

KWE CANADA COMPLIANCE

MEMO 2010 . V

I. **Imports to Canada, and the B.C. and Ontario Harmonized Sales Tax (HST).** As noted in earlier issues, effective 1 July, 2010, Ontario and B.C. will join Nova Scotia, New Brunswick and Newfoundland in having their provincial sales taxes harmonized with the GST to produce an Harmonized Sales Tax, or HST. The HST is comprised of a GST component plus a provincial sales tax component. The Federal GST component is 5%. The HST rate for Ontario will be [5% GST + 8%] = 13%; and for B.C. the HST rate will be [5% GST + 7%] = 12%.

Imports of Goods to Canada: For the *commercial* import of taxable goods into Canada, it will continue to be the case that only GST (5%) will be payable by the importer of record on the value of those goods. But note well that the full HST will be payable on the value of taxable *casual* (non-commercial) imports.

Customs Brokerage Services on Commercial Imports: The full B.C. or Ontario HST will be imposed on the value of customs brokerage services supplied with respect to commercial imports *if those services are supplied in B.C. or Ontario*. For commercial imports to Canada, a customs brokerage service is deemed to be supplied in the province where the goods are at the time of their release. That is, with respect to commercial imports, true place of supply of a taxable customs brokerage service is a function of where the goods are released; and *not* where the service provider obtaining release is located, *nor* where the importer is located.

Customs Brokerage Services on Casual Imports: The full B.C. or Ontario HST will be imposed on the value of customs brokerage services supplied with respect to casual imports *when the importer/consignee is resident of B.C. or Ontario*. The place of supply rule is different for casual importations, which are private importations of goods for consumption in Canada or are of goods being sold retail to the Canadian consumer. For these casual imports what counts is where the importer/consignee is resident. If the residence is in B.C., for instance, then imports of goods *through any port in Canada* will be subject to the full BC HST based on the value of those goods. And any taxable customs brokerage or other services supplied in connection with the release of those goods into Canada will also be subject to the full B.C. HST. This constitutes a different rule than the one used for commercial shipments.

QST: The Quebec Sales Tax (QST) is 7.5%, calculated on the GST-paid value of the goods or services supplied. The rules for QST are as above, for the HST. That is, no QST is payable on the value of commercial goods entering Canada, only the GST; but if the goods entering Canada are casual goods, imported by a Quebec resident, then GST and QST are imposed. And GST and QST are imposed on customs brokerage services made with respect to commercial goods released in or into Quebec and casual goods imported by or consigned to a resident of Quebec.

International Freight: The service of a continuous freight movement from outside Canada to and into Canada is not subject to GST or HST or QST.

Example 1: On a PARS truck shipment of commercial goods crossing into Canada from Port Huron, Michigan, through Sarnia, Ontario, the value of those imported goods will be subject

to the 5% GST component of the Ontario HST only. But the goods will be deemed to be at the Sarnia border point when they are released, and so on the value of the customs brokerage service the Ontario HST will be imposed, at 13%.

Example 2: On a shipment of commercial goods flown into the Vancouver airport and released there, the value of those imported goods will be subject to the 5% GST component of the B.C. HST only. But the goods will be in bond at the Vancouver airport pending release, and will be in B.C. when released; and so the value of the customs brokerage service will be subject to the full B.C. HST of 12%.

Example 3: A day traveller, resident in Toronto, is bringing back a new flat screen TV she bought in Buffalo, NY. She clears the TV herself, at the border when she crosses. Because she does not use a customs broker there is no customs brokerage service on which to impose the Ontario HST and so no Ontario HST *on brokerage*; but because she is resident of Ontario and the import is of a casual nature, the value of the flat screen TV attracts the full Ontario HST of 13%.

Example 4: A US-based company acts as a Non-Resident Importer to import hot tubs into Canada consigned to Ontario-resident customers. The hot tubs are sold at the retail level, directly to the door of the Ontario-resident consignee-consumers, and travel on PARS truck shipments crossing the border at Detroit/Windsor. These shipments are casual, accordingly, and the value of them is subject to the full Ontario HST of 13%, as is the value of any brokerage services supplied with respect thereto.

Example 5: A PARS truck shipment of commercial goods crosses into Quebec coming from Boston, Mass., destined for Ottawa, Ontario. The value of the imported goods will be subject to just the 5% GST; but since the brokerage services are deemed to have been supplied in the province of Quebec, the value of those services will be subject to the 5% GST plus the QST of 7.5% on the GST-paid value of the customs brokerage service.

Example 6: A prospective PARS truck shipment of commercial goods crosses into Alberta at the Sweetgrass/Coutts border point, bound ultimately for Cranbrook, B.C. The PARS fails, and the goods must travel in bond to a sufferance warehouse in Cranbrook and be cleared into Canada out of that warehouse. The value of the imported goods will be subject to just the 5% GST; but since the brokerage services will be deemed to have been supplied in the province of British Columbia, the value of those services will be subject to the full B.C. HST of 12%.

Example 7: An ocean shipment is manifested in bond to Toronto and electronically cleared out of a container yard, there, by a customs broker located in Vancouver, B.C. The value of the imported goods will be subject to just the 5% GST; but since release of the goods into Canada is obtained out of the container yard in Ontario, the value of the brokerage services will be subject to the full Ontario HST of 13%.

2. **Disparity of Tolling for NAFTA Claims.** **The statutory time limits for bringing a claim for NAFTA status and for other claims of customs that may be brought are different.** Under s. 74(3)(b)(ii) of the *Customs Act*, a refund claim may be brought to recover duty paid on NAFTA-originating goods within one year of the date duty was paid. However under s. 59(1) of the *Customs Act* the CBSA may, on its own initiative or in response to a claim, re-determine or further-redetermine the tariff classification or valuation of goods up to four years from the date duty was paid. This disparity of tolling, between one year and four, creates a situation wherein

the importer, if it enjoys sufficient leverage with its vendors of *NAFTA*-originating goods, may consider requiring of them that they provide *NAFTA* certificates of origin notwithstanding the goods are believed in good faith to be duty free under the MFN. Doing so would in effect produce a duty-free redundancy, or fail-safe: the importer holding *NAFTA*-certificates of origin for MFN duty-free goods would have insurance against the CBSA, *more than one year after import*, re-determining the classification — to a dutiable provision — of one or more of the importer's US- or Mexican-origin goods.

3. **Duty-free Manufacturing Inputs and Machinery: Canada has eliminated or reduced the rate of duty payable on certain manufacturing inputs and certain machines and equipment used in the production of goods.** This phasing-out of duty, either immediately or by steps, is being done in the name of stimulus and the lowering of trade barriers. A great many manufacturing inputs and machines used in the production of goods in Canada had been imported duty free, before. Now a further 1160 types of manufacturing inputs and machines or equipment that used to attract duty may be imported duty free; and yet another 381 types of manufacturing inputs and machines or equipment used in the production of goods will have the rate of duty in effect currently reduced to free by 1 January 2015, in 5 reduction steps.

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