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GST 400-3-3

**INPUT TAX CREDITS
SPECIAL CASES - FOOD, BEVERAGES AND ENTERTAINMENT**

Ottawa, October 4, 1991

This memorandum outlines the restrictions on input tax credit (ITC) eligibility with respect to food, beverages and entertainment expenses under the *Excise Tax Act*.

LEGISLATIVE REFERENCES

Excise Tax Act - sections 174, 175 and 236, subsections 123(1), 169(1), 169(2) and 169(5)

Income Tax Act - section 67.1

DEFINITIONS

The following definitions have either been taken from the *Excise Tax Act* as amended by S.C. 1990, c. 45 (Bill C-62), or represent departmental interpretations of terms relevant to the administration of that Act.

"Act" means the *Excise Tax Act*;

"amount" means money, property or a service, expressed in terms of the amount of money or the value in terms of money of the property or service;

"business" includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment;

"exempt supply" means a supply included in Schedule V to the *Excise Tax Act*;

"fiscal year" of a person means

(a) where the person has made an election under section 244 of the *Excise Tax Act* that is in effect, the period that the person elected to be the fiscal year of the person, and

(b) in all other cases, the taxation year of the person for income tax purposes;

"input tax credit" means a credit claimable by a registrant for the Goods and Services Tax paid or payable by the registrant in respect of the acquisition or importation of any property or service for consumption, use or supply in the course of commercial activities of the registrant;

"person" means an individual, partnership, corporation, trust or estate, or a body that is a society, union, club, association, commission or other organization of any kind;

"registrant" means a person who is registered under section 241, or who is required to apply to be registered under section 240 of the *Excise Tax Act*;

"reporting period" of a person means the reporting period of the person as determined under sections 245 to 251 of the *Excise Tax Act*;

"supply" means, subject to sections 133 and 134 of the *Excise Tax Act*, the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition;

"tax" means the Goods and Services Tax imposed under Part IX of the *Excise Tax Act*;

"tax fraction" means 7/107ths;

"taxable supply" means a supply that is made in the course of a commercial activity, but does not include an exempt supply.

GENERAL

1. An input tax credit (ITC) may be claimed by a registrant for tax paid or payable on property or a service acquired or imported for consumption, use or supply in the registrant's commercial activities. Section 169 of the Act governs the claiming of an ITC, which, depending on the circumstances, may be full or apportioned.

2. Subsection 169(1) provides that, subject to Part IX of the Act, a registrant is eligible to claim a full ITC (100 per cent) if the acquired or imported property or service is for consumption, use or supply exclusively in the registrant's commercial activities.

3. More information on full ITCs is available in GST MEMORANDUM 400-1-1, **"FULL INPUT TAX CREDITS"**.

4. Subsection 169(2) provides that when property or a service is acquired or imported by a registrant for consumption, use or supply (in this subsection referred to as "intended use") partly in the registrant's commercial activities and subsection 169(1) does not apply, the registrant is eligible to claim an apportioned ITC. In the case of an apportioned ITC, a registrant may claim part of the tax paid or payable on the acquired or imported property or service. In general, the ITC will equal the percentage or extent of use, consumption or supply of the property or service in the registrant's commercial activities.

5. More information on apportioned ITCs will be available in GST MEMORANDUM 400-1-3, **"APPORTIONED INPUT TAX CREDITS"**.

6. There are some special cases of ITC eligibility under the *Excise Tax Act*. These include the treatment of food, beverages and entertainment expenses and allowances and reimbursements.

FOOD, BEVERAGES AND ENTERTAINMENT

7. Section 236 of the *Excise Tax Act* parallels section 67.1 of the *Income Tax Act*. It is intended to limit the ITC that may be claimed by a registrant for GST paid or payable in respect of supplies of food, beverages and entertainment.

