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Legal Services

Provincial Sales Tax Act

Latest Revision: *The revision bar (|) identifies changes to the previous version of this bulletin dated November 2013. For a summary of the changes, see Latest Revision at the end of this document.*

This bulletin explains how the provincial sales tax (PST) applies to purchases of legal services.

If you provide taxable legal services in BC, you must register for PST and charge the PST payable on the purchase of legal services. For information on how to register for PST, please see [Bulletin PST 001, Registering to Collect PST](#). For information on charging PST, see [Bulletin PST 002, Charging, Collecting and Remitting PST](#).

Table of Contents

What Are Legal Services?	1
Legal Services Provided in BC	2
Legal Services Provided Outside of BC.....	3
Legal Services Provided Outside BC that Relate to BC and Another Jurisdiction	3
Purchase Price of Legal Services.....	4
Exemptions.....	5

What Are Legal Services?

Legal services are services that come within the meaning of the practice of law under the *Legal Profession Act* and services described in section 18 of the *Notaries Act*.

Examples of legal services include, but are not limited to, the following services:

- Legal counselling (providing legal advice)
- Settling terms of a purchase of a business in BC
- Providing legal services via a 1-900 number
- Tax or estate planning that includes the provision of legal advice
- Providing legal advice or acting as counsel or advocate to a party in a court proceeding, or in an arbitration or mediation

- Preparing documents of the types that come within the meaning of the practice of law under the *Legal Profession Act* and in section 18 of the *Notaries Act* (e.g. conveyance documents, documents relating to the incorporation of a company).

Please note: This is not a complete list.

Services That Are Not Legal Services

Some services performed by lawyers or notaries are generally not legal services, including:

- Acting as an arbitrator or mediator
- Acting as a member of a tribunal
- Acting as a trustee, executor or director
- Negotiating collective agreements
- Providing immigration or emigration services
- Providing general record-keeping for a corporation
- Speaking at seminars on general legal topics

However, if any of these services include or result in legal advice or legal services being provided, they are taxable regardless of whether they are separately listed on the bill.

Services provided by a person to that person's employer in the course of employment are not legal services for PST purposes.

Legal Services Provided in BC

Legal services provided in BC to a person who resides, ordinarily resides or carries on business in BC are subject to PST, unless a specific exemption applies.

Legal services provided in BC to a person who does **not** reside, ordinarily reside or carry on business in BC are subject to PST, unless a specific exemption applies, if the legal services relate to:

- Real property situated in BC
- Tangible personal property that is, or that is contemplated to be, ordinarily situated in or delivered in BC
- Any other property that is, or that is contemplated to be, owned, possessed or used in BC, or a right to use such property in BC
- A court or any other proceeding in BC or a possible proceeding
- The incorporation or contemplated incorporation of a company under the *Business Corporations Act* or *Society Act*
- The registration or contemplated registration of a corporation as an extra-provincial company or society under the *Business Corporations Act* or *Society Act*

For example, a person who resides in Alberta hires a BC lawyer to represent them in an insurance dispute that relates to a motor vehicle accident in BC. The legal services are taxable because they relate to a proceeding in BC (or a possible proceeding). This applies even if the matter is settled out of court.

Legal Services Provided Outside of BC

Legal services provided outside of BC to a person who resides, ordinarily resides or carries on business in BC are subject to PST, unless a specific exemption applies, if the legal services relate to:

- Real property situated in BC
- Tangible personal property that is, or that is contemplated to be, ordinarily situated in or delivered in BC
- Any other property that is, or that is contemplated to be, owned, possessed or used in BC, or a right to use such property in BC
- A court or administrative proceeding in BC or a possible proceeding
- The incorporation or contemplated incorporation of a company under the *Business Corporations Act* or *Society Act*
- The registration or contemplated registration of a corporation as an extra-provincial company or society under the *Business Corporations Act* or *Society Act*
- The interpretation or application of an enactment as defined in the *Interpretation Act*, or a former or proposed such enactment
- The interpretation or application of any enactment, or a former or proposed enactment of any jurisdiction, or the analysis and application of any law, if it relates to:
 - A physical or legal presence in BC
 - Any activity or transaction in BC
 - The contemplation of a presence, activity or transaction in BC
- A contract or covenant (or the contemplation of a contract or covenant) related to a physical or legal presence, activity or transaction in BC, or the contemplation of a presence, activity or transaction in BC

For example, a person who resides in BC hires an Alberta lawyer to purchase property in BC. The legal services are taxable, because the legal services are purchased by a person who resides in BC and relate to real property situated in BC.

