

Employers and Pension Plans — Prepare Now for GST/HST and QST December 31 Deadline

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Many employers that offer registered pension plans to their employees must prepare to meet their upcoming December 31, 2015 obligations under the GST/HST and QST pension plan rules. The tax authorities continue to look closely to see whether employers have fulfilled their pension plan tax obligations and are examining rebate claims filed by pension entities of registered pension plans (“pension entities”). It’s essential that employers and pension entities carefully review how these rules apply since potential changes in their organization structures could affect their 2015 calculations. This summary can help you review your 2015 pension plan tax compliance obligations and the pension entity rebates as well as help you mitigate unrecoverable tax costs.

Employers and pension plans must remember that, generally, employers have a four-year assessment period, while pension entities of registered pension plans have only two years to claim a rebate. As such, it is particularly important that employers and pension entities minimize errors related to the pension plan rules for past and current obligations which could affect eligible rebate calculations.

The GST/HST and QST pension plan rules are particularly complex for certain pension plan structures. The types of investments that pension entities hold, such as units in a master or unit trust, can also add another level of intricacy. In addition, some entities in pension plan structures may not qualify for pension entity rebates, which will generally increase the tax costs.

Background — GST/HST and QST pension plan rules

Many employers across Canada that offer registered pension plans to their employees provide services and other supplies to the pension entities. Pension entities may also acquire goods and services on their own behalf. Unless the employers and the pension entities have made a particular election, the employers must generally collect GST/HST and/or QST on the actual taxable supplies they make to their pension entities based on the applicable place of supply rules, like any other supplies made to a third party.

In addition to actual supplies, many participating employers are “deemed” to make supplies to their pension entities on the last day of their fiscal year and are required to remit amounts of taxes related to those supplies under the GST/HST and QST pension plan rules. The calculation of the amount of “deemed supplies” includes several internal and external costs, as well as actual supplies made during the year. As for the amount of

taxes on the deemed supplies, the GST/HST and QST calculations on those supplies are significantly different from the tax calculations on actual supplies. Where the employers have made actual supplies and deemed supplies and have no election related to actual supplies with the pension entities, the rules provide tax adjustments notes (TANs) and adjustments for rebates to help mitigate paying the taxes twice.

The pension plan rules provide an election to relieve tax on most actual taxable supplies made by the employer to its pension entity during the year, as well as a special measure to help certain employers that are deemed to make only a very small amount of supplies to the pension entities.

As for the pension entities, qualifying entities are generally entitled to claim a 33% rebate for most of the GST/HST and QST they paid or are deemed to have paid. However, where a pension entity is a SLFI, part of the pension entity rebates is effectively claimed through complicated calculations in their GST/HST and QST returns.

Overview

The GST/HST and QST pension plan rules apply only to employers and pension entities that meet certain conditions and definitions. Also, the pension plan rules can vary depending on an employer or pension entity's facts and circumstances. Recent changes to organizations or registered pension plans could also potentially affect how the rules apply, as well as the amount of tax owing, unrecoverable tax costs and pension entity rebates.

Are you and your pension entities affected by the pension plan rules?

Here are some questions that can help you assess how the GST/HST and QST rules may apply to your entities.

Questions for participating employers

- How many qualifying participating employers and registered pension plans are there in your corporate group?
- Do you make actual supplies of services and goods to your registered pension plans anytime during the year?
- Have any expenses been paid out of the pension entities or paid out of other types of entities, such as a master or unit trust? If so, have you reviewed those expenses and determined who is actually liable to pay these amounts under the GST/HST and QST rules (i.e., the employer, the pension entity or another entity)?
- Have you reviewed your pension plan related expenses to determine whether all required amounts are included in your calculation of deemed supplies at year-end?
- Have you claimed all eligible input tax credits (ITCs), and input tax refunds (ITRs) if applicable, on your pension related expenses?
- Do your systems and processes allow you to gather all the information required to meet your obligations?

- Have you made the election that allows employers not to remit tax on certain actual supplies made to their pension entities?

Questions for pension entities

- Is the entity a qualifying pension entity under the pension plan rules?
- Is the pension entity eligible to claim pension entity rebates?
- Have you reviewed the tax status of each pension entity? Was the pension entity a qualifying small investment plan (QSIP) last year? Is the pension entity a selected listed financial institution (SLFI) for GST/HST and/or QST purposes?
- Are any of the investments acquired directly from non-resident issuers?
- Have you included the tax paid or deemed paid in the correct claim period to calculate the pension entity's rebates?
- Has the pension entity transferred its rebate to one or more eligible employers?
- Has the pension entity made the tax adjustment transfer election (TATE) with its manager or did it make any other compliance elections?

