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MAY 04 2012

Excise and GST/HST Rulings
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Millar Kreklewetz LLP
24 Duncan Street
Third Floor
Toronto ON M5J 2B8

APR 27 2012

Case Number: 124343

Attention: W. Jack Millar

Dear Mr. Millar:

Subject: GST/HST RULING
GST/HST Treatment of Ontario Tire Stewardship "Incentive Payments"

Thank you for your letters dated May 18 and September 24, 2010, February 25, 2011, and January 9, 2012, and for meeting with us on May 25 and November 30, 2011, concerning the application of the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) to incentive payments made under designated waste diversion programs by Industry Funding Organizations. As the GST/HST treatment of a particular incentive payment will be dependant on the facts surrounding that particular payment, a general statement concerning the status of all incentive payments cannot be provided. Therefore, the tax treatment will have to be established for each type of payment (e.g., to collector, to processor etc.) made under each Industry Funding Organization's Program Plan.

In this letter we have provided rulings on payments made by Ontario Tire Stewardship (OTS) to its processors, haulers and collectors. The rulings set out below are based on provisions of the *Waste Diversion Act* and information taken from OTS's website. As discussed, we will provide rulings for the incentive payments made by Ontario Electronic Stewardship, under the Waste Electrical and Electronic Equipment Program, and by Stewardship Ontario, under the Municipal Hazardous or Special Waste Program, once we have received and analysed all of the relevant documentation.

HST applies at the rate of 15% in Nova Scotia, 13% in Ontario, New Brunswick, and Newfoundland and Labrador, and 12% in British Columbia. GST applies at the rate of 5% in the remaining provinces and territories.

STATEMENT OF FACTS

We understand

1. Ontario's *Waste Diversion Act, 2002. S.O. 2002.c. 6* (WDA) provides that its purpose is to promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs.
2. Pursuant to section 3 of the WDA, Waste Diversion Ontario (WDO) was established as a corporation without share capital.
3. Section 5 of the WDA sets out the WDO's responsibilities which include
 - (a) *develop, implement and operate waste diversion programs for designated wastes in accordance with this Act and monitor the effectiveness and efficiency of those programs...*
 - (d) *determine the amount of money required by Waste Diversion Ontario and the industry funding organizations to carry out their responsibilities under this Act...*
4. Subsection 23(1) of the WDA states "*The Minister may require Waste Diversion Ontario to develop a waste diversion program for a designated waste.*" Subsection 23(2) of the WDA states "*Waste Diversion Ontario shall develop the program in co-operation with an industry funding organization.*" The industry funding organization can be an existing organization or an organization to be incorporated under Part III of the *Corporations Act*.
5. Subsection 25(3) of the WDA states "*A waste diversion program developed under this Act must include an agreement between Waste Diversion Ontario and the industry funding organization that the program is developed in co-operation with, governing the role of the industry funding organization in the implementation and operation of the program and governing the exercise of the industry funding organization's powers under this Act.*"
6. Subsection 26(1) of the WDA states "*After a waste diversion program has been developed under section 23, Waste Diversion Ontario shall submit the program to the Minister for his or her approval.*" Subsection 26(2) of the WDA sets out the information to be submitted to the Minister, including the name of the industry funding organization that co-operated in the development of the program and the details about the program including its description and the estimated costs.
7. Subsection 29(1) of the WDA states "*If an industry funding organization is designated by the regulations as the industry funding organization for a waste diversion program, Waste Diversion Ontario and the industry funding organization shall implement and operate the program in accordance with the agreement referred to in section 25(3).*"

