

BUDGET 2023: PROPOSED GST/HST AMENDMENTS AFFECT THE SCOPE OF FINANCIAL SERVICES

Posted on March 31, 2023

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Budget 2023 proposes to amend the Excise Tax Act (the “**ETA**”) to expressly subject supplies of “payment card network” services to Goods and Services Tax/Harmonized Sales Tax (“**GST/HST**”). The proposed amendment to the ETA is intended to overrule the judgment of the Federal Court of Appeal in *Canadian Imperial Bank of Commerce v. The Queen*, (the “**CIBC Visa Decision**”), which held that “payment card network” services were exempt financial services.

Where a network operator, such as Visa, provides payment clearance services for credit (or debit) cards, these services will no longer qualify as “financial services” for the purposes of the ETA. The proposed exclusion from the definition of “financial service”, when enacted, may have retroactive effect. The retroactive effect could undermine rebate applications already filed for GST/HST paid in respect of exempt payment card clearance services based on the CIBC Visa Decision.

Budget 2023 generally proposes to extend the time during which the Canada Revenue Agency may assess a person as having made taxable supplies of payment card clearance services excluded from the definition of “financial service” beyond the normal statutory assessment period (up to one year after the legislation is enacted to add the exclusion).

The proposed exclusion from the definition of “financial service” in the ETA could have broader implications than just excluding “payment card network” services. In *Zomaron Inc. v. The Queen*, the Tax Court of Canada found that an intermediary “arranging for” payment card network services makes exempt supplies of financial services within the meaning of paragraph (l) of the “financial service” definition. If an intermediary is now taken to do arranging for taxable (non-financial) services, the intermediary’s services will no longer qualify as a “financial service” under paragraph (l). It is possible that the intermediary could recoup the applicable GST/HST from a registrant network operator without increasing the operator’s costs, because the operator would acquire the intermediary’s services to make its taxable supplies, and should therefore be entitled to recover the taxes by way of input tax credit claims.

Supplies of both “payment card network” services, as well as intermediaries that arrange for such services,

should carefully consider the implications of the amendment to the ETA proposed in Budget 2023.

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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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