

September 2017

Newly defined “investment limited partnerships” to affect partnership distributions

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The Department of Finance’s September 8, 2017 release of draft GST/HST legislation introduces the newly defined “investment limited partnership” and a series of legislative amendments that will apply to such partnerships. The Department of Finance is accepting comments on the draft legislative proposals until October 10, 2017.

These proposals follow the consultation paper “Proposals for Consultation concerning the GST/HST Treatment of Certain Limited Partnerships and Investment Plans,” released on July 22, 2016. The paper addresses the uneven treatment of investment entities that are structured as limited partnerships, are not currently considered to be investment plans, and are not captured by the selected listed financial institution (SLFI) rules.

Implications for investment entities that are structured as limited partnerships are significant:

- Certain supplies made by a general partner to the partnership may be subject to GST/HST, likely at fair market value.
- The partnership may have increased taxable inputs (some of which may be unrecoverable).
- Partnerships will have to evaluate whether they fall under the various new and expanded definitions that will result in SLFI reporting requirements.

Investment limited partnership: supply by general partner

The draft GST/HST legislation proposes to add a new subsection 272.1(8) in the *Excise Tax Act* to address supplies of management or administrative services to an “investment limited partnership” by a general partner.

The draft legislation reads:

272.1(8) Investment limited partnership — supply by general partner

For the purposes of this Part, if a general partner of an investment limited partnership provides a management or administrative service to the investment limited partnership,

(a) the provision of the service is deemed not to be done by the general partner as a member of the investment limited partnership; and

*(b) the supply of the service by the general partner to the investment limited partnership is **deemed to have been made otherwise than in the course of the investment limited partnership’s activities.***

Under the current legislation the general rules state that “anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership’s activities” [272.1(1)], as long as the person is not making a supply to the partnership “otherwise than in the course of the partnership’s activities.” [272.1(3)]

Under the proposed amendments, the supply of a management or administrative service by a general partner of an investment limited

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partnership to the partnership is “deemed to have been made otherwise than in the course of the investment limited partnership’s activities,” triggering the 272.1(3) rule that deems the supply to have been made for consideration and therefore subject to GST/HST. The effect is that the partner will have to charge GST/HST on such supplies.

Although the draft is not yet law, the legislative proposals are in effect as of September 8, 2017, and general partners may be assessed by the Minister for not charging or collecting GST/HST on applicable transactions.

Application of SLFI rules to “investment limited partnerships”

Further to the Department of Finance’s consultation paper, subsection 149(5) has also been amended such that investment limited partnerships are considered to be investment plans and therefore listed financial institutions for GST/HST purposes.

The SLFI rules have been expanded to apply to investment limited partnerships and will deal with such matters as permanent establishment, provincial attribution percentage of the SAM formula, fiscal year, and registration and reporting requirements. In general, new subsection 244.1(4) of the ETA would mean that the SLFI rules for an investment limited partnership will take effect January 1, 2019.

All investment entities that are structured as limited partnerships should examine their structure to determine the impact of these proposed amendments. Contact your Collins Barrow advisor for help.

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