

The proposed new GST/HST definition of an "investment limited partnership" and what it may mean for your business

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The Department of Finance released a package of draft legislative proposals to the *Excise Tax Act* (Canada) that will impact members of the investment management industry that utilize limited partnership structures.

On September 8, 2017, the Department of Finance (Canada) released a package of draft legislative proposals to the *Excise Tax Act* (Canada) (the "ETA") that will impact members of the investment management industry that utilize limited partnership structures.

Some of these proposals were previously announced in a Consultation Paper released on July 22, 2016 and were aimed at "levelling the playing field" between investment entities structured as limited partnerships and entities that are currently treated as investment plans for GST/HST purposes. Others, including the extension of the GST/HST rules to "management or administrative services" performed by general partners, were unexpected and may have adverse implications for certain limited partnership structures.

The Current Rules

Under current rules, the ETA deems anything done by a general partner in his or her capacity as a partner to have been done by the partnership, and not the partner. As a result, general partners of limited partnerships do not generally register separately for GST/HST purposes. However, when supplies are made by a general partner to a partnership "otherwise than in the course of the partnership's activities", the ETA will deem there to be fair market value consideration for such supplies which will attract GST/HST at the applicable rates.

The Proposals

The proposals provide that the supply of a "management or administrative service" to an "investment limited partnership" by its general partner is now deemed to have been

made "otherwise than in the course of the investment limited partnership's activities". As a result, under the current rules, such supplies will be deemed to have been made for consideration that becomes due at the time the supply is made to the partnership equal to its fair market value at that time determined as if the person were not a member of the partnership and were dealing at arm's length with the partnership. As drafted, the proposals imply that not all services or, in turn, distributions received by a general partner will constitute "management or administrative services" which would be subject to the new deeming rule. As a result, consideration will need to be made as to whether the general partner is making a "management or administrative service" to the partnership and what the fair market value consideration for such service should be.

A "management or administrative service" for these purposes is not a new concept, and is defined in the ETA to include an "asset management service". An "asset management service", in turn, is defined as "a service (other than a prescribed service) rendered by a particular person in respect of the assets or liabilities of another person that is a service of:

- (a)** managing or administering the assets or liabilities, irrespective of the level of discretionary authority the particular person has to manage some or all of the assets or liabilities,
- (b)** providing research, analysis, advice or reports in respect of the assets or liabilities,
- (c)** determining which assets or liabilities are to be acquired or disposed of, or
- (d)** acting to realize performance targets or other objectives in respect of the assets or liabilities."

This new deeming rule deals exclusively with a general partner's supply of management or administrative services to an "investment limited partnership", which is a new term introduced in the proposals. An "investment limited partnership" is broadly defined to mean a limited partnership, the primary purpose of which is to invest funds in property consisting primarily of financial instruments, if

- (a)** the limited partnership is, or forms part of an arrangement or structure that is, represented or promoted as a hedge fund, investment limited partnership, mutual fund, private equity fund, venture capital fund or other similar collective investment vehicle, or
- (b)** the total value of all interests in the limited partnership held by listed financial institutions is 50% or more of the total value of all interests in the limited partnership.

According to the explanatory notes released with the proposals, paragraph (a) of the definition will be satisfied if the limited partnership is (or forms a part of an arrangement or structure that is) represented or promoted as a hedge fund, investment limited partnership, mutual fund, private equity fund or venture capital fund or other similar collective investment vehicle. Paragraph (b) will be met if "listed financial institutions", as such term is defined in the ETA, hold interests representing at least 50 per cent of the total value of all interests in the limited partnership.

Effective Date

It is proposed that the new deeming rule will apply to the provision of a "management or administrative service" if any consideration for a supply of the service becomes due on or after September 8, 2017 (*i.e.*, the Announcement Date) or is paid on or after the Announcement Date without having become due; or if all of the consideration for a supply of the service became due or was paid before the Announcement Date unless the general partner did not, on or before that day, charge, collect or remit any GST/HST in respect of the supply.

Therefore, if enacted as proposed, the provisions could have retroactive effect. More specifically, payments by an investment limited partnership to its general partner from January 2017 onwards could be subject to GST/HST, assuming the partnership has a fiscal year ending December 31 and the general partner's compensation for 2017 is not finalized and paid until early 2018. If this is the case, the management or administrative service provided by the general partner in 2017 that relates to the 2018 payment appears to be subject to proposed subsection 272.1(8).

Special Attribution Method Rules

As previously announced, the proposals also extend the special attribution method ("SAM") rules to investment limited partnerships. As a result, similar to other investment funds, investment limited partnerships will now be required to follow the place of residence rules for the purpose of computing a blended rate of HST (which would reflect the geographic location of their investors). Failure to follow the SAM rules could result in the investors being deemed to be resident in high-rate (15%) provinces when computing GST/HST liability.

Effective Date

This amendment will apply in respect of a taxation year of a person that begins after 2018.

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