

In Brief

Canada

New GST Rules for Imported Goods

The 7 percent Canadian Goods and Services Tax (the "GST") is a multi-stage value-added tax that, subject to certain relieving provisions, applies to the supply of goods, real property, intangible property and services throughout the distribution chain, including the import of goods into Canada. The GST is not intended to be a direct cost of doing business on any businesses which are registered for the GST and engaged exclusively in making "taxable supplies". They can generally claim input tax credits ("ITCs") on their GST returns to recover GST payable on costs.

The Canadian Department of Finance recently proposed new rules to prevent the loss of GST revenues on transactions involving the importation of goods into Canada. The abuse intended to be addressed involves situations where a non-resident vendor, registered for the GST, delivers, or makes available, goods outside Canada to a Canadian purchaser (e.g., FOB U.S. vendor's premises), but acts as the importer of record in clearing the goods through Canadian customs. The GST legislation deems such sales to occur outside Canada and the non-resident vendor is relieved from any obligation to charge, collect and remit GST. The non-resident vendor would generally claim an ITC on its GST return to recover the 7 percent GST collected by the Canadian customs authorities on the importation of the goods into Canada. As a result, no net GST would be paid on the transaction, even in circumstances where, had the purchaser paid the GST directly, it could not have claimed an ITC to fully recover the GST payable. (Of note, the Canadian revenue authority has historically disallowed the ITCs claimed by non-resident vendors in these circumstances. A number of these cases are currently being appealed to the Tax Court of Canada).

To address this perceived abuse of the GST legislation, the Department of Finance introduced the so-called proposed "de facto importer" rules for goods imported on or after October 3, 2003. Under the proposed rules, the purchaser is considered to have paid the GST and can claim an ITC to recover the GST, if the purchaser is a GST registrant and is otherwise entitled to claim an ITC, and the non-resident vendor provides the purchaser with the import documentation, which indicates that the vendor paid the GST. To compensate the non-resident vendor for the GST paid by the vendor on the importation of the goods into Canada, the purchaser would reimburse the GST paid. Alternatively, if the vendor and purchaser enter into a joint election, in prescribed form, the vendor can claim the ITC, so long as it charges, collects and remits the GST (or the 15 percent Harmonised Sales Tax or HST for certain participating Atlantic Canada provinces) on its sale(s) of the goods to the purchaser. With the joint election, the taxable sales are considered to be made in Canada.

Note, the "de facto importer" rules only apply to the importation of goods in certain circumstances. Other rules are still applicable in other circumstances.

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