Achieving Canada's ambitious infrastructure goals: Indirect tax and major projects

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Following the referral of a second tranche of projects to the Major Project Office (MPO) on Nov. 13, 2025, Prime Minister Mark Carney and Alberta Premier Danielle Smith signed a Memorandum of Understanding (MOU) on Nov. 27, 2025, earmarking a privately financed bitumen pipeline (the Pipeline) to the coast of British Columbia (B.C.) as a potential additional "major project" under the federal *Building Canada Act*. This brings a total of 12 potential projects under the purview of the MPO in 2026. For a general overview of the recent project announcements, see our recent Insight.

While all projects under review by the MPO await designation as a National Interest Project (NIP), the recent announcements include projects at much earlier stages of development. Despite an expectation that shovels will not break ground in the immediate future, potential stakeholders – project proponents, construction contractors and service providers in particular – should begin considering the various indirect tax implications associated with carrying out such projects.

A number of preliminary factors suggest complexity from an indirect tax perspective, such as:

- the underlying application of goods and services tax/ harmonized sales tax (GST/HST) and Quebec Sales Tax (QST);
- co-ownership structures, including the involvement of Indigenous Peoples;
- nuanced provincial sales tax (PST) regimes applicable in certain provinces; and
- importation of complex equipment engineered and manufactured outside Canada.

These considerations are relevant at all stages of construction, beginning with preliminary engagement, planning, and formal request for proposal (RFP) processes, through to the actual operation of a given project.

Major projects in Canada: Business structures and commercial arrangements

The construction of major projects will be subject to significant private investment and associated infrastructure. With this comes complex business structures, commercial arrangements and layers of contractors and service providers.

It is critical to understand that GST/HST and QST are broadly applicable "value-added" taxes capable of recovery along the supply chain by businesses engaged in commercial activities, whereas PST is a "single-stage" tax intended to be payable only by the end user or recipient of certain taxable property and/or services and is not subject to a similar recovery mechanism. This is highly relevant in the context of contractor and subcontractor relationships, where invoices flow up from the subcontractors to the general contractor and subsequently from the general contractor to the ultimate recipient of the supply. GST/HST and QST administration is generally more streamlined in this regard due to the recovery function served by input tax credits/input tax refunds (ITCs/ITRs), which is distinguishable from PST that typically applies unless an exemption is available. Absent specific contractual language regarding PST obligations, the transacting parties may find themselves in a dispute over who bears the cost of otherwise unrecoverable PST.

Recognizing the MOU's requirement for Indigenous engagement and co-ownership, it is also important to consider the specific indirect tax rules applicable to Indigenous Peoples that may be of relevance to different aspects of construction. There is often a misconception that Indigenous-controlled entities are broadly exempt from GST/HST, QST and/or PST as purchasers of goods or services. However, these rules are highly specific and differ based on the nature of the underlying supplies. For example, an Indigenous entity must be a "band-empowered entity" in the first instance and the property or services provided must be delivered to or performed on a reserve to validly qualify for exemption status. Additionally, there are specific rules that may apply where business structures involve Indigenous co-ownership. This is relevant for various business vehicles such as corporations, limited partnerships and joint venture, which are commonly used to undertake and derisk large-scale infrastructure projects.

For GST/HST and QST purposes, both corporations and partnerships are considered "persons". This means that partnerships and corporations are capable of registering for applicable taxes and managing compliance obligations under the respective legalisation. This differs from a joint venture, which is not viewed as a separate person for GST/HST and QST purposes and is therefore not eligible to register, in and of itself. Instead, joint venture participants may be permitted to elect an "operator" to perform GST/HST and QST compliance on behalf of the joint venture, provided that the joint venture engages in a "prescribed activity". This election can provide significant advantages in terms of streamlining GST/HST and QST compliance and simplifying tax recovery.

Complex PST exemption framework in B.C.

In addition to the foregoing, there are inevitable nuances associated with PST compliance. This is primarily due to the highly specific rules that govern the goods and services subject to PST, the triggers for self-assessment obligations and the eligibility for conditional or unconditional exemptions.

