



TaxNewsFlash

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Employers and Pension Plans — Meet Dec. 31 GST Obligations

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Many employers must meet extensive GST/HST and QST obligations by December 31, 2022. Affected employers that offer registered pension plans to their employees, and that have monthly GST/HST and QST reporting periods with a December 31 year-end, must remit amounts of GST/HST (and, if applicable, QST) by January 31, 2023 under the pension plan rules. Additionally, certain employers and master trusts must also determine how they may be affected by recent draft legislation that may change specific tax calculations and filing obligations.

It's important for employers to ensure they meet their tax obligations under these complex rules, which also extend to master trusts in pension plan structures. For example, where employers do not remit GST/HST and QST owing under these rules on time, eligible pension rebates relating to these tax amounts will not be allowed. Employers should also consider whether there may be opportunities to claim additional input tax credits (ITCs) or rebates.

Which employers or pension plans are subject to the pension plan rules?

An employer, a pension plan or a master trust may be subject to the GST/HST and QST pension plan rules or special filing obligations. In particular, these obligations can apply to:

- An employer who offers retirement plans to its employees
- A retirement plan that includes a registered pension plan that governs a trust
- A pension plan structure that includes a master trust, or

- A registered pension plan that qualifies as a selected listed financial institution (SLFI) for GST/HST or QST purposes.

What obligations may change under the proposed amendments?

Some master pension entities may no longer qualify as SLFIs under GST/HST draft proposals released on August 9, 2022, while other master pension entities may now be eligible to elect to become SLFIs. Master pension entities should review these proposals carefully to determine how they may affect their tax obligations for the 2022 year. The draft proposals may also make certain adjustments for past reassessments related to the pension plan rules, subject to strict conditions and deadlines.

Employers should review these proposals, which have various effective dates, and determine whether they may affect entities within their pension plan structure. Note that Quebec has not yet announced whether the QST will be amended to reflect the proposed GST/HST measures.

Background

Employers that offer registered pension plans to their employees, pension entities and master pension entities in those pension plan structures, may be subject to specific GST/HST and QST rules. Many employers are deemed to make taxable supplies related to pension entities and to master pension entities, and are required to remit amounts of GST/HST, and QST if applicable, related to these supplies.

Qualifying pension entities in these pension plan structures may be eligible to recover 33% of the taxes paid by the employers on these deemed supplies and other tax amounts where conditions are met. These pension entities may also be subject to other GST/HST and QST rules (e.g., GST/HST and QST self-assessment requirements on certain imported taxable services).

In addition, pension entities and master pension entities may also be subject to special GST/HST and QST selected listed financial institution (SLFI) rules. These entities must review their SLFI status every year. Some pension entities within the pension plan structures may have different GST/HST and QST SLFI status, or may even be considered a SLFI for QST purposes but not for GST/HST purposes (or vice versa).

Where a pension entity has different SLFI status for GST/HST and QST purposes, significantly different GST/HST and QST rules and compliance requirements apply.

Were there any pension plan changes in 2022?

As employers, pension entities and master pension entities prepare to meet their tax obligations, they must determine whether certain changes made during the year will affect their tax compliance obligations related to the GST/HST and QST pension plan rules. Any of the following changes, among others, could potentially affect their tax obligations:

- Have there been any changes to the pension plan structure this year?
- Have the pension entities or master pension entities invested in new types of investments?
- Have any employees relocated during the year to a new province?
- Have any employers in the corporate group changed their fiscal year-end?
- Are there any new service providers this year related to pension activities?
- Has the SLFI status of any pension entity or master pension entity changed this year?
- Are the proposals affecting the SLFI status of any master pension entity?

Which employers are subject to GST/HST pension plan rules?

An employer that is both a registrant for GST/HST purposes and that qualifies as a participating employer of a registered pension plan that governs a trust is generally subject to the GST/HST pension plan rules. A participating employer includes an employer that is required to make contributions or payments to a registered pension plan in respect of its employees or former employees. Under these rules, many employers will make both taxable actual and deemed supplies to their pension plans or master trusts and must remit GST/HST related to these supplies. Similar rules apply for QST purposes.