Employers — Remitting the right amounts of GST/HST and QST

Collecting taxes on actual supplies and certain payments made by pension entities

Some employers make supplies to their pension entities during the year and, as such, must collect and remit taxes based on the usual place of supply rules as required. However, employers may be surprised to learn that the CRA has taken the position that, in many cases, certain payments made by a pension entity are consideration for taxable supplies made by the employer to the pension entity throughout the year. Based on CRA's policy, certain pension entity payments can be consideration for supplies made by the employer to the pension entity where the employer is liable to pay for the supplies, including cases where:

- The pension entity has paid the third party supplier directly
- The employer has invoiced the pension entity for the supplies, or
- The pension entity has reimbursed the employer.

As such, employers are required to determine the place of supply rules for the supplies related to these payments made by the pension entities. Specifically, they must determine the province in which the supplies are made and collect from the pension entities the correct amounts of GST/HST and QST, if applicable.

Calculating deemed supplies and taxes to remit

In addition to actual supplies made during the year, employers must annually determine, on the last day of their fiscal year, the taxable supplies that they are "deemed" to have made to their pension entities. These supplies generally include:

- Most actual supplies made to their pension entities during the year

- Pension plan related external costs, such as actuarial costs and audit fees
- Internal costs such as costs related to employees with pension plan related responsibilities.

Employers must remit the GST/HST and the QST, if applicable, on the taxable deemed supplies in the reporting periods that include the last day of their fiscal year. Employers are required to use special calculations to determine the amounts of GST, HST and QST on the deemed supplies. To do this, employers are required every year to determine their pension contributions related to employees that reside in HST-participating provinces and in Quebec.

For employers with a December 31 year-end and monthly reporting periods, these taxes must be calculated on the deemed supplies and remitted by January 31, 2016 in their December 2015 GST/HST and QST returns.

Although the pension plan rules include relieving measures to help mitigate the effect of the GST/HST and QST that apply on both actual and deemed supplies, many of these provisions add significant complexity to the calculations. These relieving measures include:

- Tax adjustment notes (TAN)
- Repayment obligations of pension entity rebates affected by these adjustments
- Adjustments in the GST/HST and QST returns of some pension entities.

However, as noted previously, the GST/HST and QST rules provide an election for certain employers and pension entities to help relieve tax on certain actual supplies. Employers and pension entities that wish to make this election for 2016 for the first time should carefully determine whether they meet all the filing requirements, conditions and deadlines, as the CRA can revoke the election in some circumstances.

KPMG observation

Eligible employers that have elected to relieve GST/HST and QST, if applicable, on actual supplies made to their pension entities should carefully review the rules to determine whether some of the exceptions apply to certain specific supplies.

Pension entities — Do they have the same SLFI status as last year?

SLFI and non-SLFI pension entities have different rules and calculations

Many of the calculations for the GST/HST and QST pension plan rules depend on whether a pension entity qualifies as a SLFI or a non-SLFI. As such, employers and pension entities must determine whether the pension entities qualify as SLFIs for GST/HST and/or QST purposes to apply the correct rules. Among other issues, a pension entity's SLFI status can affect:

- The requirement to apply the special attribution method (SAM) formula, which includes complex adjustments, and the obligation to track of all the HST and QST paid separately

- GST/HST and QST registration obligations
- Filing requirements related to the Annual Information Return and the GST/HST and QST final return
- Calculations of the pension entity rebates
- Calculations of the pension entity rebate amounts shared with qualifying employers.

QST SLFI rules continue to cause confusion

Quebec's changes to the QST rules on January 1, 2013 has created uncertainty for many pension entities, including whether these entities are SLFIs for QST purposes and whether they are required to be registered for QST purposes. As a result of these changes, each pension entity must determine whether it is a SLFI under the GST/HST rules, as well as whether it is a SLFI under the QST rules. As such, employers may have pension plans with pension entities that have different GST/HST and QST SLFI status, or even may be considered a SLFI for QST purposes but not for GST/HST purposes (or vice versa). Where a pension entity has both a SLFI and a non-SLFI status, significantly different rules and compliance requirements apply for GST/HST and QST purposes.

Details still to come for QST SLFIs

Before 2013, the QST system did not include the concept of a SLFI. Now, similar to the GST/HST rules, each pension entity must annually determine whether it qualifies as a QST SLFI to use the proper QST pension entity rebate rules. While Quebec has released most of the details and measures relating to the QST SLFI, some details specific to the QST SLFI regulations are still pending. As previously announced, these upcoming QST SLFI amendments are intended to apply retroactively, and should provide guidance on how to calculate and claim QST pension entity rebates and other QST plan adjustments.

We can help

Employers and pension entities continue to face significant challenges with the pension plan rules as well as related audits by the tax authorities. Your KPMG adviser can help you manage these complex rules and help you determine how they apply specifically to the facts and circumstances of your business and your pension entities. Amongst other compliance obligations, we can assist you to calculate your actual and deemed supplies, determine the SLFI status of your pension entities and manage the tax costs of the pension plan rules on your organization.

Your KPMG adviser can also help you determine the impact of other federal or provincial indirect tax deadlines and changes that may affect your business. We can help you manage your indirect tax compliance obligations in all relevant jurisdictions and also help you ensure that you are not missing refund opportunities.

For details, contact your KPMG adviser.

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