

Application of GST/HST to First Nations

With the introduction of HST in Ontario and British Columbia there's been a lot of attention on the impact of a new "harmonized" tax on consumers and businesses. One area that has been somewhat overlooked in the information that has been disseminated is the impact of these harmonization initiatives on First Nations – people and businesses.

The impact of the new harmonized tax is significant for First Nations people and businesses – where the person is registered for GST – that person is automatically registered for HST which means that when the new tax takes effect, there will be an obligation to collect the tax at 12%.

Current administrative policy concerning the treatment of supplies made to, or by, Indians, Indian bands and band-empowered entities is outlined in GST/HST Technical Information Bulletin B-039: Application of the GST/HST to Indians. For the most part, goods delivered to a Reserve, and services performed on a Reserve does not attract GST, unless the person is registered for the tax. This will not change when HST is implemented. If, for example, a car is purchased by an Individual that is eligible to use the Certificate of Indian Status will not pay GST on the car delivered to the Reserve. Similarly, after July 1, 2010 – HST will not apply to the sale of a car under similar circumstances.

The treatment of Indian purchases under the GST/HST outlined in Technical Bulletin B-032R is consistent with the Indian Act, in that the personal property of an Indian or an Indian band situated on a reserve, and their interests in reserves or designated lands are not subject to GST or HST.

Those registered for GST that have their place of business on a Reserve will have to collect and pay HST at 12%. For example, a business operating on a Reserve that is registered for GST does pay GST at 5% on the goods and the services they buy, and virtually everything that GST currently applies to will attract HST at 12% when the tax comes into effect.

Businesses that are registered for GST are generally able to claim the GST they pay as an input tax credit. The same rule will apply for HST that has to be paid – however there are a few expenses where large business generating more than \$10M in revenues will only be able to claim the 5%

GST component of the HST as an input tax credit. An example of an expense this rule will apply to is telecommunication costs (except internet). Where a large business pays HST at 12% on their phone bills – only the 5% will be able to be claimed as an input tax credit. This restriction will not apply to a GST registered business that generates less than \$10M in revenues a year.

So what will a GST registrant have to pay the 12% HST on? The short answer is "everything GST is paid on now". There are a few exceptions to this where only GST will apply, for example, GST at 5% will continue to apply to gasoline, diesel, marine diesel and aviation fuel and the HST at 12% will not. There is a short list of items that HST at 12% will not apply to as for the most part, the agreement between the Provincial Government of British Columbia and the Federal Government calls for a "harmonization" of the two taxes.

Bands that have implemented the First Nations Tax on fuel, alcohol and tobacco will not see the rate of tax on these items increase. The rate of tax that will apply will remain at 5%. As well – where a Band in British Columbia has implemented the First Nations GST – the tax rate that will apply in these cases will continue to be 5%.

First Nations individuals will not see any changes to their tax status for goods and services purchased on reserve. Those First Nations entities that will be affected are those who currently affected by GST.

In the next article we will discuss the Transitional Rules for BC's HST which will identify the earliest date a person can expect to see the 12% tax on an invoice and when, if they have collected the tax, they will be required to start remitting it.

Information is current to October 23, 2009. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

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