Docket: 2019-1362(GST)G

BETWEEN:

ROYAL BANK OF CANADA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on February 27, 2023 and March 2, 2023
at Toronto, Ontario

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant:	Al Meghji Pooja Mihailovich
Counsel for the Respondent:	Tony Cheung

JUDGMENT

UPON hearing the evidence and submissions of counsel;

The appeal made under the *Excise Tax Act* with respect to the Appellant's reporting period ending October 31, 2012, is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment and Order dated February 23, 2023, attached to the Reasons for Judgment as Schedule "A".

The parties shall have 60 days from the date of this judgment to agree on costs. If they are unable to do so, the Appellant shall have a further 30 days to make

submissions on costs not to exceed 10 pages and the Respondent shall have a further 30 days to make responding submissions on costs not to exceed 10 pages. If the parties do not advise the Court that they have reached an agreement and no submissions are received within the foregoing time limits, costs shall be awarded to the Respondent as set out in the Tariff.

Signed at Ottawa, Ontario, this 26th day of September 2024.

"Guy Smith"

Smith J.

Citation: 2024TCC125
Date: 20240926
Docket: 2019-1362(GST)G

BETWEEN:

ROYAL BANK OF CANADA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Smith J.

I. OVERVIEW

[1] Royal Bank of Canada (hereinafter "RBC" or the "Appellant") appeals from an assessment made under the *Excise Tax Act, R.S.C. 1985, c E-15 ("ETA")*, for its reporting period ending on October 31, 2012 ("F2012") in which the Minister of National Revenue (the "Minister") disallowed input tax credits (ITCs) for GST paid on expenses incurred to earn interchange fees from non-resident merchants and to redeem loyalty reward points earned by cardholders who transacted with those foreign merchants.

[2] For the taxation year at issue, the Appellant claims that it obtained the Minister's approval for the use of a method to determine the appropriate allocation of ITCs (the "Method") to distinguish between interchange fees earned domestically and those earned from non-resident merchants. It argues that the Minister is bound by the Method and the appeal should be allowed on that basis.

[3] In the alternative, the Appellant claims that it made both exempt and zero-rated supplies in its credit card business. In particular, it provided authorization and payment services to non-resident merchants ("Foreign Interchange Service") from which it earned foreign interchange fees ("Foreign Interchange Fees"). It argues that this was a zero-rated supply and that it was entitled to claim ITCs on expenses incurred to deliver those services, including the redemption of loyalty reward points earned by cardholders who transacted with the foreign merchants.

[4] The Minister acknowledges that it authorized the Method, but maintains that it was not precluded from reassessing the Appellant as it has. The Minister argues that the supply of the Foreign Interchange Service was part of an exempt and not a zero-rated supply of a financial service. As such, it was entitled to deny ITCs of $1,777,684 claimed by the Appellant in the supply of the Foreign Interchange Service and redemption of related loyalty reward points.

[5] Alternatively, the Minister argues that it was entitled to deny ITCs of $850,164.26 claimed by the Appellant in connection with the redemption of loyalty reward points because the expenses were not incurred in the course of a commercial activity, but in the course of making an exempt supply of a financial service.

[6] Prior to the hearing of the appeal, the parties filed a joint consent whereby they agreed to settle certain other outstanding issues arising from the same assessment described as the "Creditor Insurance Service issue", the "MasterCard Service issue" and the "Visa Service issue". The Court issued the Order attached hereto as Schedule "A", the terms of which are incorporated into the Judgment herein. It is not necessary to address those issues in any further detail.

[7] Unless otherwise indicated, all legislative references are to the ETA and include those provisions set out below and in the attached Appendix.

II. **ISSUES**

[8] The first issue is whether the Appellant was entitled to the ITCs as claimed, on the basis that the Minister was bound by the Method (the "Method Argument").

[9] If the Minister was not bound by the Method, the second issue is whether the Foreign Interchange Service was a zero-rated supply, and not an exempt supply, such that the Appellant was entitled to claim the related ITCs.

[10] In light of the Minister's alternative position, the third issue is whether the expenses incurred in connection with the redemption of loyalty reward points earned on transactions involving non-resident merchants, were part of an exempt or a zero-rated supply.

III. **BACKGROUND FACTS**

[11] At the hearing of the appeal, the parties made preliminary remarks and the Court agreed to hear the testimony of Patricia O'Malley, an expert witness who testified on behalf of the Appellant. There were no fact witnesses.

[12] The parties submitted an Agreed Statement of Facts (Partial) ("ASF"). The relevant portions are set out below for ease of reference:

> **Assessments Under Appeal**
>
> 1. By way of a reassessment, notice of which is dated April 21, 2017, the Appellant (**RBC**) was reassessed under Part IX of the *Excise Tax Act* (the Act) for its reporting period from November 1, 2011 to October 31, 2012 (**F2012**) in respect of the net tax and Divisions IV Tax for the period (collectively, the **Original Reassessment**).
>
> 2. RBC objected to the Original Reassessment in respect of both the assessment of the net tax and the assessment of the Divisions IV Tax.
>
> 3. By letter dated January 21, 2019, the Minister notified RBC that its objection in respect of the assessment of Division IV Tax was not allowed and that its objection in respect of the net tax was allowed in part, as reflected in a new reassessment of the same date.
>
> 4. RBC has appealed its assessment of net tax and of Division IV Tax for F2012.
>
> **General Background Facts**
>
> 5. RBC is a Schedule I bank pursuant to the *Bank Act* (Canada).
>
> 6. RBC is resident in Canada and is a "selected listed financial institution" within the meaning of the Act.
>
> 7. RBC is registered under the Act for GST/HST purposes.
>
> 8. RBC's reporting period for GST/HST purposes is its fiscal year, which ends on October 31st.

The Visa and MasterCard Payment Systems and RBC's Role as an Issuer

9. At all material times, RBC issued credit cards (each, an **RBC Credit Card**) under the credit card payment system operated by Visa Canada Corporation and its affiliates (**Visa**) and the similar payment system operated by MasterCard International Incorporated and its affiliates (**MasterCard**).

10. The key participants in the credit card payment system in the case of typical Visa-branded, or MasterCard-branded, credit card transaction are as follows:

a) the cardholder;

b) the merchant;

c) the merchant acquirer;

d) the issuer of the credit card; and

e) the payment network provider, being Visa or MasterCard, as the case may be.

11. A typical credit card transaction involves the following steps, in general:

a) the cardholder presents the credit card to the merchant in payment for property or services;

b) the merchant transmits to the merchant acquirer a request for the issuer's authorization of the transaction;

c) the merchant acquirer sends (via the payment network provider) an authorization request to the issuer;

d) the issuer responds by sending (via the payment network provider) an authorization message to the merchant acquirer, who immediately forwards the authorization to the merchant;

e) the merchant completes the transaction with the cardholder at the point of sale;

f) the issuer pays (via the payment network provider), to the merchant acquirer, the amount charged to the credit card account (**Credit Amount**), less an " interchange fee" payable by the merchant acquirer to

the issuer as consideration for the services provided by the issuer to the merchant acquirer (**Interchange Service**) in respect of each authorized credit card transaction;

g) the merchant acquirer pays the merchant an amount equal to the Credit Amount, less a "discount fee" payable by the merchant as consideration for the merchant acquirer's service to the merchant; and

h) the issuer, at the end of the applicable billing cycle, sends a statement of account to the cardholder to collect the Credit Amount from the cardholder.

The Revenue Earned by RBC as an Issuer in Its Credit Card Line of Business

12. At all material times, RBC earned the following types of revenue in its credit card line of business: (i) interchange fees; (ii) net interest in respect of cardholders' outstanding credit card account balances; and (iii) fees charged to cardholders.

13. In the case of RBC Credit Card transactions for which the transaction location was outside Canada, RBC earned interchange fees from non-resident merchant acquirers (**International Interchange**).

14. The interchange fee rate was not the same for all credit card transactions. RBC earned higher interchange fees in the case of an RBC Credit Card that permitted a cardholder to earn loyalty reward points redeemable for property or services (an **RBC Reward Card**).

15. RBC earned net interest when a cardholder failed to pay the full amount of his or her RBC Credit Card account balance by the specified due date. If the cardholder paid the full balance by the due date, RBC did not earn any interest.

16. RBC charged account fees to cardholders in some cases. In other cases, such fees were waived or refunded.

17. In F2012, in respect of RBC Reward Card Transactions, the revenue earned by RBC from interchange fees exceeded net interest revenue and account fee revenue combined. Specifically, RBC had net interchange fees of $1,046,132,984.98, net interest income of $641,122,989.05 and card fees of $125,960,047.27.

The Methods for determining ITCs for RBC's Credit Card Line of Business

18. RBC was generally entitled to claim ITCs to recover GST paid on its business inputs to the extent, in each case, that the input was acquired for the purpose of making taxable (including zero-rated) supplies for consideration.

19. For F2012, an authorization given by the Minister under subsection 141.02(20) of the Act was in effect, whereby RBC was authorized to use particular methods to determine the extent to which its business inputs of various categories were acquired for the purpose of making taxable (including zero-rated) supplies for consideration and, accordingly, the extent to which RBC could recover GST paid on the inputs by claiming ITCs (each a **Method**).

20. Under the Methods:

a) a 100% GST recovery rate applied to business inputs acquired exclusively for the purpose of making taxable (including zero-rated) supplies;

b) a 0% GST recovery rate applied to business inputs acquired exclusively for the purpose of making exempt supplies; and

c) different specified methods applied to different business sectors to determine GST recovery rates for the business inputs of the respective sectors that were acquired for the purpose of making both taxable (including zero-rated) and exempt supplies.

21. The Methods included specific Methods for determining ITCs in respect of certain inputs of RBC's credit card line of business in its Retail Markets- Cards Sector (the **Cards Sector**)

22. Under the Methods for the Cards Sector, expenses incurred for the purpose of making both taxable (including zero-rated) supplies and exempt supplies were divided into two categories or pools, each having its own revenue-based GST recovery rate formula. Pool #1 was for expenses that varied in proportion to the volume of RBC Credit Card transactions, and Pool #2 was for all other "mixed-purpose" expenses allocated to the Cards Sector. Specifically, RBC's original application to use the Methods provided as follows:

> The GST paid to operate the credit card business will be stratified into the two pools consisting of those expenses that varying (*sic*) in direct proportion to resident/non-resident interchange revenue, and expenses that do not vary in proportion to interchange revenue.

23. The expenses of the Cards Sector that varied in proportion to the volume of credit card transactions included, among other things, expenses incurred by RBC as a direct consequence of providing cardholders the opportunity to earn and redeem loyalty reward points by spending on their RBC Reward Card accounts (collectively, the **Reward Program Expenses**). Loyalty program expenses were given as an example of an expense in Pool #1 in RBC's original application to use the Methods, which stated that "for instance, RBC must issue loyalty points to cardholders whenever cardholders make domestic or foreign purchases using their credit cards".