8. Where the deduction for income tax purposes is limited to 80 per cent of the cost of food, beverages and entertainment, only 80 per cent of the GST in respect of these expenses qualifies for an ITC. Section 236 specifically refers to the 80 per cent limitation for the deductibility of food, beverages or entertainment expenses where section 67.1 of the *Income Tax Act* applies, or would apply if the registrant were a taxpayer under that Act.

Business Expenses under the *Income Tax Act*

9. Amounts paid for food, beverages and entertainment are generally deductible in computing the taxpayer's income under the *Income Tax Act* to the extent that they are reasonable in the circumstances.

10. For income tax purposes, the deduction for such expenses is normally limited to 80 per cent of the total amount paid, including expenses such as gratuities and provincial sales tax (PST).

11. The *Income Tax Act* outlines various exceptions to the 80 per cent limitation. In particular, subsection 67.1(1) does not apply to an amount paid or payable by a person in respect of the consumption of food, beverages or enjoyment of entertainment in

the following cases:

- (a) where the food, beverages or entertainment are provided by a person carrying on a business of providing food, beverages or entertainment (e.g., restaurants, hotels and airlines) that normally provide them for compensation;
- (b) where the food, beverages or entertainment relate to a fund-raising event, the primary purpose of which is to benefit a registered charity;
- (c) where the taxpayer is compensated by someone else (e.g., where a client is billed and the amount expended is identified in the account submitted to the client as an expense for food, beverages and entertainment);
- (d) where an amount is required to be included in computing the income of an employee of the person as a taxable benefit;
- (e) where the amounts paid for food or beverages or entertainment are in respect of an employee at a remote work location;
- (f) where the person incurs expenses for food, beverages or entertainment made generally available to all employees at a particular event (e.g., a Christmas party).

12. Where the costs of food, beverages and entertainment provided at a conference, convention, seminar or similar event are not identified separately from the total fee, \$50 per day is deemed to have been paid for food, beverages and entertainment. This amount is subject to the 80 per cent limitation (i.e., \$40 may be deducted).

13. When the cost of food, beverages or entertainment is part of a package price which includes amounts not subject to the 80 per cent limitation, the registrant will be required to determine the value or make a reasonable estimate of the amount subject to the 80 per cent limitation.

14. "Entertainment" is defined under paragraph 67.1(4)(b) of the *Income Tax Act*. Revenue Canada Taxation Interpretation Bulletin IT-518 states that the following items are considered to be entertainment expenses and to be subject to the 80 per cent limitation:

- (a) the cost of tickets for a theatre, concert, athletic event or other performance;
- (b) the cost of private boxes at sports facilities;
- (c) the cost of room rentals to provide entertainment, such as a hospitality suite;

(d)the cost of a cruise;

(e)the cost of admission to a fashion show;

(f)the cost of entertaining guests at night clubs, athletic, social and sporting clubs and on hunting, fishing, vacation and similar trips.

Direct Expenses

15. Pursuant to section 236 of the *Excise Tax Act*, where food, beverage and entertainment expenses are incurred directly by the registrant, the calculation of the ITC eligibility is based on the actual tax paid or payable on food, beverage or entertainment expenses, subject to the 80 per cent limitation.

Allowances

16. Under the provisions of section 174 of the Act, where a person pays a reasonable allowance in respect of food, beverage and entertainment to an employee, or in the case of a partnership, to a member of the partnership, the person shall be deemed to have paid tax equal to 7/107ths of the allowance amount where:

(a)the expenses were incurred in Canada;

(b)90 per cent or more of the supplies were taxable at 7 per cent;

(c)the expenses were in relation to a business activity of the person; and

(d)the allowance is deductible in computing the income of the person for a taxation year by the person under the *Income Tax Act*, or would have been so deductible if the person were a taxpayer under the *Income Tax Act* and the activity were a business.

17. The employer or partnership may claim an ITC equal to:

the tax fraction (7/107) **x** total allowance paid

18. Where the 80 per cent limitation rule applies, registrants may choose one of two ways of determining the ITC that may be claimed.

