



BY COURIER

2 March 2017

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Requesting Amendments to Increase Collection of GST/HST from Ride-Sharing Companies and Affiliated Drivers

Mr. Keenan:

We are writing to address a significant inequity in the application of GST/HST that has a substantial impact on us and our members and to request a meeting with you to discuss our serious concerns.

CANADIAN TAXI ASSOCIATION

The Canadian Taxi Association is the voice for Canada's taxi industry. Our members consist of the largest taxi companies in most major cities across Canada. We speak for an industry of 30,000 taxicab owner-operators and over 50,000 taxicab drivers, which undertake over \$2 billion in consumer transactions annually.

UNIFOR

Unifor is Canada's largest private sector union, with more than 310,000 members across the country, working in every major sector of the Canadian economy. Over 30,000 of our members are employed in federally regulated sectors including transportation, communications, and financial services.

GST/HST AMENDMENT REQUIRED

All taxi operators in Canada are required to be registered for GST/HST purposes and to charge and collect, report and remit GST/HST on their fares regardless of their annual revenues.

Ride-Sharing Companies ("RSCs") – such as Uber and TappCar – and their drivers are not required to be registered, typically are not registered, and do not charge and collect, report or remit any GST/HST.

This creates a significant competitive disadvantage for our drivers and members, and provides a direct competitive advantage to RSCs and their drivers.

Accordingly, we call on the Government of Canada to address this clear inequity by amending the *Excise Tax Act* ("ETA") to require the registration of all RSCs for GST/HST purposes – regardless of whether they are located in Canada or outside Canada – and to impose an obligation upon them to collect, report, and remit GST/HST on the fees they earn, or, at a minimum, to impose such

obligation on their affiliated drivers, so as to level the playing field between them and our drivers and members.

Specifically, we are requesting one of the following actions:

- Amend the definition of “taxi business” in subsection 123(1) of the ETA, such that it will generally apply to RSC Drivers carrying on business in Canada. As a result of this amendment, RSC Drivers will be required to register for GST/HST, regardless of whether they are considered “small suppliers” under section 148 of the ETA, and to charge and collect GST/HST on their fares; or
- Introduce provisions in the ETA which impose a GST/HST collection obligation on RSCs, rather than RSC Drivers. This could be accomplished by introducing a simplified registration for foreign-based digital service providers, and a further provision which deems that RSCs, rather than RSC Drivers, are the suppliers of the transportation services.

Our reasons for recommending these measures above are to:

- Ensure a fair, equitable, and consistent application of the GST to all suppliers in the private transportation industry (including taxis and RSCs);
- Maintain a competitive private transportation industry, unburdened by arbitrary taxation preferences;
- Simplify the application of the GST in the private transportation industry, for both consumers and suppliers;
- Ensure stability of the Federal Government’s GST/HST revenues from the RSCs and their drivers, just as our members and drivers collect, report, and remit GST/HST for the government’s benefit; and
- Improve the operation of the GST for the benefit of all Canadians.

HISTORY & CONTEXT

Since the introduction of the GST in 1990, the ETA has provided a registration exception for “small suppliers”. In general terms, if a person has annual revenues of less than \$30,000, the person is a “small supplier” under section 148 and may choose not to register for GST/HST. As a result, the “small supplier” is generally not required to collect and remit GST/HST in respect of its taxable supplies.

Initially the small supplier registration exception applied to taxicab operators. However, after amendments were made in 1993 (made effective 17 December 1990), subsection 240(1.1) of the ETA requires that “every small supplier who carries on a taxi business is required to be registered for the purposes of [Part IX of the ETA] in respect of that business.”

“Taxi business” is defined in subsection 123(1) as “a business carried on in Canada of transporting passengers by taxi for fares that are regulated under the laws of Canada or a province”.