8. Subsection 32(1) of the WDA states “*Each industry funding organization...shall establish and maintain a fund in respect of the program.*” Subsection 32(2) of the WDA provides that the funds will be held in trust to be used to pay the costs of developing, implementing and operating the program, and to pay a reasonable share of the costs incurred by WDO and the Ministry of the Environment related to carrying out their responsibilities under the WDA and administering the WDA, respectively.
9. Subsection 42(1) of the WDA states “*The Minister may make regulations...*
 - (b) *prescribing material as designated wastes for the purposes of this Act...*
 - (e) *continuing an industry funding organization named under paragraph 1 of subsection 26(2) and designating the organization as the industry funding organization for a waste diversion program that has been approved by the Minister under section 26...*”
10. *Ontario Regulation 84/03* (Regulation 84/03) written pursuant to the WDA provides that Ontario Tire Stewardship (OTS) is continued and is designated as the industry funding organization for the waste diversion program for used tires approved by the Minister under section 26 of the WDA.
11. The OTS’s objects as set out in its Articles of Incorporation include:
 - a. *to act as an industry funding organization for the administration of provincial and local programs for the disposal of used tires ...*
 - b. *to operate a waste diversion program for used tires in the Province of Ontario, as required by the (WDA);*
 - c. *to develop a program for the disposal and recycling of used tires on an environmentally responsible basis...*
12. On August 14, 2008 the Minister of the Environment sent a Program Request Letter to WDO to develop a waste diversion program for used tires. WDO entered a Memorandum of Agreement with OTS to act as its agent in developing the program plan.
13. The Ontario Tire Stewardship Used Tires Program Plan (Program Plan) dated February 27, 2009 sets out the plan for dealing with used tires from collection to processing.

14. The Main Objectives of the Used Tires Program, as set out in OTS's Registration Information Session (2009, available on-line: <https://www.ontariots.ca/files/Registration%20Information%20Session.pdf>) are as follows:

- 1) *To promote reduction, reuse and recycling of Used Tires.*
- 2) *To financially support and expand the used tire collection system...*
- 5) *Ensure Used Tires are collected, transported and processed in a safe and environmentally sound manner...*

Tire Processors

15. Section 4.8 of the Program Plan deals with the incentives to be paid to in-province registered processors and provides the following:

- OTS will introduce a hierarchical system of processing incentives to encourage processing of scrap tires into higher value-added products based on the following product categories: Shred, Fabricated Products, Crumb and Manufactured Products.
- The processing incentives will be paid to processors only upon proof of an arms-length sale of processed rubber; higher value added products will receive greater incentive payments with crumb rubber receiving the highest incentive amount.
- Producers will also have to demonstrate that their customers are utilizing the Tire Derived Products (TDPs) in a manner compliant with the diversion objectives of the program.
- In cases where primary shred is sold by a processor to be used as feedstock by another processor, the feedstock processor will receive the incentive for the TDP feedstock and the receiving processor will receive the incentive appropriate for their product less the incentive paid to the feedstock processor.
- OTS set the incentive amounts based on the following:
 - i. Tipping fees have dropped due to the increase in the demand for tires by the substitute fuel market. As such, the scrap tire processing sector is becoming increasingly un-competitive. Therefore, incentives will incorporate tip fees that processors have typically charged haulers for dropping tires off at their facilities.
 - ii. Ontario Processors have had insufficient revenue to recapitalize their operations making them less competitive. The incentive will incorporate an amount to allow Processors to invest in newer, more efficient processing technologies.
- OTS compensates registered Out of Province Processors based on previously agreed upon rates for incoming weights. All Out of Province Processors must still provide

proof that material from Ontario sources received through the program go to approved end uses.

16. OTS's 2009 Operational Registrant's Guide: July 6, 2009 was published to help operational registrants (collectors, haulers, processors). Appendix 7 of this document sets out "Agreement of Registration with Ontario Tire Stewardship as a Processor" (the "Processor Registration Agreement") and includes the following:

i. The Recitals provide that

- A. OTS has been designated as the industry funding organization under the Act to be responsible for the collection and environmentally responsible recycling of Used Tires;*
- B. The Processor wishes to operate as a processor and/or recycler of Used Tires and receive Processing Incentives in accordance with the Plan;*
- C. The Processor has been approved by OTS as an approved processor in accordance with the Plan;*
- D. The Purpose of the Agreement is to set out the terms and conditions under which the Processor will operate a collection site under the Plan.*

ii. Article 33.1 states "*The Processor hereby agrees to perform the following duties and obligations*

(a) To recycle Used Tires received by it, specifically by:

- (i) accepting delivery of, at no cost to registered Haulers, Used Tires delivered by registered Haulers;*
- (ii) processing Used Tires received into TDP; and*
- (iii) selling processed TDP on to end users;*

all in accordance with the Plan.

