

Notice of Ways and Means Motion to Amend the Excise Tax Act

That it is expedient to amend the *Excise Tax Act* as follows:

GST/HST and Investment Limited Partnerships

1 (1) Subsection 123(1) of the *Excise Tax Act* is amended by adding the following in alphabetical order:

investment limited partnership means a limited partnership, the primary purpose of which is to invest funds in property consisting primarily of financial instruments, if

(a) the limited partnership is, or forms part of an arrangement or structure that is, represented or promoted as a hedge fund, investment limited partnership, mutual fund, private equity fund, venture capital fund or other similar collective investment vehicle, or

(b) the total value of all interests in the limited partnership held by listed financial institutions is 50% or more of the total value of all interests in the limited partnership; (*société en commandite de placement*)

(2) Subsection (1) is deemed to have come into force on September 8, 2017.

2 (1) Section 132 of the Act is amended by adding the following after subsection (5):

Residence of investment limited partnerships

(6) For the purposes of this Part but subject to subsection (2), an investment limited partnership is deemed to not be resident in Canada at any time if, at that time, the total value of all interests in the partnership held by non-resident members of the partnership (other than prescribed members) is 95% or more of the total value of all interests in the partnership.

(2) Subsection (1) is deemed to have come into force on September 8, 2017.

3 (1) Subsection 149(5) of the Act is amended by striking out “and” at the end of paragraph (f) and by adding the following after paragraph (f):

(f.1) an investment limited partnership; and

(2) Subsection (1) applies in respect of

(a) any taxation year of a person that begins after 2018; and

(b) the taxation years of a person that begin in 2018 if the person elects to have subsection (1) apply in respect of those taxation years.

(3) An election under paragraph (2)(b) is to

(a) be made in prescribed form containing prescribed information; and

(b) be filed with the Minister of National Revenue in prescribed manner on or before the day that is 60 days after the day on which the legislation enacting this section receives royal assent or any later day that the Minister of National Revenue may allow.

(4) If a person makes an election under paragraph (2)(b), the references in subsection 244.1(4) of the Act, as enacted by subsection 4(1), to “2018” and “2019” are to be read as “2017” and “2018”, respectively, in applying that subsection 244.1(4) in respect of the person.

4 (1) Section 244.1 of the Act is amended by adding the following after subsection (3):

Fiscal year — investment limited partnership

(4) If a particular fiscal year of an investment limited partnership begins in 2018 and includes January 1, 2019 and the investment limited partnership would be a selected listed financial institution throughout a reporting period in the particular fiscal year if the particular fiscal year began on January 1, 2019 and ended on December 31, 2019, the following rules apply:

- (a)** the particular fiscal year ends on December 31, 2018;
- (b)** subject to subsection (2), the fiscal years of the investment limited partnership are calendar years as of January 1, 2019;
- (c)** any election made by the investment limited partnership under section 244 ceases to have effect as of January 1, 2019; and
- (d)** if the first taxation year of the investment limited partnership that begins after 2018 does not begin on January 1, 2019, for the purposes of subsection 225.2(1) the investment limited partnership is deemed to be a financial institution for the period beginning on January 1, 2019 and ending on the day preceding the first day of that taxation year.

(2) Subsection (1) is deemed to have come into force on September 8, 2017.

5 (1) Paragraph 272.1(3)(b) of the Act is replaced by the following:

(b) in the case of management or administrative services that are rendered by a general partner of an investment limited partnership to the investment limited partnership under an agreement for the particular supply of those services,

(i) if subsection 136.1(2) applies in respect of the particular supply, for each separate supply of those services that is deemed under paragraph 136.1(2)(a) to be made by the general partner for a billing period (within the meaning of that subsection), the separate supply is deemed, despite paragraph 136.1(2)(c), to be made for consideration that becomes due on the last day of the billing period equal to the fair market value of the services rendered under the agreement by the general partner to the investment limited partnership during the billing period, determined as if the general partner were not a member of the investment limited partnership and were dealing at arm's length with the investment limited partnership, and

(ii) in any other case,

(A) the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a separate supply of those services for each reporting period of the general partner during which those services are, or are to be, rendered under the agreement, and

(B) each separate supply of those services that is deemed to be made under clause (A) for a reporting period of the general partner is deemed to be made on the first day of the reporting period for consideration that becomes due on the last day of the reporting period equal to the fair market value of the services rendered under the agreement by the general partner to the investment limited partnership during the reporting period, determined as if the general partner were not a member of the investment limited partnership and were dealing at arm's length with the investment limited partnership; and

(c) in any other case, the supply is deemed to have been made for consideration that becomes due at the time the supply is made equal to the fair market value at that time of the property or service acquired by the partnership determined as if the person were not a member of the partnership and were dealing at arm's length with the partnership.

