

GST/HST Treatment of Financial Services

On December 14, 2009, Finance Canada released a backgrounder containing technical legislative proposals to address recent court decisions that may have created uncertainty with respect to the scope of the definition of “financial service” in the *Excise Tax Act*. The Department of Finance stated that such proposals are intended to “clarify” and confirm the government's policy intent that certain services like investment management, administration, marketing, promotional services and credit management do not constitute financial services and are, therefore, subject to GST/HST. The backgrounder also states that the proposals would apply to all supplies of these services made after December 14, 2009 and to past transactions where the suppliers treated these services as taxable.

On February 11, 2010, the Canada Revenue Agency (CRA) released GST/HST Notice No. 250 in response to the proposal to change the definition of “financial services”. The examples provided in this notice completely reversed the examples of exempt supplies that had previously been provided in CRA’s policy statements P-239 and P-119. On March 26, 2010, Finance Minister Jim Flaherty announced a review of Notice No. 250, and reiterated that the proposed changes were meant to be clarifications, not new taxes.

The Canadian Chamber of Commerce urges the government to ensure that any services which had previously been described as exempt in policy statement P-239 and P-119 continue to be treated as exempt services to ensure that these changes are truly only clarifications. Should the government determine that any of the examples which had previously been described as exempt services in their policy statements are now subject to tax, any such changes must be subject to an effective date that allows taxpayers sufficient time to make the necessary systems and process changes.

As a result of the uncertainty and confusion that has resulted from this announcement, it is imperative that any changes to existing published policy not be made on a retroactive basis, or even with an effective date of December 15, 2009, as vendors have no ability to go back to their customers to claim several months of additional GST/HST, if they are able to do so under their agreements.

Recommendation

That the federal government:

1. Withdraw these proposals to change the definition of financial services pending consultations with key stakeholders.
2. Ensure that any subsequent or revised proposals to change the definition of financial services not be applied on a retroactive basis.