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Tax Alert – Canada

Investment limited partnerships face SLFI compliance obligations

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The Selected Listed Financial Institution (SLFI) rules were extended to investment limited partnerships (ILPs) effective 1 January 2019. These rules aim to put ILPs on the same playing field as other investment structures such as mutual funds, which pay GST/HST and QST at a rate determined in accordance with the residency of their investors. An ILP is therefore required to determine its net tax liability/refund pursuant to the special attribution method formula (SAM formula). The SAM formula includes the provincial attribution percentage (PAP) calculation, which, in the case of an ILP, is determined on the basis of the residency of the unitholders. An ILP that qualifies as a SLFI must report the resulting GST/HST and QST net tax liability/refund using the prescribed return (SLFI Return).¹ The SLFI return for the 2019 year must be filed by 30 June 2020.

Background

In a consultation paper released on 22 July 2016, the Department of Finance (Finance) introduced proposals relating to investment entities structured as limited partnerships. Finance indicated that such entities were not subject to the SLFI rules, despite the fact they could engage in activities (e.g., the investing of funds on behalf of a group of investors) similar to those carried out by other entities defined as investment plans for GST/HST purposes. To “level the playing field” between investment entities structured as limited partnerships and entities treated as investment plans for GST/HST purposes, Finance proposed to amend the *Excise Tax Act* (ETA) by:

- ▶ Including ILPs in the definition of an investment plan; and
- ▶ Extending SLFI investment plan registration and reporting requirements to ILPs.

¹In general, a person that is a SLFI for GST/HST purposes but not for QST purposes should file Form GST494, while a person that is a SLFI for QST purposes should file Form RC7294.

The corresponding amendments to the ETA were included in Bill C-86, Budget Implementation Act, 2018, No. 2, which received Royal Assent on 13 December 2018. The changes relating to ILPs apply to taxation years beginning after 2018.

Legislative framework

Subsection 123(1) of the ETA defines an ILP as a limited partnership whose primary purpose is to invest funds in property consisting primarily of financial instruments (e.g., shares, debt, partnership interests) and that meets one of the following conditions:

- ▶ The limited partnership is, or forms part of an arrangement or structure that is, represented or promoted as a hedge fund, ILP, mutual fund, private equity fund, venture capital fund, or other similar collective investment vehicle; or
- ▶ 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.

If a partnership meets the definition of an ILP, it must determine whether it qualifies as a SLFI for GST/HST/QST purposes. A financial institution is a SLFI in a fiscal year if the financial institution:

- ▶ Is a listed financial institution under any of subparagraphs 149(1)(a)(i) to (x) of the ETA during the taxation year; and
- ▶ It has a permanent establishment in a participating (HST) province and any other province.²

A listed financial institution includes an investment plan, and the definition of an investment plan under subsection 149(5) includes an ILP. Subsection 1(1) of the Selected Listed Financial Institutions Attribution Method GST/HST Regulations (SLFI Regulations) provides that a distributed investment plan includes an ILP. Under paragraph 3(e) of the SLFI Regulations, a distributed investment plan is deemed to have a permanent establishment in a province where:

- ▶ It is qualified to sell or distribute units in the particular province; or
- ▶ A person resident in the particular province holds one or more units in the plan.

Therefore, if an ILP has a permanent establishment in a participating province (e.g., one or more partners are resident in Ontario) and any other province, it is considered a SLFI for GST/HST purposes. The QST legislation³ has similar rules for QST purposes; therefore, if an ILP has a permanent establishment in Quebec and any other province, it will be a SLFI for QST purposes (in addition to potentially being a SLFI for GST/HST purposes).

² ETA s. 225.2(1)(b) and SLFI Regulations s. 9.

³ *An Act respecting the Québec sales tax.*

SLFI implications

An ILP that is a SLFI must determine its GST/HST and QST net tax liability or refund under the SAM formula and report the net tax result on the SLFI Return. A key component of the net tax result is the calculation of the PAP, which is determined in accordance with certain investor data (i.e., the investor percentages or the investor's place of residence) and the value of their units held in the ILP at a particular point in time (attribution point).

An ILP must obtain certain information from its investors by way of written request. Information requirements vary according to whether the investor is a specified investor,⁴ selected investor, qualifying investor or an investor of another class that is not separately referenced in the information-sharing requirements outlined in the SLFI Regulations.⁵ Information for the 2019 year should have been obtained by 31 December 2019. If an ILP has not obtained the outstanding information, certain unitholders may be deemed to be residents of the highest rate province.

With respect to the 2019 SLFI return filing, the default attribution point is 30 September 2018. Where the related investor data is not available, a SLFI may elect to use the current year method (i.e., the 30 September 2019 attribution point).

Registration and available elections

An ILP that is a SLFI for the 2019 year should register as an annual GST/HST/QST filer if it prefers to avoid calculating the net tax result under the SAM formula on a monthly basis. The SLFI ILP can register for GST/HST and QST purposes by filing Form RC7301, *Request for a business number and certain program accounts for certain selected listed financial institutions*.

ILPs should also consider the benefits of filing the following elections:

- ▶ **Reporting entity election⁶** - Allows the manager (i.e., the person responsible for managing and administering an investment plan's assets and liabilities) and the ILP to make a joint election to have the manager file GST/HST/QST returns on behalf of the respective ILPs.
- ▶ **Consolidated filing election⁷** - Allows two or more ILPs to make an election to file one SLFI return on a consolidated basis.
- ▶ **Net tax adjustment transfer election⁸** - Allows the ILP to transfer the GST/HST/QST net tax refund/liability under subsection 225.2(2) of the ETA to the manager. If the manager is not a QST registrant, a special remittance return may be used to remit the QST liability.

⁴ See s. 16(1) of the SLFI Regulations for the definition of a *specified investor*.

⁵ SLFI Regulations s. 52.

⁶ SLFI Regulations s. 53.

⁷ SLFI Regulations s. 54.

⁸ SLFI Regulations s. 55.

Tracking requirements

ILPs should ensure that their systems allow them to track the following information for the purposes of calculating the net tax result under the SAM formula:

- ▶ The federal component of the GST/HST paid on expenses;
- ▶ The provincial component of the HST paid on expenses;
- ▶ The QST paid on expenses; and
- ▶ The expenses that are subject to GST/HST self-assessments.

As system changes may take time to implement, an ILP should act immediately to ensure it has this information for the purposes of complying with the SLFI rules.

Instalments

An ILP that is a SLFI for GST/HST/QST purposes will be required to make its first quarterly instalment by 30 April 2020 if its net tax liability for GST/HST purposes and separately for QST purposes exceeds \$3,000. As the SLFI Return for the 2019 year is not due until 30 June 2020, an ILP should consider the implication of any instalments it may be required to remit. Interest may be assessed on any late remittances.

Conclusion

A partnership should consider whether it qualifies as an ILP and whether it is a SLFI for GST/HST and QST purposes. An ILP that is a SLFI must ensure that:

- ▶ It has the relevant investor data to determine the PAP under the SAM formula;
- ▶ It is registered for GST/HST and QST purposes and whether it could benefit by making any of the aforementioned elections under the SLFI Regulations;
- ▶ It is tracking the federal and provincial components of the GST/HST and QST paid on expenses;
- ▶ It is tracking expenses that may be subject to GST/HST self-assessment;
- ▶ It remits any required GST/HST/QST instalments by 30 April 2020; and
- ▶ It files the SLFI Return for the 2019 year by 30 June 2020.

Learn more

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