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Limited Partnership Distributions May be Subject to GST/HST

The Department of Finance (Canada) released draft legislation to the *Excise Tax Act* (Canada) to, essentially, make certain distributions to a general partner of an “investment limited partnership” subject to GST/HST.

Under the current rules, distributions made to a general partner of a limited partnership are not subject to GST/HST if the general partner’s activities are made in the course of the partnership’s activities. The draft legislation deems management or administrative services provided by the general partner not to be made in the course of the partnership’s activities. Therefore payments to the general partner for management or administrative services will be subject to GST/ HST. However, the draft legislation applies only in respect of distributions made to general partners of “investment limited partnerships”.

Under the draft legislation, “investment limited partnership” is defined as:

a limited partnership, the primary purpose of which is to invest funds in property consisting primarily of financial instruments (which includes equity securities, debt securities, insurance policies, interests in partnerships, trusts, or any options/guarantees in respect of the foregoing), if

(a) the limited partnership is, or forms part of an arrangement or structure that is, represented or promoted as a hedge fund, investment limited partnership, mutual fund, private equity fund, venture capital fund or other similar collective investment vehicle, or

(b) 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.

In light of this definition, it appears that the draft legislation is not intended to apply to limited partnerships used in real estate development or operating limited partnerships. However, the draft legislation may catch structures where a limited partnership invests solely in units of another limited partnership.

If the draft legislation is enacted, any distributions to the general partner (including distributions that have accrued but are not paid) after September 8, 2017 will be subject to GST/HST.

This proposed new measure will be an additional cost to many investment limited partnerships as most investment limited partnerships cannot recover the GST/HST paid. The GST/HST is calculated either based on the

actual amount paid to the general partner (if the limited partnership can claim full input tax credits) or the fair market value of the services provided (if the limited partnership is not able to claim full input tax credits).

The draft legislation includes other proposed amendments to the *Excise Tax Act* (Canada), such as expanding the definition of “investment plan” and “selected listed financial institutions”.

The Department of Finance will accept comments on the draft legislation until October 10, 2017.

We urge you to contact us to review your current limited partnership structure to determine whether the draft legislation applies to your situation.