



Letter from the President

Canada Revenue Agency Makes Clear: Brokerage Commissions Exempt From GST/HST

Background: Legal Disputes Confuse GST/HST Requirements

Last year a tax court ruled in favour of the plaintiff that a significant component of the discretionary management fee is exempt from GST/HST as it is deemed as services “arranging for” the financial transaction. The decision was short-lived, however, as the federal government predictably proposed amending existing tax legislation in December, reversing the court ruling by expanding the definition of financial services subject to GST/HST to include various “arranging for” services. The amending legislation will adopt this new definition of financial services in connection with the application of the GST/HST. Last February, the Canada Revenue Agency (CRA) released Notice 250 to clarify administrative procedures under the proposed tax legislation.

But the CRA Notice surprisingly went beyond the subject addressed in the court decision to comment on the tax treatment of other financial services. Specifically, the CRA Notice did not provide the clarity needed to confirm certain financial services under the broadened tax definition, such as brokerage commissions, remain exempt from GST/HST. The wording in the CRA Notice could have been interpreted to suggest that certain ancillary services that facilitate the execution of a brokerage transaction, such as advice, research, order entry and trade confirmation, are GST/HST taxable and would therefore require the broker and dealer to determine the value of these ancillary services for every transaction to comply with the amended tax legislation. While the wording of the CRA Notice was sufficiently

vague to arrive at this conclusion, it was also recognized such an outcome introduced a fundamental change to tax policy without formal notice, nor with requisite government consultations with market participants. Indeed, on March 26, in reaction to publicized concerns of a possible change in tax status, the federal Minister of Finance confirmed that tax policy had not changed.

IIAC Actions: Calling for Clarity, Arguing For Tax Exemption

The Association recognized the industry required formal clarity in the legislative amendments, or at least in formal CRA administration procedures, to reinforce the Minister’s statement and confirm that brokerage commissions, including related ancillary services, are fully exempt from GST/HST. Dealers would not be required to quantify and segment these ancillary services for sales tax purposes. The clarity would also provide CRA with needed direction to administer the application of GST in connection with financial services. This legislative clarity would also avoid the retroactivity of GST taxation in connection with the changed definition of financial services effective December 2009.

Shortly following the court ruling last summer, the IIAC issued an Advisory to member firms which indicated the federal government would likely oppose the court decision or introduce legislation with retroactive effect to confirm existing tax policy. The IIAC advisory recommended member firms continue to collect GST on discretionary managed accounts until such time as CRA advised otherwise.



The IIAC made two written submissions to the Tax Policy Branch of the federal Department of Finance and another submission to CRA officials in the GST/HST Ruling Directorate and also met on separate occasions with both departments. The IIAC argued that imposing sales tax on ancillary services in connection with brokerage transactions would (i) undermine the fundamental principles of existing sales tax legislation, (ii) impose additional costs and uncertainty on investors, complicating their efforts to build savings and (iii) create significant practical difficulties and costs for the industry in complying with requirements to segment and value ancillary services applying in each brokerage transaction. The Association recommended either modification to the wording of the legislative amendments or a clearly defined administrative approach that would be undertaken by CRA to achieve the same result.

Outcome: Ancillary Services Exempt From GST/HST

On June 30, 2010, CRA republished Notice 250, providing the needed clarification in respect of the

application of GST/HST on brokerage commissions and other financial services.

While the proposed amending legislation awaits final parliamentary approval, the revised version of CRA Notice 250 “Proposed Changes to the Definition of Financial Services” (www.cra-arc.gc.ca/E/pub/gi/notice250/notice250-e.pdf) sets out specific examples explaining the administrative tax treatment of the revised legislation. These examples (notably examples three and four in the Notice) confirm that commissions for brokerage transactions, including related ancillary services, are exempt for the purposes of GST/HST taxation.

Yours sincerely,



Ian C.W. Russell, FCSI
President & CEO, IIAC

July 2010

Vol. 32