24. Unlike revenue from net interest or account fees, interchange fee revenue varied in proportion to the volume of RBC Credit Card transactions, given that every authorized RBC Credit Card transaction gave rise to an interchange fee, but not necessarily interest or account fees. Accordingly, the Method for Pool #1 was based on interchange fee revenue.

25. In particular, GST recovery rate for Pool #1 was determined by dividing total interchange fee revenue taxable (*i.e.*, zero-rated) supplies of Interchange Services by total interchange fee revenue from zero-rated supplies of Interchange Services and exempt supplies of Interchange Services. Specifically, the formula was as follows:

$$\frac{\text{Foreign Interchange Revenue}}{\text{(Foreign+ Domestic Interchange Revenue)}}$$

26. The GST recovery rate for Pool #2 was based on all the revenues of the Cards Sector. It was determined by dividing total revenue from all of the taxable/zero-rated supplies of the Cards Sector by total revenue from both taxable/zero-rated supplies and the exempt supplies of the Cards Sector.

27. The creation and composition of Pool #1 and Pool #2 and the GST recovery rate formula for each pool was used for purposes of RBC's Methods for its fiscal year ending in 2009, which was the first fiscal year for which any

Methods were authorized. Reward Program Expenses were among the original expenses that the Minister classified in Pool #1.

28. The Methods authorized for F2012 were consistent in all relevant respects with the original Methods authorized for RBC's fiscal year ending in 2009.

29. Under RBC's application for the Methods that was authorized by the Minister for F2012,

a) International Interchange constituted the revenue from zero-rated supplies of Interchange Services; and

b) Reward Program Expenses were among the expenses classified in Pool #1.

30. The Methods for F2012 were used by RBC consistently throughout the year and as indicated in its application for authorization to use those methods.

31. The Minister did not at any time revoke the authorization granted to RBC to use the Methods for F2012.

The Minister's Denial of the Cards Sector ITCs

32. The minister denied all of the ITCs for F2012 that were determined by RBC pursuant to the Methods for Pool #1 and Pool #2 (the **Cards Sector ITCs**).

33. The principal basis of the denial of the Cards Sector ITCs was the Minister's position that supplies of Interchange Services for which RBC earns International Interchange can never qualify as zero-rated supplies, because such supplies are excluded from the relevant zero-rating provision (being section 1 of Part IX of Schedule VI to the Act) by virtue of the application of one or more paragraphs (a), (c) and (d) of that provision. The respondent now takes the position that only paragraph (a) of that provision applies.

34. Under the position taken by the Minister for F2012, the GST recovery rate for Pool #1 was for that year equal to zero.

> 35. According to the Minister's audit proposals, an alternative basis for the denial of ITCs in respect of the Reward Program Expenses was the Minister's reclassification of those expenses from Pool #1 to the general category of expenses that are incurred exclusively for the purpose of making exempt supplies. The Minister's position was that, for ITC purposes, the Reward Program Expenses should be viewed as having been incurred by RBC exclusively for the purpose of making exempt credit-granting supplies to cardholders, and not at all for the purpose of making any Interchange Service Supplies.
>
> 36. The denial of the Cards Sector ITCs resulted in a consequential adjustment to the amount determined under subsection 225.2(2) of the Act in calculating RBC's net tax for F2012 (the **Consequential Net Tax Adjustment**).

[13] The defined terms used herein have the meaning ascribed to them by the parties in the ASF unless otherwise provided.

IV. ISSUE 1: Was the Minister precluded from assessing RBC contrary to the Method?

The Preliminary Objection

[14] In closing submissions, the Respondent took the position that the Method Argument was not properly before the Court as it was raised for the first time in the Appellant's preliminary remarks. It was argued that the Appellant failed to identify the issue in its notice of appeal, did not seek leave to amend the notice of appeal before the hearing and did not provide advance notice of its intention to raise the issue at the hearing of the appeal. The Respondent also referenced subsection 301(1.2) of the ETA, also known as the "specified person rule", that requires that a notice of objection "reasonably describe each issue to be decided" and "provide the facts and reasons relied on by the person in respect of each issue."

[15] Counsel for the Appellant objected, indicating that the Method Argument had been part of its position from the beginning. A review of the transcript indicates that the Respondent addressed the argument in its opening remarks but did not object at that time, explaining only that the approval of a method to determine the "operative extent and procurative extent" of an input did not address the "tax status of a supply" and whether it was "exempt or zero-rated supply."

[16] All things considered, I am of the view that the Respondent had an obligation to voice its objection to the Method Argument during its preliminary remarks. Had it done so, the Appellant could have brought an oral motion to amend its pleadings and the Court could have considered the matter on its merits.

[17] Given the suggestion that there may have been some form of procedural unfairness, the Court gave the Appellant the opportunity to provide supplementary written submissions on the application of subsection 301(1.2).

[18] In those submissions, the Appellant states that the Appellant's "primary argument is that the Minister (…) was without authority," under the ETA "to assess RBC to deny the Disputed ITC's because she was bound by a method she authorized." It is also argued that the Respondent was "provided with ample notice of the Method Argument (…) in the notice of objection and the notice of appeal" and that section 141.02 of the ETA, "the very provision that supports the Method Argument (…) was specified both in the notice of appeal and notice of objection."

[19] The Appellant adds that the "facts relating to the Method were extensively canvassed at discovery without the Crown objecting to the questions as being "irrelevant" and that it was described in paragraphs 21-34 of the notice of appeal and paragraphs 18-31 of the Agreed Statement of Facts."

[20] More specifically, the Appellant argues that it indicated in the notice of objection that the "issue to be decided is whether RBC was entitled to the ITCs as claimed" and further that the audit proposal was "contrary to the Minister's past position and the legal premise underlying the Pool #1 Method."

[21] The Appellant argues that it is not required to describe an issue exactly and that a reasonable description is sufficient: *Canada v. Potash Corporation of Saskatchewan*, 2003 FCA 471 (para. 22) ("*Potash Corp*") and *Devon Canada Corporation v. Canada*, 2015 FCA 214 (para. 25).

[22] The Appellant also relies on *Loblaw Financial Holdings Inc. v. The Queen*, 2018 TCC 182 where Miller J. considered whether the taxpayer was precluded from relying on certain arguments due to the application of the large corporation rules. He dismissed a late-filed motion made by the Crown to prevent the taxpayer from advancing an argument finding that the "overriding issue" had remained the same from the objection stage to trial. He relied on five factors to conclude that the large corporation rule was not engaged because the "argument" (1) did not go down a different path that the parties were already on; (2) did not take the Crown by surprise;

(3) did not require the introduction of any additional evidence; (4) did not prejudice the Crown; and (5) did not represent the "shift in direction" that the rule was meant to curb (i.e. no reconstruction) (para. 191).

[23] In the earlier decision of *Canada v. Telus Communications (Edmonton) Inc.*, 2005 FCA 159 relied upon by the Respondent, the Federal Court of Appeal set aside a decision allowing an amendment to the notice of appeal, explaining that "the Tax Court, in an appeal involving a 'specified person', has no jurisdiction to deal with an issue that was not properly raised in the notice of objection" and that a specified person "must file a notice of objection which accords with the requirements of subsections 301(1.2)." It concluded that the "conduct of the parties cannot govern when the jurisdiction of the Tax Court is denied by statute" (paras. 17-18 and 23).

[24] In *Ford Motor Company of Canada Limited v. The Queen*, 2015 TCC 39, Boyle J. also dealt with a motion to strike an amended notice of appeal by a "specified person". He reviewed a number of decisions and in particular relied on *Potash Corp.* and *Bakorp Management Ltd. v. The Queen*, 2014 FCA 104, as support for the proposition that "a court can be expected to seek to find and identify the issue described in the objection having regard to the contents of the objection read as a whole, including references therein to the taxpayer's filings and to the issues in the reassessment, and having regard to the quantification of the issue therein" (para. 53). See also *Toronto-Dominion Bank v. The King*, 2024 TCC 50 (paras. 257-260).

[25] In this instance, the thrust of the Appellant's argument is that the Minister knew from a very early stage in the litigation process that the Appellant would be raising the Method Argument "because" it conducted extensive examinations of the matter and obtained an admission that the Minister had approved the methodology for F2012 and that it was entitled to the ITCs "as claimed."

[26] As indicated in *Potash Corp.*, an issue is not required to be stated "exactly" but it must be stated "reasonably" and "what is reasonable will differ in each case and will depend on what degree of specificity is required to allow the Minister to know each issue to be decided" (para. 22).

[27] To be clear, the notice of objection does not state that the Minister was "bound by the Method" or "precluded" or "without authority" to assess contrary to it. There are no words to that effect. It would certainly have been preferable for the Appellant to have clearly articulated its position that the Minister was "bound" by the Method and "precluded" from assessing contrary to it.

[28] That said, I note that certain paragraphs of the ASF, notably paragraphs 19, 28, 30 and 31, specifically refer to the Method and not the two other arguments. As such, the Respondent cannot realistically argue that it was surprised or unprepared for the Method Argument. It also has not suffered any prejudice.

[29] In the end, to determine whether a taxpayer has complied with subsection 301(1.2), it is necessary to consider the entire context. It is particularly relevant in this instance, that the Appellant had applied and been approved for the Method for fiscal 2009, 2010 and 2011 as well as F2012. The notice of objection set out a description of the "Pre-Approved Method for Determining ITCs" (paras. 84-94) and the Minister was extensively examined on the basis for this approval.

[30] On balance, I find that the Method Argument was "reasonably" described and that the extensive reference to the pre-approved method for F2012 was sufficient to meet the requirement of subsection 301(1.2) that the "facts and reasons relied on" also be described. On that basis, I reject the Respondent's preliminary objection and find that the Method Argument is properly before the Court.

The Method Argument

[31] The ETA provides a process by which a financial institution may apply for approval of a method to determine the appropriate allocation of ITCs. Subsection 141.02 sets out a statutory scheme that allows a "qualifying institution", as defined, to apply to the Minister for approval of a methodology to apportion inputs acquired in the making an exempt and zero-rated supply. What follows is a summary of the more salient features of the statutory scheme.

[32] Subsection 141.02(18) provides that a qualifying institution "may apply to the Minister to use particular methods to determine (…) the operative extent and procurative extent of each input" for a taxation year. In accordance with subsection 141.02(20), the Minister shall "consider the application and authorize or deny the use of the particular methods." If approved, subsection 141.02(21) provides that "the particular methods shall be used consistently (…) throughout the fiscal year" but subsection 141.02(23) adds that an authorization "is deemed never to have been granted" if the Minister revokes the authorization. An institution may also file a "notice of revocation", particularly, if it ceases to be "a qualifying institution."

[33] Subsections 141.02(27) to (30) refer to interim measures that allow an institution to "elect to use particular methods" where is has filed an application and the Minister has not yet authorized the methods pursuant to subsection 141.02(20).

[34] Subsection 141.02(31), and more specifically paragraph (f), refers to the burden of proof where "a financial institution appeals an assessment." It is required to "establish on a balance of probabilities in any court proceeding relating to the assessment" that "the particular methods were used consistently." As indicated in paragraphs 30 and 31 of the ASF, it is not disputed that the Method was used consistently by the Appellant and that it was not revoked by the Minister.

