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BC Provincial Sales Tax regulations released

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BC Provincial Sales Tax (“PST”) regulations highlights

On February 28, 2013, orders-in-council were issued with respect to two regulations, the **Provincial Sales Tax Regulation** and the **Provincial Sales Tax Exemption and Refund Regulation** (collectively referred to as “Regulations”). As a result, Finance Minister Michael de Jong fulfilled his promise of earlier in the week to have the Regulations available for the entire month of March. The Regulations are established under the authority of the Provincial Sales Tax Act (“PSTA”).

The Regulations bring back into effect all of the permanent exemptions from PST that were in the old regulations under the Social Service Tax Act (“SSTA”). While there were no real surprises, it is disappointing to note that there were not as many changes to simplify or address problematic areas of the old legislation and regulations as we had anticipated. However, the Regulations have structured the numerous exemptions in a much more organized fashion than that which existed under the authority of the SSTA, which had contained provisions pieced together over many years. The following is a summary of the main categories of exemptions in the Regulations.

Provincial Sales Tax Exemption and Refund Regulation

Health and medical products

Prescription drugs continue to be exempt, along with over-the-counter pain medications and items commonly known as household medical aids. This section of the Regulation also includes exemptions for vitamins, dental and optical appliances and other supplies and equipment used by people with disabilities.

Children’s clothing

An exemption is provided for children-sized clothing. Minor changes have been made to the sizes allowed and the descriptions of the types of items included. In addition, as under the old legislation, adult-sized clothing may be purchased exempt of PST for children under the age of 15, provided that a written certification is made by the purchaser. This certification has, in fact, become more onerous, as it now requires the full name and address of the purchaser, as well as the full name of the child for whom the clothing is being purchased.

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School supplies

While it had been anticipated that the list of exempt school supplies would be updated or modernized from the old legislation to encompass typical items currently used by students, this was not the case. The list is the same as the old list, exempting basic items such as pencils and paper but not exempting calculators, highlighters, or backpacks. In addition, the list of items that may be purchased exempt by schools has been made more specific and, thus, potentially narrower in its application.

Publications

Publications eligible for exemptions include books, magazines and newspapers. There are no significant changes. While there had been concern that eBooks may attract PST, such downloads would be addressed under the definition of telecommunication services and do not appear to be taxable; however, no specific PST regulation is provided in this regard.

Gifts, prizes, draws and awards

A new area of exemption is related to gifts. These new exemptions are required, given that the legislation now has specific provisions for the imposition of tax on gifts. Gifts between family members are exempt from taxation, as are gifts to charities, prizes received, and inheritances. These exemptions are predicated on the fact that the donor either received the item as a gift in BC before April 1, 2013 or the donor originally paid tax on the item, either under the PSTA, the old SSTA, the Consumption Tax Rebate and Transition Act, or the provincial portion of HST was paid on the item and the donor did not receive a rebate or credit in respect of same. In other words, someone must generally have originally paid non-recoverable provincial tax on the gifted goods in order to qualify for relief under the new exemptions.

Fuel, energy and energy conservation

An exemption is provided for residential energy, including electricity and natural gas. Exemptions are also provided for a long list of energy conservation items, including various items from weather-stripping to wind-powered energy equipment.

Safety equipment and apparel

Exemptions in this area remain generally the same as under the SSTA. There is a specific list of exempt safety equipment and apparel that is designed to be worn by a worker, and there are exemptions for safety equipment acquired to comply with the BC Occupational Health and Safety regulations. In addition to work-related safety equipment, there are a number of general exemptions, including such things as children's car seats, first aid kits, portable fire extinguishers and life jackets.

Industrial and commercial items

This group of exemptions includes explosives, catalysts and direct agents, as well as a specific list of consumables, including dies, jigs and moulds. The exemptions generally mirror those under the SSTA.

Farmers, fertilizers, fishing and aquaculture

As before, there are many exemptions for farmers and fishermen. The particular exemptions are listed in Schedules to the Regulations and are substantially the same as before.

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Other exemptions

Other categories of exemptions include settler's effects; transportation items, such as bicycles, turbine-powered aircraft and self-propelled vessels of more than 500 gross tons; and custom software.

