offset the deemed tax collected (for which an ITC was not available), B Co may issue a TAN pursuant to section 232.01. If B Co issues a TAN, it would be allowed to reduce its net tax by the amount of the TAN (calculated with reference to subsection 232.01(3)) on the GST/HST return for the reporting period in which it issues the TAN. The trust, on the other hand, would be required to pay an amount to the Receiver General in respect of the duplicate "eligible amounts" that could have been included in its pension rebate calculation. The amount of this payment is determined under paragraph 232.01(4)(c).

Section 232.01, which deals with TANs issued in respect of deemed supplies made under subsection 172.1(5), contains a number of rules pertaining to the amount of the TAN and the circumstances of its issuance. These rules are discussed next, in section 1. The provisions of section 232.02, applicable to deemed supplies made under subsection 172.1(6), are discussed in section 2.

Section 1: TANs issued for deemed supplies made under subsection 172.1(5)

As discussed in the previous example, an employer may issue a TAN to the pension entity if (1) tax becomes payable, or has been paid without having become payable, by the pension entity on an actual supply by the employer of a specified resource; and (2) the deeming provisions of subsection 172.1(5) apply. Again, the latter deeming provisions are briefly explained as follows:

- the employer is deemed to have made a taxable supply of all or part of a specified resource;
- the employer is deemed to have collected tax in respect of that deemed supply; and
- the pension entity is deemed to have received a supply of all or part of the specified resource and is deemed to have paid tax ("the deemed tax paid") in respect of that supply. (Where the pension entity is an SLFI at the time a deemed supply is made under subsection 172.1(5), the deemed tax paid is only the federal part of GST/HST the employer is deemed to have collected in respect of the supply.)

The employer is required to issue the TAN in prescribed form containing prescribed information and in a manner satisfactory to the Minister. Every employer that issues a TAN under subsection 232.01(3) must maintain satisfactory evidence to establish that the employer was entitled to issue the TAN for a particular amount. This requirement remains for a period of six years after the day the TAN is issued.

Calculating the amount of the TAN

Subsection 232.01(4) contains a formula for calculating the maximum amount of a TAN (referred to as the "total tax amount") on a particular day for a particular specified resource. The **total tax amount** of a TAN is the sum of two amounts: (1) the **federal tax amount** of the TAN; and (2) the **provincial tax amount** of the TAN.

The **federal tax amount** is determined by the formula

$$A - B$$

Element A represents an amount in respect of the GST or federal part of the HST (where applicable) and Element B represents the federal tax amount of any previous TANs issued for the same specified resource. Here are the specific rules pertaining to these two elements:

Element A is calculated as the lesser of:

(a) the federal part of the tax in respect of the specified resource, as determined under paragraph 172.1(5)(c) (refer to example 11); and

(b) all amounts of the federal tax (i.e., the GST or the federal part of the HST) that became payable, or were paid without having become payable, by the pension entity to the employer, on or before the day that the TAN is issued, on the actual supply of the same specified resource or part.

Element B is the sum of all amounts, each of which is a federal tax amount of another TAN previously issued under subsection 232.01(3) in respect of the specified resource.

The **provincial tax amount** is determined by the formula

$$C - D$$

Element C represents an adjustment for provincial part of the HST (where applicable) and Element D represents the amount of any previous TANs issued for the same specified resource. Here are the specific rules pertaining to these two elements:

Element C is the lesser of:

(a) any provincial part of the HST in respect of the specified resource or part, as determined under paragraph 172.1(5)(c) (refer to example 11); and

(b) all amounts of provincial tax (i.e., the provincial part of the HST) that became payable, or were paid without having become payable, by the pension entity to the employer, on or before the day that the TAN is issued, on the actual supply of the same specified resource.

Element D is the sum of all amounts, each of which is a provincial tax amount of another TAN previously issued under subsection 232.01(3) in respect of the specified resource or part.

Example 15 – Calculating the total tax amount of the TAN

Continuing with our previous examples, B Co supplied the hardware at cost to the pension entity before the end of its fiscal year. The HST paid or payable by the pension entity on the actual supply was therefore 13% of $5,000, or $650. The federal part of the HST included in this amount is $250 ($5,000 × 5%), while the provincial part of the HST is $400 ($5,000 × 8%).

