

April 15, 2020

## ARTICLE

# TCC decision: Merchant services provider exempt from GST/HST

*Zomaron Inc v. HMQ*

In *Zomaron Inc. v. The Queen*, the Tax Court of Canada (TCC) clarifies the meaning of “arranging for” a financial service for GST/HST exemption purposes, which is a key provision in the *Excise Tax Act* relied upon by various service providers and industries. *Zomaron* also provides important guidance on the application of GST/HST to merchant service providers and other businesses that provide marketing, administrative, or promotional services as part of facilitating or arranging for financial services.

In 2018, the TCC released the *Applewood decision* that interpreted the meaning of “arranging for” a financial service in the context of the sale of insurance products by a car dealership. *Applewood*, and now *Zomaron*, highlight the Canada Revenue Agency’s continued focus on auditing and challenging financial intermediaries that claim their services are a GST/HST-exempt financial service as opposed to taxable promotional, advertisement, or administrative service.

## What you need to know about *Zomaron*

- *Zomaron* provides useful guidance on how to interpret the GST/HST exemption of “arranging for” a financial service and confirms it is a low threshold to meet.
- “Arranging for” a financial service remains a nuanced GST/HST concept. It is important to properly document the business arrangements, practices and procedures to support the GST/HST exemption. In *Zomaron*, the existence of such documentation was a relevant factor upon which the TCC relied.
- The legal analysis focuses on the “predominant” or “vital” element of an intermediary’s services. Services that are predominately intended to arrange for a financial service will be GST/HST exempt even if there are also ancillary activities such as marketing, promotional, and administrative services.
- Intermediaries or other businesses that provide financial-related services and claim a GST/HST exemption based on arranging for a financial service should consider a careful review of their arrangements, particularly if their services include elements of administration, marketing or promotional activities.

## Background

Zomaron Inc. (Zomaron) is an independent sales organization (ISO) for Visa and a Member Service Provider (MSP) for Mastercard. ISO/MSPs like Zomaron partner with payment-processing service providers such as Elavon Canada Company and First Data Loan Company, Canada (the Acquirers) to provide merchants with point of sale payment processing services.

The Acquirers retained Zomaron to seek out prospective merchants and to negotiate rates, fees and terms of service with those merchants.<sup>1</sup> Zomaron also handled most communications with merchants.<sup>2</sup> The Acquirers paid Zomaron based on negotiated rates, volume, and size of recruited merchants’ payment processing transactions.<sup>3</sup> The Acquirers were not involved in Zomaron’s negotiations but reserved the right to accept or deny negotiated contracts.

The CRA assessed Zomaron on the basis that GST/HST was collectible on fees it received as consideration for its services to the Acquirers.

## The issue

The issue was whether Zomaron was providing an exempt supply of “arranging for” a financial service by connecting merchants that needed payment processing services with the Acquirers who offered that service. Zomaron took the position its services were an exempt supply. The Crown took the position that Zomaron’s services were preparatory and promotional in nature, which are taxable services, carved out of the definition of financial services.<sup>4</sup>

## The decision

Zomaron successfully appealed the Minister’s Assessment to the TCC. The TCC held that Zomaron’s services were GST/HST-exempt financial services, relieving Zomaron of any obligation to charge and collect GST/HST on its services. *Zomaron* restates and clarifies the arranging for test, and provides useful guidance on satisfying the requirements under the GST/HST legislation.

## Analysis

The TCC’s analysis was based on a comprehensive review of Zomaron’s relationship with the Acquirers, focusing on the substance of their legal arrangements and practices. The TCC found that:

- the predominant element of Zomaron’s services was arranging for the Acquirers’ transaction processing services that led to the Acquirers successfully

- acquiring merchants to use their payment processing services.<sup>5</sup> This was the “vital” and “predominant” element of Zomaron’s supply; and
- Zomaron’s other activities, characterized by the Minister as promotional, marketing or advertising services, were treated as ancillary to Zomaron’s “arranging for” activities, and did not alter the nature of the supply as an exempt financial service.

