



## What First Nation-owned businesses need to know about collecting GST/HST

### When does Canadian law require First Nation-owned businesses on reserve to collect GST/HST?

When it comes to First Nation-owned businesses, what is involved and required in GST/HST registration and reporting is often misunderstood. Many First Nations who locate their businesses on reserve (incorrectly) believe that their customers do not have to pay GST/HST – whether ‘status Indian’ (First Nation individuals who have status under the *Indian Act*) or not. However, this is not the case. People who are not status Indians are not exempt from paying GST/HST, even if they are making purchases on reserve.

Section 87 of the *Indian Act*, which exempts from tax the personal property of status Indians and bands located on reserve, is the cause of this widespread misconception. On a practical level, the considerable amount of court decisions and taxation policies (and there is a lot of it) makes it difficult to understand when the section 87 tax exemption applies.

This guide is written to provide readers with a general overview of when First Nation-owned businesses must register and charge GST/HST to its customers on reserve, and when they do not, the consequences for failing to do so.

In writing this guide, I am aware that First Nations participate in a taxation regime that was imposed on them – a regime that has severely undermined their self-governance, sovereignty, and inherent tax powers. The fact that one sovereign government imposes legal obligations for the collection of taxes on another does not make a whole lot of sense to First Nations. Such action fails to consider the economic realities of First Nations across Canada who could greatly benefit from the taxes they collect. I certainly think First Nations are fully capable of administering their own taxation regimes, and I commend the legislative and policy changes (discussed below) that allow First Nations to levy

their own goods and services tax on their lands – even if these powers are limited.

Until we see a shift in the current taxation policies, First Nations will continue to find themselves subject to Canadian tax law. As such, it is essential for First Nation-owned businesses to make all appropriate investigations to determine whether they need to register and charge GST/HST. A corporation’s potential liability, and the risks associated with the failure to collect and remit GST/HST, can be devastating.

### What is GST/HST?

GST/HST is a transaction tax. It is the end consumer that is the taxpayer but given the impracticality for that individual to keep track of all their annual purchases of goods and services, the supplier is required under Canadian tax law to collect the tax at the point of sale.

Some provinces combine the provincial sales tax with the federal goods and services tax (also known as GST) to create a single tax called HST. HST is charged in the following provinces: New Brunswick (15%), Newfoundland and Labrador (15%), Nova Scotia (15%), Ontario (13%) and Prince Edward Island (14%).

All other provinces and territories administer GST and provincial sales tax separately.

### When should First Nation-owned businesses register for GST/HST?

Businesses owned by First Nations that have worldwide taxable sales of goods and services exceeding \$30,000 in any given year (i.e. four past consecutive quarters) must register for GST/HST (for certain not-for-profits and charities, this amount is \$50,000). In calculating the taxable sales of goods, include the sales made to status Indians, even if GST/HST was not charged.

Once the business is registered, GST/HST must be charged on all taxable goods and service. Some goods and services are not taxable and some goods and services are always taxed at 0% .

### **When should First Nation-owned businesses charge GST/HST?**

When a non-status Indian purchases goods or services on reserve, the vendor needs to charge GST/HST. This means that a First Nation-owned business must charge and remit the GST/HST collected from these individuals. If the individual is a status Indian, the vendor does not need to charge GST/HST on any goods purchased on reserve or for services that are rendered completely on reserve. The status Indian must present his or her Certificate of Indian Status (i.e. status card) to the vendor. The vendor must then record on the invoice or sales document the purchaser's name and registry number or band name and family number.

When a good is purchased on reserve by a band or tribal council or a service is purchased for band management activities (i.e. not commercial) or services relating to real property on reserve, GST/HST should not be charged. If certain qualifying band-owned or tribal-council owned companies are purchasing goods and services on reserve, the goods and services have to be for band management activities or the service must relate to real property on reserve. The band, tribal council, the qualifying band-owned company, or the qualifying tribal council-owned company would need to provide the vendor a certificate.

There are also input tax credits and rebates available to GST/HST registrants that can lower the amount of GST/HST payable.

As a note, the above is subject to any changes in the Canada Revenue Agency's (the "CRA") policies and guidelines.

### **What are the consequences for failing to charge and remit GST/HST?**

The failure to pay, collect or remit GST/HST is an infraction under Canadian taxation laws. If a business is assessed, CRA will demand fully repayment of the amount of GST/HST that should

have been collected or remitted and can charge interest and penalties on such amounts. CRA can also enforce the collection of a taxpayer's outstanding debt by seizing its assets, garnishing its income, and pursuing criminal prosecution (in some cases against the directors and officers). Any of the above noted legal actions can be pursued. The consequences for your business can be serious.

### **How can First Nations collect their own GST/HST?**

The *First Nations Goods and Services Tax Act* allows band councils and other First Nation governing bodies to pass First Nation laws that would impose a goods and services tax on all of its residents, including status Indians. When this tax applies on First Nations lands, it applies to everyone and will replace the federal part of HST (or GST), which is currently set at 5%. This is a tax that is administered by CRA, so partaking in this regime will alleviate some of the administrative burdens of running a tax system. That said, the tax powers are limited.

However, First Nations that are looking for more revenue tools for their operations might consider this option for meeting their needs. This can be an effective way for a First Nation to capture revenues arising from economic activity that take place on their reserve, especially arising from non-members who are resident on or visiting the reserve.

That's the general picture of how on-reserve GST/HST works. For more specific information on how these rules apply to your situation, please contact us.

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