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ARTICLE

Important Cross-Border GST/HST Developments from 2019

The application of GST/HST on exported goods and services continues to create audit challenges for Canadian businesses with international clients and operations. Below we have highlighted three GST/HST cases from 2019 that addressed zero-rated exports including the *Montecristo* decision, which also elaborated on the place of supply rules on international sales.

GST/HST triggered when individual consumers purchase goods in Canada for immediate export

Montecristo[1] is a reminder to Canadian exporters of the technical criteria that must be satisfied in order to avoid triggering GST/HST on their supplies. *Montecristo* is noteworthy because of its discussion of the meaning of "shipped", "delivery", "place of delivery," and the importance of provincial sale of goods legislation in the application of GST/HST. *Montecristo* demonstrates the need for exporters to ensure sales are correctly structured to avoid unintended GST/HST consequences.

Montecristo sold high-end jewellery at its Vancouver retail stores, predominately to international customers. A process was put in place to zero-rate those sales by arranging for delivery of the goods to the customer to take place at the gate of the Vancouver airport as the customer was leaving Canada. The CRA audited Montecristo and assessed the company for failing to charge GST/HST on its sale of goods to international customers. Montecristo appealed to the Tax Court, which held that their arrangement did not zero-rate the goods and that GST/HST should have been charged on the sales.

The Court held that the jewelry was not "shipped" outside of Canada under the arrangement. The Court interpreted "shipped" narrowly to include only arrangements where a third party is used to deliver the goods outside of Canada – the customer themselves could not deliver or ship the goods outside of Canada.

Our in-depth review of the decision is available here.

Note that this decision has been appealed to the Federal Court of Appeal.

Bus lines' services are only zero-rated if part of an international journey

Sunshine Coach[2] highlights the GST/HST nuances faced by passenger transportation businesses dealing with international passengers or journeys.

In *Sunshine Coach*, the Court held that a bus line operator should have been charging and collecting GST/HST from its international clients when those clients purchased tickets directly from the operator. This is because the operator was only selling trips taking place within Canada. As such, the operator could not rely on sections 2 or 3 of Part VII of Schedule VI of the *Excise Tax Act*, which zero-rate continuous journeys where the journey's origin or termination is outside of Canada or where there is a stopover outside of Canada.

The Court held that passenger bus transportation services that are part of a larger international trip to or from Canada are only zero-rated in the following circumstances:

1. One single ticket is purchased for all of the transportation services;
2. All of the tickets are issued by the same supplier; or
3. All of the tickets are issued by the same agent acting on behalf of all suppliers.

Sunshine Coach is a reminder to all transportation suppliers to obtain GST/HST advice before relying on these complex zero-rating rules.

Zero-rating trumps section 150 deemed exempt supplies election

CIBC World Markets[3] is an important GST/HST decision for financial institutions with international operations.

The GST/HST legislation deems a non-resident branch of a Canadian business to be a separate person from the Canadian business. This permits a supply of services from the Canadian business to the non-resident branch to occur on a zero-rated basis, so that the Canadian business would not be required to charge GST/HST but could also claim ITCs related to its supplies to the non-resident branch *(i.e.* no GST/HST).

The main issue in *CIBC World Markets* was whether the zero-rating provisions of the *Excise Tax Act* trumped an election that the taxpayer had previously made under section 150 to deem all supplies made between related companies to be exempt supplies. This election included the non-resident branch. The Court was tasked with determining whether the section 150 election overrode the zero-rating rules such that the taxpayer could not claim input tax credits in relation to services performed for the non-resident branch.

At the Tax Court level, the Court determined that the section 150 election overrode the zero-rating rule. That decision was appealed to the Federal Court of Appeal, which overruled the Tax Court, and confirmed that the non-resident branch's status trumped the section 150 election, so the taxpayer's services were zero-rated.

This decision protects the scheme and purpose of the GST/HST legislation, which is to strip GST/HST from Canadian business's services to non-residents, maintaining Canadian competitiveness in the global marketplace.

[1] *Montecristo Jewellers Inc. v. R*, 2019 TCC 31 (Tax Court of Canada).

[2] *Sunshine Coach Ltd v. R*, 2019 TCC 72 (Tax Court of Canada).

[3] *CIBC World Markets Inc. v. R*, 2019 FCA 147 (Federal Court of Appeal).

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