

ONTARIO POINT-OF-SALE EXEMPTION FOR ONTARIO STATUS INDIANS

The 2009 Budget provided a comprehensive package of tax changes to create jobs and attract new investment. Central to this tax package was the Harmonized Sales Tax (HST). The HST will come into effect on July 1, 2010. The HST rate for Ontario will be 13 percent – combining the existing five percent federal Goods and Services Tax (GST) with an eight percent provincial component.

This Backgrounder provides a general overview of proposed tax treatment. Applicable legislation and/or regulations should be consulted.

ONTARIO STATUS INDIANS POINT-OF-SALE EXEMPTION – EFFECTIVE SEPTEMBER 1, 2010

The Government of Ontario has announced that its current retail sales tax exemption for Status Indians, Indian bands and councils of an Indian band will continue for qualifying off-reserve supplies (including sales and leases) as Ontario moves to the HST. This change would be effective in respect of supplies for which consideration becomes due or is paid without having become due on or after September 1, 2010. (For treatment of qualifying off-reserve supplies from July 1, 2010 to August 31, 2010, please see below under Sales to Status Indians for period of July 1, 2010 to August 31, 2010)

The point-of-sale exemption (known as a point-of-sale rebate under HST) for Status Indians, Indian bands and councils of an Indian band will apply only to qualifying off-reserve supplies that are for the personal consumption of the Status Indian or for qualifying band activities. The Status Indian point-of-sale exemption will not apply in cases where the supplies are zero-rated, exempt, or for which the purchaser is eligible for input tax credits or another Ontario point-of-sale exemption (e.g. children's clothing, books, etc.).

Effective September 1, 2010, vendors would provide a credit (exemption) at the time of sale of the eight percent provincial component of the HST for qualifying off-reserve supplies. The purchaser would be required to show a valid Certificate of Indian Status card (similar to the point-of-sale exemption under the Ontario Retail Sales Tax).

Generally, Status Indian purchasers would not be required to take any additional steps in order to take advantage of this point-of-sale exemption. Where a Status Indian purchases a qualifying item, the vendor would provide the Status Indian purchaser with the point-of-sale exemption by crediting the Ontario component of the HST and only collecting the five per cent federal component of the HST on that item.

In the event that a Status Indian purchaser does pay the Ontario component of the HST on the purchase of a qualifying item (i.e., the vendor did not credit the Ontario component of the HST to the purchaser), the purchaser would be entitled to apply to Ontario for a rebate of the Ontario component of the HST paid.

PROPOSED DETAILS ON ONTARIO STATUS INDIANS POINT-OF-SALE EXEMPTION

The Status Indians point-of-sale exemption would generally follow the current practice of the RST exemption for goods and certain services purchased off-reserve by Status Indians and would be in addition to the current relief provided to Status Indians under the GST/HST framework.

Supplies of the following would qualify as off-reserve supplies for the purposes of the Ontario Status Indians point-of-sale exemption:

- Unless specifically provided for below, tangible personal property (i.e. goods) that is not purchased on a reserve,
- New and used motor vehicles purchased off-reserve from a motor vehicle dealer;
- Take-out meals that are not purchased on a reserve, but not including restaurant meals or catering services;
- Telecommunication services (including cable television, telephone, internet) provided to a Status Indian and that are not provided on a reserve;
- Services of installing, assembling, dismantling, adjusting, repairing or maintaining tangible personal property that are not performed on a reserve; and
- Contracts for maintenance and warranty of tangible personal property (including motor vehicles) that are not purchased on a reserve. "Eligible Services" section below sets out further detail with respect to the specific services eligible for the point-of-sale exemption.

Supplies of the following will not be qualifying off-reserve supplies and therefore will not qualify for the Ontario Status Indians point-of-sale exemption and will be subject to HST. These include:

- Gasoline, fuel, alcoholic beverages and tobacco that is not purchased on a reserve;
- Restaurant meals (other than take-out meals) and catering services;
- Energy (including electricity and natural gas) that is not provided to a reserve address;
- All other services (that are not GST/HST relieved to Status Indians or listed above) that are not performed on a reserve. Examples of services that are not eligible for the point-of-sale exemption and generally remain taxable when not performed on a reserve include haircuts, massage therapy, dry-cleaning, home renovations, funeral services;

- Intangible personal property that is not situated on a reserve;
- Goods or eligible services purchased via Internet or other distribution channels for which presentation of a Status card to verify eligibility is not possible; and
- Real property (e.g., new homes, condos and mobile homes), transient accommodation (i.e., hotel accommodation), and parking, that is not located on a reserve.

Eligible Services

Generally, services eligible for the point-of-sale exemption are those that would have previously been exempt from Ontario Retail Sales Tax only when purchased by a Status Indian. For example, a service of repairing a motor vehicle would qualify for the point-of-sale exemption. However, services that were not taxable under the Ontario Retail Sales Tax, such as washing a car or jewelry engraving, would not qualify for the Ontario Status Indians point-of-sale exemption.

As noted above, all other services that are not GST/HST relieved to Status Indians will generally remain taxable under HST to Status Indians when they are not performed on a reserve.

CURRENT GST/HST TREATMENT OF STATUS INDIANS

The Ontario Status Indians point-of-sale exemption would be in addition to the current exemption provided to Status Indians under section 87 of the *Indian Act* (Canada) which is applied to the GST/HST framework.

For information on the application of GST/HST to Status Indians, please refer to the Canada Revenue Agency's website at www.cra-arc.gc.ca.

SALES TO STATUS INDIANS FOR PERIOD OF JULY 1, 2010 TO AUGUST 31, 2010

For the period July 1, 2010 to August 31, 2010 inclusive, Status Indians, Indian bands and councils of an Indian band will be required to pay the 13 percent HST at the point-of-sale, unless exempt under section 87 of the *Indian Act* (Canada) which is applied to the GST/HST framework.

During this July 1, 2010 to August 31, 2010 period of time, the eight percent provincial component of the HST paid on qualifying off-reserve supplies would be refunded by the Ontario government for consideration that is due before September 1, 2010.

Status Indians, Indian bands and councils of an Indian band should retain their receipts for qualifying off reserve supplies used for the personal consumption of the Status Indian or for band activities. Applications for refund would be submitted to the Ontario Ministry of Revenue accompanied by:

- original receipts
- photocopy of both sides of the Status Indian Card, or in the case of Indian bands and councils, a letter from the band or council certifying the consumption of qualifying off-reserve supplies for band activities.

Applications would be submitted at the end of the interim period (September 1, 2010), with a deadline for submission of November 1, 2010.

The ministry will make best efforts to meet its current service standard for refund payments within 40 business days from receipt of a completed application.

FURTHER INFORMATION

The Ontario Ministry of Revenue and the Canada Revenue Agency will be releasing further information for vendors and Status Indian purchasers in the near future.