First, proper characterization of a supply is critical because it may alter the application of PST. For example, a service contract is taxed differently than an equipment lease contract. In the former case, an out-of-province service provider is generally required to self-assess PST on the equipment brought into B.C. and used to perform the service, but perhaps there may be partial relief afforded by the “temporary use” rules; in the latter case, an out-of-province lessor is generally required to charge PST to a lessee not only on the lease charges, but also on “related services” such as transportation or installation of the equipment subject to the lease.

Second, if a lessor does not charge PST on an otherwise taxable supply, then a purchaser or lessee is required to self-assess and remit to B.C.’s taxing authority. In other words, a purchaser or lessee cannot escape PST liability by virtue of a supplier or lessor omitting to charge the tax; essentially, the PST legislation creates a joint liability scenario, and it is not uncommon for the B.C. taxing authority to audit both parties.

Third, conditional exemptions for PST are highly specific and applied stringently by the B.C. taxing authority. If an exemption requires that a purchaser provide its PST registration or furnish an exemption certificate, such as situations involving purchases of tangible personal property for resale, this must be completed in accordance with the prescribed requirements under the PST legislation. Even more specific are the production machinery and equipment exemptions, which do not only look to the nature of the supplier and the recipient, but also how and where the particular assets are being used within a given project.

EPC contractors and importation of specialized equipment

Experience suggests that approved NIPs will likely involve Engineering, Procurement & Construction (EPC) contracts that require EPC contractors to source specialized industrial equipment from foreign manufacturers. Given the high dollar values associated with this equipment and the unprecedented disruption in global trade over the past year, addressing duties and tax is of paramount importance when entering into EPC contracts.

With respect to indirect taxes levied at the border, the Canada Border Service Agency is responsible for the collection of a distinct tax under Division III of the Excise Tax Act (Canada) (Import GST), as well as applicable PST as goods enter Canada. Like GST/HST applicable to a supply of goods made in Canada, Import GST is generally a recoverable tax. However, as non-resident importers may not be eligible to claim ITCs directly, Import GST may lead to disputes between project proponents and suppliers, which can result in trapped tax being incurred at the project level.

Given that EPC contractors necessarily supply both tangible goods and services, the application of PST can be nuanced. The nature of specialized industrial equipment also means that both taxable and exempt equipment, for purposes of PST, will likely be imported into Canada. As a result of tax applying to the landed cost of goods, PST may be overpaid by EPC contractors or project proponents themselves.

Contracts should contemplate specific import arrangements, delivery terms and pricing transparency to support value for duty determinations, as well as recoverability of taxes and available exemptions when possible.

Competitive bidding with indirect tax in mind

Parties engaging in bid preparation with respect to major projects, whether in response to a RFP or otherwise, should remain cognizant of the differences between GST/HST/QST and PST recoverability.

Specifically noting the unrecoverable nature of PST, it is prudent for bidders to consider the cost of PST at the outset and how this may affect the competitiveness of a bid. Where the bidder is subject to paying PST on taxable inputs, it should expressly acknowledge whether such PST will form part of the costs that are passed along to the RFP issuer. It is also important to distinguish between the responsibility for PST payable on taxable inputs versus any PST that may be payable on the property provided or services performed by the bidding party. With a particular increase in PST audit activity by the B.C. taxing authority, attempting to create an attractively priced bid by omitting PST costs could result in disputes between transacting parties or exposures with the taxing authority where penalties and interest for non-compliance can be significant.

Given that most parties seeking involvement with these proposed projects will be engaged in “commercial activities”, GST/HST is often less of a concern because the recipient of a good or service will claim ITCs as a means of recouping the GST/HST paid on taxable inputs. That said, instances of non-compliance increase when there are many cooks in the kitchen. It is therefore important that recipients of taxable supplies – notably RFP issuers and general contractors – do not overlook the details, such as confirming that suppliers are in fact registered for GST/HST and ensuring that supplier invoices contain the prescribed information that permits ITCs to be claimed. Although these are simple practices at face value, they often fall through the cracks when purchase orders, change orders and invoices are in abundance.

Takeaways

BLG’s Commodity Tax Group are experts in commodity/indirect taxes across Canada and have significant experience navigating complex issues arising in construction and procurement processes. Our Commodity Tax Group works closely with BLG’s construction law, regulatory and global trade lawyers to fulfill our client’s complex legal needs.

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