

Are the General Partners of a Limited Partnership Required to Collect GST/HST on Payments or Distributions Received from Their Partnerships?

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Online Tax Strategies

On September 8, 2017, the Minister of Finance presented new legislative proposals regarding limited partnerships. Under these new measures, certain distributions made by limited partnerships to general partners will henceforth be subject to the GST/HST.

Partnerships are covered by specific rules prescribed by the *Excise Tax Act*. The practical effect of these rules is that services provided by a partner to its partnership in his/her capacity as partner are not considered as being provided by the partner but rather by the partnership in connection with its activities. The partner would therefore not be considered as having provided a service and would not have to collect any GST/HST in this regard.

In order to apply these rules, the critical question is to determine whether or not a service is rendered “as a partner of the partnership”. The answer to this question needs to be determined based on particular facts, such as the partnership agreement, the nature of the services rendered and their relation to the partnership’s activities and the partner’s normal activities and remuneration, as applicable.

New rules

The CRA had already published certain decisions with respect to limited partnerships where it was considered that when the general partner of a limited partnership received an amount for services rendered to the limited partnership, this amount is

generally considered remuneration for services rendered for itself and not as a partner of the partnership.

The new provisions therefore confirm the position already retained by the CRA with regard to the specific case of “investment limited partnerships” (“ILP”).

As such, the delivery of a “management or administrative service” by a general partner to an ILP is henceforth deemed as having been made outside the ILP’s activities and within the partner’s activities. The general partner will henceforth be deemed as having made a taxable supply to the ILP. There is therefore no distinction to be made when services are rendered or not by a general partner in accordance with his/her obligation as partner.

Given the nature of an ILP’s activities, which are generally exempt financial services, the ILP’s right to claim ITC/IIR for the tax payable to its general partner will likely be limited.

Application

These legislative proposals only apply to ILPs. An ILP is defined as a limited partnership whose prime objective is to invest funds in goods that are primarily financial instruments; it is presented as speculative funds, investment limited partnerships, mutual funds, equity funds, venture capital funds or other similar collective investment mechanism.

This new definition also applies to limited partnerships whose main purpose is to invest funds in goods that are mainly financial instruments, and where more than 50% of the value of the partnership's interests is held by designated financial institutions.

Limited partnerships that invest in non-financial sectors are not targeted by these rules. The former rules should continue to apply to entities that are not ILPs if they obtain services from their partners when the latter act "as partners" of these entities.

Please note that various definitions will also be amended to take into account the new notion of ILP.

Timeline

These changes would apply to distributions paid or that became payable after September 7, 2017.

The Quebec government has not yet announced new measures in this respect. However, it is likely that these changes will also apply to the QST given the harmonization of the QST to the GST.

How to proceed?

Following these announcements, we recommend that all limited partnerships review their structures to assess the impacts of these proposals and ensure there will be no repercussions on their activities.

Don't hesitate to contact your Raymond Chabot Grant Thornton advisor who can help you apply these new measures.

For more information, visit our website at rcgt.com.