

January 5, 2000

Notice of Change re: 19.1, *Real Property and the GST/HST*, paragraph 103: ITC Chart

In 19.1, *Real Property and the GST/HST*, paragraph 103 has a chart summarizing the availability of ITCs. The middle row of this chart showed that registered individuals may not claim an ITC for tax paid or payable for the acquisition of capital real property if the use of the property is 50% or less in commercial activity. A supplementary note says that in rare cases under the provisions of subsection 208(1) an individual registrant may still get an ITC. The supplementary note is replaced by the following:

Subsection 208(1) provides that an individual cannot claim an ITC for the acquisition of capital real property that is used primarily for the personal use and enjoyment of the individual or a related individual. There could be cases where an individual acquires capital real property that is to be used partly in exempt activities, partly in commercial activities and partly for personal use and enjoyment. If the combined percentage of exempt and commercial use is 50% or greater, then the property is not being used primarily for personal use and enjoyment and the prohibition under subsection 208(1) against claiming ITCs would not apply. Thus, even though the percentage use of the property in commercial activities may be less than 50%, the individual could still claim an ITC for the commercial use of the property, as long as that commercial use is greater than 10%.

The chart in paragraph 103 has been updated to reflect this information.

Changes to be made to paragraph 103 (chart and supplementary note)

Chart

103. The following chart summarizes the availability of ITCs by percentage use in commercial activities:

| Type of Property | Percent of Use in Commercial Activity | ITC Eligibility in Terms of Percent of GST/HST Paid or Payable (% = extent of use in commercial activity) | | | | | | | |
|---------------------------|---------------------------------------|--|------|-----------------------------|------|----------------------------|------------------|------------------------|-------------------|
| | | General Registrants (partnerships and corporations) | Ref. | Registered Individuals | Ref. | Public Sector ¹ | Ref. | Financial Institutions | Ref. |
| Capital Real Property | ≤ 10% | 0 | | 0 | | 0 | | % | |
| | >10% - 50% | % | 206 | <u>see note²</u> | 208 | 0 ³ | 209 ⁴ | % | 123, 206 & 141(6) |
| | >50% - <90% | % | | % | | 100% | | % | |
| | ≥90% | 100% | | 100% | | 100% | | % | |
| Capital Personal Property | 50% or less | 0 | | 0 | | 0 | | % | |
| | >50% | 100% | 199 | 100% | 199 | 100% | 199 | % | 169 & 199(1) |

Notes

¹ Governments, non-profit and charitable organizations, municipalities, universities, schools and hospitals (ss 123(1))

² In some cases, an individual registrant may be eligible to claim an ITC even if the individual's use of the capital real property is less than 50% in commercial activities. Subsection 208(1) provides that an individual cannot claim an ITC for the acquisition of capital real property that is used primarily for the personal use and enjoyment of the individual or a related individual. There could be cases where an individual acquires capital real property that is to be used partly in exempt activities, partly in commercial activities and partly for personal use and enjoyment. If the combined percentage of exempt and commercial use is 50% or greater, then the property is not being used primarily for personal use and enjoyment and the prohibition under subsection 208(1) against claiming ITCs would not apply. Thus, even though the percentage use of the property in commercial activities may be less than 50%, the individual could still claim an ITC for the commercial use of the property, as long as that commercial use is greater than 10%.

³ These registrants excluding governments may elect to be treated as general registrants for this category on a property by property basis (s. 211)

⁴ Section 209 refers registrants who are public service bodies or specified Crown agents (other than financial institutions) to the ITC rules under subsections 199(2) to 199(4).