[35] The Appellant argues that the Minister authorized a Method that "specified a precise and unambiguous formula" to determine the ITCs to which it would be entitled to and that the "Minister is precluded from assessing [it] contrary to the Method" and "without authority (…) to retroactively challenge the correctness of a Method she approved" or to "repudiate the fundamental premises on which the Method was authorized." It is argued that there was no "qualifier in relation to the tax status of the Foreign Interchange Service" such that the Minister cannot now take the position that it was an exempt and not a zero-rated supply.

[36] The Appellant contends that the Respondent's position "is fundamentally at odds with the operation of subsection 141.02(21) and the nature of the pre-approval process" that seeks to ensure "certainty, predictability and fairness."

[37] The Appellant relies on *Bank of Montreal v. Canada* (Attorney General), 2020 FC 1014 (Walker J., as she then was), affirmed by the Federal Court of Appeal (2021 FCA 189). In that instance, Bank of Montreal ("BMO") had applied to the Minister for approval of a particular method to compute its ITCs pursuant to subsection 141.02(18) but it was denied. BMO sought judicial review of the decision arguing it was "unreasonable" and the Minister had "exceeded its authority."

[38] The application for judicial review was ultimately dismissed but before doing so, the Federal Court (FC) reviewed the "pre-approval regime" for qualifying institutions ("QIs") pursuant to subsection 141.02 and explained the following:

> [18] Under the section 141.02 regime, QIs are subject to a distinct scheme for the computation of their eligible ITCs. **Pursuant to subsection 141.02(18), a QI may apply to the Minister in advance of each fiscal year for approval of their proposed ITC computation method for the year. The Minister may approve or deny** the use of the method (subs. 141.02(20)). **The Minister's decision is separate from the audit process and is not subject to appeal to the TCC.** If the Minister authorizes the method, that method must be used by the QI to prepare its GST return for the particular fiscal year (subs. 141.02(21). **Any audit of that return is limited to determining whether the approved method was used consistently through the year and applied correctly.**

[My emphasis.]

[39] The issue before the FC was whether the Minister had properly exercised her discretion to deny BMO's proposed methodology. It concluded that the "Minister's denial (…) was within the scope of the approval authority delegated to her by Parliament under subsection 141.02(20)" and that the decision was "principled and coherent" (para. 159). The Federal Court of Appeal agreed.

[40] I find that the FC correctly enunciated the position that the discretion exercised by the Minister in the context of the approval process is distinct "from the audit process and is not subject to approval by the" Tax Court of Canada. This seems apparent from a reading of subsections 141.02(20) and 141.01(22). Indeed, I find it is also consistent with *Dow Chemical Canada ULC v. Canada*, 2024 SCC 23, where the Supreme Court of Canada concluded that a discretionary ministerial decision is distinct from an assessment (paras. 13-16 and 41-64).

[41] However, with respect, I find there is no basis for the assertion that an audit by the Minister would be "limited to determining whether the approved method was used consistently through the year and applied correctly." That statement was made in the context of an introductory review of the "pre-approval regime." It must be viewed as *obiter dictum* when one considers that there was no audit or assessment and the only issue was the reasonableness of the Minister's decision to deny the proposed methodology pursuant to subsection 141.02(22). In any event, the FC decision is not binding on this Court.

[42] The Respondent takes the position that the purpose of subsection 141.02(20) "is to reflect the use of the input (…) and to link that particular input with the outputs (…) but not to identify the tax status of specific outputs of the institution." The Respondent argues that "the tax status of the supplies (…) are not reviewed at the time of authorization" and the "application and authorization process (…) is a forward-looking process generally intended to establish methods that will be used" in the "upcoming fiscal period." In the end, it is argued that "the authorization granted under subsection 141.02(20) is not an advance audit of the institution's operations, nor (…) an indication of the Minister's agreement as to the tax status of any particular supply made by the institution."

[43] Indeed, as the noted by the Respondent, the FC later clarified its introductory comments (those in paragraph 18 above) and distinguished between the authorization and audit process, explaining as follows:

> [53] I do not agree with the Bank's characterization of the Minister's Decision and find that **the Minister does not exercise a taxation power in exercising her approval authority pursuant to subsection 142.02(20**) of the ETA. Whether the Minister approves or denies a QI's application, **her authority extends only to a review of the computation method proposed**. She does not determine the net GST payable by the QI (…) **The Bank's actual net GST payable will only be determined against its actual results**, **including the identification of its taxable and exempt supplies for the fiscal year** (…)
>
> (…)
>
> [100] I find that the Minister's approval authority under subsection 141.02(2) (*sic*) of the ETA requires her to focus on the structure of a QI's proposed methodology and the application of the methodology to the QI's business. **The Minister is required to base her assessment on the business information submitted by the QI but is not required to adopt the QI's characterization of that information for GST purposes. She is not required to assume the accuracy of the proposed elements or structure of the QI's methodology.**
>
> [My emphasis.]

[44] The FC added that "in enacting section 141.02, Parliament did not empower the Minister to disregard fundamental GST and ITC principles in exercising her pre-approval authority (…)" (para. 107). I find that this is consistent with the position of the Respondent, that the pre-approval process does not involve a determination of the tax status of an input nor preclude the Minister from later concluding that an activity involves an exempt, and not a zero-rated supply.

[45] Although there is no dispute that the Appellant consistently followed the Method, I turn to the question of the evidentiary burden. I find that paragraph 141.02(31)(f) merely confirms that a financial institution has the onus of establishing that the "particular methods (…) were used consistently" during the fiscal year at issue. This creates an evidentiary burden that would likely have existed in any event given the nature of tax litigation.

[46] That said, there is nothing in the statutory language that seeks to limit or preclude the Minister from issuing an assessment that is contrary to the Method. There is simply no language to support the Appellant's broad interpretation of the "pre-approval regime" and the proposition that the Minister is somehow bound by the authorization of the proposed methodology. It is apparent from the statutory language that Parliament contemplated the possibility of an appeal from an assessment that was contrary to the Method.

[47] Moreover, I find that the evidence (Exhibit A-2) establishes in unequivocal terms that the Minister authorized the "proposed methods" on the "basis of all the information provided" by the Appellant that was assumed to be "complete and correct." The Minister also reserved the right to conduct an audit of the books and records to determine "the basis upon which the proposed methods [had] been established and the means by which they [had] been applied" and to "assess or reassess in accordance with statutory limits." I find that this is consistent with the statutory scheme and the intention of Parliament.

[48] I therefore agree with the Respondent that there is no merit to the Appellant's argument that the Minister is bound by the Method. Consistent with the statutory scheme, the Minister reserved the right to conduct an audit of the claimed ITCs to determine whether they related to an exempt or zero-rated supply, and to reassess accordingly.

[49] The Method Argument is therefore rejected.

V. **ISSUE 2: Was the supply of the Foreign Interchange Service an exempt or zero-rated supply of a financial Service to a non-resident?**

The Nature of the Interchange Service?

[50] The Appellant operates a credit card business and issues Visa and MasterCard branded credit cards. It earns annual fees, interest charges and interchange fees. For F2012, it earned annual fees of $125,960,047, net interest fees of $641,122,989 and interchange fees of $1,046,132,984 (para. 17, ASF).

[51] The Interchange Service involves an authorization and payment service to both domestic and foreign merchants who agree to accept a Visa or MasterCard branded credit card, including those issued by the Appellant as card issuer.

[52] The various steps involved in "a typical Visa transaction" were described in great detail by Laskin J.A. in *Canadian Imperial Bank of Commerce v. Canada*, 2021 FCA 10 ("*CIBC*") (paras. 15-17). The potential revenue stream from a credit card business, including interchange fees, was also described (para. 27).

[53] It will suffice for the purposes hereof to review the simplified description provided in paragraphs 11(a) to (h) of the ASF. In a typical credit card transaction, the cardholder presents a credit card to a merchant for the purchase of goods or services. The merchant transmits an electronic request to its own bank, known as the

"merchant acquirer" seeking an authorization from the card issuer. It does so using the Visa or MasterCard payment network. If approved, the authorization is communicated to the merchant acquirer who confirms the authorization (or denial, as the case may be) to the merchant who completes the transaction with the cardholder. At that point in time, the cardholder has discharged its obligation to the merchant in connection with the purchased goods or services.

[54] As the credit card issuer, RBC advances the amount charged to the credit card using the services of the network providers, to the merchant acquirer, less an "interchange fee", as consideration for the authorization and payment service provided. The discounted amount received by the merchant acquirer, being the value of the purchase less the interchange fee, is then credited to the merchant's account. RBC may earn higher interchange fees when the credit card allows the cardholder to earn loyalty reward points redeemable for goods or services.

[55] At the end of the billing cycle, the card issuer sends a statement to the cardholder requesting payment of the outstanding credit balance. Interest only accrues on the balance outstanding after the specified due date or grace period. If the amount is paid in full, RBC does not earn any interest.

[56] Where the point of purchase was located outside Canada, RBC earned "interchange fees from non-resident merchant acquirers" (para. 13, ASF).

The Statutory Framework

[57] It is not disputed that interchange fees earned domestically constitute an exempt supply of a financial service by virtue of Part VII, Schedule V and that the Appellant was not entitled to claim ITCs. At issue is whether the service provided to non-resident merchant acquirers was an exempt, or a zero-rated supply by virtue of Part IX, Schedule VI.

[58] The ETA "contemplates three classes of goods and services" including (1) a taxable supply; (2) an exempt supply; and (3) a zero-rate supply: *Calgary (City) v. Canada*, 2012 SCC 20 (para. 16). All are relevant to this appeal.

[59] Subsection 165(1) imposes a tax on the recipient of a "taxable supply" and subsection 169(1) provides a mechanism that allows a registrant who collects the GST on behalf of the Crown, to claim ITCs on supplies made during the course of a commercial activity: *CIBC World Markets Inc. v. Canada*, 2011 FCA 270 ("*CIBC World Markets*") (paras. 6-15). Subsection 165(3) indicates that the "tax rate on a

taxable supply that is a zero-rated supply is 0%." A "zero-rated supply" is nonetheless a commercial activity and a registrant may be entitled to claim ITCs. Schedule VI includes ten basic categories of zero-rated supplies, one of which includes financial services.

[60] In the context of the Appellant's credit card business, it is important to note that the definition of a "financial service" as set out in subsection 123(1) is very broad. It includes various supplies described in paragraphs (a) to (m) but excludes supplies described in (n) to (t), being the inclusionary and exclusionary paragraphs. The following paragraphs are the most relevant here:

> ***financial service*** means
>
> (a) the exchange, **payment**, issue, receipt **or transfer of money**, whether **affected by the exchange of currency, by crediting or debiting accounts** or otherwise,"
>
> **(…)**
>
> **(g) the making of any advance, the granting of any credit or the lending of money,**
>
> **(…)**
>
> (i) **any service provided pursuant to the terms and conditions of any agreement** relating to **payments of amounts for which a credit card** voucher or charge card voucher **has been issued**,
>
> **(…)**
>
> (l) **the agreeing to provide,** or **the arranging for, a service that is**
>
> **(i) referred to in any of the paragraphs (a) to (i)**, and
>
> **(ii) not referred to in any of the paragraphs (n) to (t)**, or
>
> **(m)** a prescribed service,
>
> but does not include
>
> **(n) to (t)**
>
> [My emphasis.]

