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# Budget 2016: Proposed GST/HST Amendments

Budget 2016 announced a number of GST/HST changes that will be of significant interest to those in the call centre industry, as well as to certain businesses currently treated as "*de minimis* financial institutions" for the purposes of the *Excise Tax Act* (the "**ETA**").

## Exported Call Centre Services

Budget 2016 proposes a new zero-rating export provision to specifically address call centre technical or customer support services (the "**Support Services**") supplied to non-resident persons that are not registered for GST/HST purposes.

This new provision will apply where two conditions are fulfilled. First, the non-resident is not a "consumer" of the services. In this regard, a "consumer" of the services means an individual who acquires the services for personal consumption, use or enjoyment.

Second, it must reasonably be expected at the time the supply is made that the Support Services are to be rendered primarily to individuals who are outside Canada at the time the support is rendered. For this purpose, a person to whom a service is rendered is the person who receives the benefit, consumption, enjoyment or use of the Support Services – in this context, the customers of the non-resident who call into the call center, rather than the person who pays for them.

The proposed amendment will apply, when enacted, to any supply made after March 22, 2016 ("**Budget Day**"). In addition, this amendment will apply retroactively to supplies made before Budget Day if the supplier did not, on or before that day, charge, collect or remit an amount as or on account of GST/HST in respect of the supplies. In other words, suppliers who took the risk of not

charging, collecting and remitting GST/HST on the basis of the law as it existed before Budget Day (the "**Previous Law**") will receive the benefit of retroactive relief from potential assessment.

For providers of Support Services, this change is significant. Under the Previous Law, there was uncertainty as to whether the supply of Support Services would qualify for existing zero-rating provisions. Arguably, if any part of a service was "rendered to an individual while that individual is in Canada", the supply of the service to the non-resident would be excluded from being a zero-rated supply (and therefore be subject to GST/HST). As a result, if even a *de minimis* portion of the service was rendered to callers in Canada when receiving the call centre Support Services, the supply of the entire service could be excluded from GST/HST zero-rating relief. This amendment largely resolves that uncertainty.

There are a couple of other points to consider. First, it should be noted that the Support Services affected by the proposed new zero-rating provision do not necessarily have to be performed by a call centre. The Support Services could be effected "by means of" any other telecommunications, such as through Internet access. Second, supplies of (i) "a supply of an advisory, consulting or professional service" or (ii) "a service of acting as an agent of the non-resident person or of arranging for, procuring or soliciting orders for supplies by or to the non-resident person" are excluded from the proposed new zero-rating export provision, although such services may be zero-rated under other existing provisions of the ETA.

## *De Minimis* Financial Institutions ("FIs" )

A so-called *de minimis* FI (as defined in the ETA) may be subject to more restrictive input tax credit ("**ITC**") allocation rules that may restrict its ability to claim ITCs.

As *de minimis* FIs may provide significant financial services, and may compete with traditional or mainstream FIs (such as banks, insurance companies and investment dealers), the rules governing *de minimis* FIs are intended to ensure that *de minimis* FIs do not receive any unfair competitive advantage under the GST/HST rules vis-à-vis mainstream FIs. However, under the existing rules, a person who earns more than $1 million in interest income in respect of bank deposits may be considered to be a *de minimis* FI, even

though they do not, in practical terms, compete with mainstream FIs.

Budget 2016 proposes amendments to narrow the scope of the definition of a *de minimis* FI to exclude, in computing whether a person has interest income (or other income from the making of supplies of certain financial services) in excess of the $1 million threshold to be a *de minimis* FI, interest earned in respect of demand deposits, term deposits and GICs with a term not exceeding 364 days. This proposal implicitly acknowledges that the existing legislation extends too broad a net by capturing businesses exceeding the *de minimis* threshold as a result of receiving interest on short-term deposits made with mainstream FIs.

In determining whether a registrant is a FI, this proposed amendment will generally apply to the person's taxation years beginning after Budget Day. However, this exclusion also applies for the purpose of determining whether a person is a "reporting institution" (and, therefore, is required to file a Financial Institution GST/HST Annual Information Return ) throughout a fiscal year of the person that begins before Budget Day and ends on or after that day.

These amendments not only provide financial relief by broadening the availability of ITC claims, but also relieve the administrative burden of allocating expenses between a business' "commercial activity" and short-term deposit making activity (and certain other financial activities) for the purposes of determining ITC eligibility.

by Jamie M. Wilks and Ehsan Wahidie, Student-at-Law

For more information on this topic, please contact:


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| Toronto | Jamie M. Wilks | 416.865.7804 | jamie.wilks@mcmillan.ca |
| Toronto | Carl Irvine | 416.865.7266 | carl.irvine@mcmillan.ca |


a cautionary note