PST Law Practice FAQ

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Our law firm is already registered for GST purposes. Do we need to register for PST purposes as well? If so, how and by when?

Yes. Your law firm will need to register for PST purposes before April 1, 2013. You can register on-line through eTaxBC, which will take about twenty minutes. You can also register at any Service BC Centre using their computers or at the Ministry of Finance office at 1802 Douglas Street in Victoria. Alternatively, you can print out and complete the registration form available online and mail or fax it to the Ministry of Finance.

Our law firm is structured as a limited liability partnership, and my law corporation is a partner. Does my law corporation need to register for PST purposes? When my law corporation invoices the law firm for services provided to clients on the law firm’s behalf, will my law corporation need to charge PST to the law firm?

No to both questions. If a person providing legal services does so as a partner in a partnership, then for PST purposes the partnership, and not the partner, is considered to be providing the legal services to the clients.

In other words, the law firm, and not your law corporation, will be considered to be providing the legal services to the clients. If your law corporation does not provide legal services to anyone other than the law firm, then your law corporation is not required to register for PST and will not need to charge PST to the law firm.

As an “associate counsel”, my law corporation is not a partner of our law firm nor am I an employee of the law firm. Does my law corporation need to register for PST purposes? Will my law corporation need to charge PST to the law firm?

No to both questions, but for a slightly different reason than explained above. Unlike the partner/partnership rule set out above, your law corporation will be considered to be providing legal services to the law firm (which will, in turn, provide those services to the client), however, the legal services will be exempt if the following conditions are met:

- The legal services are provided to a law firm by a corporation that is providing services solely to the law firm under a contract for services; and

- The purchase price to the law firm for the legal services is recovered directly by the law firm in its sale price of the legal services to the client in respect of whom the legal services are provided.
This exemption, which is set out in Section 80 of the Provincial Sales Tax Exemption and Refund Regulation also applies to an individual lawyer who has not incorporated and who is not considered an employee of the law firm for income tax purposes. If the purchase price to the law firm for the individual lawyer’s legal services is recovered directly by the law firm in the sale price of the legal services to the client, then the provision of the legal services to the law firm will be exempt.

Accordingly, if the only legal services provided by your law corporation or by an individual lawyer will be exempt from tax, the law corporation and the individual lawyer will not need to register for PST.

I am in-house counsel for a group of corporations. I provide legal advice in the course of my employment to the corporation that serves as my employer but also to a series of related corporations. Will the related corporations need to pay PST to my employer for my legal services?

No. A corporation will be exempt from PST on legal services provided to that corporation by an employee of a “related corporation”, as defined. Corporations will generally be considered to be “related corporations” if one of the corporations is the wholly owned subsidiary of the other, or if both corporations are wholly owned subsidiaries of another corporation.

Will our law firm need to file PST returns in a similar way as we file our GST returns?

Yes. If your law firm has annual revenues of greater than $1.5 million, you will be required to file your PST returns electronically, just as you are required to file GST returns electronically.

What law firm account will we need to use to remit GST and PST collected from clients?

GST and PST will need to be accounted for separately. Both GST and PST collected from clients should not be remitted from your trust account. Rather, GST and PST should be transferred to your general account (along with fees associated with the client matter if they have been properly invoiced). GST and PST should then be paid from your general account. GST will continue to be paid to the federal government whereas payments of PST will be paid to the Province of British Columbia.

When will our law firm need to start collecting PST?

You will generally need to charge and collect PST on all invoices dated on or after April 1, 2013 regardless of when the legal services are rendered. A retainer cannot be applied to fees for legal services rendered until an invoice is delivered to the client.

No PST should be collected on a retainer because it is viewed to be a deposit until the amount is applied.

Are there transition rules for the HST system?

Yes, but they are relatively straightforward for legal services: you will need to remit HST that has been charged to clients on invoices dated before April 1, 2013 with your GST return.
While the transition rules for HST and PST match, the application of the taxes are not the same.

Invoices dated before April 1, 2013 will generally be subject to GST/HST whereas invoices dated on or after April 1, 2013 will generally be subject to GST and PST.

As discussed below, the rules for determining when HST applies to legal services are not the same as those for PST. The rules for determining when GST applies to legal services have not changed.

**Will we be paid a commission for collecting and remitting PST?**

Yes. Commissions will be paid for collecting PST; the maximum commission is $198 per month.

**Our firm has been charging GST/HST on some disbursements when invoicing clients. Will the same rules apply under the PST system?**

No. PST will not apply to reasonable charges for faxing, printing or copying documents related to the legal services being provided. Charges for legal research and secretarial and other support services will be subject to PST.

The application of GST/HST to a disbursement depends on whether the disbursement involves an expense you incur as agent for your client. If you incur the expense as agent, then GST/HST does not apply. Consult Canada Revenue Agency GST/HST Policy Statement P-209R, Lawyers’ Disbursements, for further information.

**Our firm provides legal services to governments, including some provincial and federal crown agencies. Are these services exempt under the PST system?**

Not necessarily. You will need to charge both GST and PST to the B.C. government and B.C. crown agencies. You charge only GST to the federal government or federal crown agencies.