The 1993 amendments to the ETA were made following consultations by the Department of Finance and Government of Canada with the Canadian taxicab industry. The amendments were introduced as a means of ensuring that the “taxi industry operates under a consistent pricing structure”, where all taxi fares are inclusive of GST.¹

At the time the amendments were made, the concern was that two-tier pricing for taxicab fares would emerge as a result of the different ownership and management structures in the taxicab industry.² For instance, some taxicabs are owned and operated by the same person, whereas in other instances, companies hire employees to operate a fleet of taxicabs. In circumstances where taxicabs are owned and operated by the same person, prior to the 1993 amendments, these operators could have potentially taken advantage of the “small supplier” registration exception and, as a result, would not have been required to collect GST from their customers. Consequently, these “small supplier” taxicab operators would have had a significant pricing advantage over other taxicabs operators that were not “small suppliers”.

The 1993 amendments remedied the potential for two-tier pricing by requiring all taxicab operators to register for GST, regardless of whether they are considered “small suppliers” under section 148 of the ETA. This resulted in a fair and consistent application of the GST to all suppliers in the private transportation industry.

RSCs & THE GST/HST

More than 20 years later, with the entrance of RSCs into Canada’s private transportation industry, a similar two-tier pricing issue has arisen.

Although RSCs and their Drivers offer a service that is interchangeable with the service offered by taxicabs, unlike taxicabs, RSC Drivers are able to take advantage of the “small supplier” registration exception. As a consequence, “small supplier” RSC Drivers have a significant pricing advantage with customers, simply as a consequence of the inconsistent application of GST/HST.

This inequity arises because the definition of “taxi business” within subsection 123(1) of the ETA is restricted to “a business carried on in Canada of transporting passengers by taxi for fares that are regulated”. In many cities and jurisdictions across Canada, although RSCs and RSC Drivers are regulated, their fares often are not. As a result, RSCs Drivers generally do not meet the requirements necessary to be considered a “taxi business” for the purpose of the ETA.

Further, this conclusion based on the current law has been confirmed by the Canada Revenue Agency in a GST/HST Ruling issued to the City of Ottawa dated September 8, 2016 (CRA Case No. 177455).

Consequently, RSC Drivers that are able to remain unregistered for GST/HST as “small suppliers” gain a significant competitive advantage in the market. They are not required to collect GST/HST from their customers, which effectively reduces the total fare that customers are required to pay for their services. Ultimately, this reduction in price discourages consumers from using those suppliers that are required to collect GST/HST, such as taxicabs or other RSC Drivers that are not “small

¹ Department of Finance Press Release, “Further Streamlining of the GST Announced”, Ottawa, December 18, 1990.

² *Ibid.*

suppliers”. In order for the private transportation industry to remain healthy, competitive and fair, an amendment to the ETA is required.

Although suppliers registered for GST/HST have the ability to claim input tax credits, this does not offset the inequitable application of the ETA. While unregistered “small suppliers” cannot claim input tax credits, the pricing advantage that they enjoy over their competition in the private transportation industry – and in particular, our drivers and members – significantly outweighs the benefits of claiming input tax credits. Moreover, “small suppliers” are free from the considerable administrative burden associated with GST/HST registration.

Accordingly, we are requesting one of two remedies; either:

- the definition of “taxi business” is amended, such that it will generally apply to RSC Drivers carrying on business in Canada; or
- provisions are added to the ETA which require RSCs to collect GST/HST on the fares paid for their Drivers’ services, rather than their affiliated RSC Drivers.

FAIRNESS & EQUITY

Prior to the introduction of the GST in 1990, the Department of Finance published *The White Paper: Tax Reform 1987*, which lists the five primary objectives of its tax reform proposal: fairness, competitiveness, simplicity, consistency and reliability.³ It is these five objectives of the GST which necessitate that amendments be made to the ETA in respect of its application to the private transportation industry.

The White Paper provides details on how the introduction of the GST would achieve each of its primary objectives. Specifically:

- Fairness – is to be achieved, in part, “by broadening tax bases through eliminating and reducing selective preferences”.⁴
- Competitiveness – is to be achieved by introducing a tax system with “lower rates and a broader base.”⁵ Furthermore, *The White Paper* describes how “[s]pecial preferences help some taxpayers, but at the cost of higher tax rates that hurt others. As a general principle, the government should refrain from using the tax system to subsidize particular types of investment activity. Such subsidies introduce distortions in economic decisions and inequities among taxpayers. Where incentives remain, they should serve well-defined objectives, and should endeavour not to bias choices among similar types of economic activity.”⁶
- Simplicity – “fewer invidious borders between products taxed differently under the sales tax will contribute to meeting this objective.” Moreover, “[a] tax system with fewer special preferences will also be more straightforward and more readily understood by Canadians”

³ *The White Paper: Tax Reform 1987*, June 18, 1987, at p 3.