If the deeming provisions of subsection 172.1(5) apply, B Co could issue a TAN in respect of the hardware. Using the formulas to calculate the federal tax amount and the provincial tax amount, the amount of the TAN would be calculated as follows.

Element A is equal to the lesser of the federal part of the HST calculated under paragraph 172.1(5)(c) (see example 11) and the federal part of the tax actually paid by the pension entity on an actual supply by the employer. Since both of these amounts are $250, Element A of the **federal tax amount** is $250.

Similarly, **Element C** is equal to the lesser of the provincial part of the HST calculated under paragraph 172.1(5)(c) ($345 – see example 11) and the provincial part of the HST actually paid by the pension entity on the actual supply by the employer ($400). Since the amount calculated under paragraph 172.1(5)(c) is the lesser of these two amounts, Element C of the **provincial tax amount** is $345.

Assuming that B Co has issued no previous TANs in respect of the hardware, **Elements B and D** will be 0. However, had a TAN been previously issued in respect of the hardware, the respective federal and provincial tax amounts of the previous TAN would need to be subtracted from the amounts calculated for Elements A and C.

Using these amounts for Elements A and C, the **total tax amount** of the TAN is:

$250 + $345 = $595

Making the adjustments

Where an employer issues a TAN, the employer, the pension entity and the employers that have made an election under section 261.01 with the pension entity, must make various adjustments to their net tax or rebate claim.

Employer adjustment

Paragraph 232.01(5)(a) allows the employer that issued the TAN to deduct an amount equal to the total tax amount of the TAN in determining its net tax for its reporting period that includes the day on which the TAN is issued to the pension entity.

Example 16 – Offsetting the deemed tax collected with the amount of the TAN

In example 14, the deemed tax collected by B Co under subsection 172.1(5) was calculated to be $595. Since this amount is deemed to have been collected in the reporting period that includes B Co's fiscal year end, it must be added to B Co's net tax for that period.

However, where B Co issues a TAN to the trust, B Co will be able to make a reduction to its net tax for the reporting period in which it issues the TAN. Since the amount of the TAN calculated in example 15 was also determined to be $595, B Co would be able to deduct that amount from its net tax for the reporting period in which the TAN was issued. Therefore, if B Co were to issue the TAN at the end of the fiscal year in question, it would be able to fully offset by the amount of the TAN the deemed tax collected on its GST/HST return that includes the fiscal year-end.

Pension entity adjustments

There are **two possible adjustments** that might be made by a pension entity that receives a TAN from the employer. This depends on whether the deemed tax paid by the pension entity under subsection 172.1(5) was

1. claimable by the entity as an ITC (e.g., because the supply of the specified resource on which tax was deemed paid was for consumption, use or supply in the course of commercial activities of the pension entity); or
2. an "eligible amount" that is included in the calculation of the pension entity's rebate (i.e., amount B in Step 2 of Part II, "Pension entity rebate").

Adjustment 1: Where the pension entity was eligible for an **ITC** on the deemed tax paid, paragraph 232.01(5)(b) requires the pension entity to add, in determining its net tax for its reporting period in which it receives the TAN, an amount determined by the formula

$$A \times B$$

where

A is the amount of the ITC, and

B is the amount determined by dividing

- where the pension entity was an SLFI on the day that it was deemed to have paid the tax (which, for purposes of subparagraph 172.1(5)(d)(ii), is the last day of the fiscal year of the employer), the **federal tax amount** of the TAN; and,
- where the pension entity was not an SLFI on that day, the **total tax amount** of the TAN,

by the total amount of the deemed tax paid for the specified resource under subsection 172.1(5) (see example 12).

Example 17 – ITC adjustment by pension entity

The amount of the deemed tax paid by the trust under subsection 172.1(5) depends on whether it is an SLFI. In example 12, it was determined that the deemed tax paid by the trust, if an SLFI, would be $250 and, if not, would be $595.

