



# Information Bulletin

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## THE PROVINCIAL SALES TAX ACT

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### INFORMATION ON TRANSFERS OF BUSINESS ASSETS BETWEEN CLOSELY RELATED PARTIES

This bulletin has been prepared to help you apply and collect the Provincial Sales Tax. It is a general guide and not a substitute for the legislation.

**The changes to this bulletin are indicated by a (I).**

The contents of this bulletin are presented under the following sections:

- A. Introduction
- B. Definitions
- C. Transfers Among Parent Corporations and Wholly Owned Subsidiaries
- D. Transfers to a New Company Wholly Owned and Controlled by the Transferors
- E. Transfers to a New Company Which the Transferor Does Not Wholly Own or Control
- F. Amalgamations
- G. Partnerships
- H. Winding Up of a Company
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#### **A. INTRODUCTION**

Section 7.3 and 7.4 of The Provincial Sales Tax Regulations provide for an exemption of tax on transfers of tangible personal property between parent and subsidiary corporations where specific conditions are met. This provision allows for the continuity of business through a change in the organizational structure, such as the incorporation of a proprietorship, without incurring a tax liability.

There is no provision for an exemption on transfers of tangible personal property among two or more partnerships or among unrelated corporations. Transfers between corporations that are wholly owned and controlled by the same group of shareholders, are exempt when the group continuously maintains the same degree of beneficial ownership in the two companies.

This bulletin outlines the conditions under which transfers of tax-paid assets between related business entities may be made without payment of tax. The bulletin also outlines the application of tax to the transfer of business assets as part of a winding up, as a dividend in kind, or as a return of capital.

## **B. DEFINITIONS**

Beneficial Ownership	The ability to exercise any or all of the rights and privileges inherent in the ownership of shares.
Tangible Personal Property	Goods that can be seen or touched and may be subject to repossession.
Parent Corporation	A corporation that beneficially owns at least 95% of the outstanding shares of each class of share capital of its subsidiary corporation.
Tax-Paid Assets	Business assets on which the Provincial Sales Tax was paid when initially acquired.
Related Corporation	A corporation associated with another corporation when the other corporation is: <ul style="list-style-type: none"> <li>• Its parent corporation; or</li> <li>• Its wholly owned subsidiary; or</li> <li>• Another wholly owned subsidiary of the same parent corporation.</li> </ul>
Wholly Owned Subsidiary	A corporation where 95% of the outstanding shares of each class of its share capital are beneficially owned by another corporation referred to as its parent corporation.

## **C. TRANSFERS AMONG PARENT CORPORATIONS AND WHOLLY OWNED SUBSIDIARIES**

The transfer of tax-paid assets, by sale or lease, is exempt when transferred from:

- A parent corporation to its wholly owned subsidiary corporation; or
- A wholly owned subsidiary corporation to its parent corporation; or
- A wholly owned subsidiary corporation to another wholly owned subsidiary of the same parent corporation.

To qualify for this exemption, the following criteria must be met:

- The business assets being transferred qualify as tax-paid assets by a related corporation.
- Where the transfer is by way of a purchase, the relationship between the corporations must be maintained for a period of at least eight months after the date of the transfer.
- Where the transfer is by way of a lease, no tax is payable on lease payments as long as the relationship between the corporations is maintained.

Assets acquired tax exempt under these provisions retain their tax-paid status on future transfers as long as eight months has elapsed since the initial transfer and the relationship between the companies has been maintained.

Where a corporation is to be wound up or dissolved, it may transfer its tax-paid assets to a related corporation exempt of tax provided the following additional conditions are met:

- The seller and the purchaser were related corporations for a period of at least eight months prior to the purchase date.
- At or after the time of the purchase, the seller is dissolved or wound up.
- The seller and the purchaser remain related corporations until such time as the seller is dissolved or wound up.

If these criteria are met, it is not necessary for the companies to remain related for eight months after the transfer.

**D. TRANSFERS TO A NEW COMPANY WHOLLY OWNED AND CONTROLLED BY THE TRANSFERORS**

The transfer of tax-paid business assets is exempt from tax when a new company is incorporated by a person, partnership, or corporation which wholly owns and controls the new corporation and the intention is to have the same principals operate the business. To qualify for the exemption, the following conditions must be met:

- The person(s), partnership, or corporation incorporating the new company wholly owns and controls it.
- The business assets being transferred qualify as tax-paid assets by the transferor.
- The transferor continues to wholly own and control the new corporation for a period of at least eight months after the date of the transfer.
- The business assets being transferred are available to the newly incorporated company on the first day that it commences to carry on business (i.e. by marketing, manufacturing, or producing products, or providing services).

Transfers of assets under these provisions will qualify for the exemption when the accounting entries are recorded in the company's books of account after the company has begun its intended business, provided that the effective date of the transfer is no later than the date when the firm first commenced to carry on business. Transfers of assets after the date the corporation began carrying on business, where the assets could not effectively be transferred by that date because the transferor continued to use the assets, would not qualify for the exemption. Activities such as arranging financing for a business or selling share capital will not in themselves be considered carrying on a business.

