

Implementation of the New Harmonized Sales Tax (HST) in Ontario Temporary Recapture of Input Tax Credits (RITC) Applicable to Large Businesses

General Overview

Large Businesses have some specific implementation rules relating to the HST. A “Large Business” is defined for these purposes as a business making taxable supplies exceeding \$10 million annually on an associated group basis. Businesses meeting this definition will be required to repay, (or ‘recapture’) ITC’s attributable to the provincial component of the HST they pay in respect of certain property or services.

Affected businesses will be required to report on their GST/HST returns the total or gross amount of ITC’s paid or payable during a period. A separate line on the return will then be used to report the ITC’s that are to be recaptured in respect of the provincial portion of the HST, calculated as outlined below. Large Businesses will not be allowed to simply forego claiming ITC’s to fulfill the RITC requirements - the two-step reporting must be used. Failure to do so could result in penalties.

Affected Period

The recapture of ITC’s is temporary for Large Businesses. The measure is in effect for five years, from July 1, 2010 to June 30, 2015. Following that, there is a phase-out period of the requirement to recapture ITC’s:

- 75% for the period from July 1, 2015 to June 30, 2016,
- 50% for the period from July 1, 2016 to June 30, 2017,
- 25% for the period from July 1, 2017 to June 30, 2018, and
- 0% on or after July 1, 2018.

A recapture year begins July 1st and ends June 30th of the following year. The affected period includes eight recapture years. Whether a business is required to recapture ITC’s for a particular year will depend on the amount of taxable supplies reported for the previous fiscal year.

Specified Property and Services

Generally, the RITC requirement applies to the following specified property and services that are acquired, or brought into Ontario, by a Large Business for consumption or use by that business in the province:

- specified road vehicles, including certain parts and services, and motor fuel (other than diesel fuel) for use in road vehicles,
- specified energy,
- specified telecommunications services, and
- specified meals and entertainment that are currently subject to an ITC repayment requirement (generally at a 50% rate).

Specified Road Vehicles

A specified road vehicle is generally a motor vehicle required to be licenced for use on a public highway and weighing less than 3,000 kg. Specified “parts and service” are items acquired within 12 months of the acquisition of a specified vehicle, excluding routine repairs and maintenance. For example, the acquisition of a vehicle anti-theft system after the vehicle purchase would be a specified part.

If a Large Business acquires a specified road vehicle for the purposes of resupplying or reselling that vehicle, the RITC requirement would not apply except to the extent that the business uses that vehicle before reselling. Details of this calculation can be provided upon request.

All fuel (other than diesel fuel) purchased for use in specified motor vehicles would generally be subject to the RITC requirement during the affected period.

Specified Energy

Specified energy will typically include electricity, gas, fuel and steam that is acquired for use in the province by a Large Business. Specified energy acquired by a lessee as part of an ‘all-in’ lease cost for real property would not generally be subject to the RITC requirements.

The RITC requirements do not generally apply to specified energy used by Large Businesses directly in the manufacturing of goods for sale or farming activities, nor to specified energy used in the production equipment used by the Large Business. The requirements do apply to energy not used directly in the production process, such as energy used to light, heat, air condition or ventilate a production facility.

For simplification purposes, Large Businesses producing tangible personal property for sale may elect to use a 'production proxy'. This proxy is based on the Canadian detail of the North American Industry Classification System for 2007 ("NAICS Canada 2007), a statistical tool that classifies sectors. The government has laid out various percentages to determine the portion of the total amount of specified energy that the Large Business acquires that would be considered to be used directly in the production of tangible personal property for sale. This election must be filed prior to each recapture period to be valid. Please contact us for specific determinations if your business falls within this category.

Specified Telecommunication Services

Telecommunication services acquired by Large Businesses to which the RITC requirement **would apply** include the following:

- local and long-distance telephone,
- cable and satellite television,
- facsimile service,
- video, audio and computer link-ups, and
- data transmission.

Telecommunication services acquired by Large Businesses to which the RITC requirement **would not apply** include the following:

- internet access services,
- web-hosting services, and
- toll-free telephone services.

Specified Meals and Entertainment

Meals and entertainment **subject to the RITC** requirement include:

- business dinners,
- tickets for a theatre, concert, sporting event or other performance
- private boxes at sports facilities, and
- admission to nightclubs, athletic, social and sports clubs.

Meals or entertainment not subject to the RITC requirement include:

- those acquired solely for the purpose of resupply (e.g. by a restaurant),
- meals or entertainment acquired for certain events where all employees from a particular location are invited (e.g. office Christmas party), and
- those acquired for an employee where the expenses are required to be included in the employee's income as a taxable benefit.

Accounting for Recaptured ITC's

Upon implementation (July 1, 2010), a Large Business is required to separately track ITC's it pays relating to the provincial component of the HST. These ITC's to be recaptured are generally to be reported in its GST/HST return for the reporting period in which the ITC's became available.

In an effort to simplify the overall compliance requirements, Large Businesses can elect to use an Estimation/Installment approach. This approach has certain drawbacks and Large Businesses may well be further ahead to have a system in place up front to account for the RITC requirements as they occur, rather than after the fact. Should you wish to explore this election option, please contact us and we will be happy to provide additional details.

HST Electronic Filing Requirements

The federal government has announced that GST/HST registrants classified as Large Businesses are required to file their returns for reporting periods ending on or after July 1, 2010 using the GST/HST Netfile service. This online service will provide the additional schedule required for reporting gross ITC's along with the amount of ITC's that have been recaptured. Penalties may be assessed on Large Businesses who do not use this required filing method.

Summary

This guide provides only a general overview of the HST implementation as it relates to Large Businesses. Should you be in doubt about the application or relevance of any of the above to your specific situation, please be sure to seek further advice.

The Ontario Ministry of Revenue publication entitled "Temporary Recapture of Input Tax Credits Requirement" fully outlines the above, and can be found at the following link:

<http://www.rev.gov.on.ca/en/notices/hst/05.html>