If B Co acquired the hardware for use in the commercial activities of the trust, the trust would, subject to section 169, be entitled to a corresponding ITC for the deemed tax paid on the deemed taxable supply by B Co. This would be in addition to the ITC that it would likewise have been able to claim on the actual taxable supply made to the trust by the employer earlier in the fiscal year.

In example 15, B Co calculated the **total tax amount** of the TAN to be $595, the **federal tax amount** of which was $250.

If the trust were **an SLFI** on the day that it was deemed to have paid tax, paragraph 232.01(5)(b) would require it to add, in determining its net tax for its reporting period in which it receives the TAN, an amount determined by multiplying the ITC by the fraction determined by dividing the **federal tax amount** by the deemed tax paid on the hardware. Using the results from examples 12 and 15, this amount is

$$\$250 \div \$250 = 1$$

The trust would thus be required to add the following amount to its net tax on its GST/HST return for the reporting period in which B Co issued the TAN:

$$\$250 \times 1 = \$250$$

This is the full amount of the ITC that the trust could have claimed on the deemed tax paid under subsection 172.1(5).

If the trust were **not an SLFI**, paragraph 232.01(5)(b) would require it to add, in determining its net tax for its reporting period in which it receives the TAN, an amount determined by multiplying the ITC by the amount determined by dividing the **total tax amount** by the deemed tax paid on the hardware. Using the results from examples 12 and 15, this amount is

$$\$595 \div \$595 = 1$$

Therefore, the trust would be required to add the following amount to its net tax on its GST/HST return for the reporting period in which B Co issued the TAN:

$$\$595 \times 1 = \$595$$

This adjustment is equal to the full amount of the ITC that the trust could have claimed on the deemed tax paid under subsection 172.1(5).

Adjustment 2: Where the pension entity is eligible to claim a **rebate** for the deemed tax paid, paragraph 232.01(5)(c) applies. This provision has the effect of requiring the pension entity to make a payment in relation to the rebate that it could claim on the deemed tax paid, to the extent that the deemed tax is reduced by the TAN (see "Role of TAN" in example 14).

Paragraph 232.01(5)(c) specifically requires that the payment be made if any part of the deemed tax paid is an "eligible amount" of the pension entity for a particular claim period (i.e., the deemed tax paid is included in amount B of the rebate formula in Step 2 of Part II, "Pension entity rebate"), and the pension entity was a qualifying pension entity on the last day of the claim period.

Importantly, the pension entity would be required to make the payment even if it did not include the eligible amount in its rebate calculation. As long as all or part of the deemed tax paid is an "eligible amount" of a qualifying pension entity, the entity would be required to make the payment. Paragraph 232.01(5)(c) requires the payment to be made by the pension entity to the Receiver General by the last day of the pension entity's claim period following the one in which the employer issued the TAN.

The amount of the payment is determined using the formula

$$A \times B \times C \times D$$

where

A is the portion of the deemed tax paid on the particular specified resource that is an "eligible amount" of the pension entity for the claim period;

B is 33%;

C is the amount determined by dividing,

- where the pension entity was an SLFI on the day that it was deemed to have paid the tax (which, for purposes of subparagraph 172.1(5)(d)(ii), is the last day of the fiscal year of the employer), the **federal tax amount** of the TAN, and
- where the pension entity was not an SLFI on the day that it was deemed to have paid tax, the **total tax amount** of the TAN,

by the total amount of the deemed tax; and

D is the amount determined by dividing

a) the difference between

- the pension rebate amount (i.e., amount F in Step 6 of Part II, "Pension entity rebate") for the pension entity for the particular claim period, and
- the portion of the rebate amount that the pension entity elects to share with its qualifying employers under subsections 261.01(5) and (6) (see Part III, "Elections") for the particular claim period, by

b) the pension rebate amount for the pension entity for the particular claim period.

Example 18 – Rebate adjustment payment required by pension entity

The amount of the payment required of the trust will depend on whether it is an SLFI.

Part A – The trust is not an SLFI on the day it is deemed to have paid tax

Where **the trust is not an SLFI**, the deemed tax paid on the deemed supply of the hardware was determined in example 12 to be $595, the full amount of which was an "eligible amount". This is **Element A** of the formula.

