



Proposed GST/HST Treatment of Supplies of Human Ova and In vitro Embryos

GST/HST Notices - Notice 312

May 2019

On March 19, 2019, the Minister of Finance tabled Budget 2019 which proposed amendments to add human ova to the list of drugs and biologicals that are zero-rated under Part I of Schedule VI to the Excise Tax Act.

It also proposed to add in vitro embryos to the list of:

- non-taxable importations under Schedule VII to the Excise Tax Act; and
- non-taxable property under Part I of Schedule X to the Excise Tax Act for purposes of property brought into a participating province from another province.

These amendments are included in Bill C-97, Budget Implementation Act, 2019, No.1, which received second reading in the House of Commons on April 30, 2019.

This publication provides questions and answers regarding the proposed amendments. Any commentary in this publication should not be taken as a statement by the CRA that the proposed amendments will become law in their current form.

In this publication, all legislative references to the “Act” are to the Excise Tax Act unless otherwise specified. The information in this publication does not replace the law found in the Act and its regulations.

If this information does not completely address your particular situation, you may wish to refer to the Act or relevant regulation, or call GST/HST Rulings at 1-800-959-8287 for additional information. If you require certainty with respect to any particular GST/HST matter, you may request a ruling.

[GST/HST Memorandum 1-4, Excise and GST/HST Rulings and Interpretations Service](#), explains how to obtain a ruling or an interpretation and lists the GST/HST rulings centres.

If you are located in Quebec and wish to request a ruling related to the GST/HST, please call Revenu Québec at 1-800-567-4692. You may also visit the Revenu Québec website at revenuquebec.ca to obtain general information.

GST/HST rates

Reference in this publication is made to supplies that are subject to the GST or the HST. The HST applies in the participating provinces at the following rates: 13% in Ontario and 15% in New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. The GST applies in the rest of Canada at the rate of 5%. If you are uncertain as to whether a supply is made in a participating province, see [GST/HST Technical Information Bulletin B-103, Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province.](#)

Introduction

Technological advances have resulted in donated human ova and in vitro embryos now being used in assisted human reproduction procedures and the Assisted Human Reproduction Act, S.C. 2004, c. 2, has established a framework for assisted human reproduction in Canada. Under this framework, donated human sperm or ova may be legally imported or purchased in Canada from a reproduction clinic or donor bank, so long as these facilities are not acting on behalf of a donor. In addition, donated human in vitro embryos may be legally imported into Canada.

1. What do the proposed amendments change?

The Excise Tax Act contains provisions that zero-rate a broad range of drugs and biologicals that are regulated under federal legislation. Prescription drugs, certain non-prescription drugs, and human sperm are currently relieved (zero-rated) from the GST/HST pursuant to Part I of Schedule VI to the Act. Also, the importation of zero-rated prescription drugs, certain non-prescription drugs, and human sperm are currently considered non-taxable importations of goods and are not subject to tax pursuant to section 6 of Schedule VII to the Act. Similarly, zero-rated prescription drugs, certain non-prescription drugs, and human sperm brought into a participating province from another province are currently considered non-taxable property and are not subject to self-assessment for the provincial component of the HST pursuant to section 15 of Part I of Schedule X to the Act.

Prior to March 20, 2019, the Act did not contain provisions for the relief of tax for the supply and importation of a human ovum and the importation of an in vitro embryo. Also, it did not contain provisions for the relief of the requirement to self-assess the provincial component of the HST, or part thereof, for the bringing of an in vitro embryo or human ovum into a participating province from a non-participating province, or from another participating province for which the rate of the provincial part of the HST is lower.

The first proposed amendment to the Act would add, under section 6 of Part I of Schedule VI to the Act, the supply of an ovum, as defined in section 3 of the Assisted Human Reproduction Act, to the list of drugs and biologicals that are zero-rated for GST/HST purposes. Consequently, the importation of an ovum would be considered a non-taxable importation for GST/HST purposes under section 6 of Schedule VII to the Act and therefore no longer subject to tax. Similarly, an ovum brought into a participating province from a non-participating province, or from another participating province for

which the rate of the provincial part of the HST is lower, would be considered non-taxable property for GST/HST purposes under section 15 of Part I of Schedule X to the Act and therefore no longer subject to self-assessment for the provincial component of the HST, or part thereof.

The second proposed amendment would add, under section 13 of Schedule VII to the Act, the importation of in vitro embryos, as defined in section 3 of the Assisted Human Reproduction Act, to the list of non-taxable importations set out in Schedule VII to the Act. As a result, the importation of in vitro embryos would no longer be subject to tax. Similarly, the third proposed amendment would provide, under section 27 of Part I of Schedule X to the Act, relief of the provincial component of the HST or part thereof on bringing in vitro embryos into a participating province from a non-participating province or from another participating province for which the rate of the provincial part of the HST is lower.

These changes would apply after March 19, 2019 to supplies and importations of ova, to importations of in vitro embryos, and to the bringing in of ova and in vitro embryos into a participating province from another province.

