

BUDGET 2018: GOVERNMENT PROCEEDS WITH "INVESTMENT LIMITED PARTNERSHIP" GST/HST MEASURES AND HOLDING CORPORATION CONSULTATIONS

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Budget 2018 reaffirmed the Government's desire to subject certain services rendered by general partners ("GPs") of "investment limited partnerships" ("ILPs") to special GST/HST treatment, and signalled its intention to examine the so-called "holding corporation rule".

"Investment Limited Partnership" Proposals Modified

On September 8, 2017, the Government introduced draft GST/HST amendments that would treat certain services rendered by a GP of an ILP to the ILP as taxable supplies (the "September 8 Proposals"). For details on these proposals, refer to our October 2017 [Tax Law Bulletin A New Tax on Investment Funds: Distributions to General Partners \(GPs\) of "Investment Limited Partnerships" Possibly Subject to GST/HST](#). Under the September 8 Proposals, GST/HST will be imposed on the fair market value (the "FMV") of administrative and management services provided by a GP to an ILP of which it is a member.

Comments were received by the Government from stakeholders on the September 8 Proposals. As a result of this consultation, Budget 2018 introduced changes to the proposed legislative amendments.

Budget 2018 addresses concerns that had been raised regarding the retrospective aspect of the September 8 Proposals. GST/HST is no longer generally proposed to be levied on services rendered by a GP to an ILP before September 8, 2017. The one notable exception is where the GP charged, collected or remitted GST/HST on account of any such pre-September 8, 2017 services.

Moreover, the FMV of the services rendered by a GP to an ILP is no longer to be determined on the date that the supply is made. Depending on the particular circumstances, the FMV will instead be determined on (i) the last day of a "billing period" where there is a separate taxable supply of services deemed to be made in respect of the billing period, or (ii) in any other case, the last day of a GST/HST reporting period of the GP. In the latter case, there is deemed to be a separate taxable supply of services during each reporting period of the GP.

Notwithstanding the Government's modification of the ILP proposals, issues concerning the computation of

FMV remain. First, there is no clarification as to how FMV should be determined. Second, the GST/HST imposed on the FMV of supplies made by the GP at the relevant time may not bear any relation to the amounts actually paid to the GP for its services, due to timing differences and other considerations.

Finally, as a result of the ILP proposals, an ILP may be a “selected listed financial institution” (“SLFI”) for HST purposes. Under the September 8 Proposals, these SLFI measures were to take effect January 1, 2019. As a result of changes to the proposals included in Budget 2018, an ILP may elect to accelerate the rules applicable to SLFIs.

Consultations on Input Tax Credit (“ITC”) Holding Corporation Rules

At present, holding corporations resident in Canada may register for the GST/HST and claim ITCs to recover GST/HST payable on expenses incurred in relation to shares or indebtedness of an operating corporation engaged in a taxable commercial activity. The Government intends to consult stakeholders on these rules, particularly two aspects of the rules: (a) the limitation of the rule to corporations, and (b) the required relationship of the subject expenses to the operating corporation.

The expansion of ITC eligibility to situations involving not only corporations, but individuals, partnerships and trusts, would be a welcome development. From a policy perspective, the legal structure chosen to pursue commercial activities should not prejudice access to, and the availability of, ITCs.

Conversely, consultation on the second area of focus may be an unwelcome development. Despite jurisprudence taking an expansive view of what expenses may qualify for ITCs, the Canada Revenue Agency's administrative policy is more restrictive, requiring a direct relationship between the expenses and the operating entity to qualify for ITCs (subject to certain available look-through rules). In Budget 2018, the Government indicated that it “intends to clarify which expenses of the parent corporation that are in respect of shares or indebtedness of a related commercial operating corporation qualify for input tax credits”. By this statement, the Government may be signalling that it intends to introduce its currently non-binding restrictive administrative policy into law.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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