

# Information Bulletin

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PST-60

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## THE PROVINCIAL SALES TAX ACT

### TRANSFERS OF BUSINESS ASSETS BETWEEN CLOSELY RELATED PARTIES

This bulletin has been prepared to help you apply and collect the Provincial Sales Tax (PST). It is a general guide and not a substitute for the legislation.

*Changes to this bulletin are indicated by a (I) in the left margin.*

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#### A. INTRODUCTION

Sections 7.3 and 7.4 of *The Provincial Sales Tax Regulations* provide an exemption of tax on transfers of tax-paid tangible personal property between parent and subsidiary corporations, or related partnerships, and upon formation of a new corporation or partnership where specific criteria are met. These provisions allow for the continuity of business through a change in the organizational structure, such as the incorporation of a proprietorship, without incurring a tax liability.

There is no provision for an exemption on transfers of tangible personal property among existing unrelated corporations unless those corporations are otherwise considered to be related since they are wholly owned and controlled by the same group of shareholders. The group must continuously maintain the same degree of beneficial ownership in the two companies.

This bulletin outlines the conditions under which transfers of tax-paid assets between related business entities may be made without payment of tax. The bulletin also outlines the application of tax to the transfer of business assets as part of a winding up, as a dividend in kind, or as a return of capital.

When a condition, such as the 8-month relationship requirement, is not fulfilled for an exemption of tax as outlined in the sections below, the matter must be reported to the Ministry of Finance and the tax must be self-assessed on the value of the tangible personal property or taxable service as at the time of acquisition.

### **Valuation of Assets**

When an asset is sold or transferred below fair market value, *The Provincial Sales Tax Act* allows Finance to make a valuation of the fair market value of that asset. In this case, the fair market value as determined by Finance is deemed to be the purchase price of the asset.

### **Documentation Requirements**

When all qualifying conditions are met and an asset is transferred to a related party exempt from PST, documentation must be retained that provides proof the asset transferred is a tax paid asset.

### **Obtaining Approval for Transfers of Vehicles**

To claim a PST exemption for an eligible transfer of a vehicle to or from a related party, please contact the Ministry of Finance for approval prior to transferring the vehicle registration. Otherwise, Saskatchewan Government Insurance (SGI) will collect the PST on the fair-market value of the vehicle at the time of transfer. If the PST is paid in error, you may apply to Finance for a refund of the tax.

A claim for a PST exemption or [Application for Refund](#) should include the following supporting documentation, as applicable:

- copy of the current vehicle registration;
- name of the party receiving the vehicle;
- proof the vehicle qualifies as a tax-paid asset;
- description of the relationship between the parties involved;
- certificate of amalgamation;
- corporate registry documents of the parties involved, listing shareholders for all share classes;
- partnership registry listing all partners; and/or,
- any other documentation we request to confirm the relationship.

In cases where the required relationship is not maintained for at least eight months, the party that purchased, acquired, or received the asset must self-assess PST on the purchase price of the asset. No depreciation is allowed.

In cases where a taxable asset is sold below the fair-market value, Finance may determine a fair-market value for the purpose of applying the PST.

**B. DEFINITIONS**

Beneficial Ownership	The ability to exercise any or all of the rights and privileges inherent in the ownership of shares.
Tangible Personal Property	Goods that can be seen, weighed or measured or are otherwise perceptible to the senses.
Tax-Paid Assets	Business assets on which PST was paid when initially acquired.
Parent Corporation	A corporation that beneficially owns at least 95 per cent of the outstanding shares of each class of share capital of its subsidiary corporation.
Related Corporation	A corporation associated with another corporation when the other corporation is: <ul style="list-style-type: none"><li>• its parent corporation; or</li><li>• its wholly owned subsidiary; or</li><li>• another wholly owned subsidiary of the same parent corporation.</li></ul>
Wholly Owned Subsidiary	A corporation where 95 per cent of the outstanding shares of each class of its share capital are beneficially owned by another corporation referred to as its parent corporation.
Parent Partnership	A partnership that beneficially owns at least 95 per cent of the partnership interest of another partnership.
Related Partnership	A partnership is related to another partnership when: <ul style="list-style-type: none"><li>• one partnership beneficially owns at least 95 per cent of the partnership interest of another partnership, and is allocated at least 95 per cent of the income or loss of the other partnership; and</li><li>• there is no right or option that, if exercised, would result in the two parties ceasing to be closely related.</li></ul> <p><b>Note:</b> Partnerships are also considered related when the same person or group of persons controls each partnership according to the same criteria.</p>
Partnership Interest	Partnership interest means interest in a limited partnership, including partnership units.