(b) promptly complete and submit to OTS each month, or as otherwise directed by OTS from time to time, all documentation required under the Plan..."

(c) comply, abide by, and carry into effect, as may be required, the objectives of, and the obligations imposed upon the Processor contained in and set out in this Agreement and the Plan...

(d) provide advance notice of, or advise OTS immediately upon, any material change in the operating status of the Processor, including notice of all

operating shutdowns or slowdowns that are expected to exceed five working days...

(g) sell, transfer or dispose of all culled Used Tires or TDP in accordance with the letter and spirit of all protocols, treaties or agreements affecting international or interprovincial trade...

iii. Article 34.1 states *“Processor shall not sell, transfer or dispose of culled Used Tires or TDP for any purpose which is not an Approved Purpose found on the list of Approved Purposes for Recycled Tires maintained by OTS and published on OTS’ web site...Processor agrees that it shall have no entitlement to Processing Incentives in respect of any Non-approved Sale...”*

iv. Article 36.1 states *“OTS hereby agrees to perform the following duties and obligations:*

(a) pay all valid Processing Incentives to the Processor within 35 days of receipt of proof of sale in accordance with the Plan; and

(b) provide OTS promotional and educational materials.”

v. Article 37.2 states *“No Processing Incentives will be paid to Processor with respect to Used Tires, tire parts or processed rubber held in Processor’s inventory prior to September 1st, 2009.”*

vi. Article 37.4 states *“OTS may withhold any and all monies payable to the Processor as Processing Incentives or other monies otherwise payable for any reason to the Processor in the event of a breach of this Agreement or a failure on the part of the Processor to provide all necessary reports or documentation as may be required by OTS...”*

vii. Article 37.5 states *“OTS reserves the right at any time to reduce, refuse to pay or recover all or part of Processing Incentives in respect of TDPs sold or delivered to a person situated outside of the Province of Ontario... which may, in the opinion of OTS, result in a violation of the laws of Canada or the export jurisdiction or which may result in the possibility of administrative or legal action against OTS, Waste Diversion Ontario or the Government of Ontario or Canada or the possibility of trade sanctions against TDP originating from Ontario. Trade problems could include sale at local prices which are lower than Ontario prices (“dumping”) or sale at any price of subsidized goods which could trigger under local laws the right to take administrative or legal action, including the imposition of countervailing duties or interprovincial trade sanctions.”*

- viii. Article 40.3 states “Processor shall maintain comprehensive “occurrence” general liability insurance...and deliver to OTS on request a certificate thereof with the OTS named as an additional insured thereon.”
- ix. Article 41.1 states “Processor acknowledges and agrees that at no time shall OTS take possession of any Used Tires or TDP and that OTS shall not, in any event, be liable under any theory of liability to Processor, the previous owner(s)...for any damages, losses, expenses, liabilities and/or other amounts...arising out of or related to any loss, improper use, improper culling, improper transfer or sale, improper disposal or environmental degradation resulting, proceeding or connected in any way to Used Tires or TDP.”
- x. Article 44.3 states “The parties agree that in the event of a dispute between them with respect to the terms or performance of this Agreement then such dispute shall be first subject to Mediation under Appendix 12 in the Plan, “Mediation Guidelines”, and if such dispute is not able to be resolved through mediation, then it shall be subject to arbitration under Appendix 13 in the Plan, “Arbitration Guidelines”.”
- xi. Article 44.5 states “OTS retains the right to revise or amend this Agreement. OTS will give notice to the Collector of such change (the “Change Notice”). Unless the Processor gives notice to OTS (the “Rejection Notice”) within 45 days of receipt of the Change Notice that the Processor does not accept the revisions or amendments in the Change Notice, this Agreement, as amended, remains in effect and is binding. If the Processor gives a Rejection Notice to OTS, this Agreement shall be terminated 30 days after the delivery by the Processor...”

