



## **EXCLUSIVE INTERVIEW:**

**Today I'm pleased to be talking to Greg Hurst. Until recently, Greg was a Principal with Morneau Sobeco in Vancouver. Effective August 16, 2010, he has launched Greg Hurst & Associates providing specialty expertise in the area of GST/HST as applied to investment plans and registered pension plans.**

**Thanks for joining me today Greg.**

**Thank you Sheryl – I am delighted to have this opportunity.**

**Q. Greg, you are establishing a new business this month. Tell me a little bit more about the nature of your business and the services you will provide.**

A. Greg Hurst & Associates Ltd. will ultimately be a full-service pension consulting firm, but initially we are going to focus on an additional service differentiator in that we are embracing the opportunity to assist sponsors and administrators of pension, investment and other employee benefit plans in coping with new GST and HST rules.

**Q. Given your broad experience and expertise in the pension industry, why have you chosen to consult in the area of GST/HST as applied to investment plans and registered pension plans?**

A. In three words, "pressing need" and "opportunity" motivated my choice. New GST rules that apply to registered pension plans (both defined benefit and defined contribution) will have administrative and financial consequences for those plans for fiscal years beginning on and after September 23, 2009. New rules relating to the implementation of HST will also have administrative and financial consequences for all "investment plans" as of July 1, 2010. Very importantly, the term "investment plans" in relation to HST goes far beyond investment funds and captures RPPs, capital accumulation plans and many other similar types of employee benefit plans.

**Q. Can you give me a high level summary of changes to the GST rules that will impact these types of plans?**

A. There are three sets of rule changes that come into play. The first set applies only to RPPs with fiscal years commencing on and after September 23, 2009. These rules require that all services utilized by an RPP, including services deemed to be supplied by the employer at fair market value, to be assessed for GST and/or HST. They prohibit employers from utilizing GST/HST paid in respect of a pension plan as an input tax credit (or ITC). They also extend the 33% GST rebate to all RPPs in respect of GST/HST. The rebate can be assigned to the employer, if desired.

The second set changes the place of supply rules (used to determine the applicable GST or HST rate) such that supply is determined to take place in the province of the recipient of the services. For many plans, particularly CAPs (including RPPs), the recipient will be the plan members so the place of supply will be the province of residency of the plan members. This presents many challenges for administrators and plan sponsors, particularly in regard to looking through expenses that may be paid by a plan sponsor on behalf of plan members (and many financial institutions actually seem likely to trip over these complexities at this juncture).

The third set of rules applies to “Listed Financial Institutions,” or LFIs. This term includes “investment plans,” which in turn is defined to include RPPs, DPSPs, and many other employee benefit plan arrangements. These rules define “Specified Listed Financial Institutions” (or SLFIs) as LFIs that have members in two or more provinces at least one of which is an HST province. SLFIs will generally be required to carry out special calculations in respect of GST/HST under “Special Attribution Method,” or SAM rules.

So, does that sound complex?

**Q. It really does sound very complicated. So what are some of the red flags registered plan sponsors should be aware of as a result of the introduction of the HST in B.C. and Ontario?**

I kind of want to waive a big red flag for every plan sponsor...just that they need to pay attention to what's going on here.

Complacency on anyone's part, be they sponsor, provider, or consultant should be red flagged. Experience in GST has shown that the Canada Revenue Agency will sooner or later ensure that GST or HST due is paid. Further, where tax court battles over GST have been won by the taxpayer, the Department of Finance has a track record of getting the law changed to ensure it remains in line with intended value-added tax principles – even to the extent of making such changes retroactive to ensure those who paid prior to a successful court challenge cannot claim it back.

Also, freely provided GST/HST advice from providers should be red flagged. Representations need to be carefully weighed relative to the independence and expertise of those making the representation. Many suppliers will only go so far as to take the “billers” perspective in regard to their obligations to collect the taxes.

However, as fiduciaries, plan sponsors must take the “payers” perspective either on their own behalf or on behalf of plan members, where fees are deducted from member accounts. As an example, from a biller’s perspective tax paid by an investment fund manager will represent a blend of GST and HST based on the allocation of the fund by province of residence of the unit holders. The biller may be indifferent as to how the tax is allocated amongst unit holders, or decide it is too difficult to allocate tax by province.

From a payers perspective, though, it is not sufficient to stop there. Alberta unit holders for example, may have a compelling case that they should not have any tax allocated against their accounts which in effect subsidizes Ontario and BC unit holders.

**Q. Why is the HST in B.C. and Ontario a potential issue for plan sponsors located in non-HST provinces?**

Well, there are a few factors at play here. First, it is not really the location of the head office of the plan sponsor that matters but rather the location of the plan members, including retirees and former members who still have entitlements under the plan. So, a plan with members in two or more provinces, at least one of which is an HST province will be affected by HST rules.

Another factor, for CAPs in particular, is how GST/HST is reflected in investment management fees deducted from funds utilized by the plan. Depending on the fund provider, some HST may be reflected in unit values of the fund that are net of fees and taxes.

**Q. Interesting. Then what are the administrative implications for sponsors of RPPs, DPSPs and employee benefit plans?**

Although the question is short, it requires a lengthy and complex answer, which cannot even be complete as the Department of Finance has not yet finalized all the rules, and CRA has not yet published any administrative information. For now, the best we can do is offer the “Frequently Asked Questions” document I have given you. Although it is designed as a high level and straight-forward read, it still runs to six pages!

**Q. Are there any governance implications for plan sponsors as a result of GST/HST changes?**

Definitely, in three areas in particular.

First, plan sponsors will want to ensure that their obligations and their plan’s obligations in respect of self-assessment for GST/HST due are correctly met. I expect CRA will commence audits that target this area with the initial primary objective of educating plan administrators and of course, collecting all taxes payable.

Second, RPP sponsors will want to ensure they receive all rebates due to them, as a fiduciary obligation.

Third, plan sponsors will want to do their best to ensure that members are not paying taxes that should not be applied to them. For example, Alberta members should not be burdened with a portion of the HST. This will be potentially fertile ground for class action lawsuits founded on the very basic legal principle of “no taxation without representation.”

**Q. Where can plan sponsors get more information about how the HST/GST rules apply to their registered plans and what (if any) steps they should be taking?**

We have published the FAQ noted above, which can be downloaded from your website as well as [www.millsomparker.ca](http://www.millsomparker.ca). I also authored a Benefits Canada On-line article [Retirement programs need to be prepared for the HST party](#). Both of these sources also provide links to the Department of Finance for more technical information.

Otherwise, pickings are very slim so far, with only a few professional firms having published any information as of yet.

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Thanks for talking to me today Greg. It looks like you have found a very interesting niche consulting area. Good luck in your new business.

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