

Canada Revenue Agency Notice

Notice 200

May 2005

FOR DISCUSSION PURPOSES ONLY

Draft GST/HST Policy Statement, *Whether Administrative Overhead Costs Fall under Subsection 186(1) of the Excise Tax Act*

This policy statement is being disseminated by the Canada Revenue Agency in draft form for comments. Comments or suggestions should be sent by August 31, 2005 to:

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GST/HST Policy Statement

P-196R	Whether Administrative Overhead Costs Fall under Subsection 186(1) of the <i>Excise Tax Act</i>
DATE OF ISSUE	To be determined
LEGISLATIVE REFERENCE	Subsection 186(1) of the <i>Excise Tax Act</i> (the Act)
NATIONAL CODING SYSTEM FILE NUMBER	11585-11
EFFECTIVE DATE	January 1, 1991 for GST and April 1, 1997 for HST

Issue

Where the requirements of subsection 186(1) of the Act have been met, for purposes of determining an input tax credit of a parent corporation, the parent corporation will be deemed to have acquired or imported property or services for use in commercial activities of the parent to the extent the parent can reasonably be considered to have acquired or imported the property or services for consumption or use in

relation to the shares or indebtedness of a related corporation that is engaged exclusively in commercial activities.

Do only direct costs, for example, accounting and legal services on the further acquisition of shares, meet the conditions under subsection 186(1) of the Act, or do indirect costs, such as administrative overhead also meet the conditions under subsection 186(1) of the Act for purposes of determining an input tax credit of the parent corporation?

Decision

Both direct costs and indirect costs will qualify under subsection 186(1) of the Act provided the parent corporation can demonstrate that the costs meet the requirements of subsection 186(1) of the Act. Specifically, only property or services that can reasonably be regarded as having been acquired or imported by the parent for consumption or use in relation to the shares or indebtedness of a related corporation will fall under subsection 186(1) of the Act.

Whether a particular property or service can reasonably be regarded as being acquired or imported by the parent corporation for consumption or use in relation to a parent's holding of shares or debt in a related company, and the extent of this relationship, is a question of fact. Each case must be examined in light of its particular facts in determining whether subsection 186(1) of the Act may apply in the circumstances.

Evaluating whether a particular property or service meets the requirements of the subsection includes examining the nature of the property or service to see if it is reasonable that there is a relationship between the consumption or use of the property or service and the parent's holding of the shares of the capital stock, or indebtedness of the operating company. If it is reasonable that there is such a relationship, the extent of the relationship must then be determined, whether it is wholly or partially attributable to the parent's holding of shares or debt in a related company. For example, the parent corporation is required to allocate its inputs between the activity of acquiring, holding, and disposing of shares and indebtedness of the operating company, and other activities that are not commercial activities such as, for example, raising its own capital by issuing shares or borrowing money, and acquiring shares or debt of non-related corporations.

Examples

EXAMPLE NO. 1

Facts

1. Holdco, a corporation that is a registrant and resident in Canada, owns 51% of the shares of capital stock of another corporation, Opco.
2. Opco carries on the commercial activity of manufacturing widgets, and all of its property is for use in that activity.
3. Holdco will acquire a further 5% of the shares of capital stock of Opco.
4. Holdco will acquire legal services, for consideration of \$1000 and for which \$70 GST will be payable, specifically to effect the purchase of the shares.

Decision

Holdco will be entitled to claim a full input tax credit (assuming all conditions of section 169 are met) by virtue of subsection 186(1) of the Act.

Rationale

Holdco can reasonably be regarded as having acquired the legal services for consumption or use in relation to the shares of a related corporation, Opco. Also, Holdco is deemed to have acquired the services for use exclusively in the course of its commercial activities, as they were acquired exclusively for use in relation to the shares of Opco. When tax is payable, all of the property of Opco is for consumption, use or supply exclusively in commercial activities.

EXAMPLE NO. 2**Facts**

1. Holdco is a corporation that is a registrant and resident in Canada, and owns 51% of the capital stock in each of Opco, Aco, Bco, Xco, Yco and Zco (the Corporations).
2. The Corporations have outstanding loans from Holdco.
3. Holdco invests in shares of unrelated companies.
4. The Corporations are engaged exclusively in the manufacturing of widgets.
5. All of the property of each corporation is for consumption, use or supply exclusively in the manufacturing of widgets.
6. Holdco has employees for whom it provides office space, furniture and equipment.
7. Holdco pays GST on a monthly basis for the rental of office space and office equipment.

Decision

Holdco is entitled to input tax credits to the extent that the inputs relate to the activity of acquiring, holding or disposing of the shares and indebtedness of the related corporations.

Rationale

An allocation must be made where the rental of office space and equipment costs relates to either managing the holding company and its share structure or buying and holding shares in unrelated companies, which are not activities giving rise to ITCs.

EXAMPLE NO. 3**Facts**

1. Holdco, a corporation that is a registrant and resident in Canada, owns 51% of the shares of the capital stock of another corporation, Opco.
2. Opco carries on the manufacturing of widgets, and all of its property is for consumption, use or supply in that activity.
3. Holdco is proposing to issue shares of its own in order to finance the purchase of a further 15% of the shares of Opco.
4. Holdco will pay GST on legal and accounting services acquired in order to issue the shares.

Decision

Holdco will not be entitled to claim input tax credits by virtue of subsection 186(1) of the Act in respect of the legal and accounting services.

Rationale

Holdco cannot reasonably be regarded as acquiring the services for consumption or use in relation to the shares of Opco. The services will be acquired for consumption or use in relation to Holdco issuing shares of its capital stock and not for consumption or use in relation to the shares of Opco (i.e., it is one step removed from obtaining additional shares of Opco). As such, the legal and accounting services are not deemed to be for use in commercial activities of Holdco to any extent under subsection 186(1) of the Act.