Tire Haulers

17. Section 3 of OTS’s 2009 Operational Registrant’s Guide: July 6, 2009 “Roles and Requirements of Haulers” provides that Haulers are required to

- *Deliver scrap tires to OTS registered Processors to be eligible to receive a Transportation Incentive*
- *Pick up used tires from registered Collectors at no charge. Instead of receiving payment by Collectors for picking up used tires, Haulers will receive a Transportation Incentive (defined as “Weight and kilometre driven based payments offered by OTS to registered Haulers to pick up and transport Used Tires under the Program.”) from OTS for all tires transported, including tires directed to reuse. Haulers will be paid by OTS for the transportation services upon delivery of the portion of the scrap tires directed to recycling to a registered Processor or other eligible end users.*
- *Haulers may charge Collectors a surcharge for non-program tires.*

- Complete an OTS Used Tire manifest form and submit to OTS.
- Provide detailed information to OTS on final destinations and end-uses of tires directed to reuse including tires that are exported for reuse.
- In return for meeting these requirements OTS will ensure the Hauler receives:

The applicable Transportation Incentive,

Your name posted on the OTS website as a registered hauler.

18. Appendix 5 to the 2009 Operational Registrant's Guide: "Agreement of Registration with Ontario Tire Stewardship as a Hauler" (the "Hauler Registration Agreement")

i. The Recitals provide that

- A. *OTS has been designated as the industry funding organization under the Act to be responsible for the collection and environmentally responsible recycling of Used Tires;*
- B. *The Hauler wishes to operate as a hauler of Used Tires and receive Transportation Incentives in accordance with the plan;*
- C. *The Hauler has been approved by OTS as an approved hauler in accordance with the Plan; and*
- D. *The purpose of this Agreement is to set out the terms and conditions under which the Hauler will operate as an approved hauler under the Plan.*

ii. Article 18 "Responsibilities of the Hauler" provides that *"the Hauler shall*

- (a) abide by the requirements set out in this Agreement and its schedules;*
- (b) use the system of manifests and documents created by OTS to record and report all transactions involving Used Tires, as the system is modified by OTS from time to time in its sole discretion;*
- (c) retrieve Used Tires from registered Collectors, and deliver all Used Tires which are not culled by the Hauler to registered Processors, as directed by OTS;*
- (d) establish tire retrieval arrangements with Collector for Used Tires which provide consistent retrieval service frequency and recovery volume and timing;*

- (e) store all Used Tires with all requirements of Applicable Law...*
 - (f) update any registration information provided to OTS in the Registration System as soon as possible after information is changed;*
 - (g) fully and properly complete required manifests and other documents in preparation for transportation of Used Tires, in the manner directed by OTS from time to time;*
 - (h) within five days after receiving the request from OTS, provide an Inventory Report regarding Used Tires on the Hauler's premises and/or in the Hauler's inventory at the time of the request, in such format as OTS shall direct;*
 - (i) provide detailed information to OTS regarding the final destination and end-use of culled Used Tires sold by the Hauler for reuse within or outside Canada, in the form required by OTS from time to time;*
 - (j) submit to periodic inspections of the Hauler's premises by OTS or OTS's designated representative, at intervals which are reasonable in the sole judgement of OTS;*
 - (k) use equipment, supplies and service provided by OTS only for their intended purposes and in an efficient manner;*
 - (l) file all required documents and reports in the manner directed by OTS from time to time;*
 - (m) respond in a timely manner to all requests by OTS for information relating to Used Tires;*
 - (n) comply, abide by and carry into effect, as may be required, the objectives of, and the obligations imposed upon the Hauler contained in and set out in this Agreement and the Plan; provided that to the extent any provision of the Plan may conflict with a term or terms of this Agreement, then the Plan shall prevail;*
 - (o) conduct itself in a professional and business-like manner in dealings with registered Collectors, Processors, members of the public and OTS..."*
- iii. Article 21 provides that the Hauler agrees to permit OTS or its agents to inspect its business site and that OTS may audit its records which support Hauler's claims and to ensure the Hauler is in compliance with the terms of the Agreement, the Plan and Applicable Laws.

