



# GST/HST Memoranda Series

## 17.6 Definition of “Listed Financial Institution”

September 1999

Revised June 9, 2000

### Overview

This memorandum explains the meaning of the term “listed financial institution” and provides details on who is a listed financial institution and/or a selected listed financial institution under the *Excise Tax Act*.

### Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

### Note

This memorandum replaces GST/HST Memorandum 17.6, *Definition of “Listed Financial Institution”*, dated February 1995. Significant changes have been side-barred.

### Note - HST

Reference in this publication is made to supplies taxable at 7% or 15% (the rate of the Harmonized Sales Tax (HST)). The 15% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the “participating provinces”). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, *Place of Supply Rules under the HST*, available from any Revenue Canada tax services office.

## Financial institutions

### General s 149

1. There are rules for determining whether a person is to be treated as a financial institution. This determination is relevant for a number of provisions of the Act. Some provisions apply specifically to “financial institutions”, “listed financial institutions” or “selected listed financial institutions”, while other provisions specifically exclude these institutions. It is to be noted that a listed financial institution is a subset of the definition of financial institution.
2. Some provisions that set out different rules for financial institutions are:
  - input tax credit determination and change-in-use rules - sections 204 and 205;
  - election for exempt supplies - section 150;

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- election in respect of passenger vehicles - subsection 173(2);
  - registration - subsection 240(3);
  - reporting periods - subsection 245(2); and
  - zero-rating of certain financial services - Part IX of Schedule VI.
3. Some provisions that specifically exclude financial institutions are:
- property and services of non-financial institutions - sections 185 and 198;
  - use of property or services in commercial activities - section 141;
  - capital personal property rules - sections 199 and 200; and
  - employee and partner rebate - section 253.

Definition  
para 149(1)(a)

4. Generally, a listed financial institution is a provider of financial services. Specifically, as a result of the definition of “listed financial institution” in subsection 123(1), a person is a listed financial institution throughout a particular taxation year if, at any time in the particular year, the person is included in one of the categories set out in subparagraphs 149(1)(a)(i) through (xi). This memorandum provides details on each of these subparagraphs. The following describes the various categories of listed financial institutions under subparagraphs 149(a)(i) through (xi).

- 149(1)(a)(i) • a bank;
- 149(1)(a)(ii) • a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee;
- 149(1)(a)(iii) • a person whose principal business is as a trader or dealer in, or as a broker or salesperson of, financial instruments or money;
- 149(1)(a)(iv) • a credit union;
- 149(1)(a)(v) • an insurer or any other person whose principal business is providing insurance under insurance policies;
- 149(1)(a)(vi) • a segregated fund of an insurer;
- 149(1)(a)(vii) • the Canada Deposit Insurance Corporation;
- 149(1)(a)(viii) • a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof;
- 149(1)(a)(ix) • an investment plan;

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- 149(1)(a)(x) • a person providing services referred to in section 158 (tax discounters); or
- 149(1)(a)(xi) • a corporation deemed under section 151 (i.e., corporations that have made an election under section 150) to be a financial institution.

### **Bank**

Definition  
ss 123(1)

5. “Bank” means a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*.

### **Corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee**

6. Corporations that are trust companies that are regulated under either federal or provincial laws to provide services to the public as a trustee are listed financial institutions for GST/HST purposes.

### **Person whose principal business is as a trader or dealer in, or as a broker or salesperson of, financial instruments or money**

7. A person whose principal business is as a trader or dealer in, or as a broker or salesperson of, financial instruments or money is a listed financial institution for GST/HST purposes. As such, listed financial institutions include any person who commonly acts as an agent or broker in a transaction involving a financial instrument, or who buys and sells financial instruments as principal. It generally also includes a business carried on by a proprietorship, a partnership or a corporation whose principal business is that of an investment dealer, stock and bond broker, securities and commodities trader or any person dealing in or selling financial instruments such as an insurance agent.

Principal business

8. The determination of a person’s principal business is relevant to the interpretation of subparagraph 149(1)(a)(iii) as well as subparagraphs 149(1)(a)(v) and (viii).

Business  
ss 123(1)

9. For GST/HST purposes, “business” is defined in the Act. A business includes a profession, calling, trade, manufacture or undertaking of any kind without regard to an expectation of profit. An activity engaged in on a regular or continuous basis involving the supply of property by way of lease, licence or similar arrangement is also included in the definition of business. Excluded from this definition is an office or employment.

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10. The Act does not define “principal”, and therefore its common or ordinary meaning applies for GST/HST purposes. As a result, in the context of section 149, the Department considers that “principal” refers to the person’s chief or main business activity.

### Determining factors

11. To determine what the principal business of a person is for the purposes of section 149, a review of the facts and circumstances of each case is required. This review may include an examination of each kind of business activity carried out by the person. Some factors to be considered include:

- the relative profits realized by each segment of a person’s business;
- the total number of supplies made and the total value of the revenue received from supplies made in each business activity;
- the relative value of the assets employed in each business activity;
- the commercial practices of the person, including the time, attention and efforts expended by the employees, managers, or corporate officers in each business activity; and
- the terms of any partnership agreement if the person is a partnership, or corporate objects in the case of a corporation.

