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A Brief Introduction to GST/HST

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The Canadian federal Goods and Services Tax ("GST") is a consumption tax that applies to most goods and services supplied in Canada at a rate of 5%. As a value-added tax, the GST applies at every level of the supply chain. Intermediaries in the supply chain, which buy supplies in order to in turn provide goods and services to consumers, can often recover the GST that they pay by claiming input tax credits ("ITCs") claimed on GST returns that refund GST paid on purchases. As a result, the tax is effectively only paid by the end consumer.

Certain provinces have harmonized their provincial-level sales tax with the federal GST. In these provinces, a single combined Harmonized Sales Tax ("HST") is imposed, consisting of a federal GST component together with a provincial sales tax component. As a harmonized tax, HST is administered under the same general rules as the GST and by the same taxing authority. For provinces that do not impose HST, federal GST and provincial sales tax (if applicable) are levied separately under differing rules and authorities.

The various rates for each province/territory are summarized in the following table.

Province	GST Rate	PST Rate	Total Rate
Alberta	5%	0%	5%
British Columbia	5%	7%	12%
Manitoba	5%	7%	12%
New Brunswick	5%	10% (HST)	15%
Newfoundland and Labrador	5%	10% (HST)	15%
Northwest Territories	5%	0%	5%
Nova Scotia	5%	10% (HST)	15%
Nunavut	5%	0%	5%
Ontario	5%	8% (HST)	13%
Prince Edward Island	5%	10% (HST)	15%
Québec	5%	9.975%	14.975%
Saskatchewan	5%	6%	11%
Yukon	5%	0%	5%

Both GST and HST are administered by the Canada Revenue Agency ("CRA"). To the extent that tax is imposed on importations of goods into Canada, the Canada Border Services Agency (the "CBSA") administers GST as well. If the registrant is in Québec, the federal GST is administered by Revenu Québec in addition to the provincial Québec Sales Tax ("QST").

Imposition of GST/HST to Goods and Services

GST/HST is imposed upon every recipient of a taxable supply made in Canada.

A "recipient" is generally the person liable to pay for the supply. The tax only applies to value of consideration payable for "taxable supplies" made in Canada. However, identifying exactly what constitutes a taxable supply is a multi-step process.

A "supply" includes the provision of property or a service in any manner. A "taxable supply" is first defined as one made in the course of "commercial activity", which is further defined to constitute one of three things:

1. Carrying on "business" with a reasonable expectation of profit, except to the extent

the business involves the making of "exempt supplies";

2. An adventure or concern in the nature of trade, except to the extent that it involves the making of exempt supplies; or
3. The supply of real property (except an exempt supply).

A "business" generally includes a profession, calling, trade, manufacture, or undertaking of any kind whether or not engaged in for profit. It excludes acting as an employee.

Note, however, that there are zero-rated and exempt supplies that are not subject to GST/HST. These include supplies such as used residential property, health care services, insurance and banking services, and many supplies by charities and public sector bodies, to name a few. It should be noted that zero-rated supplies are actually "taxable supplies" taxed at 0%; accordingly, ITCs are available in respect of these while no ITC is available for "exempt supplies".

Collection of GST/HST

Every person who makes a taxable supply must collect the tax payable by the recipient. There are some exceptions in certain sales of real property.

Individuals are not required to collect and remit GST/HST on wages received by them in the course of an office or employment. Independent contractors, however, usually must collect and remit GST/HST (subject to the small supplier threshold). It is therefore crucial to determine for GST/HST purposes, as it is for income tax purposes, whether an individual is carrying on activities as an employee or independent contractor.

Registration

Not every person making taxable supplies in Canada or to Canadians need register for GST/HST. For example, persons making taxable supplies under a stipulated annual threshold ($30,000 in most situations, $50,000 for charities and public service bodies) are not required to register for GST/HST. The amount of taxable supplies must constantly be monitored to ensure that the limit is not exceeded. Conversely, it is also possible to voluntarily register for GST/HST, even if the requirement has not been met.

The general rule is that every person who makes a taxable supply in Canada in the course of a commercial activity in Canada must register for GST/HST, unless:

- the person is a "small supplier";
- the only commercial activity of the person is the sale of real property otherwise than in the course of a "business"; or
- the person is a non-resident who does not "carry on business in Canada".

Small Suppliers

A "small supplier" is not required to register for GST/HST. A small supplier is generally one who, together with any "associated" companies, makes taxable supplies in the preceding four calendar quarters of less than the $30,000 or $50,000 threshold, as the case may be. Therefore, the determination is made for each particular calendar quarter, on a quarter-by-quarter basis, and includes the consideration of supplies made by associates. In calculating total taxable supplies for purposes of the threshold test, supplies made both inside and outside Canada must be included, but certain sales of goodwill may be excluded. Supplies of financial services or sales of capital property of the person or an associate are also excluded.

Sales of Real Property

Although the taxable sale of real property constitutes commercial activity, a person is not required to register for GST/HST when it sells real property if the property is not being sold in the course of "business". A business generally includes a profession, calling, trade, manufacture, or undertaking of any kind whether or not engaged in for profit.