See [Section G](#) for the application of PST in relation to general partnerships.

**C. TRANSFERS AMONG RELATED PARTNERSHIPS, AND PARENT CORPORATIONS AND WHOLLY OWNED SUBSIDIARIES**

The transfer of tax-paid assets, by sale or lease, is exempt from PST when transferred from:

- a parent corporation to its wholly owned subsidiary corporation; or
- a wholly owned subsidiary corporation to its parent corporation; or
- a wholly owned subsidiary corporation to another wholly owned subsidiary of the same parent corporation; or
- a partnership to a related partnership.

To qualify for this exemption, the following criteria must be met:

- The business assets being transferred qualify as tax-paid assets by a related corporation or partnership.
- Where the transfer is by way of a purchase, the relationship between the corporations or partnerships must be maintained for a period of at least eight months after the date of the transfer.
- Where the transfer is by way of a lease, no tax is payable on lease payments when the relationship between the corporations or partnerships is maintained.

Assets acquired tax exempt under these provisions retain their tax-paid status on future transfers when a minimum of eight months has elapsed since the initial transfer and the relationship between the companies has been maintained.

Where a corporation or partnership is to be wound up or dissolved, it may transfer its tax-paid assets to a related corporation or partnership exempt of tax provided the following additional conditions are met:

- The seller and the purchaser were related corporations or partnerships for a period of at least eight months prior to the purchase date.
- At or after the time of the purchase, the seller is dissolved or wound up.
- The seller and the purchaser remain related corporations or partnerships until such time as the seller is dissolved or wound up.

If these criteria are met, it is not necessary for the companies to remain related for eight months after the transfer.

**D. TRANSFERS TO A NEW CORPORATION OR LIMITED PARTNERSHIP WHOLLY OWNED AND CONTROLLED BY THE TRANSFERORS**

The transfer of tax-paid business assets is exempt from tax when a new limited partnership is formed, or a new company is incorporated by a person, partnership, or corporation which wholly owns and controls the new corporation, and the intention is to have the same principals operate the business. To qualify for the exemption, the following conditions must be met:

- The person(s), partnership, or corporation incorporating the new company, or forming the new limited partnership, wholly owns and controls it.

- The business assets being transferred qualify as tax-paid assets by the transferor.
- The transferor(s) continues to wholly own and control the new corporation or limited partnership for a period of at least eight months after the date of the transfer.
- The business assets being transferred are available to the newly incorporated company on the first day that it commences to carry on business (i.e. by marketing, manufacturing, or producing products, or providing services).

Transfers of assets under these provisions will qualify for the exemption when the accounting entries are recorded in the company's books of account after the company has begun its intended business, provided that the effective date of the transfer is no later than the date when the firm first commenced to carry on business. Transfers of assets after the date the corporation began carrying on business, where the assets could not effectively be transferred by that date because the transferor continued to use the assets, would not qualify for the exemption. Activities such as arranging financing for a business or selling share capital will not in themselves be considered carrying on a business.