⁴ *Ibid.*

⁵ *Ibid* at p 4.

⁶ *Ibid.*

and ultimately, “[a] simpler tax system will ease compliance and reinforce the self-assessment principle that is the foundation of our tax system.”⁷

- Consistency – “it is important that the personal, corporate and sales tax structures be well integrated and internally consistent to assure Canadians that the total tax burden is fairly shared and that the system is economically efficient. Consistency also enhances understanding of the system and facilitates compliance and administration.”⁸
- Reliability – “[t]he basic objective of the tax system is to raise revenues to pay for publicly funded programs. To provide the high standard of services to which the government is committed, the tax system must yield predictable and reliable revenues derived from a fair, broad and secure tax base.”⁹

If the necessary amendments are not made to the ETA so as to require the collection of GST/HST in respect of all transportation services provided by RSCs/RSC Drivers, the five primary objectives of the GST will not be met. As such, we are requesting our proposed amendments as a means of:

- Ensuring that the GST is applied fairly in the private transportation industry by eliminating a selective preference for RSC Drivers;
- Maintaining a competitive private transportation industry, unconstrained by the arbitrary competitive advantage conferred only to RSC Drivers that are “small suppliers”;
- Simplifying the application of the GST to the private transportation industry, for both consumers and suppliers. Consumers will not be forced to seek out “small supplier” RSC Drivers in order to receive the lowest fare. Suppliers will more readily understand and comply with their self-assessment obligations;
- Establishing a consistent application of the GST in the private transportation industry, where the burden of the system is shared equally by all types of suppliers; and
- Ensuring stability of the Federal Government’s GST revenues from the private transportation industry, even as consumers are increasing their reliance on the services offered by RSC Drivers, rather than the services offered by traditional suppliers, such as taxicabs.

AMENDMENT OPTIONS

Amend the Definition of “taxi business”

One possible remedy for achieving a fair, consistent, simple and reliable application of the GST in the private transportation industry, is to amend the definition of “taxi business” in subsection 123(1) of the ETA, such that it will generally apply to RSC Drivers carrying on business in Canada. Following the amendment, RSC Drivers will generally be required to register for GST/HST, regardless of whether

⁷ *Ibid.*

⁸ *Ibid* at p 5.

⁹ *Ibid.*

they are considered “small suppliers” under section 148 of the ETA. As a result, the GST will be applied consistently to the fares of all types of suppliers in the private transportation industry.

Our recommendation for amending the definition of “taxi business” would be to include a separate reference to RSC Drivers. For example the definition might be amended to read as follows:

“taxi business” means

- (a) a business carried on in Canada of transporting passengers by taxi for fares that are regulated under the laws of Canada or a province, or
- (b) a business carried on in Canada of transporting passengers by passenger vehicle that is regulated under the laws of Canada, a province, or municipality as a ride-sharing service, private transportation service or other similar service;

The inclusion of a specific reference to RSC Drivers in the definition of “taxi business” is of particular importance in light of the recent decision by Australia’s Federal Court, *Uber B.V. v Commissioner of Taxation*, [2017] FCA 110, in which Uber argued that its drivers are not “taxis” for the purpose of Australia’s GST Act.¹⁰ Given the similarities between the ETA and Australia’s GST Act, if the ETA is not amended to include an explicit reference to RSC Drivers, it is highly likely that Uber will bring a similar legal challenge in Canada.

Introduce a Simplified Form of GST/HST Registration

An alternative remedy would be to introduce provisions in the ETA which are designed to impose a GST/HST collection obligation on RSCs, rather than RSC Drivers. As many RSCs provide their services through foreign entities (such as Uber B.V. in the Netherlands), the primary challenge will be in compelling these foreign entities to register for, collect and remit GST/HST.