Non-Residents Carrying on Business in Canada

A non-resident is not required to register for GST/HST unless it carries on business in Canada. Carrying on business may take many forms, including the carrying out of a profession, business, undertaking, manufacture, or trade. It normally involves the carrying out of the activities on a "regular" or "continuous" basis. In other words, isolated business transactions carried on in Canada by a non-resident as part of a business carried on outside Canada are often not sufficient to constitute carrying on business in Canada.

In determining whether a non-resident person is carrying on business in Canada (where there is no permanent establishment in Canada), the factors generally considered include the place where the contract is made, and the place from which the profits arise (i.e., where the operations that lead to profits are carried out). While these two factors have been given greatest emphasis in the case law, they are far from exhaustive. Other relevant factors include:

- the place where delivery of goods or payment for goods is made;
- the place of manufacture and storage of inventory;
- the place where the orders are solicited;
- the place where the bank accounts are maintained; and
- the whereabouts of any branch, office, or agents or employees.

Please note that effective July 1, 2021, non-residents who supply digital products to Canadian consumers as well as non-residents providing goods through fulfillment warehouses or who supply short term accommodation must register under a simplified system if such sales exceed the $30,000 annual threshold.

GST/HST Returns

A GST/HST return must be filed for each reporting period of a registrant. Reporting periods can be monthly, quarterly, or annually as explained in the next section. The filing due dates for the returns will differ depending on the length of the reporting period; these are discussed below.

Each return comprises a summary of taxes collected and self-assessed, less the sum of ITCs the registrant is entitled to, resulting in either a net tax owing or net refund. For smaller registrants, there are also some simplified methods of determining net tax or ITCs. These and entitlement to ITCs are discussed further below.

Annual filers may be required to pay quarterly installments.

Reporting Periods

A GST/HST registrant may have one of three reporting period frequencies: monthly, quarterly, or annually. A reporting period frequency will be assigned automatically by the CRA when an application for registration is filed; however, in certain circumstances the registrant will be entitled to modify this with reference to the amount of anticipated taxable supplies.

The required reporting period is determined with reference to what is known as the "threshold amount". The threshold amount is based on the amount of taxable supplies (i.e., including zero-rated supplies, but not exempt supplies) made in a fiscal year by a registrant together with associated entities, both inside and outside Canada:

- A registrant whose threshold amount in a fiscal year exceeds $6 million must file monthly;
- Registrants whose fiscal threshold amount ranges between $1.5 million to $6 million must file quarterly returns (and may file monthly if they so wish);
- Registrants with taxable supplies for a fiscal year of below $1.5 million will normally file annually, although they may file more often if they wish.

A registrant may choose to have a calendar fiscal year for GST/HST purposes, even if its business fiscal year is otherwise. A registrant may also choose to file more frequently than required under the legislation if the registrant is entitled to substantial ITCs and wishes to have them refunded more quickly. More frequent filing may be advantageous from a cash-flow perspective, but also involves more paperwork.

Filing

Registrants must file their GST/HST returns, as well as certain forms, elections, and applications, with the appropriate Tax Centre of the CRA. This office may not be the same office where the registrant files its income tax returns. Québec registrants file their returns with the appropriate office of the Ministère du Revenu du Québec.

Monthly and quarterly filers must file returns within one month from the end of the reporting period. Annual filers must generally file within three months of year end, but certain self-employed individuals with calendar fiscal years may have until June 15th to file returns.

Electronic filing is generally required for "large businesses" and those whose annual net tax exceeds $1,500,000. Effective for periods beginning in 2024, most registrants are required to file GST/HST returns electronically. Subsection 278.1(2.1) of the *Excise Tax Act* and section 2 of the *Electronic Filing and Provision of Information (GST/HST) Regulations* require a person that is not a charity to file electronically.

Remittances

Remittances of net tax owing for a reporting period must generally be paid by the due date for filing the return. However, certain self-employed individuals that have until June 15th to file returns, must remit the corresponding net tax owing by April 30th.

Annual filers are normally required to file quarterly installments of net tax — they are generally required to make quarterly installments unless their installment base is less than $3,000. The installment base is determined as the lesser of net tax for the prior fiscal and estimated net tax of the current fiscal, resulting in each installment being one quarter of that. Each installment must be paid within one month after the end of the fiscal quarter.

Payment can be made by mail, along with the appropriate return, electronically, or at a financial institution in Canada. Paying electronically or at a financial institution is mandatory for amounts of $50,000 or more for payments made prior to 2024; for payments made after 2023 this threshold is reduced to $10,000. Eligible persons may also file their GST/HST returns online or by telephone and make electronic payments. Cheques must be made payable to the Receiver General and the registrant's business number should be written on the cheque.

Net Refunds

If a registrant's net tax for a reporting period is negative, a refund may be claimed.

Even if a refund appears payable, the Minister will not pay it until all returns (including any other federal tax returns) required to be filed by the registrant have in fact been filed. Moreover, no refund will be paid if the person has any amounts owing under other statutes — rather, the amount of the refund or rebate will be automatically offset against any outstanding amount.