**E. TRANSFERS TO A NEW CORPORATION OR LIMITED PARTNERSHIP WHICH THE TRANSFEROR DOES NOT WHOLLY OWN OR CONTROL**

The transfer of business assets is exempt from tax when transferred from a person(s), partnership, or corporation to a new corporation or limited partnership which the transferor does not wholly own and control, provided the following criteria are met:

- The business assets being transferred qualify as tax-paid assets.
- The transferor receives shares of the purchasing corporation, or partnership interest of the limited partnership, equal in value to the net equity in the tax-paid assets transferred.
- The transfer of tax-paid assets to the purchasing corporation or limited partnership is concurrent with the transfer of shares to the transferor.
- The transfer takes place no later than the first day the new company commences business (i.e. by marketing, manufacturing, or producing products, or providing services).
- The transferor retains all of the shares or partnership interest accepted as payment for a period of at least eight months after the date of their issue or transfer.

**F. AMALGAMATIONS**

When companies amalgamate through a formal amalgamation, within the meaning of subsection 87(1) of the *Income Tax Act* (Canada), the transfer of assets to the newly amalgamated company is not considered to be a sale of tangible personal property. Therefore, PST does not apply to the transaction.

Where tax was previously paid on the assets, by either of the parties of an amalgamation, the assets will be considered tax paid by the amalgamating company. This is important for future transfers to wholly owned subsidiaries or further amalgamations.

Where the amalgamation involves two wholly owned subsidiaries of the same parent corporation, any assets either subsidiary acquired exempt from the parent corporation retain their exempt status on amalgamation if the amalgamating company remains a wholly owned subsidiary of the same parent. This applies even if the amalgamation occurs within eight months of the transfer of the assets. However, if the parent/subsidiary relationship ends within eight months of the transfer, the

amalgamated company is liable for tax on any assets received exempt from the parent within the eight-month period.

Where amalgamating companies are wholly owned subsidiaries of different parent corporations, any assets received exempt from the respective parent corporations at least eight months prior to the amalgamation will retain their exempt status upon amalgamation. The amalgamating companies are liable for tax on any assets received exempt from the respective parent corporations within eight months prior to the date of amalgamation.

An amalgamation procedure does not absolve the parties involved from any tax liability incurred prior to the amalgamation.

## **G. GENERAL PARTNERSHIPS AND JOINT VENTURES**

The transfer of tax-paid assets by a partner to a new or existing general partnership is exempt from tax when the contributing partner retains an equivalent ownership interest in the assets of the partnership. The eight-month retention period that applies for limited partnerships does not apply to general partnerships. Tax will apply to the value of consideration paid by an individual partner to acquire an additional ownership interest in a tax paid asset whenever there is a change in the ownership of an asset. When the consideration includes an exchange or trade of a tax paid asset, tax will not apply to that portion.

The transfer of assets to a partner from the general partnership is exempt from tax when the ownership interest in the assets received is equal in value to the partner's interest in the partnership being removed.

Upon the dissolution of a general partnership, the transfer of tax-paid assets is exempt from tax when the partner receives an ownership interest in an asset in satisfaction of the existing partner's interest in the partnership.

### **Joint Ventures**

Joint ventures are typically viewed in the same manner as general partnerships. In general, tax will not apply to the sale of a joint venture interest unless the sale includes an identifiable change in the ownership of specific tangible assets.

## **H. LIMITED PARTNERSHIPS**

The transfer of tax-paid assets by a person, partnership and/or corporation to a limited partnership is not subject to tax when the transferor takes back limited partnership units equal in value to the net equity in the assets transferred and intends to maintain their proportionate interest in those assets for a minimum of eight months.

A limited partnership is generally viewed in the same context as a corporation with respect to the unit/shareholder rights in that each unit or share has an ownership interest in the assets of the entity but there is typically no direct identifiable ownership attached to a particular asset. In this regard, the

sale of a unit in a limited partnership will not attract the application of the tax unless the sale includes a change in the ownership of specific assets that can be identified to the sale or transfer of units.

