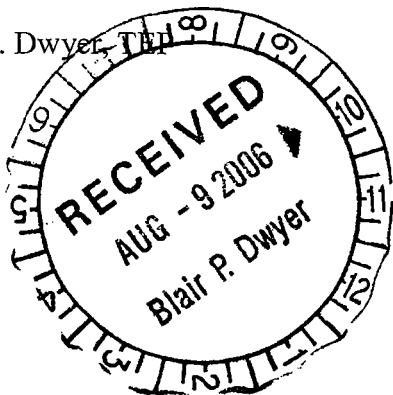


Dwyer Tax Lawyers
900-1175 Douglas Street
Victoria, BC V8W 2E1

NUR, Q (2001)

Attention: Blair P. Dwyer



Excise and GST/HST Rulings Directorate
Place de Ville, Tower A, 15th Floor
320 Queen Street
Ottawa, Ontario K1A 0L5

Case Number 57496

Dear Mr. Dwyer:

Subject: GST/HST INTERPRETATION
Mitigation Payments Made by the BC Forestry Revitalization Trust

Thank you for your letter of January 13, 2005, to Susan Mills, concerning the application of the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) to mitigation payments made by the BC Forestry Revitalization Trust (BCFRT) as a consequence of the *Forestry Revitalization Act* (FRA). We apologize for the delay in replying.

All legislative references are to the *Excise Tax Act* (ETA) and the regulations therein, unless otherwise specified.

Effective July 1, 2006, the rate of the GST has been reduced from 7% to 6% and the rate of the HST from 15% to 14%. The new rates apply to supplies for which the GST/HST is paid on or after July 1, 2006, without having become payable before that date. Specific transitional rules apply to certain supplies, for example, real property. For more information on the transitional rules for the reduction of the GST/HST rate, please refer to **Reduction in the Rate of the GST/HST - Questions and Answers** <<http://www.cra-arc.gc.ca/agency/budget/2006/gstratega-e.html>> on the CRA Web site.

RULINGS REQUESTED

- 1. You requested a ruling as to whether the contractor mitigation payments made by the Trustee of the BCFRT to forestry contractors pursuant to the Contractor Mitigation Funding Agreement (CMFA) are subject to GST.

2. You requested a ruling as to whether the employee mitigation payments made by the Trustee of the BCFRT to forestry contractors pursuant to Employee Mitigation Funding Agreements (EMFAs) are subject to GST.

RESPONSE

Since we cannot examine the individual forestry contracts that are impacted by the FRA or the individual agreements under which the mitigation payments are to be made, we are unable to provide rulings with respect to the situation. However, we can provide interpretations with respect to the issues, and the relevant provisions of the ETA.

Based on the information provided, our interpretations are as follows.

1. The sample CMFA that you provided to us suggests that contractor mitigation payments are amounts other than consideration, in which case no GST would be payable under section 165 of the ETA. However, without examining each settlement agreement, we cannot rule out the possibility that, in some instances, a supply may have been made in exchange for a mitigation payment. If a mitigation payment is consideration for a taxable supply by a registrant, no GST would be payable if the recipient of the supply is considered to be Her Majesty in right of British Columbia. If the BCFRT is a true trust, and is making payments in its own right, rather than on behalf of Her Majesty in right of British Columbia, any mitigation payment that is consideration for a taxable supply by a GST registrant would be subject to GST under section 165 of the ETA.

If the mitigation payments are being made as a consequence of the breach, modification or termination of agreements between forestry licensees and forestry contractors, the possible application of subsection 182(1) must be considered. In your letter of September 29, 2005, you indicated that the Trustee is not aware of any cases in which a licensee makes a supply to a contractor, and that it is always the case that a contractor makes a supply to a licensee. If a mitigation payment is made as a consequence of the breach, modification or termination of an agreement for the making of a taxable supply by a forestry contractor to a forestry licensee, subsection 182(1) may apply. A definite determination could only be made by examining the original contract between the forestry contractor and the forestry licensee, and the specific CMFA between the Trustee and the forestry contractor.

In your request for a ruling, you referred to our Technical Information Bulletin B-067 and suggested that the payments at issue are grants or subsidies that should not attract GST. However, nothing in B-067 or in the ETA suggests that a deeming provision such as subsection 182(1) of the ETA would be invalidated simply because the amount at issue is a grant, subsidy or similar payment.

In your letters of September 29 and October 7, 2005, you suggested that section 182 of the ETA should only apply to a payment made as a direct consequence of a legal liability arising from a breach, modification or termination of an agreement, and should not apply to *ex gratia* payments.

However, subsection 182(1) does not refer to legal liability. It refers to a payment made to a registrant as a consequence of the breach, modification or termination of an agreement for the

making of a taxable supply (other than a zero-rated supply) by that registrant in Canada. Subsection 182(1) applies equally to payments made by third parties to such an agreement.

In your letter of October 7, 2005, you compared the situation at issue to the example in Policy Statement P-218R, where we stated that subsection 182(1) of the ETA would not apply to a payment made by an individual for accidentally breaking a display window. However, in that example, there was no prior agreement for the making of a taxable supply. The situation at issue appears to involve agreements for the making of taxable supplies, so it would be necessary to determine the reason a particular contractor mitigation payment was made.

2. The GST status of employee mitigation payments can only be determined by examining the details of each EMFA, and the context in which those agreements were made.

If the employee mitigation payments were made by the Trustee to employees and former employees of the forestry contractors, through the agency of the contractors, as compensation for wages lost as a result of the implementation of the FRA, such payments would not be subject to GST under section 165 or subsection 182(1) of the ETA.

If an employee mitigation payment is made by the Trustee to a forestry contractor in order to ameliorate the circumstances of the forestry contractor, the payment would not be subject to GST under section 165 or subsection 182(1) of the ETA. However, if an employee mitigation payment is made by the Trustee to a forestry contractor that is a GST registrant, and the payment is made as a consequence of the breach, modification or termination of an agreement for the making of taxable supplies by the forestry contractor to a forestry licensee, subsection 182(1) may apply. A definite determination could only be made by examining the original contract between the forestry contractor and the forestry licensee, and the specific EMFA between the Trustee and the forestry contractor.

It does not appear that a mitigation payment made under the EMFA would be consideration for a supply. However, as stated above, if the BURT is a true trust, any mitigation payment that is consideration for a taxable supply by a GST registrant would be subject to GST under section 165 of the ETA.

The foregoing comments represent our general views with respect to the subject matter of your request. These comments are not rulings and, in accordance with the guidelines set out in GST/HST Memorandum 1.4, *Goods and Services Tax Rulings*, do not bind the Canada Revenue Agency with respect to a particular situation. Future changes to the ETA, regulations, or our interpretative policy could affect this interpretation.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at (613) 952-9211.

Yours truly,

A handwritten signature in black ink that reads "Don Dawson". The signature is written in a cursive, slightly slanted style.

Don Dawson
Corporate Reorganizations Unit
Financial Institutions and Real Property Unit
Excise and GST/HST Rulings Directorate