Actual and deemed supplies

Some employers may provide taxable supplies of goods and services to entities in their pension plan structures throughout the year (i.e., “actual” supplies such as administrative services). Unless the employers and the pension entities (or master pension entities) have made a specific joint election, employers must generally collect GST/HST and QST on these actual supplies based on the general place of supply rules and report these amounts in a timely manner in the appropriate GST/HST and QST returns.

Employers may also have to remit amounts of GST/HST and QST related to certain payments made by a pension entity. The CRA’s position is that where a pension entity directly pays a third-party supplier or reimburses the employer for certain expenses, these payments can be considered payment for actual supplies made by the employer to the pension entity if the employer was liable to pay for the supplies. The CRA takes a similar position on payments made by master pension entities.

In addition to actual supplies made during the year, many employers must remit taxes on certain supplies that they are “deemed” to make on the last day of their fiscal year under the GST/HST and QST pension plan rules. The deemed supplies include various internal costs (e.g., salaries), and external costs (e.g., actuarial costs).

In general, to compute the amounts of GST/HST and QST owing on the deemed supplies, employers are required to use special calculations based on their pension contributions

and on the residency of their members. Employers must report the GST/HST and QST, if applicable, in the returns for the reporting period that includes the last day of their fiscal year. In general, for employers with a December 31 year-end and monthly reporting periods, taxes must be reported in their December 2022 GST/HST and QST returns and remitted by January 31, 2023.

Special relieving measures may apply to certain employers that are deemed to make only a very small amount of supplies to the pension entities and master pension entities.

KPMG observations

Eligible employers should ensure that they review their expenses related to the actual and deemed taxable supplies to ensure they exclude any expenses that are not subject to the pension plan rules and that they properly claim their eligible ITCs.

Many pension plans have structures that include various types of entities, and these entities often make both domestic and foreign investments. In these circumstances, it can often be difficult to determine appropriate tax treatments, as well as eligible credits.

Certain errors related to the GST/HST and QST pension plan rules can lead to missed rebates, as well as over- or under-remitted tax. For example, a pension entity cannot claim a rebate related to taxes remitted by the employer in the wrong reporting period. A careful review of the rules and how they apply to employers and their plans can help to avoid such tax errors.

Relieving measures

Although the GST/HST and QST pension plan rules include certain relieving measures for employers, many of these provisions add significant complexity. For example, some measures that help mitigate the effect of paying GST/HST and QST on both actual and deemed supplies may require employers to issue tax adjustment notes and, to potentially repay certain amounts related to pension entity rebates.

Further, certain employers and pension entities or master pension entities can make GST/HST and QST elections to help relieve tax on certain actual supplies. However, these elections come with specific conditions.

KPMG observations

Employers and master pension entities often do not meet the stringent conditions of these GST/HST and QST elections, which include a high ownership test. As such, many employers rely on other relieving measures, including tax adjustment notes, to help alleviate the cost of tax on both the actual and deemed supplies.

Pension entities, master pension entities and GST/HST pension plan rules

Under the pension plan rules, many qualifying pension entities, other than master pension entities, are eligible to claim a 33% rebate for most of the GST/HST and QST they have paid or are deemed to have paid. However, some pension entities do not qualify for the rebate or may be subject to special rules (e.g., rules for pension entities of employers that qualify as financial institutions). Under the rules for master pension entities, some pension entities are also eligible to claim a 33% rebate of a portion of the GST/HST and QST paid by the master pension entities.

KPMG observations

Before claiming a pension entity rebate, pension entities should first determine if they are eligible to recover taxes paid on expenditures through ITCs, input tax refunds (ITRs) or other rebates as this will affect the amount of pension rebates the pension entity will be eligible for.

Is the pension entity a SLFI?

A pension entity that qualifies as a SLFI is subject to additional tax calculations and specific filing obligations. In general, a pension entity qualifies as a SLFI for GST/HST purposes, if it has members that reside in an HST province and in another province, or that reside in Quebec and in another province, for QST purposes. Some exceptions may apply for pension entities that meet specific threshold tests. This determination must be made every year for each pension entity. Specific rules apply for master pension entities.