[61] As noted above, Schedule VI includes ten basic categories of zero-rated supplies, one of which includes financial services. It provides as follows:

Part IX – Financial Services

1. **A supply of a financial service** (other than a supply that is included in section 2) **made by a financial institution to a non-resident person, except where the service relates to**

(a) a debt that arises from

(i) the deposit of funds in Canada, where the instrument issued as evidence of the deposit is a negotiable instrument, or

(ii) the lending of money that is primarily for use in Canada;

(b) a debt for all or part of the consideration for a supply of real property that is situated in Canada;

(c) a debt for all or part of the consideration for a supply of personal property that is for use primarily in Canada;

(d) a debt for all or part of the consideration for a supply of a service that is to be performed primarily in Canada; or

(e) a financial instrument (other than an insurance policy or a precious metal) acquired, otherwise than directly from a non-resident issuer, by the financial institution acting as a principal.

[My emphasis.]

[62] The parties agree that section 1 above describes a zero-rated supply of a financial service and that the Appellant would be entitled to claim ITCs for GST paid on expenses incurred for the purpose of completing transactions with "a non-resident person." They also agree that paragraphs 1(a) to (e) describe a number of exceptions, referred to "carve-outs" that, if applicable, would mean that the financial service rendered is an exempt and not a zero-rated supply, notwithstanding the fact that it involves "a non-resident person." As indicated in paragraph 33 of the ASF, the Minister specifically relies on paragraph 1(a).

Submissions of the Respondent

[63] The Minister's primary assessing position is that the Foreign Interchange Service was an exempt supply of a financial service and the Appellant was not entitled to claim ITCs because, on a correct interpretation of subparagraph 1(a)(ii), the supply related to "credit card debt that arose from the lending of money (...) each time" the bank "authorized a credit card purchase transaction."

[64] The Respondent argues that the Foreign Interchange Service was "inextricably connected to and dependent upon RBC's decision to lend money to the Cardholders" because it "assumed the risk of non-payment on the debt by the cardholders" who "were all Canadians" and all "payments" were converted and settled in Canadian dollars in accordance with the credit card agreement.

[65] The Respondent adds that the "Cardholder Agreement" (Exhibit R-5), under a section titled "Your Rights and Duties as a Customer Using your Credit Card", states that the Appellant is "lending" the amount of a purchase or cash advance to the Cardholder. It also states that a "debt" includes all amounts charged to the card. The Respondent argues there is no doubt that "RBC was lending money to the Cardholders each time it authorized purchase transactions" and that interest accrued on amounts "not paid within the grace period."

[66] The Respondent contends that the carve-out set out in paragraph 1(a)(ii) is intended to be "broad in scope and not restricted" and that this is apparent from Parliament's use of the expression "relates to" in section 1. It argues that this should not be limited to a debt that arises between the Appellant as a "financial institution and the non-resident merchant acquirer."

[67] The Respondent argues that the "lending of money" was for use in Canada, "both from a qualitative and quantitative perspective" and that there is no evidence that the money was not used in Canada. It adds that there is no evidence that the cardholders were not in Canada when purchases were made and it is possible they were in fact completing transactions by electronic means.

[68] The Respondent contends that any interchange fees included in the pre-approved methods for determining ITCs were for an exempt and not a zero-rated supply and the disallowance of the ITCs totalling $1,777,684 should be upheld.

Submissions of the Appellant

[69] The Appellant argues that the Foreign Interchange Services are *prima facie* zero-rated because the financial service was provided to a non-resident merchant and the broad objective of the applicable provision is to zero-rate all exported financial services. It argues that the carve-out does not apply because the supply does not relate to cardholder debt and does not arise from the lending of money primarily used in Canada. It raises a number of other arguments.

Analysis

[70] For reasons that follow, I find that the service provided to non-resident merchant acquirers was a zero-rated supply of a financial service and that the Appellant was entitled to claim ITCs incurred to render those services.

[71] Section 1 of Part IX of Schedule VI ("Section 1") seeks to ensure that exported financial services or services provided to a non-resident are zero-rated: *CIBC World Markets* (paras. 29-30). The policy objective is to ensure that Canadian companies offering financial services abroad remain competitive on world markets (paras. 36-37).

[72] It is not disputed that the Appellant is a "financial institution" and that it supplied a "financial service" to a "non-resident person" being the merchant acquirers, thus satisfying all the requirements of Section 1. At this point in the analysis, I find that the Foreign Interchange Service is *prima facie* zero-rated.

[73] The Respondent argues that the phrase "relate to" at the end of Section 1, is "broad in scope," relying on *Mac's Convenience Stores Inc. v. The Queen*, 2012 TCC 393. In that instance, the taxpayer was a convenience store that purchased and operated automated banking machines ("ABMs") within its retail premises. It claimed ITCs on the purchase of the ABMs relying on subsection 185(1) that allows a registrant, that is not a financial institution, to claim GST on an input to a financial service that "relate to" a registrant's commercial activities (paras. 49-50).

[74] The Minister denied the ITCs on the basis that the operation of the ABMs was an exempt supply of a financial service. Hogan J. rejected that argument and allowed the appeal finding that a registrant need only demonstrate that "there is some connection between the making of a financial service in respect of which ITCs are claimed (…) and the registrant's other commercial activities (…) in order to qualify for the favourable treatment provided for in subsection 185(1)" (para. 50). Hogan J. referred to the subject provision as "a simplification measure" (para. 52). In the end, I find that the decision turns on its own facts and that, for additional reasons set out below, the suggestion that there need be only "some connection" between the supply at issue and "the lending of money", is not sufficient for me to conclude that it is NOT a zero-rated supply.

[75] The Appellant contends that Section 1 should be interpreted in its proper context. It relies on *Sarvanis v. Canada*, 2002 SCC 28, where the Court turned its attention to the phrase, "in respect of" noting that although it suggests "a broad set of connections," it is not of "infinite reach" and a "proper approach to statutory interpretation" requires that the entire context be considered. (paras. 22, 24, 25-26).

See also *Hillier v. Canada (Attorney General)*, 2019 FCA 44 (para. 24). I find that the meaning of the expression "in respect of" is sufficiently similar to the phrase "relate to" such that I agree with the Appellant that the phrase must be given an interpretation that accords with the context and purpose of Section 1 which is to zero-rate financial services provided to non-residents.

[76] I also find that the phrase "relate to" should be narrowly construed as a broad interpretation of the carve-outs would defeat the policy objectives. See *Ike Enterprises Inc. v. The Queen*, 2017 TCC 59 (paras. 48-49). This is consistent with the conclusion reached in *National Bank Life Insurance Company v. The Queen*, 2005 TCC 425, where Lamarre J. (as she then was) found that when Parliament makes a rule and lists certain exceptions, the latter must be regarded as exhaustive and so strictly construed. She recognized the principle that exceptions should not be extended and if there was any doubt, the general rule should be favoured over the exception (paras. 38-40).

[77] As reviewed above, financial services are broadly defined in the relevant inclusionary paragraphs of the definition, being paragraph (a) ("the exchange, payment (…) or transfer of money, whether affected by the exchange of currency, cy crediting or debiting accounts or otherwise"), paragraph (g) ("the making of any advance, the granting of any credit or the lending of money"), paragraph (i) ("any service related to (…) payments of amounts for which a credit card voucher or charge card voucher has been issued") and (l) ("the agreeing to provide, or the arranging for, a service that is (…) referred to in any of paragraphs (a) to (i)").

[78] In contrast, the carve-out in subparagraph 1(a)(ii) refers only to "the lending of money that is primarily used in Canada." It does not include or refer to "the granting of any credit" for example, or to any of the broad language used in either of the inclusionary paragraphs (a), (g), (i) and (l).

[79] As will be seen below, the jurisprudence has recognized a clear distinction between the granting of credit and the lending of money. This was explained in *Garland v. Consumers' Gas Co.*, [1998] 3 SCR 112, where Major J. (writing for the majority) explained as follows:

> 35. (…) **A debt is deferred -- and credit extended** -- when an agreement or arrangement permits a debtor to pay later than the time at which payment would otherwise have been due (…) **The substance of such "credit" is a determined amount of money which is payable over time**. **Unlike the principal of a loan**, however, **such credit is not initially paid out to the debtor in the form of mone**y,

> but **arises when a debt is incurred** for goods, services or benefits, and **that debt is then deferred in full or in part by agreement of the parties.**
>
> [My emphasis.]

[80] The issue was more recently dealt with in *CIBC, supra*, where the Crown had argued that the use of a credit card had not really changed the nature of CIBC's "consumer lending business" since it just made "a different kind of consumer loan to its clients," suggesting finally that "a loan is a loan is a loan" (para. 66). Laskin J.A. rejected this argument explaining as follows:

> [67] (…) **To treat a credit card as no different from a line of credit is to ignore the fundamental attributes of a credit card** – that it is a widely accepted method of payment that permits the cardholder to obtain virtually instantaneous access to credit, and **to use that credit at the point of sale to purchase goods and services**.
>
> [My emphasis.]

[81] A similar conclusion was reached in *Dahl et al. v. Royal Bank of Canada*, 2005 BCSC 126, ("*Dahl et al*.") affirmed in 2006 CBCA 369, where the Court noted that because the "cardholder is permitted to defer payment of the debt, credit is advanced on the date of the purchase or service" and "this deferral of debt results in an extension of credit" (paras. 58 and 85).

[82] On the basis of these authorities, I find that the Foreign Interchange Service does not relate to the "lending of money" because, in the words of Major J, cited above, "a debt is deferred" and "credit is extended" and unlike a loan, "such credit is not initially paid out to the debtor in the form of money." The credit transaction results in a debt "incurred for goods, services or benefits" that is "then deferred in full or in part by agreement of the parties."

[83] I therefore conclude that the true nature of the transaction that allowed RBC to earn interchange fees involved the "granting of credit." The point in time when RBC earned this revenue was when the merchant accepted the credit card as payment in full of the goods or services. As indicated in *Dahl et al.,* "the cardholder's liability to the merchant is discharged by the merchant's acceptance of the credit card" and "the Bank becomes liable to the merchant, and the cardholder becomes liable to the Bank."

[84] I thus agree with the Appellant that "when a cardholder uses a credit card to purchase goods or services, there is no transfer of money from the credit card issuer to the cardholder" and therefore there is no loan that arises from the lending of money. Despite the fact that the cardholder is expected to pay the outstanding credit balance before the grace period, I find that no monies are advanced to the cardholder. Indeed, as most cardholders must know, interest only accrues if the outstanding credit balance is not repaid prior to the end of the grace period.

