The new pension plan deemed supply GST/HST rules are now fully in effect, and their impact is already hitting plan sponsors. Confusion, yes, but there is also a lack of awareness on just how much they might impact pension plans and other employee benefits arrangements. And, in many cases, this is leading to non-compliance.

If you are an employer with a trusteed pension plan and your corporate year-end was between Sept. 23 and Dec. 31, 2010, your deemed supply assessment was due with your GST/HST filing and remittance for the following month (i.e., January for a December 31 year-end). Additionally, other reporting deadlines are fast approaching, and many elections are well past due. The federal government also seems to be considering extension of the pension plan deemed supply rules to other employee benefits plan types, as indicated in Part III – Issues for Consultation of the publication Backgrounder: Modifications to the Proposed Financial Institution (FI) Rules for the Harmonized Sales Tax (HST), published by the Department of Finance on Jan. 28, 2011.

Under the new FI rules, pension plans and other employee benefits arrangements are “investment plans” that invest in other pooled, segregated and mutual funds, which are also “investment plans.” Investment plans that have investors in two or more provinces where at least one province is an HST province remit a “blended” rate of GST/HST that reflects the province of residency of the ultimate investors in the investment plan.

Cost issues can arise for pension plans and other employee benefits arrangements that are not selected listing financial institutions if such blended rate of GST/HST is collected and does not match the GST or HST rate applicable to the particular plan (e.g., where the blended GST/HST rate of the investment plan is 10% for a plan with only Alberta members who should only pay 5% GST). Plan administrators may have a fiduciary obligation to require provider investment plans to make an adjustment to GST/HST collected in respect of an administrator’s plan to ensure that the rate of GST/HST collected is the appropriate rate for that plan. This applies to GST/HST that is collected within the investment plan fund prior to calculation of unit values of such funds.

The new rules do not represent a new tax policy. Previously, the policy intent was set out in GST/HST Technical Information Bulletin B-032R, published on June 8, 1993, by the Canada Revenue Agency. The law behind this policy became the subject of a case in the Tax Court of Canada. In General Motors of Canada Ltd. v. The Queen, GM’s right to claim input tax credits was determined and upheld in a subsequent 2009 appeal to the Federal Court of Appeal.

In the GM case, the amount of GST in question, on investment management fees for its plan, amounted to almost $900,000 in respect of a 26-month period. Your pension plans may not be as large, but non-compliance over time will have a compounding effect in respect of taxes due and penalties and interest, which can become “real money.”

Qualified advice requires contextual, in-depth knowledge of how such plans operate in order to arrive at correct interpretations and to know what data to request for calculation and reporting requirements. It also involves keeping you abreast of key developments in this area and support in reviewing contracts for liability exposures to non-compliance by the trustee. BC