iv. Article 22 “Obligations of OTS” provides that OTS shall

- (a) *Pay the Hauler the Transportation Incentives at the rate determined by OTS and approved by WDO from time to time in each of their sole discretion and posted on OTS’s internet web site...*
- (b) *Accrued Transportation Incentives shall be paid by OTS once per month, at such times as OTS may determine in its sole discretion;*
- (c) *Provide promotional and informational material and telephone support to Hauler, as OTS deems necessary.*

v. Article 23.1 states “*Hauler shall not charge any additional fee to Collectors for retrieval of Used Tires in accordance with the Plan. Hauler acknowledges and agrees that OTS will advise Collectors of the requirement of this section, and that OTS will establish mechanisms to enable Collectors to advise OTS of any breach of the requirement of this section.*”

vi. Article 23.2 states “*The minimum standard load size for retrieval of Used Tires in Southern Ontario is 50 Used Tires; the minimum standard load size for ...Northern Ontario is 75 Used Tires.*”

vii. Article 23.3 states “*...Haulers and Collectors may enter into agreements in their own right regarding the pickup of tires which are not Used Tires as defined in the Plan, or non-standard delivery schedules. Additional charges may be charged...in respect of these relationships.*”

viii. Article 23.4 states “*No Transportation Incentive will be paid to Hauler with respect to Used Tires or tire parts held in Hauler’s inventory prior to September 1st, 2009.*”

ix. Article 26.1 states “*The Hauler covenants and agrees with OTS to indemnify and hold harmless OTS, its directors, officers, employees and agents against all costs, charges, expenses, legal fees and any other losses of claims which OTS may hereinafter suffer, sustain or may incur or be compelled to pay as a result of any performance or non-performance by Hauler of its obligations hereunder, or any claim, action or proceeding which is brought, prosecuted or threatened against OTS, its directors, officers, employees and agents for any act, deed or omission of the Hauler arising from the breach of this Agreement, the Plan, or any applicable law.*”

x. Article 26.3 states “*Hauler shall maintain comprehensive “occurrence” general liability insurance... and deliver to OTS on request a certificate thereof with OTS named as an additional insured thereon.*”

- xi. Article 27.1 states “...at no time shall OTS take possession of any Used Tires and that OTS shall not, in any event, be liable under any theory of liability to Hauler, the previous owner(s) or user(s) of any Used Tires for any damages, losses, expenses, liabilities...arising out of or related to any loss, improper use, improper culling, improper disposal or environmental degradation resulting, proceeding or connected in any way to Used Tires.”
- xii. Article 28.1 states “The Hauler understands that its name, main contact information, and registration number assigned to it by OTS, as well as information regarding the Hauler’s operation, may be published by OTS on OTS’s website or other publicly accessible website.”
- xiii. Article 29.1 states “The parties agree and understand that the Plan may be revised from time to time without the input or consent of the Hauler, and the Hauler shall be bound by each revised version of the same as each revision may be issued, as though each was set out herein and formed a contractual obligation upon the Hauler and the Hauler covenants and agrees to abide by, comply with and satisfy such revised Plan.”
- xiv. Article 29.3 states “The incentives payable and the payment schedule implemented by OTS may be modified from time to time. All changes will be posted on OTS’s internet web site no less than 60 days before effective date of such change.”
- xv. Article 30.2 states “This Agreement shall ensure to the benefit of and be binding on the parties, their heirs, legal personal representatives, successors and permitted assigns.”