## I. **TRUSTS**

A trust is a legal relationship in which legal ownership of property is held by a trustee, for the beneficial ownership of the beneficiaries. There is normally a written document that sets out what the trustee's duties are in relation to the property held in trust.

- Other than in the case of a bare trust, a trustee is usually granted some degree of discretion and control in the management of the trust assets.
- In the case of a bare trust, the trustee(s) holds legal title to the trust property but has no discretion and no responsibilities or duties in relation to the trust property other than to act strictly on the instructions of the beneficiaries.

When a trustee is replaced, legal title passes from the previous trustee to the new trustee. In these circumstances, when there is no consideration paid for a transfer of legal title and no change in the beneficial ownership of the assets takes place, tax does not apply.

When tax-paid assets are transferred into a trust to be held for the benefit of the transferor, tax does not apply as there is no change in the beneficial ownership of those assets. When tax-paid assets are transferred out of a trust to a beneficiary of the trust, the transfer does not attract tax when no consideration is paid and there is no change in the beneficial ownership of the asset.

In a spousal trust where a spouse is the only beneficiary and the trust purchases shares in a corporation that is wholly owned and controlled by the other spouse, the transfer of tax-paid assets into the corporation will meet the criteria for an exemption of PST when the spouses together own and control at least 95 per cent of the issued shares for at least eight months after the date of the transfer.

Where a family trust (other than a spousal trust) purchases shares in a corporation from a family member, the transaction is treated as one between unrelated parties. In this case, such a transaction could invalidate a prior exemption that was granted for the transfer of tax-paid assets into the corporation, when the prior conditions were not met.

## J. **WINDING UP OF A BUSINESS**

Under the provisions of *The Provincial Sales Tax Act*, tax is imposed on the sale of tangible personal property. "Sale" is defined as including the transfer of the title to or possession of tangible personal property for consideration.

### Winding Up a Corporation

When assets are transferred to a shareholder as part of a winding up, dissolution, or liquidation of a corporation, and the shares of the shareholder are reduced in value or cancelled as a result of the transfer, consideration has been paid for the assets. Therefore, a sale has occurred and the shareholder is required to pay tax on the value of the assets at the time of transfer.

The shareholder is not required to pay tax on the value of assets at the time of transfer, when it can be shown that the individual is the sole shareholder and has continuously wholly owned and controlled the corporation since the time the corporation had paid tax on the assets.

#### Winding Up a General Partnership

When assets are transferred to a partner as part of a winding up, dissolution or liquidation of a general partnership, PST does not apply when the transfer of assets are distributed to each partner in satisfaction of their equity in the partnership.

When a partner receives assets valued greater than their partnership interest, PST applies to the portion of the value of the assets that exceeds their partnership interest.

#### **K. DIVIDEND IN KIND AND RETURN OF CAPITAL**

The same principle applies to the transfer of assets as a dividend in kind or a return of capital, whether in the course of winding up, or otherwise.

When a company declares a dividend to a class or classes of shareholders, a liability is created to each of those shareholders. If the dividend is paid by transferring an asset of the company, the liability to the shareholder receiving the asset is reduced to the extent of the value of the asset. The transfer of title or possession of the asset is therefore contingent upon the reduction of the company's liability to pay all or a portion of the dividend to the shareholder.

When a company transfers an asset to affect a return of capital to a shareholder, the value of shares held by that shareholder is reduced to the extent of the value of the asset.

When tangible personal property is transferred as a dividend in kind or as a return of capital, the consideration paid by the shareholders in return for the asset is the cancellation of the company's liability to pay the dividend or the reduction in the value of shares held by the shareholder. For PST purposes, a sale is considered to have taken place. The shareholder is therefore required to pay tax on the value of the asset at the time of the transfer.

#### **FOR FURTHER INFORMATION**

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Telephone: Toll Free 1-800-667-6102  
Regina 306-787-6645

Email: [sasktaxinfo@gov.sk.ca](mailto:sasktaxinfo@gov.sk.ca)

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