2. What is an ovum?

As defined in section 3 of the Assisted Human Reproduction Act, **ovum** means a human ovum, whether mature or not.

3. What is an embryo?

As defined in section 3 of the Assisted Human Reproduction Act, an **embryo** means a human organism during the first 56 days of its development following fertilization or creation, excluding any time during which its development has been suspended, and includes any cell derived from such an organism that is used for the purpose of creating a human being.

4. What is an in vitro embryo?

As defined in section 3 of the Assisted Human Reproduction Act, an **in vitro embryo** means an embryo that exists outside the body of a human being.

5. What does zero-rated mean?

Zero-rated means that no GST/HST is charged when the product is supplied, as the tax rate is 0%. However, a GST/HST registrant can claim an input tax credit for the GST/HST paid or payable on property and services acquired to make zero-rated supplies, when all necessary conditions are met.

6. Can suppliers stop charging GST/HST on human ova before the amendment receives Royal Assent?

Yes, suppliers can stop charging GST/HST on supplies of human ova in accordance with the proposed amendment as of March 20, 2019. This proposed amendment is subject to parliamentary approval. However, consistent with its standard practice, the CRA is administering this measure on the basis of the proposed amendment.

7. Are clinics and donor banks liable under the Act to pay GST on the importation of in vitro embryos after March 19, 2019?

No, clinics and donor banks are not liable to pay GST on the importation of in vitro embryos after March 19, 2019. This proposed amendment is subject to parliamentary approval. However, consistent with its standard practice, the Canada Border Services Agency is administering this measure on the basis of the proposed amendment.

8. What should I do if a supplier charges me GST/HST on human ova supplied after March 19, 2019?

If the proposed amendment becomes law, you may then contact the supplier, who may choose to adjust the amount charged, or refund or credit the amount collected. If so, the supplier must provide you with a credit note for the amount. Alternatively, you can file a rebate claim with the CRA for the amount paid in error as or on account of tax by using [Form GST189, General Application for Rebate of the GST/HST](#). However, the CRA cannot pay a rebate for an amount paid in error as or on account of tax until the proposed amendment becomes law.

A supplier who has charged or collected GST/HST on human ova supplied after March 19, 2019, must include that amount in the calculation of their net tax on their GST/HST return, and remit that net tax if there is a balance owing, according to the regular rules.

9. How will the proposed amendment apply to the importation of human ova?

Zero-rated drugs and biologicals such as human sperm are relieved of the tax when they are imported. As a result of the proposed amendment, all importations of human ova made after March 19, 2019 would be considered non-taxable importations for GST/HST purposes and therefore not subject to tax.

10. How will the proposed amendment apply to the importation of in vitro embryos?

As a result of the proposed amendment, all importations of in vitro embryos made after March 19, 2019 would be considered non-taxable importations for GST/HST purposes and therefore not subject to tax.

11. How will the proposed amendments apply to the bringing of an in vitro embryo or a human ovum into a participating province from another province?

As a result of the proposed amendments, all in vitro embryos and human ova that are brought into a participating province from another province after March 19, 2019 would be considered non-taxable property (that is, not subject to the self-assessment rule of the provincial component of the HST).

12. How will the proposed amendments apply to in vitro fertilization treatments?

Where a patient of a fertility clinic or other health care facility undergoes treatment or other service at the clinic which includes the implantation of a human donor ovum or the transfer of an in vitro embryo, the CRA considers that the supply of the human donor ovum or in vitro embryo made by the

clinic to the patient in these circumstances would generally be part of an exempt supply of an institutional health care service.

Therefore, the supply of an in vitro fertilization treatment remains the same in that it generally is considered a single exempt supply of an institutional health care service.

13. How will the proposed amendments apply in provinces that have a provincial sales tax?

The proposed amendments only apply for GST/HST purposes. This means that although a supplier in a province that has a provincial sales tax may stop charging GST/HST in accordance with the proposed amendments, provincial sales tax may still apply to such sales. Any questions relating to the provincial sales tax should be addressed to the province in question.

Further information

All **GST/HST technical publications** are available at [GST/HST technical information](#).

To make a **GST/HST enquiry** by telephone:

- for **GST/HST general enquiries**, call **Business Enquiries** at **1-800-959-5525**
- for **GST/HST technical enquiries**, call **GST/HST Rulings** at **1-800-959-8287**

If you are located in **Quebec**, call **Revenu Québec** at **1-800-567-4692** or visit their website at revenuquebec.ca.

If you are a **selected listed financial institution** (whether or not you are located in Quebec) and require information on the **GST/HST** or the **QST**, go to [GST/HST and QST - Financial institutions, including selected listed financial institutions](#) or:

- for **general GST/HST or QST enquiries**, call **Business Enquiries** at **1-800-959-5525**
- for **technical GST/HST or QST enquiries**, call **GST/HST Rulings SLFI** at **1-855-666-5166**

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