

Accessing Input Tax Credits (“ITCs”) of Holding Companies and Partners and Structuring of Partnerships to Reduce GST/HST Costs

Overview

When an operating company carries on business in Canada and is engaged exclusively in a taxable commercial activity, claiming ITCs to recover GST/HST paid on taxable business inputs is generally straight-forward. When taxable expenses are incurred at the holding company level, or incurred by a partner if the business is carried on through a partnership, special considerations apply. Where ITCs could be available to a holding company or a partner, delaying registering the company or partner could cost it ITC claims and money. Furthermore, careful structuring of partnership activities may be required to avoid unrecoverable GST/HST. This Bulletin provides further details below on these opportunities to recover or relieve taxes.

1. Holding Companies

To claim ITCs to recover GST/HST payable on certain expenses or imports, a holding company resident in Canada (“Holdco”) can voluntarily register for the GST/HST in certain circumstances.¹ To the extent that Holdco’s taxable acquisition or importation of property or services “relate to” the shares or indebtedness of a

¹ ETA, subparagraph 240(3)(d)(i).

“related corporation” (“Relatedco”), then Holdco could access ITCs.² Holdco is related to another corporation for GST/HST purposes if they are related to each other under subsections 251(2) to (6) the *Income Tax Act*.³ Another condition of ITC eligibility is that Relatedco has acquired or imported all or substantially all⁴ of its property for consumption, use or supply exclusively in the course of its taxable commercial activities.

Canada Revenue Agency (“**CRA**”) provides a number of examples where CRA considers Holdco’s expenses to “relate to” the shares or indebtedness of Relatedco, such as:

1. legal services acquired by Holdco to sell the Holdco’s shares of Relatedco, and
2. appraisal services acquired by Holdco to value Relatedco’s real estate that secures a loan from Holdco to Relatedco, so that Holdco can consider whether to increase that loan.⁵

CRA restricts the eligibility for ITC claims by requiring a *direct* linkage between (1) the taxable inputs acquired or imported, and (2) the shares or indebtedness of Relatedco. To the extent that the inputs relate *directly* to raising of Holdco’s own capital or its own share structure, despite a secondary or *indirect* purpose relating to the shares or indebtedness of Relatedco, then CRA would disallow any ITC claims. For example, in CRA’s view, legal or other expenses incurred in relation to Holdco’s issuance of its own shares to finance the purchase of additional shares of Relatedco would be ineligible for ITC claims. CRA maintains this restrictive

² ETA, subsection 186(1).

³ ETA, subsection 126(2).

⁴ CRA has administratively interpreted “all or substantially all” to mean at least 90%, although the jurisprudence suggests a lesser proportion could suffice, depending on the particular circumstances. See, for example, *Ruhl (W.) v. Canada* [1998] G.S.T.C. 4 (TCC).

⁵ CRA’s GST/HST Memorandum 8.6 - Input Tax Credits for Holding Corporations and Corporate Takeovers (November 2011).

interpretation despite the Courts having interpreted these rules more liberally.⁶

To qualify for the ITCs, Holdco need not necessarily own the shares of the operating company (“**Opco**”) directly. If Holdco indirectly owns Opco through Holdco’s direct ownership of the shares of Relatedco, then it is possible that Relatedco’s shares of Opco (or of another holding company in the ownership chain) could be deemed to be property acquired exclusively for consumption, use or supply in Relatedco’s commercial activities⁷ (one of the conditions noted above for ITC eligibility).

If a corporation resident in Canada (“**Takeoverco**”) is proposing to acquire all or substantially all⁸ of the shares, having full voting rights, of another corporation (“**Targetco**”), then Takeoverco can become registered for the GST/HST and claim ITCs on its takeover expenses.⁹ Another condition of Takeoverco’s ITC eligibility is that Targetco has acquired or imported all or substantially all¹⁰ of its property for consumption, use or supply exclusively in the course of its taxable commercial activities (parallels a condition above of Holdco’s ITC eligibility relating to Relatedco’s property). In certain circumstances, fees incurred by Targetco to resist a takeover may be eligible for ITC claims, particularly where Targetco is engaged exclusively in taxable commercial activities.¹¹

Note that a partnership cannot access ITCs through these rules and a partnership in the ownership chain could restrict a holding company’s ITC eligibility.

⁶ *Perfection Dairy Group Ltd. v. R.*, [2008] G.S.T.C. 124 (TCC) and *Stantec Inc. v. R.*, [2008] G.S.T.C. 137 (TCC); *aff’d* [2009] G.S.T.C. 143 (FCA).

⁷ ETA, subsection 186(3).

⁸ *Supra*, footnote 4.

⁹ ETA, subsection 186(2) and subparagraph 240(3)(d)(ii).

¹⁰ *Supra*, footnote 4.

¹¹ *BJ Services Company Canada Inc. v. R.*, [2002] G.S.T.C. 124 (TCC).

2. Partners

Where a partner, other than an individual, acquires taxable property or services for consumption, use or supply in the course of taxable “commercial activities” of the partnership, of which the partner is a member, and not on account of the partnership, the partner should consider voluntarily registering for the GST/HST at the earliest opportunity to claim ITCs to recover the GST/HST payable on such acquisitions.¹² In one recent case, a limited partner’s expenses relating to being publicly listed were found not to be expenses incurred “in the course of the activities of the partnership”, so ITCs were denied.¹³

3. Partnerships

Limited partnerships (“LPs”) engaged in making exempt supplies would generally be restricted from claiming ITCs to recover GST/HST paid on business costs. For example, a LP making exempt long-term rentals of residential units in its apartment buildings would be restricted from claiming ITCs. If the general partner (the “GP”) of that LP were managing the apartment buildings on behalf of the LP, then the GP could be required to charge and collect GST/HST on the GP’s (imputed or actual) fees for management services, thereby effectively increasing the LP’s costs of managing the buildings by the amount of the taxes charged and collected.

In certain circumstances, the LP could be structured in a manner such that GP would be considered to be performing its activities as a member of the partnership and not in the course of its own business activities.¹⁴ As such, the GP should not be considered to be making taxable supplies of services to the LP. Instead, the LP would be deemed to be managing the apartment buildings on its own behalf, thereby eliminating GST/HST on the management

¹² ETA, subsection 272.1(2) and paragraph 240(3)(a), and CRA’s GST/HST Policy Statement P-216 – Registration of a Partner (Other than an Individual) Not Engaged in a Commercial Activity Other Than the Commercial Activity of the Partnership (July 1998).

¹³ *FP Newspapers Inc. v. R.*, [2013] G.S.T.C. 21 (TCC).

¹⁴ ETA, subsection 272.1(1) and CRA’s GST/HST Policy Statement P-244 – Partnerships – Application of Subsection 272.1(1) of the *Excise Tax Act* (August 9, 2004).

input. Another area where this structuring could be helpful is in the case of a private investment fund established as a LP.

Planning is Important

When dealing with takeovers, ownership structures and establishing or acquiring businesses, many considerations need to be taken into account. GST/HST can often be overlooked. Careful planning in advance can eliminate or significantly reduce GST/HST costs. Eligibility for ITC claims or outright GST/HST relief can depend on such careful planning. As simple a matter as timely GST/HST registration of a holding company or partner can mean the difference between achieving significant tax savings or not. GST/HST should be included in the list of considerations to be taken into account in pursuing takeovers (or resisting them), setting up ownership structures and establishing or acquiring businesses.

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[a cautionary note](#)

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