12. In the case of subparagraph 149(1)(a)(iii), it will be a question of fact whether or not a particular person’s principal business is as a trader or dealer, or as a broker or salesperson of financial instruments or money. Generally, such a business would include those activities relating to the trading, dealing, exchanging or selling of financial instruments or money.

### Credit union

#### Definition ss 123(1)

13. Credit union has the meaning assigned by subsection 137(6) of the *Income Tax Act*, and includes a person described in paragraph (a) of the definition of “deposit insurance corporation” in subsection 137.1(5) of the *Income Tax Act*.

14. A “credit union” is defined in subsection 137(6) of the *Income Tax Act* to mean a corporation, association or federation incorporated or organized as a credit union or co-operative credit society provided

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- all or substantially all of its revenues are derived from the sources described in subparagraphs (a)(i) to (vii) of the definition of “credit union” in subsection 137(6) of the *Income Tax Act*,
- all or substantially all its members having full voting rights were corporations, associations or federations described in subparagraphs (b)(i) to (iii) of the definition of “credit union” in subsection 137(6) of the *Income Tax Act*, or
- it is an entity meeting the requirements of paragraph (c) of the definition of “credit union” in subsection 137(6) of the *Income Tax Act*, (i.e., the corporation, association or federation would be a credit union as set out in (b) above if all the members (other than individuals) having full voting rights in each member that is a credit union were members with full voting rights in the corporation, association or federation).

15. The term “credit union” includes a caisse populaire. Additional information on credit unions can be found in GST/HST Memorandum 17.8, *Credit Unions*, and Revenue Canada Interpretation Bulletin IT-483, *Credit Unions*.

### **Insurer or any other person whose principal business is providing insurance under insurance policies**

16. Insurance companies and fraternal benefit societies that are registered under federal or provincial insurance statutes are generally considered to be listed financial institutions.

17. Any person that is an insurer as defined in subsection 123(1) or whose principal business is providing insurance under insurance policies or issuing insurance policies is a listed financial institution.

18. GST/HST Memorandum 17.9, *Insurance Agents and Brokers*, contains detailed information on persons whose principal business is providing insurance under insurance policies.

### **Segregated fund of an insurer**

s 131

19. For GST/HST purposes, a segregated fund of an insurer is deemed to be a trust which is deemed to be a separate person and which does not deal at arm’s length with the insurer. The insurer is deemed to be a trustee of the trust. The activities of the segregated fund are deemed to be the activities of the trust and not the activities of the insurer.

### **Canada Deposit Insurance Corporation**

20. The Canada Deposit Insurance Corporation is a federal Crown Corporation that provides insurance in respect of funds on deposit with its member institutions.

**Person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof**

21. Any person, including a sole proprietorship, partnership, corporation or other organization, that carries on business principally as a finance company, acceptance company, factor, venture capitalist, or a loan, mortgage or investment company is considered to be a listed financial institution. The concept of principal business for GST/HST purposes is discussed in paragraphs 8 to 12.

**Investment plan**

ss 149(5)

22. The following trusts and corporations are investment plans for GST/HST purposes:

- (a) a trust governed by
  - (i) a registered pension plan,
  - (ii) an employees’ profit sharing plan,
  - (iii) a registered supplementary unemployment benefit plan,
  - (iv) a registered retirement savings plan,
  - (v) a deferred profit sharing plan,
  - (vi) a registered education savings plan,
  - (vii) a registered retirement income fund,
  - (viii) an employee benefit plan,
  - (ix) an employee trust,
  - (x) a mutual fund trust,
  - (xi) a pooled fund trust,
  - (xii) a unit trust, or
  - (xiii) a retirement compensation arrangement,

as each of those terms is defined for the purposes of the *Income Tax Act* or the *Income Tax Regulations*;

- (b) an investment corporation, as that term is defined for the purposes of the *Income Tax Act*;
- (c) a mortgage investment corporation, as that term is defined for the purposes of the *Income Tax Act*;

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- (d) a mutual fund corporation, as that term is defined for the purposes of the *Income Tax Act*;
- (e) a non-resident owned investment corporation, as that term is defined for the purposes of the *Income Tax Act*; and
- (f) a corporation exempt from tax under the *Income Tax Act* by reason of paragraph 149(1)(o.1) or (o.2) of that Act.

23. Detailed information on statutory definitions, technical descriptions and administrative requirements of the above entities for income tax purposes is available from the nearest Revenue Canada tax services office.

### Person providing tax discounting services referred to in section 158 of the Act

24. A tax discounter is a listed financial institution for GST/HST purposes. For a person to be considered a tax discounter for GST/HST purposes, that person must come within the meaning of that term under the *Tax Rebate Discounting Act*.