Tire Collectors

- 19. Appendix 3 to the 2009 Operational Registrant’s Guide: July 6, 2009 is the “Agreement of Registration with Ontario Tire Stewardship as a Collector” (the “Collector Registration Agreement”). The Collector Registration Agreement includes the following:
 - i. The Recitals provide that
 - A. OTS has been designated as the industry funding organization under the Act to be responsible for the collection and environmentally responsible recycling of Used Tires;
 - B. The Collector wishes to operate a collection site for Used Tires and receive Collection Incentives in accordance with the Plan;
 - C. The Collector has been approved by OTS as an approved Collector in accordance with the Plan; and
 - D. The purpose of this Agreement is to set out the terms and conditions under which the Collector will operate a collection site under the Plan.

ii. Article 3 “Responsibilities of Collector” states that “*The Collector hereby agrees to:*

- (a) abide by the requirements set out in the Agreement;*
- (b) use the system of manifests and documents created by OTS to record and report all transactions involving Used Tires, as the system is modified by OTS from time to time in its sole discretion;*
- (c) store all Used Tires in accordance with all requirements made from time to time by the Ontario Ministry of the Environment and the Ontario Office of the Fire Marshal;*
- (d) store all Used Tires in a manner that ensures they are free of foreign material and excessive moisture, secure, and accessible for efficient pickup;*
- (e) with the exception of Used Tires culled by Collector, ensure all Used Tires are released only to Registered Haulers;*
- (f) update any registration information provided by OTS in the Registration System as soon as possible after the information is changed;*
- (g) within five days after receiving a request from OTS, provide an Inventory Report regarding Used Tires on the Collector’s premises and/or in the Collector’s inventory at the time of the request, in such format as OTS shall direct;*
- (h) report to OTS in the form required by OTS from time to time regarding Used Tires culled by the Collector;*
- (i) fully and properly complete required documents in preparation for transportation by Registered Hauler of Used Tires, in manner directed by OTS from time to time;*
- (j) use equipment, supplies and service provided by OTS only for their intended purposes and in an efficient manner;*
- (k) file all required documents and reports in the manner directed by OTS from time to time;*
- (l) respond in a timely manner to all requests by OTS for information related to Used Tires;*
- (m) comply, abide by and carry into effect, as may be required, the objectives of, and the obligations imposed upon the Collector contained in and set out in this Agreement and the Plan; provided that to the extent any provision of the Plan may conflict with a term or terms of the Agreement, then the Plan shall prevail...*

- iii. Article 6 provides that the Collector agrees to permit OTS or its agents to inspect its business site and that OTS may audit its records which support the Collector's claims and to ensure the Collector is in compliance with the terms of the Agreement, the Plan and Applicable Laws.
- iv. Article 7 "Obligations of OTS" states that "OTS shall
 - (a) *Pay the Collector a Collection Incentive at the rate and upon the schedule determined by OTS and approved by WDO from time to time in each of their sole discretion;*
 - (b) *Within five days of a request for Used Tire Pickup from the Collector, OTS shall facilitate retrieval of Used Tires from Collector by Registered Haulers, at no charge for volumes of used tires greater than 50 PTE in for Collectors in Southern Ontario and 75 PTE in Northern Ontario...*
- v. Article 8.1 states "*OTS shall facilitate retrieval of Used Tires by a Registered Hauler to occur within five days of receiving a request for Used Tire Pickup from Collector.*"
- vi. Article 8.2 states "*In arranging any Used Tire Pickup, Collector must contact at least three Registered Haulers before contacting OTS to facilitate Used Tire Pickup.*"
- vii. Article 8.4 states "*Collector may not charge additional fees, such as "tire recycling" or "environmental" fees, to motor vehicle owners after Used Tires are removed from the motor vehicle, or upon receipt of used tires from a consumer, provided the quantity of tires delivered by the consumer does not exceed four (4) tires...*"
- viii. Article 8.5 states "*Notwithstanding any other provision of this agreement, Collectors and Haulers may enter into agreements in their own right regarding the pickup of non-standard tires or non-standard delivery schedules. Additional fees may be charged by Haulers to Collectors or by Collectors to Haulers in respect of these relationships.*"
- ix. Article 8.6 states "*No Collection Incentives will be paid to Collector with respect to Used Tires, tire parts or processed rubber held in Collector's inventory prior to September 1st, 2009.*"
- x. Article 8.8 states "*OTS may withhold any and all monies payable to the Collector as Collection Incentives or other monies otherwise payable for any reason to the Collector in the event of a breach of this Agreement or a failure on the part of the Collector to provide all necessary reports or documentation as may be required by OTS under the terms of the Agreement or Plan, if such breach or failure continues for 30 days after OTS has in writing demanded that such breach or failure be cured.*"