Persons who purchase taxable legal services outside of BC from a provider of legal services not registered under the PST are required to self-assess the PST due.

To self-assess the PST due, the purchaser needs to complete and send in a *Casual Remittance Return (FIN 405)* with the PST due by the last day of the month following the month during which the legal services were purchased. For example, if the legal services were billed on May 15, the self-assessment would be due by June 30.

Legal Services Provided Outside BC That Relate to BC and Another Jurisdiction

If a person who resides, ordinarily resides or carries on business both in and outside of BC purchases legal services provided outside of BC, and a part of the legal services relate to BC

and a part relate to a jurisdiction outside of BC, PST applies to the portion of the purchase price that is for the legal services that relate to BC.

For example, a national chain store purchases legal services outside BC that relate to a matter that affects all of its stores across Canada. The chain only pays PST on the portion that relates to its store(s) in BC.

This proration of tax does not apply when legal services are purchased in BC. In the example above, if the national chain store purchases legal services in BC that relate to a matter that affects all of its stores across Canada, the chain must pay PST on the entire purchase price of the legal services.

Purchase Price of Legal Services

PST at a rate of 7% applies to the purchase price of legal services. The purchase price includes fees, charges and specified disbursements as explained below.

Disbursements

Generally, a disbursement is a request for the reimbursement of an out-of-pocket expense that was incurred by a provider of legal services, on behalf of a particular client, as a result of a billing by a third party (e.g. a lawyer pays a fee to file an incorporation application and recovers the fee from the lawyer's client as a disbursement). Disbursements, other than disbursements for legal research, secretarial or other support services, are not part of the purchase price of legal services and are not subject to PST.

For example, out-of-pocket travel expenses (e.g. airfare or hotel costs) incurred on behalf of a particular client and billed to that client for the precise recovery of the actual cost of the expenses do not form part of the purchase price of legal services.

However, if a billing item is characterized as a disbursement but it is not a recovery of an out-of-pocket expense incurred on behalf of a particular client as a result of a billing by a third party, such an amount **is** generally part of the purchase price of legal services and is subject to PST. The following are examples of such charges:

- paralegal time
- word processing
- computer costs
- online searches performed using resources acquired under a flat subscription fee
- mileage (e.g. per kilometre)
- travel time
- in-house photocopying (see Non-Taxable Fees and Charges below for exceptions)
- in-house printing (see Non-Taxable Fees and Charges below for exceptions)
- faxes (see Non-Taxable Fees and Charges below for exceptions)
- telephone calls (unless the charge is a precise recovery of an amount billed by a third party, such as a long distance call that appears on a telephone bill)

Please note: This is not a complete list.

These form part of the purchase price of legal services because they are not recoveries of out-of-pocket expenses incurred on behalf of a particular client as a result of billings by third parties. PST applies to such charges, regardless of how they are characterized on an invoice, unless the charge is excluded from the purchase price of legal services as outlined below.

Non-Taxable Fees and Charges

Generally, fees and charges for legal services form part of the purchase price and are subject to PST. However, certain fees and charges are excluded from the purchase price and are not subject to PST.

Fees and charges for the transmission (e.g. faxing), printing or copying of documents are excluded from the purchase price of legal services if the fees or charges reasonably reflect the cost of the transmission, printing or copying of documents incurred by the person providing the legal services. These fees and charges are therefore not subject to PST.

However, if the fees or charges are “marked up” from a reasonable approximation of the actual cost, they are not excluded from the purchase price of legal services and are subject to PST.

Exemptions

Legal Aid

Legal services provided to an individual are exempt from PST if they are at least partly paid for by the Legal Services Society or by a funded agency within the meaning of the *Legal Services Society Act*.