As stipulated by the formula, **Element B** is 33%.

In example 15, the **total tax amount** of the TAN was also calculated to be $595. Since the deemed tax in Element A is $595, **Element C** is

$$\$595 \div \$595 = 1$$

Using the amounts in example 6, assume that the trust's "pension rebate amount" for the claim period is $5,445 and that a Type I election is made to share 55% of that amount with B Co. The total of all elected shared portions is calculated as:

$5,445 × 55% = $2,994.75

For purposes of Element D, the difference between the pension rebate amount and the shared portion is:

$5,445 – $2,994.75 = $2,450.25

Element D is therefore:

$2,450.25 ÷ $5,445 = 45%

Using the formula determining the amount of the payment, the trust would be required to make a payment to the Receiver General by the last day of the trust's claim period following the one during which B Co issued the TAN, calculated as:

$595 × .33 × 1 × .45 = $88.36

Part B – The trust is an SLFI on the day it is deemed to have paid tax

Where the trust **is an SLFI**, the deemed tax paid on the deemed supply of the hardware was determined in example 12 to be $250, the full amount of which was an "eligible amount". This is **Element A** of the formula.

In example 15, the **federal tax amount** of the TAN was also calculated to be $250. Since the deemed tax in Element A is $250, **Element C** is:

$250 ÷ $250 = 1

Using the amounts in example 6, assume that the trust's "pension rebate amount" for the claim period is $1,993 and a Type I election is made to share 55% of that amount with B Co. The total of all elected shared portions is calculated as:

$1,993 × 55% = $1,096.15

For purposes of Element D, the difference between the pension rebate amount and the shared portion is:

$1,993 – $1,096.15 = $896.85

Element D is therefore:

$896.85 ÷ $1,993 = 45%

Using the formula, the trust would be required to make a payment to the Receiver General by the last day of the trust's claim period following the one in which the employer issued the TAN, calculated as:

$250 × .33 × 1 × .45 = $37.13

Therefore, the SLFI trust is required to make a repayment of $37.13 to the Receiver General. If the trust had not been an SLFI on the day it is deemed to have paid tax, this amount would have been $88.36. These amounts represent the part of the pension entity rebate that was claimed in respect of the hardware and included in amount B of the rebate formula (i.e., the deemed tax paid in Step 2 in Part II, "Pension entity rebate").

The formula on which the amounts in example 18 were calculated takes into account the fact that the trust only claimed a net rebate equal to 45% of the total eligible amount included in amount B of the rebate formula (i.e., the deemed tax paid in Step 2 of Part II, "Pension entity rebate"). The remaining 55% of the total eligible amount was transferred to B Co under a Type I election. As explained previously, the employer would have been able to deduct this latter amount from its net tax for the reporting period in which the pension entity filed the election. To ensure that the full amount of the deemed tax that is included in amount B is accounted for, the employer will be required to add the remaining 55% of the total eligible amount back to its net tax. This is explained next.

Adjustments required by employers who made an election to share the rebate

Employers who are party to a Type I, II or III election (see Part III, "Elections") to share a rebate with the pension entity, must add back an amount in respect of the shared portion of deemed tax paid by the pension entity that was included in amount B of the pension entity's rebate calculation (see Step 2 in Part II, "Pension entity rebate") where a TAN was issued in respect of the deemed tax. Specifically, paragraph 232.01(5)(d) requires the employer, which made a deduction in determining its net tax as a result of the election, to add back the amount deducted from its net tax to the extent that the deemed tax paid is reduced by the TAN.

The amount determined under paragraph 232.01(5)(d) must be added to the employer's net tax for its reporting period that includes the day on which it issues the TAN.