Accordingly, Zomaron was not required to charge GST/HST on its fees to the Acquirers. Notably, the TCC determined that a marketing agreement between Zomaron and Elavon was not in substance an agreement to provide marketing services and that in practice was never followed.

Framework to analyze the “arranging for” test

In coming to this conclusion, the TCC confirmed and expanded on the framework for determining whether a supply was indeed an exempt supply of “arranging for” financial services:

- First, determine, from the purchaser’s perspective, whether a single compound supply is being provided versus multiple supplies. If there are multiple supplies, each supply attracts its own GST/HST treatment.<sup>6</sup>
- Second, if a single compound supply is at issue, identify *all* elements of the supply provided for consideration.
- Third, consider *only* the “predominant elements” of the supply, from the purchaser’s perspective, to ascertain whether the supply is included in the definition of “financial service.”<sup>7</sup>

## Important TCC guidance

The TCC also clarified the scope of the term, the importance of an intermediary having continued involvement between parties versus initially facilitating their relationship, the role of agency, and the interplay between the term “arranging for” and previous legislative amendments. In particular:

- “Arranging for” means “bringing together parties to a service.”<sup>8</sup>
- There is a low threshold for establishing whether a service constitutes “arranging for” a financial service. This threshold was not changed by 2010 legislative amendments to the *Excise Tax Act*.<sup>9</sup>
- To be “arranging for” a service, an intermediary must have a sufficient amount of involvement to “cause to occur” or effect the financial service, but this involvement is not necessary in every transaction that then occurs.<sup>10</sup> In other words, it appears a person can be arranging for financial services if they facilitate an agreement between two parties even if a person may not necessarily have an ongoing role in the parties’ business arrangement.
- An intermediary can meet the “arranging for” threshold without being a legal agent with authority to bind a party to the transaction.<sup>11</sup> An agency relationship is a factor, but not a determinative one, in considering the “arranging for” threshold.
- Paragraph (r.4), which carves out from the definition of “financial services” services such as preparatory or promotional or advertising services, only applies if those services identified in paragraph (r.4) are the *predominant* element of a single compound supply. If such services are *ancillary* to the supply, paragraph (r.4) is not engaged.<sup>12</sup>

## Takeaways

*Zomaron* is a welcome decision for intermediaries in the financial services industry that may not fit within traditional “broker-” or “agent-” type role. *Zomaron* clarifies what activities constitute an exempt supply of “arranging for” financial services for GST/HST purposes – a GST/HST exemption that both the CRA and taxpayers have struggled to interpret. When reviewed in light of the 2018 *Applewood* decision ([our Applewood commentary can be accessed here](#)), it appears from the above analysis that a unified common law framework for applying the “arranging for” GST/HST exemption is starting to emerge in the context of these “non-traditional” intermediaries.

---

<sup>1</sup> *Zomaron*, para 6 fact 6.

<sup>2</sup> *Ibid*, para 29.

<sup>3</sup> *Ibid*, para 6 fact 11.

<sup>4</sup> *Excise Tax Act*, RSC 1985, c E-15, s 123(1)“financial service.”

<sup>5</sup> *Zomaron*, para 107.

<sup>6</sup> *Ibid*, para 63.

<sup>7</sup> *Ibid*, para 65.

<sup>8</sup> *Ibid*, para 97.

<sup>9</sup> *Ibid*, paras 77 and 91.

<sup>10</sup> *Ibid*, para 97.

<sup>11</sup> *Ibid*, para 99.

<sup>12</sup> *Ibid*, para 110.

---

By: Bobby B. Solhi, Braek Urquhart

Services: Tax


---

## Related Contacts

Bobby B. Solhi  
Partner

 Toronto

 [BSolhi@blg.com](mailto:BSolhi@blg.com)

 [416.367.6467](tel:416.367.6467)