25. GST/HST Memorandum 17.10, *Tax Discounters*, provides more information on tax discounters.

### Corporation deemed under section 151 of the Act to be a financial institution

26. A corporation that has made the election under section 150 (form GST27, *Election for Exempt Supplies - Election to Deem Supplies Between Members of a Closely Related Group of Which a Listed Financial Institution is a Member to be Supplies of Financial Services*) is deemed to be a financial institution throughout the period during which the election is in force.

Election for exempt supplies  
ss 150(1)

27. Where a corporation that is a member of a closely related group (one of the members of which is a listed financial institution) and another member of that group make a joint election, every supply of property between the two members made by way of lease, licence or similar arrangement or of a service, that is made while the election is in effect and that would in the absence of this provision have been a taxable supply, is considered a supply of a financial service.

Exceptions  
ss 150(2)

28. This election does not apply to:

- imported taxable supplies (within the meaning of section 217); or
- property held or services rendered by a member of a closely related group in the member’s capacity as a participant in a joint venture with another person at a time when an election under section 273 between the persons is in effect.

Additional information

29. Refer to GST/HST Memorandum 17.14, *Election for Exempt Supplies*, for more information on the election under section 150.

### Amalgamation and acquisition

ss 149(2) and (3)

30. A person is a financial institution as a result of an amalgamation of two or more corporations or of an acquisition of a business, where a financial institution is involved in the transaction as indicated in paragraphs 31 to 34.

#### Amalgamation

ss 149(2)

31. Where two or more corporations are merged or amalgamated to form a new corporation and the principal business of the new corporation is the same as, or similar to, the business of one or more of the predecessors that was a financial institution, then the new corporation is considered to be a financial institution for its taxation year that commences on the date of the merger or amalgamation. Refer to paragraphs 8 to 12 for information on principal business.

#### Acquisition of a business

ss 149(3)

32. Where a person acquires a business as a going concern from a person who, immediately before that time was a financial institution, the person acquiring the business is considered to be a financial institution for the remainder of the taxation year if the acquired business is a financial business and is continued as the person’s principal business after the acquisition. This would apply even if the purchaser were not a financial institution prior to the acquisition. Refer to paragraphs 8 to 12 for information on principal business.

Policy Statement P-021,  
*Application of Subsection*  
149(3)

33. Where a person acquires a non-financial business from a financial institution, it is the Department’s position **not** to consider the person to be a financial institution unless the person wants to be considered a financial institution.

34. The Department considers that the rule respecting the acquisition of a business applies only to the purchase of an entire business or a division of a business that operates as a going concern. It does not apply to the sale of shares by one person to another where the corporate entity continues its operations.

### Selected listed financial institutions

35. Effective April 1, 1997, with the implementation of HST, a new term, “selected listed financial institution”, and its definition were introduced. Selected listed financial institutions are required to determine their net tax liability using a special attribution method.

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36. The special attribution method applies only to selected listed financial institutions and affects their reporting and filing requirements. More detailed information on selected listed financial institutions and the special attribution method, including the formula, calculation and filing requirements, is available in the guide, *GST/HST Information for Selected Listed Financial Institutions*, and GST/HST Technical Information Bulletin B-083R, *Financial Services Under the HST*. Information may also be obtained by contacting the nearest Revenue Canada tax services office.

Definition  
ss 225.2

37. A person is a selected listed financial institution throughout a reporting period in a fiscal year if, during the taxation year in which the fiscal year ends and during the preceding taxation year, the person:

- a) is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) and;
- b) the listed financial institution is;
  - required to allocate taxable income (or income in the case of an individual, an estate of a deceased individual, or a trust) for income tax purposes to both a participating and a non-participating province, or
  - a specified partnership, or
  - a prescribed financial institution.

Exclusion

38. A person who is a listed financial institution solely by virtue of subparagraph 149(1)(a)(xi) is not a selected listed financial institution. More information on subparagraph 149(1)(a)(xi) is available in paragraphs 26 to 29.

Specified partnership  
ss 225.2(8)

39. A partnership is a specified partnership during a taxation year if it has taxable income (or income, in the case of a member that is an individual, an estate of a deceased individual, or a trust)

- a) earned by at least one member in a participating province, and
- b) earned by at least one member (whether or not it is the same member) in a non-participating province,

from a business carried on through the partnership in that year.

Prescribed financial institution  
para 225.2(1)(d)

40. According to Part I of the draft *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, for GST/HST purposes, a corporation is a prescribed financial institution if, during its current taxation year and the immediately preceding taxation year, the corporation:

- a) is named in Schedule III to the *Financial Administration Act*; and

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- b) would have been required to allocate taxable income for federal income tax purposes between at least one participating province and at least one non-participating province if it had taxable income in both of those years and if it had been subject to both federal and provincial income taxes in both of those years.

All GST/HST memoranda and other Revenue Canada publications are available on Internet at the Revenue Canada site <http://www.rc.gc.ca/> under the heading “Technical Information” in “General Information”.