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Indirect Tax Alert

News from Americas Tax Center

Canada releases new GST/HST rules for carbon emission allowances

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On 27 June 2018, Canada's Department of Finance (Finance) released draft changes to the *Excise Tax Act*, RSC 1985, c. E-15, as amended (the ETA) that will alter the way that Goods and Services Tax (GST)/Harmonized Sales Tax (HST) is accounted for on the transfer of emission allowances (including emissions credits traded under the cap and trade systems that are in place in Alberta, Ontario¹ and Quebec). These changes propose to treat GST/HST on emission allowances similarly to how GST/HST is accounted for on the transfer of commercial real property.²

Under the existing rules in the ETA, as with most taxable supplies, the supplier is obligated to charge, collect and remit, to the Federal Government, GST/HST on the transfer of emission allowances. The purchaser (i.e., recipient) of the allowances will pay the relevant GST/HST to the supplier and typically (if the purchaser is properly registered for GST/HST purposes and engaged in commercial activity) claim an input tax credit on the filing of its GST/HST return to offset the GST/HST paid.

In response to concerns raised by businesses who actively manage emission allowances, Finance has proposed eliminating the existing cash flow burden that arises in respect of waiting for the Government to issue offsetting input tax credits and to eliminate the concern about dealing with businesses that may not be well established or regulated in Canada and the concern about payments of tax to nonresidents.

Effective 27 June 2018, suppliers will no longer be required to collect and remit GST/HST on supplies of emission allowances (even where the purchaser is not registered for GST/HST purposes). Instead, purchasers that are resident in Canada or purchasers that are not resident in Canada, but are registered for GST/HST purposes, are required to self-assess GST/HST on the transfer of emission allowances.

Purchasers who are registered for GST/HST purposes and are acquiring emission allowances for use or supply in the course of their commercial activities are generally permitted to claim a fully offsetting input tax credit on the same GST/HST return that includes the self-assessment. As a result, under the new rules, most purchasers will be relieved from paying or remitting any net GST/HST in respect of a transfer of emission allowances.

These changes with respect to emission allowances are effective as of 27 June 2018 (referred to by Finance as the "Announcement Date"). However, these changes will also apply retroactively to any sales of emission allowances where GST/HST was payable before the announcement date, but the GST/HST has not yet been collected by the supplier (i.e., an invoice has been issued but has not yet been paid). As part of these changes, there will no longer be a rebate for tax paid in error in respect of an emission allowance. If this causes any concern for amounts paid or collected in error since the Announcement Date, please contact your local tax professional as soon as possible.

Endnotes

1. On 3 July 2018, the Government of Ontario announced that it has revoked the cap and trade regulation, thus prohibiting all further trading of emission allowances.
2. Note that Quebec has harmonized with these federal proposals - see [Quebec Information Bulletin 2018-5](#).

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