The amount of this adjustment is determined using the formula

$$A \times B \times C \times D$$

where

A is the portion of the amount of the deemed tax that is an "eligible amount" of the pension entity for the particular claim period;

B 33%;

C is determined by dividing,

- where the pension entity was an SLFI on the day that it was deemed to have paid the tax, the **federal tax amount** of the TAN, and,
- where the pension entity was not an SLFI on the day that it was deemed to have paid tax, the **total tax amount** of the TAN,

by the total amount of the deemed tax; and

D the amount determined by dividing

(a) the amount of the net tax adjustment (deduction) determined under subsection 261.01(5), 261.01(6) or 261.01(9) for the participating employer for the particular claim period by

(b) the amount that is,

- where the pension entity was an SLFI on the day that it was deemed to have paid tax, the sum of **pension rebate amount** for the pension entity for the particular claim period and the **provincial pension rebate amount** for the pension entity for the particular claim period, and
- where the pension entity was not an SLFI on that day, the pension rebate amount for the pension entity for the particular claim period.

Example 19 – Employer adjustment for election

In example 18, the trust was required to make a payment to the Receiver General based on the amount of a TAN issued by B Co. But because the trust elected to share 55% of this rebate with B Co pursuant to a Type I election, it was only required to repay 45% of the amount. Since B Co would have been able to deduct the shared amount from its net tax in the reporting period in which the pension entity filed the Type I election, it will be required to add that portion back to its net tax for the reporting period in which the TAN is issued.

The calculation of the amount to be added back to the trust's net tax again depends on whether it is an SLFI.

Part A – The trust is not an SLFI on the day it is deemed to have paid tax

Using the amounts in example 18, **Element A** is the deemed tax paid on the hardware. Where the trust is not an SLFI, this is $595.

As stipulated by the formula, **Element B** is 33%.

Element C is calculated in the same manner as in example 18. The **total tax amount** of the TAN is $595. Since the deemed tax in Element A is $595, **Element C** is

$595 ÷ $595 = 1

The trust's **pension rebate amount** for the claim period is $5,445. Since a Type I election was made to share 55% of that amount with B Co, the elected shared portion is calculated as:

$5,445 × 55% = $2,994.75

Therefore, B Co would have been able to claim a net tax deduction of $2,994.75 on its return for the reporting period in which the trust filed the election.

Element D is therefore:

$2,994.75 ÷ $5,445 = 55%

The amount that must be added to B Co's net tax is therefore:

$595 × .33 × 1 × .55 = $107.99

Part B – The trust is an SLFI on the day it is deemed to have paid tax

Using the amounts in example 18, **Element A** is the deemed tax paid on the hardware. Where the trust is an SLFI, this is $250.

As stipulated by the formula, **Element B** is 33%.

Element C is calculated in the same manner as in example 18. The **federal tax amount** of the TAN is $250. Since the deemed tax in Element A is $250, **Element C** is:

$250 ÷ $250 = 1

Again using the amounts calculated in example 6, the trust's **pension rebate amount** for the claim period is $1,993, while the **provincial pension rebate amount** is $2,168.38. Since a Type I election was made to share 55% of that amount with B Co, the elected shared portion is calculated as:

($1,993 + $2,168.38) × 55% = $2,288.76

Therefore, B Co would have been able to claim a net tax deduction of $2,288.76 on its return for the reporting period in which the trust filed the election.

Element D is therefore:

$2,288.76 ÷ ($1,993 + $2,168.38) = 55%

The amount of B Co's net tax adjustment is therefore:

$250 × .33 × 1 × .55 = $45.38

This amount must be added to B Co's net tax for the reporting period in which it issues the TAN.

Note: Since this example assumes that the parties have made a Type I election, Element D is simply the "specified percentage" of the pension rebate amount that the parties elect to share (i.e., as shown in Line B of Part E of Form RC4607). As explained in Part II, "Pension entity rebate", an employer may deduct the full amount of this percentage as a net tax deduction when the parties make a Type I election. For Type II and III elections, however, the specified percentage may be reduced by the employer's degree of participation and then again by its tax recovery rate. Accordingly, Element D will not necessarily be the same as the specified percentage shown in Line D of Part F of Form RC4607. In many cases, it will be less.