Many of the calculations under these rules depend on the SLFI status of the particular pension entity. As such, each pension entity must determine whether it qualifies as a SLFI for GST/HST and/or QST purposes to apply the correct rules.

Ensure rebate calculations are correct

Qualifying pension entities should ensure they have included all relevant amounts in their pension entity rebate calculations. A qualifying pension entity may be eligible to claim a rebate on various tax amounts, such as:

- GST/HST and/or QST paid on actual supplies to the employer and to third-party suppliers
- All or part of the GST/HST and /or QST paid by a master pension entity within its pension plan structure
- All or part of the GST/HST and/or QST paid by the employer related to deemed supplies.

The pension entity's SLFI status also affects the calculations of the pension entity rebate.

While a non-SLFI pension entity may be eligible to claim GST/HST and QST pension entity rebates, a SLFI pension entity may only be eligible to claim a rebate for the GST and the federal component of the HST. Instead of claiming a rebate related to the provincial component of the HST or the QST, a SLFI pension entity will generally claim certain tax adjustments in its SLFI annual final return in the subsequent year.

Many pension entities can opt to transfer their pension entity rebates to their eligible participating employers. The calculations of the amounts transferred will again vary, depending on whether the pension entity is a SLFI. Similar rules apply for QST purposes.

File rebate applications by deadline

In general, a qualifying pension entity must claim a pension entity rebate within a two-year deadline, but determining when this deadline ends can create some confusion. This deadline differs between pension entities that are registered for GST/HST and QST purposes and pension entities that are not registered. In addition, a qualifying pension entity may file only one rebate application for any particular claim period.

SLFI pension entities and master pension entities — Filing the annual GST/HST final returns for SLFIs

Pension entities and master pension entities that qualify as SLFIs must file the annual GST/HST and/or QST final return for SLFIs within six months of their fiscal year-end, regardless of whether they are registered for GST/HST and QST purposes. As such, a SLFI pension entity with a December 31 year-end must file an annual final return by June 30, 2023. SLFI pension entities and master pension entities with reporting periods other than annual reporting periods must also file the annual GST/HST and/or QST final return in addition to their regular GST/HST returns. However, before filing, master pension entities should carefully review the recent proposals to determine whether the proposed changes may affect their SLFI status, and if so, to which fiscal years the proposals may apply.

This annual final return requires SLFI pension entities and master pension entities to use a complicated formula known as the special attribution method (SAM) under the SLFI rules.

The SAM formula essentially calculates tax adjustments (credits and/or liabilities) related to the provincial component of the HST in each HST province, even where the entity does not have a physical presence in the province. Similar rules apply for QST purposes.

KPMG observations

As part of the SLFI rules, a SLFI pension entity or a master pension entity must carefully track all the HST and QST paid throughout its reporting period. Misidentified amounts of tax paid may increase their tax costs.

Non-SLFI pension entities and master pension entities — Filing the GST/HST annual information returns for financial institutions

A pension entity that is not a SLFI may have to file a GST/HST annual information return if it meets certain conditions, in addition to filing its regular GST/HST returns. Similar rules apply for master pension entities as well as for QST purposes. Further, some pension entities and master pension entities that qualify as SLFIs only for HST or only for QST purposes may still be required to file an annual GST/HST or QST information return for GST/HST or QST.

An affected pension entity or master pension entity must file its GST/HST annual information return no later than six months after the entity's year-end. For an entity with a December 31 year-end, that deadline to file for the 2022 fiscal year is June 30, 2023.

We can help

Your KPMG adviser can help you review your structure and investments to determine if you have any missed credits, refunds or opportunities that may increase your tax efficiency. We can also help you manage these complex rules and help you determine how they apply specifically to the facts and circumstances of your business and pension plan structures. Our Indirect Tax professionals can also assist you with any queries from the CRA or Revenu Québec about pension plan-related tax obligations and pension entity rebates.

In addition, we can help you manage your indirect tax compliance obligations in all relevant jurisdictions, including assisting you in calculating your actual and deemed supplies, in determining the SLFI status of your pension entities and master pension entities and in managing the tax costs of these rules on your organization. Your KPMG adviser can also help you determine the impact of other federal or provincial indirect tax deadlines and changes that may affect your business.

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