

Significant Changes To GST/HST Holding Company Rules

August 14, 2018

The Department of Finance released proposed amendments to the Excise Tax Act that could significantly impact holding companies.

On July 27, 2018, the Department of Finance ("Finance") released a number of proposed amendments to the Excise Tax Act (the "Act"), including section 186, that could significantly impact many businesses that use a holding corporation structure. Section 186 allows a holding corporation to claim input tax credits ("ITCs") to recover GST/HST on expenses incurred with respect to a subsidiary.

Current Rule

The general rule is that a holding corporation cannot claim ITCs for expenses incurred with respect to shares or indebtedness of a subsidiary. In order to claim an ITC, subsection 169(1) requires that property or service is acquired for consumption, use or supply in the course of commercial activities of the company.

Activities related to holding a share or indebtedness of a subsidiary is generally not a commercial activities. Where certain conditions are met, section 186 deems a holding company to be carrying on a commercial activity and allows it to claim ITCs to the extent that expenses are reasonably incurred in relation to a subsidiary.

Proposed Rule – More Targeted

The proposed amendments appear to address the CRA's longstanding concern that the existing rules are too broad as a holding company is only required to prove that the expenses were reasonably incurred "in relation to" a related subsidiary.

The proposed amendments contain more detailed, precise language that aims to more clearly define the scope of activities that would qualify and effectively narrow the type of expenses that would be eligible for ITCs. Moving forward, section 186 will require a more direct link between the holding company expenses and the activities of the subsidiary.

Most holding companies will be affected by these changes.

The draft amendments are open to comment until September 10, 2018.

Consultation Paper – Significant Narrowing of Holding Corporation ITCs

Further to the proposed amendments, Finance also released a consultation paper that proposes to limit the ability of a parent or holding corporation to claim ITCs to "closely related" (i.e., >90 per cent voting control) rather than just a "related" subsidiary. If implemented, this amendment could significantly impact corporate investors and existing ownership structures that use a holding company. The holding company rules would be available only to those arrangements that are effectively wholly-owned parent-subsidiary entities and leave all other corporate structures with unrecoverable GST/HST.

On a positive note, the consultation also proposes to extend the holding corporation rules to include ownership structures that use a trust or partnership, rather than a corporation, to claim ITCs in respect of a subsidiary.

These proposals are open to comment until September 28, 2018.

We Can Help

For assistance in assessing how the draft amendments might affect your business or in preparing a response to the draft amendments and consultation paper, please contact **the author or a member of BLG's Tax Group. We will continue to monitor developments in this area and update you in our bulletins.**

Expertise

[Tax](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.