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Canadian indirect tax news

Claim your public service body rebates on time or amend!

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The Canada Revenue Agency (CRA) has recently announced a new policy which affects all public service bodies (PSB)¹ that are entitled to a PSB rebate under the Excise Tax Act (ETA). This change creates significant compliance issues that may adversely affect a PSB's cash-flow while also creating additional administrative demands for the CRA.

By way of background, the PSB rebate is calculated as a percentage of the “non-creditable tax charged” (NCTC) of the GST and the provincial part of the HST paid or payable on eligible expenses for a “claim period” of a person. Regarding time limitation to claim rebates, PSBs have up to four years to file their PSB rebate application for a claim period.

The claim period is different depending if the PSB is a registrant or not. As such, a “claim period” of a registered PSB is its reporting period (monthly, quarterly or annually) and for a PSB that is not a GST/HST registrant, the claim period consists of either (i) the first and second fiscal quarters in a fiscal year, or (ii) the third and fourth fiscal quarters in a fiscal year of the PSB.

Technically, to be compliant with the ETA, whenever tax becomes payable (or is paid without becoming payable) in a claim period that amount of tax should be added to the NCTC for that period. The legislation does not allow for tax that was paid or that became payable in a particular reporting period to be claimed as a PSB rebate in a subsequent period. Although the CRA has been working around this issue since the inception of the GST, it appears that the recent informal case decision in *Humber College Institute of Technology & Advanced Learning v. The Queen*² may have forced CRA to release a very restrictive and narrow interpretation to prevent perceived potential abuses.

Since the introduction of the GST, almost every PSB took the position that any amount of GST/HST that was paid or payable in a previous claim period could be claimed in any subsequent PSB claim since a PSB has up to four years to claim the

¹ PSBs include a school authority, university, or public college that is established and operated other than for profit, a hospital authority, a facility operator, or an external supplier, a municipality, including determined and designated municipalities.

² Due to a late filing and rebate application, Humber College was assessed interest on the full amount of GST arising on the purchase of certain real property, without taking into account the 67% PSB rebate available to Humber. If Humber had not voluntarily come forward and filed an application for the rebate, which led to an assessment, but had been assessed by the CRA without having done so, subsection 296(2.1) of the ETA would have applied. Subsection 296(2.1) allows the 67% rebate to offset the GST retroactively to the period for which the tax was assessed, thus the taxpayer would not incur interest pursuant to subsection 280(1) of the ETA on the full amount of the GST. It is important to note that the CRA has not applied the reasoning in *Humber* in applying subsection 296(2.1) where the rebate is for tax paid in error pursuant to section 261 of the ETA.

rebate. For example, an invoice dated January 1, 2014 but not processed before June 2014 would normally be included in the June rebate claim for a PSB that is a monthly filer. This was a practical and reasonable solution as it is virtually impossible for larger PSBs to receive and process their suppliers' invoices within a 30 day period (i.e., the typical claim period for a monthly filer).

In the *Excise and GST/HST News – No 89 (Summer 2013)*, the CRA stated the following:

“a PSB can only claim a PSB rebate of an amount of GST/HST on the application (...) for the claim period in which the GST/HST was paid or payable. If a PSB has not claimed PSB rebates for several claim periods, it should file a separate rebate application form for each claim period for which it is eligible to claim a rebate. The PSB should not consolidate rebates for multiple claim periods into one rebate application.

If a PSB has already claimed a PSB rebate for a claim period and subsequently discovers additional GST/HST that was paid or payable during that claim period, the PSB must adjust the previously filed rebate application to claim a PSB rebate for the additional GST/HST. The PSB cannot include the additional tax in the PSB rebate application for a different claim period.”³

This means that the rebate is claimable only in the claim period in which the GST/HST has been paid or payable, and not in a subsequent claim period. As such, a PSB has up to four years to **file** its claim, **not** four years to **claim** the rebate after the GST/HST has been paid or payable.

To further demonstrate using the previous example, although the GST/HST payable in January 2014 was only processed in June 2014, the PSB must claim the rebate with its January claim period.

As such, where a PSB with a monthly filing requirement is not able to process invoices by the following month, the PSB needs to go back and amend previously filed rebate claims to recover GST/HST paid in subsequent rebate claim periods. This could require a monthly filer to amend as many as 3 or 4 returns per claim period to correctly capture all the NCTC (i.e., potentially filing 36 or 48 claims per year). These amended claims will ultimately overwhelm CRA's resources leading to processing delays and the need to hire additional resources to process the backlog.

The alternative is to delay filing the rebate application until all invoices for a rebate period have been received and processed. However, this is not realistic as it could create a significant cash flow burden for a PSB.

It appears that CRA has suggested two options for PSBs: assume the cash flow consequences by postponing filing rebate claims until all invoices have been processed, or file amended rebate claims applications each time an invoice is received or processed after the rebate claim period. Both solutions are unreasonable and force an unnecessary burden on PSBs.

Although it is hopeful that CRA will “clarify” their administrative policy and grant administrative relief to PSBs, it is not certain that this will happen⁴. PSBs are thus forced to either comply with the new rules or ignore them – creating additional risks

³ Revenu Quebec is adopting the same administrative policy for QST purposes.

⁴ It is our understanding that the GST/HST Rebates Processing Section at CRA is actively reviewing this policy and that during the interim it is “business as usual”.

and potential penalties relating to non-compliance.

Nonetheless, there may be other practical solutions which include: reviewing your accounts payable (A/P) processes and policies; acquiring additional A/P staff and resources; enhancing and streamlining your procurement and payment processes; changing your filing frequency; consolidating amended rebates on an annual or semi-annual basis; and even considering outsourcing the preparation of GST/HST returns to a third party.

For detailed assistance, please contact **Michael Matthews** or your local indirect tax contact.

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