**E. TRANSFERS TO A NEW COMPANY WHICH THE TRANSFEROR DOES NOT WHOLLY OWN OR CONTROL**

The transfer of business assets is exempt from tax when transferred from a person(s), partnership, or corporation to a new corporation which the transferor does not wholly own and control, provided the following criteria are met:

- The business assets being transferred qualify as tax-paid assets.
- The transferor receives shares of the purchasing corporation equal in value to the net equity in the tax-paid assets transferred.
- The transfer of tax-paid assets to the purchasing corporation is concurrent with the transfer of shares to the transferor.
- The transfer takes place no later than the first day the new company commences business (i.e. by marketing, manufacturing, or producing products, or providing services).
- The transferor retains all of the shares accepted as payment for a period of at least eight months after the date of their issue or transfer.

**F. AMALGAMATIONS**

When companies amalgamate through a formal amalgamation, within the meaning of subsection 87(1) of the Income Tax Act (Canada), the transfer of assets to the newly amalgamated company is not considered to be a sale of tangible personal property. Provincial Sales Tax, therefore, does not apply to the transaction.

Where tax was previously paid on the assets, by either of the parties of an amalgamation, the assets will be considered tax-paid by the amalgamating company. This is important for future transfers to wholly owned subsidiaries or further amalgamations.

Where the amalgamation involves two wholly owned subsidiaries of the same parent corporation, any assets either subsidiary acquired exempt from the parent corporation retain their exempt status on amalgamation, if the amalgamating company remains a wholly owned subsidiary of the same parent. This applies even if the amalgamation occurs within eight months of the transfer of the assets. However, if the parent/subsidiary relationship ends within eight months of the transfer, the amalgamated company is liable for tax on any assets received exempt from the parent within the eight-month period.

Where amalgamating companies are wholly owned subsidiaries of different parent corporations, any assets received exempt from the respective parent corporations at least eight months prior to the amalgamation will retain their exempt status upon amalgamation. The amalgamating companies are liable for tax on any assets received exempt from the respective parent corporations within eight months prior to the date of amalgamation.

An amalgamation procedure does not absolve the parties involved from any tax liability incurred prior to the amalgamation.

**G. PARTNERSHIPS**

With the exception of the transfer of tax-paid assets to a new corporation, a partnership will not qualify for an exemption of tax. The transfer of assets by an individual partner may qualify for a full or partial exemption as outlined in the bulletin.

The transfer of tax-paid assets by a partner to a new or existing partnership is exempt from tax when the contributing partner retains an equivalent ownership interest in the assets of the partnership. The transfer of assets to a partner from the partnership is exempt from tax when the ownership interest in the assets received is equal in value to the partnership interest that is being removed.

Tax will apply to the value of consideration paid by an individual partner to acquire an additional ownership interest in a tax paid asset. When the consideration includes an exchange or trade of a tax paid asset, tax will not apply to that portion.

Upon the dissolution of a partnership, the transfer of tax-paid assets is exempt from tax when the partner receives an ownership interest in an asset in satisfaction of the existing partnership interest.

**H. WINDING UP OF A COMPANY**

Under the provisions of The Provincial Sales Tax Act, tax is imposed on the sale of tangible personal property. "Sale" is defined as including the transfer of the title to or possession of tangible personal property for a consideration.

When assets are transferred to a shareholder as part of a winding up, dissolution, or liquidation of a corporation, and the shares of the shareholder are reduced in value or cancelled as a result of the transfer, consideration has been paid for the assets. Therefore, a sale has occurred and the shareholder is required to pay tax on the value of the assets at the time of transfer.

The shareholder is not required to pay tax on the value of assets at the time of transfer, when it can be shown that the individual is the sole shareholder and has continuously wholly owned and controlled the corporation since the time the corporation had paid tax on the assets.

**I. DIVIDEND IN KIND AND RETURN OF CAPITAL**

The same principle applies to the transfer of assets as a dividend in kind or a return of capital, whether in the course of winding up, or otherwise.

When a company declares a dividend to a class or classes of shareholders, a liability is created to each of those shareholders. If the dividend is paid by transferring an asset of the company, the liability to the shareholder receiving the asset is reduced to the extent of the value of the asset. The transfer of title or possession of the asset is therefore contingent upon the reduction of the company's liability to pay all or a portion of the dividend to the shareholder.

When a company transfers an asset to effect a return of capital to a shareholder, the value of shares held by that shareholder is reduced to the extent of the value of the asset.

When tangible personal property is transferred as a dividend in kind or as a return of capital, the consideration paid by the shareholders in return for the asset is the cancellation of the company's liability to pay the dividend or the reduction in the value of shares held by the shareholder. For Provincial Sales Tax purposes, a sale is considered to have taken place. The shareholder is therefore required to pay tax on the value of the asset at the time of the transfer.

### **FOR FURTHER INFORMATION**

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		<u>E-mail:</u>	sask.tax.info@finance.gov.sk.ca
		<u>Fax:</u>	306-787-6653

Internet: Provincial Sales Tax bulletins, forms and information are available on the Internet at:

<http://www.gov.sk.ca/finance/revenue/pst/pst.htm>

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