**What GST/HST rates should be used when our firm provides legal services to clients in other provinces?**

As of April 1, 2013, the “harmonized” provinces and their HST rates will be: Ontario (13%); Nova Scotia (15%); New Brunswick (13%); Newfoundland and Labrador (13%) and Prince Edward Island (14%).

The “non-harmonized” provinces will be B.C., Alberta, Saskatchewan, Manitoba and Quebec (despite announcements describing Quebec as harmonizing, the QST remains a separate tax), which are subject to the 5% GST. In addition to B.C., Saskatchewan, Manitoba and Quebec will have separate provincial sales tax systems, so you will need to consider how those apply in connection with your legal services.

The GST/HST rate you must charge to clients is determined under “place of supply” rules in sections 142-144.1 of the Excise Tax Act; in Sch. IX to the Excise Tax Act; and in the associated regulations. There are different rules for goods, real property, intangible personal property and services, and there are specific rules for various types of services. Consult your tax advisor or accountant about specific “place of supply” questions, but generally:
• Legal services provided in connection with criminal, civil, or administrative litigation that is under the jurisdiction of a provincial court or tribunal established under the laws of a province are deemed to be “supplied” in that province.

• However, the “place of supply” for legal services rendered before the commencement of litigation, and for all other legal services (including actions in federal courts), is generally based on the client’s address:
  o Your legal services are deemed to be “supplied” in the province where, in the ordinary course of your business, you obtain an address that is the client’s home or a business address.
  o If the client has multiple addresses, your legal services are deemed to be “supplied” in the province most closely connected with the supply, which is likely the address from which you are hired (e.g. the address on the letter of engagement for that particular matter).
  o If you do not obtain a home or business address, your services are deemed “supplied” in the province of the client’s address most closely connected with the supply.

• Despite the general client address rules, there are specific rules based on the location of relevant property:
  o If you provide legal services in relation to tangible personal property (for example, a sale of assets), your services are “supplied” in the province where the property is situated at the time you provide your services.
  o If you provide legal services in relation to real property (for example, a sale of land), your services are “supplied” in the province where the real property is located.

As the GST/HST and PST rules are not “harmonized”, both HST and PST can apply to the same legal services.

**If I am charging an out-of-province client for various matters and apply different GST/HST rates to each matter, do I need to show the different rates on the invoice?**

No. You are not required to show separate GST/HST amounts or rates on the invoice, however you must show the total amount of GST/HST charged.

If PST applies to a matter on the invoice, then you will need to show the amount of PST being charged as a separate item.

**Do I charge PST to clients who are not resident in B.C.? What if they are not resident in Canada?**

It depends. If you provide legal services in B.C. to a client who neither resides nor carries on business in B.C., then you may still need to charge the client PST if the services *relate* to B.C.
There are six tests for determining whether the services relate to B.C., for example, legal services that relate to real property situated in B.C.

Legal services provided outside B.C. may also be subject to PST for similar reasons. Law firms that are collecting tax on services provided outside BC, and their clients, may be entitled to pro-rate the amount of PST payable depending on the extent to which the services relate to B.C. as well as other jurisdictions.

You should refer to sections 126 and 127 of the *Provincial Sales Tax Act*, or seek tax advice, to determine whether you must charge PST.

**What can our firm do about HST if we know it will be some time, if ever, before an invoice will be paid?**

If you can establish that the debt is not collectible, you can write off the amount payable by the client for accounting and income tax purposes and claim a deduction for GST/HST on your return.

A similar deduction will be available for PST if a law firm remits PST on an invoice not paid, or only partially paid, by a client.

**Our firm represents plaintiffs in personal injury cases. When preparing a Bill of Costs after successful litigation, we want to ensure that our client receives amounts to recover the taxes on our legal fees and disbursements. How do we calculate the GST/HST and PST payable if some of the fees or disbursements were invoiced or incurred before April 1, 2013?**

A cost award is not a fee subject to sales tax (GST/PST or PST) since the award itself is not "consideration" for a purchase of goods or services. Rather, the award includes amounts intended to compensate a successful party for taxes payable on legal fees and disbursements. In personal injury cases, a plaintiff generally cannot claim input tax credits to recover GST/HST charged by the law firm. Consequently, this tax is a cost that should be included in amounts claimed in a Bill of Costs. The same applies to PST since there are no input tax credits available.

Compensation for taxes should be considered, on a line-by-line basis, in the Bill of Costs. The tax treatment of each line item should reflect the tax treatment the item would have in the law firm's bill to the plaintiff.

If your legal services straddle the implementation of PST on April 1, 2013, then the billing date governs the application of tax. If you bill the client before April 1, 2013, then HST applies to that bill. If you bill the client in whole or in part after April 1, 2013, GST/PST applies to the bill.

Taxes should not be added to costs for disbursements your law firm incurred as agent of the client (although any taxes charged to your firm are included in the amount reimbursed by the client).

**What materials should I look at in order to find out more about the implementation of the PST?**
The Legislature recently passed amendments to the *Provincial Sales Tax Act*, a consolidated draft version of which is available on the Ministry of Finance’s Consumer Taxation Branch website.

There is also a series of bulletins provided by the Ministry of Finance about the transition to the PST; registering for PST purposes; charging, collecting and remitting PST; and specific information about the application of PST to legal services on the website.