(2) Section 272.1 of the Act is amended by adding the following after subsection (7):

Investment limited partnership — supply by general partner

(8) For the purposes of this Part, if a general partner of an investment limited partnership renders a management or administrative service to the investment limited partnership,

(a) the rendering of the service is deemed not to be done by the general partner as a member of the investment limited partnership; and

(b) the supply by the general partner to the investment limited partnership that includes the service is deemed to have been made otherwise than in the course of the investment limited partnership's activities.

(3) For the purposes of subsections (4) to (6) and Part IX of the Act, if management or administrative services are rendered by a general partner of an investment limited partnership to the investment limited partnership under a particular agreement entered into before September 8, 2017 and if some or all of those services are rendered on or after that day, the following rules apply:

(a) in respect of the management or administrative services that are rendered on or after September 8, 2017 (referred to in this paragraph as the “subsequent services”),

(i) the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a particular supply of the subsequent services and the particular supply is deemed to have been made on September 8, 2017,

(ii) the subsequent services are deemed to have been rendered under an agreement for the particular supply and not under the particular agreement and the agreement for the particular supply is deemed to have been entered into on September 8, 2017,

(iii) any amount that is charged, collected or remitted at any time as or on account of tax under Part IX of the Act in respect of an amount of consideration that is reasonably attributable to the rendering of the subsequent services is deemed to be an amount of tax that is collected at that time in respect of the particular supply, and

(iv) if the total of all amounts of tax that are payable under Part IX of the Act in respect of the particular supply is in excess of the total of the amounts that are deemed under subparagraph (iii) to be amounts collected before Budget Day in respect of that supply, that excess is deemed, despite subsection 272.1(3) of the Act, as amended by subsection (1), to have become payable on Budget Day and the general partner is deemed to have collected that excess on that day; and

(b) in respect of the management or administrative services, if any, that are rendered before September 8, 2017 (referred to in this paragraph as the “prior services”),

(i) the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a supply of the prior services (referred to in this paragraph as the “earlier supply”) and the earlier supply is deemed to have been made on the day on which the particular agreement is entered into,

(ii) the prior services are deemed to have been rendered under an agreement for the earlier supply and not under the particular agreement and the agreement for the earlier supply is deemed to have been entered into on the day on which the particular agreement is entered into, and

(iii) any amount that is charged, collected or remitted at any time as or on account of tax under Part IX of the Act in respect of an amount of consideration that is reasonably attributable to the rendering of the prior services under the particular agreement is deemed to be an amount of tax that is collected at that time in respect of the earlier supply.

(4) Subsection (1) applies in respect of management or administrative services that are supplied after September 7, 2017.

(5) Subsection (2) is deemed to have come into force on September 8, 2017 but also applies in respect of management or administrative services that are rendered under an agreement entered into before that day if an amount was, before that day, charged, collected or remitted as or on account of tax under Part IX of the Act in respect of those services or in respect of any supply made under the agreement.

(6) For the purposes of Part IX of the Act, if subsection 272.1(8) of the Act, as enacted by subsection (2), applies in respect of management or administrative services that are rendered before September 8, 2017 by a general partner of an investment limited partnership to the investment limited partnership under an agreement entered into before that day, the following rules apply:

(a) subsection 272.1(3) of the Act, as amended by subsection (1), does not apply in respect of the supply of the management or administrative services made by the general partner to the investment limited partnership;

(b) any amount that the investment limited partnership pays or credits to the general partner after September 7, 2017 that is reasonably attributable to the management or administrative services is deemed to be consideration for the supply of those services by the general partner to the investment limited partnership that becomes due at the time the amount is paid or credited; and

(c) if an amount was charged, collected or remitted as or on account of tax in respect of a particular amount — being an amount that the investment limited partnership paid or credited to the general partner before September 8, 2017 and that is reasonably attributable to the management or administrative services — the particular amount is deemed to be consideration for a taxable supply of those services that becomes due at the time the amount is paid or credited.