

University of Calgary v. The Queen
University of Alberta v. The Queen
The consequences of apportionment of inputs
GST/HST & QST



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GST/HST & QST and dual-use expenses

Is your apportionment method compliant with the GST legislation?

Recently, the Tax Court of Canada rendered two GST decisions almost identical regarding apportionment methods of input tax credits (ITC): *University of Calgary v. The Queen*, 2015 TCC 321 and *University of Alberta v. The Queen*, 2015 TCC 336.

The Court had to establish whether the method used by each university to measure the use of their real properties between taxable supplies and exempt supplies is made in accordance to subsection 141.01(5) of the *Excise Tax Act* (ETA). The Court also reviewed the apportionment method put forward by the Canada Revenue Agency (CRA).

The apportionment of input tax credits (ITC)

Generally speaking, universities' real properties are used for both exempt activities such as courses leading to a degree, and for commercial activities such as rental of real properties. The ETA allows public service bodies to claim ITCs in proportion of the use of their real properties in the course of commercial activities. What was in dispute in both decisions was first the classification of exterior common areas and second whether it is compulsory to use an indexing factor based on the replacement cost of each building and structure.

The universities' method is fair and reasonable

The method used by the universities was essentially based on the detailed classification of interior and exterior areas according to their usage. They have established a ratio based on the use of these areas in the course of commercial activities and in the course of exempt activities. The universities' method did not take into account any kind of building replacement cost indexing factor. The Court ruled that the universities' method was fair and reasonable and as such fell within the ETA.

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The CRA's method does not comply with the law

The Court has also reviewed the method put forward by the CRA. According to the CRA's method the exterior common areas should have been classified as exempt. Also an indexing factor built from the replacement cost of each building and structure established by a valuator is employed. This indexing factor considerably changed the universities' ratios.

The Court ruled that to consider all exterior common areas as exempt was not compliant with the GST legislation. There are no reasons to have different treatments between exterior common areas and interior common areas.

The Court also ruled that the use of a replacement cost indexing factor had some shortcomings. The replacement cost has been performed several years after the expenses were incurred. There are no links between the replacement cost and the basic tax content. The management of the change-in-use rules is problematic, and finally, to ask of universities to hire valutors is an unreasonable burden.

Updating your method?

Subsequent to these decisions, public service bodies that are using an apportionment method that is not compliant with the GST-HST and QST legislation should review their method.

Ad Valorem's tax practitioners have more than twenty years of experience with apportionment rules. Do not hesitate to contact us to review your method or simply to update your current method.

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