



Temporary ITC Restrictions *for Large Businesses*

With the introduction of HST effective July 1, 2010, the 2009 Ontario Budget announced temporary restrictions on input tax credits (ITCs) that would apply to certain items used by businesses making taxable supplies, including zero-rated supplies, worth more than \$10 million annually on an aggregate associated basis ("large business"), including financial institutions, in the course of their commercial activities. The restrictions would be temporary and would only apply to the Ontario portion (8%) of the HST.

Restrictions

The restrictions would generally apply to the following goods and services acquired or brought into Ontario for use by a large business:

Specified Road Vehicles

A specified road vehicle would generally mean a vehicle that is licensed, or required to be licensed, for use on a public highway weighing less than 3,000 kg at the time that the vehicle is first licensed or required to be licensed in Ontario. A trailer, semi-trailer or detachable axle would not be considered a specified road vehicle.

Specified road vehicles would include vehicles that are acquired by way of sale, or by way of lease, licence or similar arrangement. However, a person entrusted with the custody and operation of a taxi by a taxi permit holder would generally not be considered to be acquiring a specified road vehicle for purposes of the RITC requirement.

PARTS AND SERVICES

The ITC restriction would generally apply to parts and services, such as an anti-theft system etc., that are acquired, or brought into Ontario within 12 months of the acquisition, or bringing into Ontario, of the vehicle (even if that vehicle was acquired, or brought into Ontario, prior to July 1, 2010). However, the ITC restriction would generally not apply to vehicle parts and services used for routine repair or maintenance of that specified road vehicle.

USE OF SPECIFIED ROAD VEHICLES BEFORE RESUPPLY

If a large business acquires, or brings into Ontario, a specified road vehicle for the purpose of resupplying it but uses that vehicle before resupplying it, the large business would generally be required to recapture a portion of the ITCs that it claimed in respect of the acquisition or bringing in. Specifically, the large business would be required, for each month or part thereof it uses the vehicle, to recapture the portion of the provincial component of the ITCs claimed that is attributable to 2 per cent of the cost of the vehicle.

FUEL FOR USE IN SPECIFIED ROAD VEHICLES

The ITC restriction would generally apply to fuel (other than diesel fuel) that is acquired, or brought into Ontario, to the extent that the fuel is for use in the engine of a specified road vehicle.

Specified Energy

A specified energy would generally include electricity, gas, fuel (other than fuel used in a propulsion engine) and steam that is acquired, or brought into Ontario, for use in the province by a large business, including the delivery charges and other costs that are incidental to the supply of energy.

Specified energy acquired by a lessee as part of a single supply of a real property lease would not be subject to the ITC restriction, as the lessee would not, for purposes of the HST be acquiring a supply of energy. Conversely, a lessor that provides energy to a lessee as part of a single supply of a real property lease would not be able to claim relief from the ITC restriction on the basis of the manner in which the lessee uses that energy: e.g., if the lessee uses the energy directly in the production of tangible personal property for sale by the lessee.

PRODUCTION FOR SALE

The ITC restriction would generally not apply to specified energy used in the production of tangible personal property for sale by the large business, or production equipment used by the large business in the production of tangible personal property for sale by the large business. The ITC restriction would, however, generally apply to specified energy used by the large business to facilitate such production (i.e., not directly in the production process), including specified energy that is used to light, heat, air condition or ventilate a production facility.

PRODUCTION PROXY

To simplify compliance with the ITC restriction, production proxies have been released to determine what portion of the specified energy that a large business acquires for use in Ontario would be considered to be used directly in the production of tangible personal property for sale and hence not subject to the ITC restriction.



SR&ED ACTIVITIES AND THE SR&ED PROXY

The ITC restriction would generally not apply to specified energy used in activities that are eligible scientific research and experimental development (SR&ED) activities in Ontario.

A large business would be able to either track the actual amount of specified energy used directly in qualifying SR&ED activities, or use a SR&ED proxy formula to determine what portion of the specified energy would be considered to be used directly in qualifying SR&ED activities.

Specified Telecommunication Services

A specified telecommunication service would include the service of emitting, transmitting or receiving signs, signals, writing, images or sounds or intelligence of any nature by wire, cable, radio, optical or other electromagnetic system, or by any similar technical system and the making available for such emission, transmission or reception telecommunications facilities of a person who carries on the business of supplying such services. A telecommunications facility would generally mean any facility, apparatus or other thing (including any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, or any part thereof) that is used or is capable of being used for telecommunications.

The ITC restriction would generally apply to services such as local and long-distance telephone, cable and pay television, satellite television, facsimile and electronic mail, video, audio and computer link-ups and data transmission,

However, the ITC restriction would generally not apply to internet access services, web-hosting services and toll-free telephone services.

PROXIES FOR SPECIFIED TELECOMMUNICATION SERVICES

If a large business receives an invoice for a single supply that includes both specified telecommunication services and other services and/or goods that are not subject to the ITC restriction, and the large business cannot readily ascertain which portion of the provincial component of the HST applicable to the supply is attributable to these other services and/or goods, the large business would be allowed to use the following proxies to make that determination.

1. If the supply covered by the invoice includes specified telecommunication services, other services, and goods (e.g., telecom equipment rental), then 14% of the consideration for the supply would be deemed to be attributable to the other services and goods.
2. If the supply covered by the invoice includes specified telecommunication services and other services (but no goods), then 4% of the consideration for the supply would be deemed to be attributable to the other services.
3. If the supply covered by the invoice includes specified telecommunication services and goods (but no other services), then 11% of the consideration for the supply would be deemed to be attributable to the goods.



Specified Meals and Entertainment

Specified meals and entertainment include food, beverages and entertainment that are currently subject to an ITC repayment requirement under the federal Excise Tax Act.

Meals and entertainment subject to the ITC restriction would include business dinners, tickets for a theatre, concert, athletic event or other performance, private boxes at sports facilities and admissions to nightclubs, athletic, social and sporting clubs.

Meals and entertainment that would not be subject to the ITC restriction would generally include meals or entertainment 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., an office Christmas party), and meals or entertainment for an employee in situations where the expenses are required to be included in the employee's income as a taxable benefit under the ITA.

Phase-out Restrictions

The ITC restrictions would apply to the Ontario component of the HST on the aforementioned items at the following rates:

- 100% for the period from July 1, 2010 to June 30, 2015
- 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
- 0% on or after July 1, 2018.

Reporting ITC Restrictions

In most cases, registrants would calculate and separately identify the recaptured ITCs in their GST/HST returns and would not simply forego claiming these ITCs in their calculation of net tax. They will report the recapture in the appropriate information fields on a schedule to the GST/HST return for the period in which the ITCs first become available.

Large businesses subject to the ITC restrictions will be required to NETFILE their GST/HST returns for periods ending on or after July 1, 2010.

Should you have any questions concerning the above, please contact

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