Consequential net tax adjustments required of SLFI pension entities

Where a pension entity that receives a TAN under section 232.01 is an SLFI, it will be required to make certain adjustments in the determination of its net tax under section 225.2 and the draft *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* in respect of the provincial part of the HST. These adjustments, provided in section 46 of the draft *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* are in respect of:

- the amount of the federal part of the TAN – clause (vi)(A) of Element G_2 of section 46;
- the amount of the provincial part of the TAN – clause (vii)(A) of Element G_1 of section 46;
- the amount that the pension entity was required to include in determining its net tax as a result of the TAN in respect of an ITC that it was entitled to claim – clause (iv)(A) of element G_3 of section 46; and
- the amount that the pension entity was required to pay to the Receiver General as a result of the TAN in respect of a pension rebate that it was entitled to claim – clause (iv)(C) of element G_3 of section 46.

The CRA will publish a GST/HST notice that will explain those rules.

Notification, liability and assessments

When an employer issues a TAN to a pension entity and paragraph 232.01(5)(d) applies to require the participating employers to add an amount to their net tax, the pension entity must notify each of those employers that the TAN was issued. This notification must be made in prescribed form containing prescribed information and in a manner satisfactory to the Minister of National Revenue, and is necessary to alert the participating employers to the fact that they must make the appropriate adjustments.

Moreover, where the participating employer becomes liable to add an amount to its net tax under paragraph 232.01(5)(d), the pension entity is jointly and severally liable with the employer to pay the amount to the Receiver General, and may be assessed as such. Special rules also exist to ensure that these amounts are repaid where an otherwise liable employer ceases to exist on or before the TAN is issued. In that case, the pension entity is liable to pay the relevant amount.

Section 2: TANs issued for deemed supplies made under subsection 172.1(6)

Section 232.02 contains provisions similar to section 232.01 in that it describes rules pertaining to TANs issued in circumstances where an actual in-house supply (referred to as a "**pension supply**" – see section 2 of Part IV, "Deemed taxable supplies by employers") has been made, and the deeming rules under subsection 172.1(6) apply as discussed in Part IV. Again, the latter deeming provisions are as follows:

- the employer is deemed to have made a taxable supply of all or part of an "employer resource";
- the employer is deemed to have collected tax on the deemed supply; and
- the pension entity is deemed to have received a supply of all or part of the employer resource and is deemed to have paid tax ("the deemed tax paid") in respect of that supply. Where the pension entity is an SLFI at the time a deemed supply is made under subsection 172.1(6), the deemed tax is only the GST or the federal part of the tax the employer is deemed to have collected in respect of the supply.

Under subsection 232.02(2), an employer may issue a TAN to the pension entity when (1) a participating employer of a pension plan is deemed under subsection 172.1(6) to have made one or more taxable supplies of its own resources ("employer resources") that were consumed or used for the purpose of making a supply of property or a service (an "actual pension supply") to a pension entity of the pension plan; and (2) tax becomes payable, or has been paid without having become payable, by the pension entity on an actual pension supply by the employer of the employer resource.

The employer is required to issue the TAN in prescribed form, containing prescribed information and in a manner satisfactory to the Minister of National Revenue. Every employer that issues a TAN under subsection 232.02(2) must maintain satisfactory evidence to establish that the employer was entitled to issue the TAN for a particular amount. This requirement remains for a period of six years after the day the TAN is issued.

Calculating the amount of the TAN

The calculation of the amount of the TAN under subsection 232.02(3) is similar to that of subsection 232.01(4).

Subsection 232.02(3) contains a formula for calculating the maximum amount of a TAN (referred to as the "total tax amount") on a particular day in respect of employer resources. The "total tax amount" of a TAN is the sum of two amounts: (1) the **federal tax amount** of the TAN, and (2) the **provincial tax amount** of the TAN.

The **federal tax amount** is determined by the formula

$$A - B$$

where

A represents the adjustment for the **federal part** of the HST. This is calculated as the lesser of:

(a) the total of all amounts, each of which is an amount of the federal part of the tax in respect of employer resources as determined under paragraph 172.1(6)(c) (this is the amount calculated using the formula presented under the heading "Calculation of tax deemed collected by the employer" in section 2 of Part IV, "Deemed taxable supplies by employers"); and

(b) the total of all amounts of tax that became payable, or were paid without having become payable, by the pension entity to the employer, on or before the day that tax is deemed to have been paid on the deemed supply by the employer, on an actual pension supply (as discussed in section 2 of Part IV).