[85] As a result, RBC's ability to earn interest income only arises at a later point in time and is contingent on the non-payment of the outstanding credit balance. If paid in full, there is no loan or debt upon which interest can accrue. I find that this is so despite the reminder in the Cardholder Agreement that all purchases are a "debt" owed to RBC that must be repaid and that interest will accrue after the grace period. In the meantime, whether the outstanding credit balance is eventually repaid or not, RBC earned the interchange fees when it provided the authorization and payment service to the non-resident merchant acquirers.

[86] The Respondent argues that there is no evidence that the cardholder was outside of Canada when the transaction with the non-resident merchant was consummated, suggesting that it was not necessarily an exported financial service. I find that this argument should be rejected because the established law on the sale of goods provides that where an international sale transaction occurs, the place of payment is the seller's place of residence (GHL Fridman, *Sale of Goods in Canada*, 6th ed. (Toronto: Thomson Reuters, 2013, at 235). Therefore the sale takes place where the non-resident merchant is located or resides and not in Canada. It matters not where the cardholder is physically located or whether the transaction may have been consummated electronically from within Canada. The critical issue is that the merchant and merchant acquirer are non-residents and the Respondent has already admitted to the quantum of those transactions. They are not at issue.

[87] It must also be remembered that the interchange fee is paid by the merchant acquirer and not by the cardholder. The merchant acquirer is the "recipient" of the authorization and payment service at issue because it pays for the service although the cost is ultimately borne by the merchant who receives a discounted payment.

[88] RBC's entitlement to interest charges is contingent and arises contractually by virtue of the Cardholder Agreement but the interchange fee arises by virtue of multiple distinct and independent agreements between RBC and the network providers, between the network providers and the merchant acquirer and between the merchant acquirer and the merchant. Without these agreements and the extensive

network created by Visa and MasterCard as network providers, it would be difficult if not impossible for most Canadian financial institutions to engage in consumer credit and transact with foreign merchants located across the globe.

[89] In the end, I cannot disregard the distinction that has been made between "the granting of credit" and "the lending of money." As a result of that distinction, I am able to conclude that the Foreign Interchange Service is a zero-rated supply that relates to the granting of credit and not to "the lending of money." I also cannot disregard the narrow statutory language contained in the carve-out relied upon by the Respondent. Parliament could have used the description contained in paragraph (g) of the definition of a "financial service" being "the making of any advance, the granting of any credit or the lending of money." It has not done so choosing instead to limit the carve-out to situations involving a loan transaction with a non-resident person where the money is used in Canada. Since I have concluded that there is no loan, it is not necessary to decide whether the funds are used in Canada.

[90] To paraphrase Noel C.J. (*CIBC World Markets,* para. 4), I find that this interpretation of the carve-out in paragraph 1(a)(ii) is consistent with the text of the relevant provisions and provides a result that achieves the statutory objectives and gives effect to the entire statutory scheme.

[91] For all the foregoing reasons, I find that the Foreign Interchange Service should be characterized as an exported financial service and a zero-rated supply.

VI. **ISSUE III – Whether expenses incurred for the redemption of loyalty reward points earned by cardholders from transactions involving non-resident merchants were part of an exempt or a zero-rated supply.**

[92] Having concluded that the Appellant is entitled to ITCs on expenses incurred to earn Foreign Interchange Fees, I must now determine whether this should extend to ITCs incurred in connection with the redemption of loyalty reward points earned by cardholders who completed transactions with non-resident merchants.

[93] As set out in paragraphs 23 and 24 of the ASF, RBC earned interchange fees for "every" credit card transaction and this revenue varied in proportion to the volume of transactions. In contrast, not "every" transaction gave rise to interest charges. RBC earned more interchange fees from credit cards that allowed cardholders to earn loyalty reward points redeemable for property or services ("RBC Reward Cards").

Position of the Appellant

[94] The Appellant argues that the RBC Reward Cards generally attracted "higher-spending customers" who made greater use of its cards. In fact, it offered loyalty reward points to entice customers to use these cards and increase the volume of transactions, resulting in increased interchange fee revenue.

[95] On that basis, it is argued that the issuance of points and associated Reward Program Expenses "are inextricably linked to the interchange fee revenue" and that it should be entitled to claim the inputs incurred "as a direct consequence of providing cardholders the opportunity to earn and redeem loyalty points."

[96] The Appellant relies on the testimony and export report of Ms. Patricia O'Malley dated November 4, 2022 (the "Expert Report"). She explained that RBC was required to follow accounting standards recognized by *International Financial Reporting Standards* ("IFRS") and *International Accounting Standards* ("IAS"), and in particular the rules contained in *Customer Loyalty Programmes.*

[97] In essence, Ms. O'Malley explained that these accounting rules look to the components of a sale and recognize that part of the service (i.e. the loyalty reward points) will be delivered at a later date. As a result, the portion of the interchange service fee that is allocated to these points is reported as a liability called "deferred revenue" or "revenue from a service yet to be performed."

[98] The Appellant also relies on subsection 141.01(4) of the Act that allows a registrant to claim ITCs where it has provided a "free supply," defined as a taxable supply that is made for nil or nominal consideration. It argues that the issuance of loyalty points were a free supply made to generate interchange fees and thus it should be allowed to claim inputs related to the redemption of the loyal reward points related to the Foreign Interchange Service.

Position of the Respondent

[99] The Respondent argues that the Appellant is not entitled to ITCs for Reward Program Expenses as they relate to the exempt supply of a financial service.

[100] The Respondent notes that a registrant is entitled to ITCs where there is a sufficient nexus between an input and a commercial activity and that where the registrant makes only taxable supplies, an indirect nexus may be sufficient.

[101] However, since the Appellant was involved in making both exempt and taxable supplies, both activities must be notionally severed because the definition of a "commercial activity" specifically excludes the making of an "exempt supply." The Respondent argues that RBC has not demonstrated that there is a sufficient nexus or connection between the expenses incurred to redeem loyalty reward points and the supply of the Foreign Interchange Service.

Analysis

[102] For reasons that follow, I find that the Appellant was not entitled to claim ITCs on expenses incurred in the redemption of loyalty reward points that may have accrued to customers involved in transactions with non-resident merchants.

[103] As noted in the analysis above, the definition of a "commercial activity" is broad but it excludes business activities involving the "making of exempt supplies". In fact, this is repeated three times in paragraphs (a), (b) and (c) as follows:

> **commercial activity** of a person means
>
> > **(a) a business carried on by the person** (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), **except to the extent to which the business involves the making of exempt supplies by the person,**
> >
> > **(b) an adventure or concern of the person in the nature of trade** (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), **except to the extent to which the adventure or concern involves the making of exempt supplies by the person**, and
> >
> > **(c) the making of a supply (other than an exempt supply**) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply; (*activité commerciale*)
>
> [My emphasis.]

[104] As explained in *President's Choice Bank v. The Queen*, 2022 TCC 84 ("*PC Bank*"), expenses associated in the redemption of loyalty reward points must be incurred in the course of a commercial activity if the registrant intends to claim ITCs (para. 29). I have already concluded that (excluding the service provided to non-resident merchant acquirers that was a zero-rated supply) the Appellant was involved in an exempt supply, being the supply of a "financial service" and, in

connection with the Appellant's credit card business, this included the activities described in paragraphs (a), (g), (i) and (l) of the definition, as reproduced above.

[105] That said, it is not disputed that various components of the Appellant's business involved the making of both exempt and taxable supplies. But since the definition of a "commercial activity" excludes "the making of an exempt supply", I agree with the Respondent that those parts "of the business that consist of making exempt supplies must be notionally severed": *Canada v. 398722 Alberta Ltd.*, 2000 CanLII 15331 (FCA) (para. 22) and *Amex Bank of Canada v. The King*, 2023 TCC 93 (para. 75) ("*Amex Bank*"). This is necessary in order to distinguish between those expenses that may have been incurred in the context of an exempt supply and those that were incurred in the course of a commercial activity.

[106] Where a registrant is involved in both an exempt and taxable supply, it must demonstrate that the expenses it seeks to attribute to a commercial activity are "inextricably linked" or that there is a "sufficient nexus or connection" with the commercial activity: *ONEnergy Inc. v. Canada*, 2018 FCA 54 (paras. 20 and 23).

[107] I find that the Appellant has failed to do so. In reaching this conclusion, I find that cardholders were entitled to loyalty reward points as a result of the Cardholder Agreement. As argued by the Respondent, the award of these points was not absolute. In accordance with the RBC Rewards Terms and Conditions (Exhibit R-1), cardholders could only claim reward points if their account was in good standing and if the account was more than 90 days past due, the cardholder could neither earn nor redeem reward points. If the account was in good standing, cardholders could earn bonus points with select merchants and retailers. If the Appellant's only motivation was to entice cardholders to use their credit cards to generate interchange fees, there would be no need to impose limits or restrictions for the redemption of loyalty reward points.

[108] There are other considerations including a temporal element in that the loyalty reward points might not be redeemed for months or even years after the transaction with the non-resident merchant. In addition, there is a geographical consideration in that the Foreign Interchange Service was provided to a non-resident merchant acquirer while expenses to redeem the points are incurred by RBC in Canada.

[109] These considerations lead me to conclude that expenses incurred by RBC in the redemption of loyalty reward points were inextricably linked and an integral component of the Appellant's agreement to extend credit pursuant to the Cardholder Agreement. Although the presentation of the RBC Reward Card triggered the

Appellant's entitlement to the interchange fees, I find that this connection is not sufficient for me to conclude that expenses incurred in the redemption of loyalty reward points earned from transactions involving non-resident merchant–acquirers were part of a taxable or zero-rated supply.

[110] It follows that I attach no weight to the Expert Report or testimony of Ms. O'Malley. It may be that, for accounting purposes, loyalty reward points should be accounted for as a form of deferred revenue. However, it is well established that accounting principles are merely informative and not determinative. They do not by themselves establish rules and are not determinative of questions of law: *Canderel Ltd. v. Canada* [1998] 1 SCR 147 (para. 33) and *Shell Canada Ltd. v. Canada*, [1999] 3 SCR 622 (paras. 32-37).

[111] The remaining argument is that the Appellant was entitled to claim ITCs because the issuance of points was part of a "free supply" as described in subsection 141.01(4). Subsection 141.01 is located in *Division I – Interpretation* under the heading *Supplies and Commercial Activities*. As noted above, the definition of "commercial activity" excludes an "exempt supply".

[112] Subsection 141.01(1) defines an "endeavour" as follows:

> **Meaning of endeavour**
>
> **141.01 (1)** In this section, **endeavour** of a person means
>
> **(a) a business of the person;**
>
> **(b)** an adventure or concern in the nature of trade of the person; or
>
> **(c)** the making of a supply by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.
>
> [My emphasis.]