19. Under the first method, registrants may claim an ITC equal to 7/107ths of the total allowance for food, beverages and entertainment expenses (including GST, PST and gratuities) throughout the fiscal year. Where a registrant adopts this method, 20 per cent of the total ITCs claimed will have to be recaptured at the end of the GST fiscal year. Those filing annually will add 20 per cent of the ITC to the net tax for the

fiscal year. Monthly and quarterly filers will add 20 per cent of the ITC to the net tax in the GST return for the first reporting period after that GST fiscal year.

20. The second alternative allows registrants to claim 80 per cent of 7/107ths of the total allowance in each reporting period.

Under this method, the 20 per cent recapture is calculated during each reporting period. This method will eliminate the need for any recapture adjustment at the end of the GST fiscal year.

21. Under the provisions of subsection 169(5), where a registrant cannot fully satisfy the general documentary requirements, a documentary exemption is allowed which provides that the registrant may claim an ITC equal to 7/107ths of the allowance (including GST, PST and gratuities), provided that sufficient books and records are maintained indicating that the tax was paid or payable.

Reimbursements

22. Section 175 of the *Excise Tax Act* provides that where a member of a partnership or an employee of an employer incurs an expense for which the member or employee is reimbursed by the partnership or employer, any GST included in the amount reimbursed shall be deemed to have been paid by the partnership or the employer and not by the member or employee. In accordance with the normal rules under section 169 of the *Excise Tax Act*, a registered employer or partnership may claim an ITC for the GST included in the amount reimbursed to the employee or member of the partnership for expenses incurred in Canada.

23. Where a reimbursement is in respect of a supply of food, beverages and entertainment and the 80 per cent limitation applies, registrants may choose one of two ways to recapture the ineligible 20 per cent. However, the method chosen must be used consistently throughout the fiscal year.

24. In the first method, ITCs are claimed for expenses (including PST, GST and gratuities) in the reporting period in which the expense is incurred, or a subsequent reporting period, and 20 per cent of the total ITCs claimed at the end of the GST fiscal year is recaptured. For registrants filing GST returns annually, this recapture is achieved by adding the disallowed 20 per cent to the net tax for the GST fiscal year. For monthly and quarterly filers, 20 per cent is added to the net tax in the GST return for the first reporting period after that GST fiscal year. This method may be used whether the registrant is claiming ITCs based on sufficient documentary evidence, or where there is an exemption from general documentary requirements.

25. The second alternative may apply only where a registrant cannot fully satisfy the general documentary requirements for claiming ITCs. Under the provisions of subsection 169(5), a documentary exemption is allowed which provides that a registrant

may claim 6/106ths of the total reimbursed amount in each reporting period (including GST, PST and gratuities) provided that sufficient books and records are maintained indicating that the tax was paid or payable. Under this method, the 20 per cent recapture may be calculated during each reporting period, which effectively eliminates the need for any recapture adjustment at the end of the registrant's GST fiscal year.

26. More information on ITC eligibility with respect to allowances and reimbursements will be available in GST MEMORANDUM 400-3-11, **"SPECIAL CASES - ALLOWANCES AND REIMBURSEMENTS"**.

DOCUMENTARY REQUIREMENTS

27. General documentary and information requirements are outlined in GST MEMORANDUM 400-1-2, **"DOCUMENTARY REQUIREMENTS"**.

NOTE: This memorandum does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation or contact any Revenue Canada Excise/GST office for additional information.

REFERENCES

OFFICE OF RESPONSIBILITY:
Policy and Legislation

LEGISLATIVE REFERENCES:
Excise Tax Act

HEADQUARTERS FILE:
N/A

SUPERSEDES GST MEMORANDUM:
N/A

OTHER REFERENCES:
N/A

SERVICES PROVIDED BY THE DEPARTMENT ARE AVAILABLE IN BOTH OFFICIAL LANGUAGES.

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