It is our understanding that the government is considering amendments to the ETA which are aimed at imposing a GST/HST collection obligation on foreign-based digital service providers (“Foreign DSPs”). These proposed measures have often been reported in the media as the “Netflix tax”. If the reports are in fact correct, we request that they expressly include RSCs in the proposed amendments.

On our understanding, collection of GST/HST from Foreign DSPs might be accomplished through a simplified form of GST/HST registration. Under this simplified registration, Foreign DSPs would be required to register for GST/HST and, consequently, collect and remit GST/HST in respect of their taxable supplies made in Canada. This would relieve Canadian consumers of their obligation to self-assess GST/HST payable in respect of these foreign-based digital services.

An additional challenge in imposing this simplified registration requirement on RSCs, is that many RSCs have structured their operations in such a manner that creates ambiguity as to whether it is the RSC or the affiliated RSC Driver that is making the supply. For example, Uber Technologies, Inc., provides its services through a subsidiary in the Netherlands (Uber B.V.), which provides drivers with access to its Uber app, thereby allowing the drivers to receive ride requests. Uber B.V. asserts that it

¹⁰ *A New Tax System (Goods and Services Tax) Act 1999* (Cth), ss 145-5, 195-1.

merely facilitates the relationship between the Uber driver and the passenger. Once that connection has been established, it is the Uber driver that is supplying the transportation services.

Therefore, to ensure that a simplified registration will be effective in imposing a GST/HST collection obligation on RSCs, we are requesting further amendments to the ETA which would specifically deem that the RSCs, rather than their affiliated RSC Drivers, are supplying the transportation services.

Overall, the effect of a simplified registration will be to shift the administrative burden associated with GST/HST registration from RSC Drivers to the RSCs, while still achieving a fair, consistent, simple and reliable application of the GST to the private transportation industry.

Prohibit RSCs from Initiating Legal Proceedings, Unless Registered for GST/HST

An additional measure, which could be implemented in conjunction with a simplified registration, would be to prohibit foreign RSCs from initiating legal proceedings in Canadian courts unless they are registered for GST/HST.

The incentive for RSCs to register for GST/HST to ensure they can avail themselves of the benefits of Canada's court system would virtually ensure GST/HST registration and compliance by the RSCs.

For example, the registered trade-marks of RSC and foreign-based digital content and service providers have significant value. If they were unable to commence an action in a Canadian court to enforce their trade-mark rights unless or until they were registered for GST/HST purposes, there would be great incentive upon them to register for and to collect GST/HST.

Similarly, RSCs have been benefitting from the use of Canada's court system to gain the ability to conduct business in municipalities across Canada. Yet to date, they have not voluntarily registered to comply with their corresponding tax obligations, taking the position that they are not required to do so.

There is precedent for this approach to enforcing registration obligations. In most Canadian provinces, corporations that carry on business in the province are required to be extra provincially licensed or registered in the province. If they fail to do so, such extra-provincial corporations are not allowed to maintain legal actions in respect of contracts made within the province, unless and until the extra-provincial corporation is registered under the province's *Extra-Provincial Corporations Act*, *Business Corporations Act* or other similar statute.¹¹

CONCLUSION

The unfair and inconsistent application of the ETA's "small supplier" registration exception poses a significant threat to the competitiveness of the private transportation industry. Unless amendments to the ETA are made:

- "Small supplier" RSCs and their Drivers will have an arbitrary, but significant pricing advantage in the market;

¹¹ For example see: *Extra-Provincial Corporations Act* (Ontario), RSO 1990, c E.27, s 21(1).

- Consumers will be forced to seek out “small supplier” RSC Drivers in order to receive the lowest fare; and
- As consumers continue to increase their reliance on the services offered by RSC Drivers, the Federal Government’s GST revenues from the private transportation industry will steadily decline.

Accordingly, we call on the Government of Canada and the Department of Finance to amend the ETA to address this inequitable application of GST/HST between our drivers and members and RSCs and their drivers.

We also request a meeting with you to discuss our concerns. Upon review of this letter, please contact our counsel with respect to this matter – David Douglas Robertson of EY Law LLP at (403) 206-5474 – to coordinate a time for this meeting.

Yours sincerely,

Canadian Taxi Association

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