[113] The Appellants relies on paragraphs (a) above to assert that it was involved in an "endeavour" relating to a "business." The Appellant then relies on subsection 141.01(4) (reproduced in the Appendix) to assert that it made a "free supply" in that it made "a taxable supply (…) of property or a service for no consideration or nominal consideration in the course" of the endeavour and that "among the purposes (…) for which the free supply is made is the purpose of facilitating, furthering or promoting" its endeavour. The Appellant then relies on

paragraph 141.01(1)(c) to assert that the free supply "shall be deemed (…) to have been acquired," for a "specified purposes" being the award of loyalty reward points. According to the Appellant, this analysis purports its contention that it was entitled to claim ITCs on purchases made (air flights, hotels, merchandise, etc.) in the redemption of loyalty reward points.

[114] I find that this argument is fundamentally flawed and should be summarily rejected because the Appellant was not involved in an "endeavour" or "a business of the person." As argued by the Respondent, RBC did not have a distinct or separate business of providing a Foreign Interchange Service. I have already noted that the definition of a "commercial activity" excludes "an exempt supply" and that the issuance and redemption of loyalty reward points were part of an exempt supply. I reject the notion that RBC was involved in an endeavour.

[115] In *Amex Bank*, Hogan J. considered the bank's claim for ITCs on the redemption of reward points and concluded that they were "incurred in respect of a liability that arose because of the supply of an exempt financial service" (para. 75). He added that the issuance and redemption of loyalty reward points were part of a composite supply and that "the predominant elements or components of the supply are exempt financial services." He also considered and rejected the application of the "free supply" rule (paras. 80-91).

[116] On the basis of the foregoing, I find that the Appellant was not entitled to claim ITCs on expenses incurred in the redemption of loyalty reward points earned by customers who transacted with non-resident merchants.

VII. **CONCLUSION**

[117] In summary, I conclude that:

i. the Minister was not bound by the Method;

ii. the Foreign Interchange Service was a zero-rated supply such that the Appellant was entitled to claim related ITCs; and

iii. the Appellant was not entitled to claim ITCs in connection with the redemption of loyalty reward points earned by customers who completed transactions with non-resident merchants.

Signed at Ottawa, Ontario, this 26th day of September 2024.

"Guy Smith"

Smith J.

Schedule A

Docket: 2019-1362(GST)G

BETWEEN:

ROYAL BANK OF CANADA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

The Honourable Justice Guy Smith

Counsel for the Appellant:	Al Meghji Al-Nawaz Nanji
Counsel for the Respondent:	Tony C. Cheung

ORDER

WHEREAS the parties filed a consent on December 22, 2021 (the "Consent") requesting that the Court issue an order acknowledging the terms thereof;

AND WHEREAS this matter involves an appeal of an assessment under the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, for the Appellant's reporting period ending October 31, 2012 (the "2012 reporting period");

AND WHEREAS, in accordance with the terms of the Consent, the parties have agreed that the appeal herein should be decided in part in the Appellant's favour on the basis that:

1. The fees paid to the Appellant from various Canadian insurance companies for services provided to the Appellant (the "**Creditor Insurance Service**") were considerations for exempt supplies of financial services;

2. The fees paid by the Appellant to MasterCard International Incorporated ("**MasterCard**") for the MasterCard service (the "**MasterCard Service**") were consideration for an exempt supply of a financial service; and

3. The fees paid by the Appellant to Visa Canada Corporation and its affiliates ("**Visa**") for the Visa service (the "**Visa Service**") were consideration for an exempt supply of a financial service.

AND WHEREAS, as a consequence of the foregoing, the parties have agreed that the appeal with respect to the Appellant's 2012 reporting period should be decided in part in the Appellant's favour, such that:

4.1 The net tax be reduced by the amount of $4,712,129.23 relating to the Creditor Insurance Service;

4.2 The net tax be reduced by the amount of $1,230,447 relating to the Visa Service;

4.3 The Division IV tax be reduced by the amount of $169,553 relating to the MasterCard Service;

4.4 The net tax adjustments under subsection 225.2(2) will be decreased accordingly in the following amounts:

a. $1,445,647 in respect of the Visa Service; and

b. $199,207 in respect of the MasterCard Service.

AND WHEREAS the parties have agreed that the remaining Interchange Service issue, (as defined in the pleadings), shall not be affected by the Consent or the terms of this Order;

NOW THEREFORE IT IS ORDERED as follows:

1. The Creditor Insurance Service issue, the MasterCard Service issue and the Visa Service issue, as defined in the pleadings, and the adjustments agreed to by the parties, as described in paragraphs 4.1 to 4.4 above, shall be referred back to the Minister of National Revenue for reconsideration and reassessment at the same time as the remaining Interchange Services issue (as defined in the pleadings) is disposed of by way of judgment of this Court;

2. No costs shall be awarded in connection with the matters set out above; and

3. The remaining Interchange Service issue (as defined in the pleadings) shall not be affected by the Consent herein or the terms of this Order.

Signed at Ottawa, Ontario, this 23rd day of February 2023.

"Guy Smith"

Smith J.

Appendix

Relevant provisions of the *Excise Tax Act, R.S.C. 1985, c E-15 ("ETA")*

Definitions in subsection 123(1) of the ETA

business includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment; (*entreprise*)

entreprise Sont compris parmi les entreprises les commerces, les industries, les professions et toutes affaires quelconques avec ou sans but lucratif, ainsi que les activités exercées de façon régulière ou continue qui comportent la fourniture de biens par bail, licence ou accord semblable. En sont exclus les charges et les emplois. (*business*)

commercial activity of a person means

(a) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,

(b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and

(c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the

activité commerciale Constituent des activités commerciales exercées par une personne:

a) l'exploitation d'une entreprise (à l'exception d'une entreprise exploitée sans attente raisonnable de profit par un particulier, une fiducie personnelle ou une société de personnes dont l'ensemble des associés sont des particuliers), sauf dans la mesure où l'entreprise comporte la réalisation par la personne de fournitures exonérées;

b) les projets à risque et les affaires de caractère commercial (à l'exception de quelque projet ou affaire qu'entreprend, sans attente raisonnable de profit, un particulier, une fiducie personnelle ou une société de personnes dont l'ensemble des associés sont des particuliers), sauf dans la mesure où le projet ou l'affaire comporte la réalisation par la personne de fournitures exonérées;

course of or in connection with the making of the supply; (*activité commerciale*)

c) la réalisation d'une fourniture, sauf une fourniture exonérée, d'un immeuble de la personne, y compris les actes qu'elle accomplit dans le cadre ou à l'occasion de la fourniture. (*commercial activity*)

exempt supply means a supply included in Schedule V; (fourniture exonérée)

fourniture exonérée Fourniture figurant à l'annexe V. (exempt supply)

financial service means

(a) the exchange, payment, issue, receipt or transfer of money, whether effected by the exchange of currency, by crediting or debiting accounts or otherwise,

(b) the operation or maintenance of a savings, chequing, deposit, loan, charge or other account,

(c) the lending or borrowing of a financial instrument,

(d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument,

(e) the provision, variation, release or receipt of a guarantee, an acceptance or an indemnity in respect of a financial instrument,

(f) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar payment or receipt of money in respect of a financial instrument,

service financier

a) L'échange, le paiement, l'émission, la réception ou le transfert d'argent, réalisé au moyen d'échange de monnaie, d'opération de crédit ou de débit d'un compte ou autrement;

b) la tenue d'un compte d'épargne, de chèques, de dépôt, de prêts, d'achats à crédit ou autre;

c) le prêt ou l'emprunt d'un effet financier;

d) l'émission, l'octroi, l'attribution, l'acceptation, l'endossement, le renouvellement, le traitement, la modification, le transfert de propriété ou le remboursement d'un effet financier;

e) l'offre, la modification, la remise ou la réception d'une garantie, d'une acceptation ou d'une indemnité visant un effet financier;

f) le paiement ou la réception d'argent à titre de dividendes, sauf les ristournes, d'intérêts, de principal ou d'avantages, ou tout paiement ou réception d'argent semblable, relativement à un effet financier;

f.1) le paiement ou la réception d'un montant en règlement total ou partiel d'une

(f.1) the payment or receipt of an amount in full or partial satisfaction of a claim arising under an insurance policy,

(g) the making of any advance, the granting of any credit or the lending of money,

(h) the underwriting of a financial instrument,

(i) any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has been issued,

(j) the service of investigating and recommending the compensation in satisfaction of a claim where

(i) the claim is made under a marine insurance policy, or

(ii) the claim is made under an insurance policy that is not in the nature of accident and sickness or life insurance and

(A) the service is supplied by an insurer or by a person who is licensed under the laws of a province to provide such a service, or

(B) the service is supplied to an insurer or a group of insurers by a person who would be required to be so licensed but for the fact that the person is relieved from that requirement under the laws of a province,

(j.1) the service of providing an insurer or a person who supplies a service referred to in paragraph (j) with an

réclamation découlant d'une police d'assurance;

g) l'octroi d'une avance ou de crédit ou le prêt d'argent;

h) la souscription d'un effet financier;

i) un service rendu en conformité avec les modalités d'une convention portant sur le paiement de montants visés par une pièce justificative de carte de crédit ou de paiement;

j) le service consistant à faire des enquêtes et des recommandations concernant l'indemnité accordée en règlement d'un sinistre prévu par:

(i) une police d'assurance maritime,

(ii) une police d'assurance autre qu'une police d'assurance-accidents, d'assurance-maladie ou d'assurance-vie, dans le cas où le service est fourni:

(A) soit par un assureur ou une personne autorisée par permis obtenu en application de la législation d'une province à rendre un tel service,

(B) soit à un assureur ou un groupe d'assureurs par une personne qui serait tenue d'être ainsi autorisée n'eût été le fait qu'elle en est dispensée par la législation d'une province;

j.1) le service consistant à remettre à un assureur ou au fournisseur du service visé à l'alinéa j) une évaluation des dommages causés à un bien ou, en cas de perte d'un bien, de sa valeur, à condition que le fournisseur de l'évaluation examine le bien

appraisal of the damage caused to property, or in the case of a loss of property, the value of the property, where the supplier of the appraisal inspects the property, or in the case of a loss of the property, the last-known place where the property was situated before the loss,

(k) any supply deemed by subsection 150(1) or section 158 to be a supply of a financial service,

(l) the agreeing to provide, or the arranging for, a service that is

(i) referred to in any of paragraphs (a) to (i), and

(ii) not referred to in any of paragraphs (n) to (t), or

(m) a prescribed service,

but does not include

(n) the payment or receipt of money as consideration for the supply of property other than a financial instrument or of a service other than a financial service,

(o) the payment or receipt of money in settlement of a claim (other than a claim under an insurance policy) under a warranty, guarantee or similar arrangement in respect of property other than a financial instrument or a service other than a financial service,

(p) the service of providing advice, other than a service included in this definition because of paragraph (j) or (j.1),

(q) the provision, to an investment plan (as defined in subsection 149(5)) or any corporation, partnership or trust whose

ou son dernier emplacement connu avant sa perte;

k) une fourniture réputée par le paragraphe 150(1) ou l'article 158 être une fourniture de service financier;

l) le fait de consentir à effectuer, ou de prendre les mesures en vue d'effectuer, un service qui, à la fois :

(i) est visé à l'un des alinéas a) à i),

(ii) n'est pas visé aux alinéas n) à t);

m) un service visé par règlement.

