Eat, Drink and Be Merry - The federal government announces temporary GST/HST holiday on qualifying goods

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On Nov. 21, 2024, the Department of Finance announced temporary goods and services tax/harmonized sales tax (GST/HST) relief on certain qualifying goods as part of the federal government's wider announcement titled More money in your pocket: A tax break for all Canadians.

While the authors generally support substantive tax reform to address Canada's declining productivity and relieve inflationary pressure on the cost of living for Canadians, temporary GST/HST relief on select items may be perceived as tokenism and foists the hidden costs of political messaging on Canadian business.

What you need to know

- Between Dec. 14, 2024 to Feb. 15, 2025 (the Relief Period), GST/HST will be fully relieved on certain qualifying goods.
- The tax relief on qualifying goods will apply to the federal GST as well as the provincial portion of the HST applicable in participating provinces.
- Relief will apply to goods that are paid for and delivered to purchasers during the Relief Period. Relief will also extend to tax payable upon importation of qualifying goods under Division III of the *Excise Tax Act* (ETA).
- Canadian businesses should act now to ensure their GST/HST systems reflect this temporary relief to avoid conflicts with consumers and limit future audit risk.
- Provincial sales tax regimes in British Columbia, Saskatchewan, Manitoba and Québec are administered independently from GST/HST and are not subject to relief under the federal government initiative.

Background

GST/HST applies to goods and services supplied in Canada at a rate of 5-15 per cent, unless they are specifically exempt under Schedule V of the ETA or zero-rated under Schedule VI of the ETA.

Since its inception, the ETA has included zero-rating provisions applicable to select goods and services such as basic groceries to mitigate the regressive nature of GST/HST, whereby lower income households spend a larger portion of their income on necessities subject to tax.

While the legislative mechanics of the temporary GST/HST relief announcement will likely leverage existing zero-rating provisions, at least in part, the Department of Finance guidance does not include any legislative proposals at this time. However, the initial guidance indicates that the relief will extend to goods purchased and delivered to recipients during the Relief Period, as well as GST/HST payable upon importation of the same goods into Canada during the Relief Period.

Qualifying items eligible for GST/HST relief include:

- Children's clothing, footwear, diapers, and car seats;
- Select toys designed for children under 14 years of age;
- Puzzles, video games and game media for all ages, excluding digital products;
- Print newspapers and books;
- Natural and artificial Christmas trees;
- Select food items otherwise excluded from the existing zero-rated basic groceries including chips, candies, baked goods, prepared meals; and
- Beverages otherwise excluded from existing zero-rated basic groceries including pop, bottled water, beer, wine, and coolers with up to 7 per cent alcohol content.

Insight

Under the ETA, GST/HST registrants (Taxpayers) are appointed as agents of the His Majesty in right of Canada and are required to collect tax on behalf of the government. This means that Taxpayers are burdened with tax compliance costs in order to discharge their obligation to collect and ultimately remit tax to the CRA. When Taxpayers get it wrong, they are liable for not only tax amounts that they may have failed to collect but may also be subject to significant penalties and interest. Worse yet, when Taxpayers are subject to audit, they may find themselves pitted against an administrative regime with sweeping powers in a process that increasingly appears tilted against the Taxpayer.

Under a regime that imposes significant compliance costs and the potential liabilities on businesses in the course of discharging their obligations under the ETA, the federal government should strive for consistency and clarity in its tax policy. While a temporary tax holiday may appear simple in concept, the reality is that Canadian businesses will be required to implement changes to complex tax compliance systems on short notice in order to affect this temporary GST/HST relief.

Tax determination, sourcing exercises and systems implementations represent significant capital expenditures and take months to effectively implement in normal circumstances. The technology, advisory, and internal resource costs associated with the implementation of the temporary GST/HST relief will be incurred by Canadian businesses and may ultimately be borne by the consumers that the GST/HST holiday is intended to benefit.

The fact the Department of Finance communicated the intention to develop a robust rulings initiative to address the complexities of zero-rating basic groceries at the CPA Canada Commodity Tax Symposium on Oct. 29, 2024, whereby Taxpayers are to send physical samples of grocery items to the CRA to ascertain their status under existing the zero-rating provisions, speaks to the complexity of the characterization exercise necessary to operationalizing measures to relieve tax. An announcement that provides mere weeks for Taxpayers to affect this change is not indicative of a reasoned policy-driven decision and places not only costs on Taxpayers, but also a high level of uncertainty as to how the CRA will audit on these issues in the coming years.

While evolving consumer trends may warrant changes to the existing zero-rating provisions under the ETA, such changes should be undertaken as part of a holistic review and be grounded in policy. The use of temporary GST/HST relief on qualifying goods, particularly related to items intentionally omitted from the current zero-rating provisions under the ETA, undermines the work of Taxpayers and tax administrators alike.

Takeaways

Given the short lead time before the temporary GST/HST relief is to take effect, retailers and suppliers should be proactive in making necessary systems changes in order to cease collection of GST/HST on qualifying goods during the Relief Period to avoid adverse impacts on customer relationships. Additionally, retailers will want to identify and address any potential characterization issues with respect to their product lines to ensure that they continue to collect GST/HST on products that fall outside of the list of qualifying goods subject to GST/HST relief.

In addition to implementing necessary system changes, Taxpayers should ensure they retain documentation outlining the system process changes undertaken to affect the temporary GST/HST relief program as a means of maintaining sufficient evidence for any future audits.

To discuss how these changes may impact your business, feel free to reach out to the authors or any member of BLG's national commodity tax team.

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