Purchases of Legal Services by Providers of Legal Services

Legal services are exempt from PST if the legal services are provided to a lawyer, law firm, notary or notary firm and if all of the following criteria are met:

- the legal services are provided by:
 - an individual who provides legal services only to the lawyer, law firm, notary or notary firm, but who is not an employee of the lawyer, law firm, notary or notary firm for the purposes of the *Income Tax Act* (Canada), or
 - a law firm or notary firm that provides legal services only to the lawyer, law firm, notary or notary firm,
- the legal services are provided only for a particular client of the lawyer, law firm, notary or notary firm, and
- the purchase price of the legal services to the lawyer, law firm, notary or notary firm is to be included in the purchase price of the legal services billed or otherwise charged to the client by the lawyer, law firm, notary or notary firm.

To satisfy this condition, the “rebilling” should be identifiable on the invoice (i.e. as a discrete fee or charge or, if it is part of a single fee or charge for legal services, the invoice should indicate that the lawyer, law firm, notary or notary firm is recovering its purchase price for the third-party legal services).

Example:

- A law firm retains an individual as an associate counsel, and the associate counsel is not an employee of the law firm for the purposes of the *Income Tax Act* (Canada).
- The associate counsel has no clients aside from the law firm.

- The law firm retains the associate counsel to provide legal services for a particular client (i.e. the legal services relate only to the law firm's client, and not to the law firm).
- The invoice issued by the law firm to its client contains a discrete line item for legal fees attributable to the associate counsel or it contains a single line item for legal fees but states that, within those fees, the law firm is recovering its purchase price of legal services purchased from the associate counsel.

If the conditions above are met, the law firm may purchase legal services from the associate counsel exempt from PST.

Please note: The client must pay PST on the rebilled amount because it is included in the purchase price billed or otherwise charged by the law firm to its client.

Some providers of legal services purchase legal services under conditions that do not qualify for the exemption described above and recover the cost of those legal services as a disbursement. If a provider of legal services (the "Primary Provider") incurs an expense on behalf of a particular client as a result of a billing by a third-party provider of legal services, that expense may be recovered by the Primary Provider as a non-taxable disbursement. The Primary Provider is required to pay PST on the legal services provided by the third-party provider.

Legal Services Provided to First Nations

Legal services purchased by a First Nation individual or band are exempt from PST if the legal services relate to real property situated on First Nation land, or are performed on First Nation land.

The exemption does not extend to tribal councils, band empowered entities, corporations or cooperatives.

For more information on exempt sales to First Nations individuals and First Nations bands, please see [Bulletin PST 314](#), *Exemptions for First Nations*.

First Nation Negotiations

Legal services purchased by an aboriginal organization representing the interests of persons who qualify as Indians under the *Indian Act* (Canada) and bands are exempt from PST if the legal services relate to any of the following:

- Aboriginal treaty or land claims negotiations
- Consultations with the provincial or federal governments in relation to aboriginal rights or aboriginal title, or in relation to interim agreements that relate to aboriginal rights or aboriginal title
- Negotiations that relate to existing treaties or treaty rights
- Negotiations with other aboriginal organizations in relation to overlapping treaty or land claims

Legal Services Provided to a Related Corporation

Corporations are exempt from PST on legal services provided to that corporation by an employee of a related corporation.

For more information, please see [Bulletin PST 210](#), *Related Party Asset Transfers*.

Members of the Diplomatic and Consular Corps

Legal services purchased by certain members of the diplomatic and consular corps are exempt from PST if the purchaser holds a valid diplomatic or consular identity card issued by the Department of Foreign Affairs and International Trade of the Government of Canada.

For more information, please see [Bulletin CTB 007](#), *Exemption for Members of the Diplomatic and Consular Corps*.



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The information in this bulletin is for your convenience and guidance and is not a replacement for the legislation.

Latest Revision

February 2014

- As a result of Budget 2014 changes to the legislation retroactive to April 1, 2013:
 - the definitions of “band” and “First Nation individual” have been moved from the regulations to the Act.

References: *Provincial Sales Tax Act*, sections 1 “band”, “First Nation individual”, “legal services”, “taxable service”, 20, 28, 126-129, 169 and 181; Provincial Sales Tax Exemption and Refund Regulation, sections 79-82 and 148; Provincial Sales Tax Regulation, section 9.