La présente définition exclut:

n) le paiement ou la réception d'argent en contrepartie de la fourniture d'un bien autre qu'un effet financier ou d'un service autre qu'un service financier;

o) le paiement ou la réception d'argent en règlement d'une réclamation (sauf une réclamation en vertu d'une police d'assurance) en vertu d'une garantie ou d'un accord semblable visant un bien autre qu'un effet financier ou un service autre qu'un service financier;

p) les services de conseil, sauf un service visé aux alinéas j) ou j.1);

q) l'un des services suivants rendus soit à un régime de placement, au sens du paragraphe 149(5), soit à une personne morale, à une société de personnes ou à une fiducie dont l'activité principale consiste à investir des

principal activity is the investing of funds, of

(i) a management or administrative service, or

(ii) any other service (other than a prescribed service),

if the supplier is a person who provides management or administrative services to the investment plan, corporation, partnership or trust,

(q.1) an asset management service,

(r) a professional service provided by an accountant, actuary, lawyer or notary in the course of a professional practice,

(r.1) the arranging for the transfer of ownership of shares of a cooperative housing corporation,

(r.2) a debt collection service, rendered under an agreement between a person agreeing to provide, or arranging for, the service and a particular person other than the debtor, in respect of all or part of a debt, including a service of attempting to collect, arranging for the collection of, negotiating the payment of, or realizing or attempting to realize on any security given for, the debt, but does not include a service that consists solely of accepting from a person (other than the particular person) a payment of all or part of an account unless

(i) under the terms of the agreement the person rendering the service may attempt to collect all or part of the account or may realize or attempt to realize on any security given for the account, or

fonds, si le fournisseur est une personne qui rend des services de gestion ou d'administration au régime, à la personne morale, à la société de personnes ou à la fiducie:

(i) un service de gestion ou d'administration,

(ii) tout autre service (sauf un service prévu par règlement);

q.1) un service de gestion des actifs;

r) les services professionnels rendus par un comptable, un actuaire, un avocat ou un notaire dans l'exercice de sa profession;

r.1) le fait de prendre des mesures en vue du transfert de la propriété des parts du capital social d'une coopérative d'habitation;

r.2) le service de recouvrement de créances rendu aux termes d'une convention conclue entre la personne qui consent à effectuer le service, ou qui prend des mesures afin qu'il soit effectué, et une personne donnée (sauf le débiteur) relativement à tout ou partie d'une créance, y compris le service qui consiste à tenter de recouvrer la créance, à prendre des mesures en vue de son recouvrement, à en négocier le paiement ou à réaliser ou à tenter de réaliser une garantie donnée à son égard; en est exclu le service qui consiste uniquement à accepter d'une personne (sauf la personne donnée) un paiement en règlement de tout ou partie d'un compte, sauf si la personne qui effectue le service, selon le cas:

(i) peut, aux termes de la convention, soit tenter de recouvrer tout ou partie du compte, soit réaliser ou tenter de réaliser une garantie donnée à son égard,

(ii) the principal business of the person rendering the service is the collection of debt,

(r.3) a service (other than a prescribed service) of managing credit that is in respect of credit cards, charge cards, credit accounts, charge accounts, loan accounts or accounts in respect of any advance and is provided to a person granting, or potentially granting, credit in respect of those cards or accounts, including a service provided to the person of

(i) checking, evaluating or authorizing credit,

(ii) making decisions on behalf of the person in relation to a grant, or an application for a grant, of credit,

(iii) creating or maintaining records for the person in relation to a grant, or an application for a grant, of credit or in relation to the cards or accounts, or

(iv) monitoring another person's payment record or dealing with payments made, or to be made, by the other person,

(r.4) a service (other than a prescribed service) that is preparatory to the provision or the potential provision of a service referred to in any of paragraphs (a) to (i) and (l), or that is provided in conjunction with a service referred to in any of those paragraphs, and that is

(i) a service of collecting, collating or providing information, or

(ii) a pour entreprise principale le recouvrement de créances;

r.3) le service, sauf un service visé par règlement, qui consiste à gérer le crédit relatif à des cartes de crédit ou de paiement, à des comptes de crédit, d'achats à crédit ou de prêts ou à des comptes portant sur une avance, rendu à une personne qui consent ou pourrait consentir un crédit relativement à ces cartes ou comptes, y compris le service rendu à cette personne qui consiste, selon le cas:

(i) à vérifier, à évaluer ou à autoriser le crédit,

(ii) à prendre, en son nom, des décisions relatives à l'octroi de crédit ou à une demande d'octroi de crédit,

(iii) à créer ou à tenir, pour elle, des dossiers relatifs à l'octroi de crédit ou à une demande d'octroi de crédit ou relatifs aux cartes ou aux comptes,

(iv) à contrôler le registre des paiements d'une autre personne ou à traiter les paiements faits ou à faire par celle-ci;

r.4) le service, sauf un service visé par règlement, qui est rendu en préparation de la prestation effective ou éventuelle d'un service visé à l'un des alinéas a) à i) et l), ou conjointement avec un tel service, et qui consiste en l'un des services suivants :

(i) un service de collecte, de regroupement ou de communication de renseignements,

(ii) un service d'étude de marché, de conception de produits, d'établissement ou de traitement de documents, d'assistance à la clientèle, de publicité

(ii) a market research, product design, document preparation, document processing, customer assistance, promotional or advertising service or a similar service,

(r.5) property (other than a financial instrument or prescribed property) that is delivered or made available to a person in conjunction with the rendering by the person of a service referred to in any of paragraphs (a) to (i) and (l),

(r.6) a service (other than a prescribed service) that is supplied by a payment card network operator in respect of a payment card network (as those terms are defined in section 3 of the Payment Card Networks Act) where the supply includes the provision of

(i) a service in respect of the authorization of a transaction in respect of money, an account, a credit card voucher, a charge card voucher or a financial instrument,

(ii) a clearing or settlement service in respect of money, an account, a credit card voucher, a charge card voucher or a financial instrument, or

(iii) a service rendered in conjunction with a service referred to in subparagraph (i) or (ii),

(s) any service the supply of which is deemed under this Part to be a taxable supply, or

(t) a prescribed service; (service financier)

ou de promotion ou un service semblable;

r.5) un bien, sauf un effet financier ou un bien visé par règlement, qui est livré à une personne, ou mis à sa disposition, conjointement avec la prestation par celle-ci d'un service visé à l'un des alinéas a) à i) et l);

r.6) le service, sauf un service visé par règlement, qui est fourni par un exploitant de réseau de cartes de paiement relativement à un réseau de cartes de paiement (ces termes s'entendant au sens de l'article 3 de la Loi sur les réseaux de cartes de paiement) lorsque la fourniture comprend la prestation, selon le cas :

(i) d'un service relativement à l'autorisation d'une opération relative à l'argent, un compte, une pièce justificative de carte de crédit ou de paiement ou un effet financier,

(ii) d'un service de compensation ou de règlement relativement à l'argent, un compte, une pièce justificative de carte de crédit ou de paiement ou un effet financier,

(iii) d'un service rendu conjointement avec un service visé aux sous-alinéas (i) ou (ii);

s) les services dont la fourniture est réputée taxable aux termes de la présente partie;

t) les services visés par règlement. (financial service)

recipient of a supply of property or a service means

(a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration,

(b) where paragraph (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration, and

(c) where no consideration is payable for the supply,

(i) in the case of a supply of property by way of sale, the person to whom the property is delivered or made available,

(ii) in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available, and

(iii) in the case of a supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be read as a reference to the recipient of the supply; (acquéreur)

acquéreur

a) Personne qui est tenue, aux termes d'une convention portant sur une fourniture, de payer la contrepartie de la fourniture;

b) personne qui est tenue, autrement qu'aux termes d'une convention portant sur une fourniture, de payer la contrepartie de la fourniture;

c) si nulle contrepartie n'est payable pour une fourniture:

(i) personne à qui un bien, fourni par vente, est livré ou à la disposition de qui le bien est mis,

(ii) personne à qui la possession ou l'utilisation d'un bien, fourni autrement que par vente, est transférée ou à la disposition de qui le bien est mis,

(iii) personne à qui un service est rendu.

Par ailleurs, la mention d'une personne au profit de laquelle une fourniture est effectuée vaut mention de l'acquéreur de la fourniture. (recipient)

taxable supply means a supply that is made in the course of a commercial activity; (*fourniture taxable*)

zero-rated supply means a supply included in Schedule VI. (fourniture détaxée)

fourniture taxable Fourniture effectuée dans le cadre d'une activité commerciale. (*taxable supply*)

fourniture détaxée Fourniture figurant à l'annexe VI. (zero-rated supply)

Subsection 141.01(1) of the ETA

141.01 (1) In this section, ***endeavour*** of a person means

(a) a business of the person;

(b) an adventure or concern in the nature of trade of the person; or

(c) the making of a supply by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.

141.01 (1) Au présent article, constituent les initiatives d'une personne : a) ses entreprises; b) ses projets à risque et ses affaires de caractère commercial; c) la réalisation de fournitures d'immeubles de la personne, y compris les actes qu'elle accomplit dans le cadre ou à l'occasion des fournitures.

Subsection 141.02 of the ETA

141.02

Application for pre-approved method

(18) A person that is, or is reasonably expected to be, a qualifying institution for a fiscal year may apply to the Minister to use particular methods to determine for the fiscal year the operative extent and the procurative extent of each business input of the person.

141.02

Demande d'approbation de méthode

(18) La personne qui est une institution admissible pour un exercice, ou dont il est raisonnable de s'attendre à ce qu'elle le soit, peut demander au ministre l'autorisation d'employer des méthodes particulières afin de déterminer pour l'exercice la mesure d'utilisation et la mesure d'acquisition de chacun de ses intrants d'entreprise.

Form and manner of application

(19) An application made by a person under subsection (18) shall

(a) be made in prescribed form containing prescribed information, including the particular method to be used in respect of each direct input, excluded input, exclusive input and non-attributable input of the person; and

(b) be filed by the person with the Minister in prescribed manner on or before

(i) the day that is 180 days before the first day of the fiscal year to which the application applies, or

(ii) any later day that the Minister may allow on application by the person.

Forme et modalités de la demande

(19) La demande d'une personne doit, à la fois:

a) être établie en la forme déterminée par le ministre et contenir les renseignements qu'il détermine, notamment un exposé de la méthode particulière qui sera employée à l'égard de chaque intrant direct, intrant exclu, intrant exclusif et intrant non attribuable de la personne;

b) être présentée au ministre, selon les modalités qu'il détermine, au plus tard :

(i) le cent quatre-vingtième jour précédant le début de l'exercice qu'elle vise,

(ii) à toute date postérieure que le ministre peut fixer sur demande de la personne.