Related services

The PSTA imposes tax on services related to tangible personal property ("TPP"). The Regulations provide a number of exemptions that serve to narrow down the class of services that are taxable. Services to a specific list of household appliances are exempt, as are services to affixed machinery, clothing, and software. In addition, specific categories of services that might otherwise be considered taxable are enumerated in the Regulations as being exempt, including motor vehicle towing, diagnostic testing, installation of software on an electronic device, moving services, freight transportation services and packaging.

Production machinery and equipment

The rules for manufacturers are replaced in much the same form as under the SSTA. Equipment is exempt if it is acquired by a qualifying manufacturer, used primarily and directly in the manufacturing process **and more than 90% of its use is** at the qualifying part of the manufacturing site. The qualifying part of the manufacturing site is now defined to generally encompass the area from the point at which the raw materials are received to the point at which the finished product is first stored or transported from the site. This exemption also extends to parts for such equipment, as well as to equipment used in pollution control or waste management. Specific exemptions are also provided for equipment used by businesses in the area of software development, exploration or development of petroleum and natural gas, mining and logging. It should be noted that in order to qualify for an exemption of this type, the purchaser must provide certification as to the use of the equipment. This would be provided in the form of an exemption certificate; however, the particular form is not currently available.

Related party exemptions

The related party exemptions that existed under the authority of the old SSTA have been reintroduced. Related parties are defined, basically and generally, as a corporation and its wholly-owned subsidiary (which is established under an ownership test of 95%). TPP may be transferred between related corporations, as long as it is "tax paid" and the corporations continue to be related for 8 months following the date of transfer. As expected, "tax paid assets" are assets on which either PST, SST, or tax under the Consumption Tax Rebate and Transition Act has been paid or, alternatively, where the provincial portion of HST has been paid on the asset but no credit or rebate has been received for that tax. The related party rules apply to both leases and purchases of TPP. Services between related companies are considered exempt services. Finally, there are special exemptions for TPP transferred to a new corporation before it commences operations in return for shares, regardless of whether the new corporation is wholly-owned. This provision typically allows a sole proprietor to incorporate his/her business without the payment of PST on his/her assets.

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Other provisions

The remainder of the Provincial Sales Tax Exemption and Refund Regulation addresses situations where a person has paid tax on exempt items and is entitled to a refund. The refund in respect of medical equipment purchased with charity funds is retained and includes the software used to operate such equipment. This allows hospitals, for example, to purchase large pieces of medical equipment, such as diagnostic medical imaging equipment (e.g., x-ray machines and CT scanners) and the software that runs the equipment, essentially exempt of PST.

Provincial Sales Tax Regulation

This particular regulation is more technical in nature and covers the following:

- Prescribed dates for payment of tax under various sections of the PSTA
- Details on certain aspects of the purchase price determination, particularly where items are bundled or where items are brought into BC
- What constitutes dealer-use of a motor vehicle and the calculation of tax in such a case
- Tax applicable on the change-in-use of various types of property
- Allowances for registrants for collecting tax, up to a maximum of \$198 per month
- The manner of remittance or payment of tax
- Information that must be contained on invoices or other documentation
- Retention of records
- Penalties and interest

For further details, we refer you to the [Ministry of Finance website](#).

Is your business ready?

With PST coming into effect April 1, 2013, businesses have less than one month to ensure that they are ready for the transition back to a retail sales tax environment. Prior to April 1st, business must make certain that the following steps have been completed:

- Registration with the Ministry of Finance to collect PST
- Assessment of inventory, services and activities subject to the application of tax
- Re-programming of electronic systems
- Modifications to templates or documents
- Development of processes and procedures, including self-assessments, to mitigate PST exposure and ensure compliance
- Provision of training and/or manuals for an effective conversion and ongoing compliance
- Consideration of budgets and impact analyses

Drawing from our years of providing market-leading indirect tax support, Deloitte's Indirect Tax team has developed a return to PST roadmap to ensure that our clients' return to PST is as seamless as possible. Some of the services which we can provide are:

- Review of long-term contracts for indirect tax implications
- Systems and processes review and adjustment
- PST training and creation or updating of user-friendly tools, such as cheat sheets, matrices, decision trees, etc.
- Identification and implementation of tax savings plans and opportunities

To find out how our team of tax, legal and systems specialists can help you ensure that your business is PST-ready, or to understand more about how these regulations impact you, contact any of our Indirect Tax leaders listed below:

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