B is the total of all amounts, each of which is a federal tax amount of any other TAN previously issued under subsection 232.02(2) in respect of employer resources consumed or used for the purpose of making the actual pension supply.

The **provincial tax amount** is determined by the formula

$$C - D$$

where

C represents the adjustment for the **provincial part** of the HST. This is calculated as the lesser of:

(a) the total of all amounts, each of which is an amount of the provincial part of the tax in respect of an employer resource consumed or used to make the actual pension supply, as determined under paragraph 172.1(6)(c) (this is the amount calculated using the formula presented under the heading, "Calculation of tax deemed collected by the employer in section 2 of Part IV); and

(b) the total of all amounts of the provincial part of the HST that became payable, or were paid without having become payable by the pension entity to the employer on or before the day that tax is deemed to have been paid on the deemed supply by the employer, on an actual pension supply (as discussed in section 2 of Part IV).

D is the total of all amounts, each of which is a provincial tax amount of any other TAN previously issued under subsection 232.02(2) in respect of employer resources consumed or used for the purpose of making the actual pension supply.

Making the adjustments

Where an employer issues a TAN under subsection 232.02(2), and the pension entity has been deemed to have received and paid tax in respect of an employer resource under subsection 172.1(6), then the employer, the pension entity and employers that have made an election under section 261.01 with the pension entity must make various adjustments to their net tax or rebate claim.

Employer adjustment

Where the employer issues a TAN, paragraph 232.02(4)(a) allows the employer to deduct an amount equal to the total tax amount of the TAN in determining its net tax for its reporting period that includes the day on which the TAN is issued to the pension entity.

Pension entity adjustments

There are two possible adjustments that may have to be made by a pension entity that receives a TAN from the employer. This will depend on whether the deemed tax paid by the pension entity under subsection 172.1(6) was claimable by the entity as an ITC (e.g., because the pension supply on which tax was deemed paid was for consumption, use or supply in the course of commercial activities of the pension entity), or was an "eligible amount" for which a rebate could be claimed.

Where the pension entity was eligible for an **ITC** on the deemed tax paid, paragraph 232.02(4)(b) requires the pension entity to add, in determining its net tax for its reporting period in which it receives the TAN, an amount determined by the formula

$$A \times B$$

where

A is the amount of the ITC; and

B is the amount determined by dividing

- where the pension entity was an SLFI on the first day on which an amount of tax is deemed to have been paid, the federal tax amount of the TAN, and,
- where the pension entity was not an SLFI on that day, the total tax amount of the TAN,

by the total of all amounts, each of which is an amount of deemed tax in respect of an employer resource consumed or used for the purpose of making the actual pension supply.

Where the pension entity is eligible to claim a **rebate** for the deemed tax paid under subsection 172.1(6), paragraph 232.02(4)(c) applies. This provision requires the pension entity to make a payment in relation to the rebate that it could claim on the deemed tax paid, to the extent that the deemed tax is reduced by the TAN.

Paragraph 232.02(4)(c) specifically requires that the payment be made if any part of the deemed tax paid is an "eligible amount" of the pension entity for a particular claim period, and the pension entity was a qualifying pension entity on the last day of the claim period.

Importantly, the pension entity would be required to make the payment even if it did not include the eligible amount in its rebate calculation. As long as all or part of the deemed tax paid is an "eligible amount" of a qualifying pension entity, the entity would be required to make the payment. Paragraph 232.02(4)(c) requires the payment to be made by the pension entity to the Receiver General by the last day of the pension entity's claim period following the one in which the employer issued the TAN.