Authorization

(20) On receipt of an application made under subsection (18), the Minister shall

(a) consider the application and authorize or deny the use of the particular methods; and

(b) notify the person in writing of the decision on or before

(i) the later of

(A) the day that is 180 days after that receipt, and

(B) the day that is 180 days before the first day of the fiscal year to

Autorisation

(20) Sur réception de la demande visée au paragraphe (18), le ministre :

a) examine la demande et autorise ou refuse l'emploi des méthodes particulières;

b) avise la personne de sa décision par écrit au plus tard:

(i) au dernier en date des jours suivants :

(A) le cent quatre-vingtième jour suivant la réception de la demande,

(B) le cent quatre-vingtième jour précédant le début de l'exercice visé par la demande,

which the application applies, or

(ii) any later day that the Minister may specify, if the day is set out in a written application filed by the person with the Minister.

(ii) à toute date postérieure que le ministre peut préciser, si elle figure dans une demande écrite que la personne lui présente.

Effect of authorization

(21) For the purposes of this Part, if the Minister under subsection (20) authorizes the use of particular methods for a fiscal year of the person,

(a) the particular methods shall be used consistently, and as indicated in the application, by the person throughout the fiscal year to determine the operative extent and the procurative extent of each business input of the person; and

(b) subsections (6) to (15) and (27) do not apply, for the fiscal year, in respect of any business input of the person.

Effet de l'autorisation

(21) Pour l'application de la présente partie, si le ministre autorise l'emploi de méthodes particulières relativement à l'exercice d'une personne, les règles suivantes s'appliquent :

a) les méthodes particulières doivent être suivies par la personne tout au long de l'exercice et selon ce qui est indiqué dans la demande afin de déterminer la mesure d'utilisation et la mesure d'acquisition de chacun des intrants d'entreprise de la personne;

b) les paragraphes (6) à (15) et (27) ne s'appliquent pas pour l'exercice relativement aux intrants d'entreprise de la personne.

Reasons for denial

(22) If the Minister denies under subsection (20) the use of the particular methods specified in an application made under subsection (18) and the person has, in respect of the application, complied with the requirements set out in subsection (19) and provided to the Minister all requested information within any reasonable time set out in the written notice requesting the information, the Minister shall notify the person in writing of the reasons for not authorizing the use of the particular methods on or

Raisons du refus

(22) Si le ministre refuse l'emploi de méthodes particulières exposées dans une demande faite selon le paragraphe (18) et que la personne, lors de sa demande, s'est conformée aux exigences énoncées au paragraphe (19) et a livré au ministre tous les renseignements demandés dans un délai raisonnable fixé dans l'avis écrit demandant les renseignements, le ministre avise la personne par écrit des raisons du refus au plus tard au dernier en date des jours suivants:

before the particular day that is the later of

(a) the day that is 60 days after the day the person last provided any requested information to the Minister; and

(b) the day on or before which the notification of the decision is required to be given to the person under subsection (20).

a) le soixantième jour suivant le jour où la personne a livré au ministre, la dernière fois, tout renseignement demandé;

b) le jour où la personne doit au plus tard être avisée de la décision du ministre selon le paragraphe (20).

Revocation

(23) An authorization granted under subsection (20) to a person in respect of a fiscal year of the person ceases to have effect on the first day of the fiscal year and, for the purposes of this Part, is deemed never to have been granted, if

(a) the Minister revokes the authorization and sends a notice of revocation to the person on or before the day that is 60 days before the day that is the first day of the fiscal year;

(b) the person files in prescribed manner with the Minister a notice of revocation in prescribed form containing prescribed information on or before the day that is 60 days before the first day of the fiscal year; or

(c) the person is not a qualifying institution for the fiscal year.

(…)

Révocation

(23) L'autorisation accordée à une personne en vertu du paragraphe (20) relativement à son exercice cesse d'avoir effet au début de l'exercice et est réputée, pour l'application de la présente partie, ne jamais avoir été accordée si, selon le cas :

a) le ministre la révoque et envoie un avis de révocation à la personne au plus tard le soixantième jour précédant le début de l'exercice;

b) la personne présente au ministre, selon les modalités déterminées par lui, un avis de révocation, établi en la forme et contenant les renseignements déterminés par lui, au plus tard le soixantième jour précédant le début de l'exercice;

c) la personne n'est pas une institution admissible pour l'exercice

(…)

Ministerial direction

(32) If a financial institution is required to use a method (in this subsection referred to as the "previous method") in

Ordre du ministre

(32) Si une institution financière est tenue d'employer une méthode conformément à l'un des paragraphes (10) à (15) relativement

accordance with any of subsections (10) to (15) in respect of a fiscal year of the financial institution, the Minister may at any time, by notice in writing, direct the financial institution to use, for the purposes of determining for the fiscal year, and any subsequent fiscal year, the operative extent and the procurative extent of each business input referred to in that subsection, another method that is fair and reasonable and, if the Minister so directs, the other method, and not the previous method, shall apply for those purposes.

à son exercice, le ministre peut lui ordonner à tout moment, par avis écrit, d'employer, lorsqu'il s'agit de déterminer pour l'exercice ou pour tout exercice postérieur la mesure d'utilisation et la mesure d'acquisition de chaque intrant d'entreprise mentionné au paragraphe en cause, une autre méthode qui est juste et raisonnable. Le cas échéant, l'autre méthode et non la méthode initiale s'applique à ces fins.

Method directed by the Minister — appeals

(33) If under subsection (32) the Minister directs a financial institution to use a method in respect of a business input for a fiscal year, the Minister assesses the net tax of the financial institution for a reporting period included in the fiscal year and the financial institution appeals the assessment under this Part in respect of an issue relating to the application of that subsection,

(a) the Minister shall establish on a balance of probabilities that the method is fair and reasonable; and

(b) if the final determination of the courts is that the method is not fair and reasonable, the Minister shall not direct the financial institution under subsection (32) to use another method for the fiscal year in respect of the business input.

Méthode employée sur ordre du ministre — appels

(33) Si le ministre ordonne à une institution financière, selon le paragraphe (32), d'employer une méthode relativement à un intrant d'entreprise pour un exercice, qu'il établit une cotisation à l'égard de la taxe nette de l'institution financière pour une période de déclaration comprise dans l'exercice et que l'institution financière fait appel de la cotisation en vertu de la présente partie relativement à une question liée à l'application de ce paragraphe, les règles suivantes s'appliquent :

a) le ministre est tenu d'établir selon la prépondérance des probabilités que la méthode est juste et raisonnable;

b) si les tribunaux décident en dernier ressort que la méthode n'est pas juste et raisonnable, le ministre ne peut ordonner à l'institution financière, selon le paragraphe (32), d'employer une autre méthode pour l'exercice relativement à l'intrant d'entreprise.

Subsection 165(1) of the ETA

Imposition of goods and services tax

165 (1) Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply.

(…)

(3) The tax rate in respect of a taxable supply that is a zero-rated supply is 0%.

Taux de la taxe sur les produits et services

165 (1) Sous réserve des autres dispositions de la présente partie, l'acquéreur d'une fourniture taxable effectuée au Canada est tenu de payer à Sa Majesté du chef du Canada une taxe calculée au taux de 5 % sur la valeur de la contrepartie de la fourniture.

(…)

(3) Le taux de la taxe relative à une fourniture détaxé est nul.

Subsection 169(1) of the ETA

Input Tax Credits

General rule for credits

169 (1) Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:

A × B

where

A

is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the

Crédit de taxe sur les intrants

Règle générale

169 (1) Sous réserve des autres dispositions de la présente partie, un crédit de taxe sur les intrants d'une personne, pour sa période de déclaration au cours de laquelle elle est un inscrit, relativement à un bien ou à un service qu'elle acquiert, importe ou transfère dans une province participante, correspond au résultat du calcul suivant si, au cours de cette période, la taxe relative à la fourniture, à l'importation ou au transfert devient payable par la personne ou est payée par elle sans qu'elle soit devenue payable:

A × B

où:

A

représente la taxe relative à la fourniture, à l'importation ou au transfert, selon le cas, qui, au cours de la période de déclaration,

person during the reporting period or that is paid by the person during the period without having become payable; and

B is

(a) where the tax is deemed under subsection 202(4) to have been paid in respect of the property on the last day of a taxation year of the person, the extent (expressed as a percentage of the total use of the property in the course of commercial activities and businesses of the person during that taxation year) to which the person used the property in the course of commercial activities of the person during that taxation year,

(b) where the property or service is acquired, imported or brought into the province, as the case may be, by the person for use in improving capital property of the person, the extent (expressed as a percentage) to which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and

(c) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

devient payable par la personne ou est payée par elle sans qu'elle soit devenue payable;

B:

a) dans le cas où la taxe est réputée, par le paragraphe 202(4), avoir été payée relativement au bien le dernier jour d'une année d'imposition de la personne, le pourcentage que représente l'utilisation que la personne faisait du bien dans le cadre de ses activités commerciales au cours de cette année par rapport à l'utilisation totale qu'elle en faisait alors dans le cadre de ses activités commerciales et de ses entreprises;

b) dans le cas où le bien ou le service est acquis, importé ou transféré dans la province, selon le cas, par la personne pour utilisation dans le cadre d'améliorations apportées à une de ses immobilisations, le pourcentage qui représente la mesure dans laquelle la personne utilisait l'immobilisation dans le cadre de ses activités commerciales immédiatement après sa dernière acquisition ou importation de tout ou partie de l'immobilisation;

c) dans les autres cas, le pourcentage qui représente la mesure dans laquelle la personne a acquis ou importé le bien ou le service, ou l'a transféré dans la province, selon le cas, pour consommation, utilisation ou fourniture dans le cadre de ses activités commerciales.

Subsection 301(1) of the ETA

Meaning of *specified person*

Personne déterminée

301 (1) Where an assessment is issued to a person in respect of net tax for a reporting period of the person, an amount (other than net tax) that became payable or remittable by the person during a reporting period of the person or a rebate of an amount paid or remitted by the person during a reporting period of the person, for the purposes of this section, the person is a ***specified person*** in respect of the assessment or a notice of objection to the assessment if

(…)

Issue to be decided

301(1.2) Where a person objects to an assessment in respect of which the person is a specified person, the notice of objection shall

(a) reasonably describe each issue to be decided;

(b) specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and

(c) provide the facts and reasons relied on by the person in respect of each issue.

301 (1) Pour l'application du présent article, la personne à l'égard de laquelle est établie une cotisation au titre de la taxe nette pour sa période de déclaration, d'un montant (autre que la taxe nette) qui est devenu à payer ou à verser par elle au cours d'une telle période ou du remboursement d'un montant qu'elle a payé ou versé au cours d'une telle période est une personne déterminée relativement à la cotisation ou à un avis d'opposition à celle-ci si, selon le cas :

(…)

Question à trancher

301(1.2) L'avis d'opposition que produit une personne qui est une personne déterminée relativement à une cotisation doit contenir les éléments suivants pour chaque question à trancher :

a) une description suffisante;

b) le redressement demandé, sous la forme du montant qui représente le changement apporté à un montant à prendre en compte aux fins de la cotisation;

c) les motifs et les faits sur lesquels se fonde la personne.

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