

FOR DISCUSSION PURPOSES ONLY

Draft Policy Statement on the GST/HST implications of the transfers of property referred to in paragraph 272.1(7)(c) of the *Excise Tax Act*

This policy statement is being disseminated by the CCRA in draft form for comments. Comments should be sent by July 31, 2003 to:

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GST/HST Policy Statement

Date of Issue:

Subject:

The GST/HST implications of the transfers of property referred to in paragraph 272.1(7)(c) of the *Excise Tax Act* (“ETA”).

Legislative Reference:

Subsection 272.1(7)

National Coding System File Number:

11635-8

Effective Date:

April 24, 1996

Issue and Decision:

Where subsection 272.1(7) of the ETA applies, its effect is to deem the other partnership (referred to as the “new partnership” in this policy statement) to be a continuation of, and the same person as, the predecessor partnership. The issue is whether the distribution of property from the predecessor partnership to the partners, and the transfer of that property from the partners to the new partnership, are subject to the normal GST/HST rules in the ETA, or whether those transfers are not supplies for GST/HST purposes because the new partnership is deemed to be a continuation of the predecessor partnership.

The CCRA’s position is that where subsection 272.1(7) of the ETA applies, the supplies of property from the predecessor partnership to the partners, and from the partners to the new partnership, are subject to the normal GST/HST rules in the ETA.

Example

Facts

1. Mr. A, Ms. B, and Mr. C are partners in a retail store which is engaged exclusively in commercial activity. Each has a 33.3% interest in the capital of the partnership. The partnership is registered for GST/HST purposes.
2. Mr. A dies. The partners had no agreement concerning the continuation of the partnership where one partner dies.
3. The partnership dissolves and the partnership property is distributed equally among Mr. A’s estate, Ms. B, and Mr. C.
4. Immediately thereafter, Ms. B and Mr. C each buy half of Mr. A’s estate’s interest in the partnership property.
5. Immediately thereafter, Ms. B and Mr. C each transfer all their interest in the property of the former partnership, at the same cost that they acquired them, to a new partnership and it carries on the business.
6. The new partnership is not registered separately from the original partnership and does not apply to register under section 240 of the ETA.

Issue

Does subsection 272.1(7) of the ETA apply in this example? Are the transfers of property from the original partnership to the surviving partners and the partner’s estate, from the partner’s estate to the other two partners, and from the two partners to the new partnership subject to the normal GST/HST rules in the ETA?

Comments

Subsection 272.1(7) of the ETA does apply, and the new partnership is deemed to be a continuation of the original partnership. As a result the new partnership can use the same business number for GST/HST purposes as the original partnership.

The supplies of property from the original partnership to the surviving partners and the partner's estate, from the partner's estate to the other two partners, and from the two partners to the new partnership are subject to the normal GST/HST rules in the ETA.

The supplies of property by the partnership to the surviving partners and the estate are subject to GST/HST. The property supplied by Mr. A's estate to Ms. B and Mr. C are not made in the course of a commercial activity. The estate cannot claim ITCs for the GST/HST it paid on the acquisition of that property. It does not collect GST/HST on the supplies of that property. Similarly the supplies of property made by Ms. B and Mr. C to the new partnership are not made in the course of a commercial activity. They cannot claim ITCs for the GST/HST they paid on the acquisition of that property. They do not collect GST/HST on the supplies of that property to the new partnership.