The amount of the payment is determined by the formula

$$A \times B \times C \times D$$

where

A is the total of all amounts, each of which is the part of an amount of deemed tax that is an "eligible amount" of the pension entity for the claim period;

B is 33%;

C is the amount determined by dividing

- where the pension entity was an SLFI on the first day on which an amount of tax is deemed to have been paid, the **federal tax amount** of the TAN, and,
- where the pension entity was not an SLFI on that day, the **total tax amount** of the TAN,

by the total amount of the deemed tax; and

D is the amount determined by dividing

a) the difference between

- the pension rebate amount (amount F in Step 6 in Part II, "Pension entity rebate") for the pension entity for the particular claim period, and
- the portion of the rebate amount that the pension entity elects to share with its qualifying employers under subsections 261.01(5) and (6) (see Part III, "Elections") for the pension entity for the particular claim period; by

b) the pension rebate amount for the pension entity for the particular claim period.

Adjustments required by participating employers as a consequence of election

Employers who issue a TAN for employer resources consumed or used for the purpose of making an actual pension supply and were party to a Type I, II or III election will be required to make a further adjustment to their net tax.

The required adjustment arises from the fact that the deemed tax paid by the pension entity on the employer resources is an "eligible amount" that can be included in the pension entity's rebate calculation (amount B in Step 2 in Part II, "Pension entity rebate"). If the rebate amount were shared with the employer under one of the aforementioned elections, the employer would be entitled to a net tax deduction in respect of the shared amount. If the pension entity keeps a portion of the rebate amount, it would be required to make a payment to the Receiver General in respect of that portion. Similarly, the portion of the eligible amount taken as a net tax deduction by the employer must be added back to its net tax for its reporting period that includes the day on which it issues the TAN.

The amount to be added back is determined under paragraph 232.02(4)(d) by the formula

$$A \times B \times C \times D$$

where

A is the total of all amounts, each of which is the part of an amount of deemed tax that is an "eligible amount" of the pension entity for the claim period;

B is 33%;

C is the amount determined by dividing

- where the pension entity was an SLFI on the first day on which an amount of tax is deemed to have been paid, the **federal tax amount** of the TAN, and
- where the pension entity was not an SLFI, the **total tax amount** of the TAN,

by the total amount of the deemed tax; and

D is the amount determined by dividing

a) the amount of the net tax adjustment (deduction) determined under subsection 261.01(5), 261.01(6) or 261.01(9) for the participating employer for the particular claim period by

b) the amount that is,

- where the pension entity was an SLFI on the first day on which an amount of tax is deemed to have been paid, the sum of **pension rebate amount** for the pension entity for the particular claim period and the **provincial pension rebate amount** for the pension entity for the particular claim period, and
- where the pension entity was not an SLFI on that day, the pension rebate amount for the pension entity for the particular claim period.

Consequential net tax adjustments required of SLFI pension entities

Where a pension entity that receives a TAN under section 232.02 is an SLFI, it will be required to make certain adjustments in the determination of its net tax under section 225.2 and the draft *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* in respect of the provincial part of the HST. These adjustments, provided in section 46 of the draft *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* are in respect of:

- the amount of the federal part of the TAN – clause (vi)(B) of element G_2 of section 46;
- the amount of the provincial part of the TAN – clause (vii)(B) of element G_1 of section 46;
- the amount that the pension entity was required to include in determining its net tax as a result of the TAN in respect of an ITC that it was entitled to claim – clause (iv)(B) of element G_3 of section 46; and
- the amount that the pension entity was required to pay to the Receiver General as a result of the TAN in respect of a pension rebate that it was entitled to claim – clause (iv)(D) of element G_3 of section 46.

The CRA will publish a GST/HST notice that will explain those rules.

Notification, liability and assessments

When an employer issues a TAN to a pension entity and paragraph 232.02(4)(d) applies to require the participating employers to add an amount to their net tax, the pension entity must notify each of those employers that the TAN was issued. This notification must be made in prescribed form containing prescribed information and in a manner satisfactory to the Minister of National Revenue, and is necessary to alert the participating employers to the fact that they must make the appropriate adjustments.

Moreover, where the participating employer becomes liable to add an amount to its net tax under paragraph 232.02(4)(d), the pension entity is jointly and severally liable with the employer to pay the amount to the Receiver General, and may be assessed as such. Special rules also exist to ensure that these amounts are repaid where an otherwise liable employer ceases to exist on or before the TAN is issued. In that case, the pension entity is liable to pay the relevant amount.

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.