- xi. Article 10.3 states *“Either party may terminate this Agreement without cause upon 90 days written notice to the other Party.”*
 - xii. Article 10.4 states *“Upon termination of this Agreement, OTS shall continue to pay Collection Incentives to the Collector with respect to services performed before the terminations of this Agreement...”*
 - xiii. Article 11.1 states *“The Collector covenants and agrees with OTS to indemnify and hold harmless OTS, its directors, officers, employees and agents against all costs, charges, expenses, legal fees and any other losses or claims which OTS may hereinafter suffer, sustain or may incur or be compelled to pay as a result of any performance or non-performance by Collector of its obligations hereunder ...”*
 - xiv. Article 12.1 states *“Collector acknowledges and agrees that at no time shall OTS take possession of any Used Tires and that OTS shall not, in any event, be liable under any theory of liability to Collector, the previous owner(s)...arising out of or related to any loss, improper culling, improper transfer or sale, improper disposal or environmental degradation resulting, proceeding or connected in any way to Used Tires.”*
 - xv. Article 14.1 states *“The parties agree and understand that the Plan may be revised from time to time without the input or consent of the Collector, and the Collector shall be bound by each revised version ...as though each was set out herein and formed a contractual obligation upon the Collector and the Collector covenants as and agrees to abide by, comply with and satisfy such revised Plan.”*
 - xvi. Article 15.2 states *“This Agreement shall ensure to the benefit of and be binding on the parties, their heirs, legal personal representatives, successors and permitted assigns.”*
20. Collection Incentives are only made available to registered collectors for eligible program tires that are not Generated (i.e. do not result from their own business operations or those received from other businesses)

RULINGS REQUESTED

You would like to know

1. Whether the incentive payments made by OTS to tire processors are subject to the GST/HST.
2. Whether the incentive payments made by OTS to tire haulers are subject to the GST/ST.
3. Whether the incentive payments made by OTS to tire collectors are subject to the GST/HST.

RULINGS GIVEN

Based on the facts set out above, we rule that

1. The incentive payments made by OTS to tire processors are subsidies and are not consideration for a supply. As such, the incentives are not subject to the GST/HST.
2. The incentive payments made by OTS to tire haulers are consideration for a taxable supply and subject to the GST/HST.
3. The incentive payments made by OTS to tire collectors are consideration for a taxable supply and subject to the GST/HST.

This ruling is subject to the qualifications in GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service*. We are bound by this ruling provided that none of the above issues are currently under audit, objection, or appeal, that no future changes to the ETA, regulations or our interpretative policy affect its validity, and all relevant facts and transactions have been fully disclosed.

EXPLANATION

Pursuant to the WDA, the person designated as the industry funding organization must maintain a fund for the purpose of developing, implementing and operating a waste diversion program for which it is responsible. In this case, OTS, as the industry funding organization, uses the fund to provide incentive payments in order to fulfill its program commitments. The program itself serves a public good in preventing useable material or material that may be environmentally damaging from ending up in land-fill. However, the question is whether the incentive payments made by OTS are intended to subsidize another person's activities or whether the incentives are consideration for the supply of services which are inputs necessary for OTS to carry out its obligations.

It is noted that OTS has informed persons receiving incentives that these payments are not subject to the GST/HST based on OTS's belief that the payments would be grants or subsidies as provided for in the Canada Revenue Agency's *Technical Information Bulletin B-067, Goods and Services Tax Treatment of Grants and Subsidies*. As per TIB-067, it must be determined whether the recipient of the payment makes a supply as a result of having received the payment and, if so, whether that supply is directly linked to the payment.

1. In the case of incentives paid to tire processors, the payments serve to support OTS's Program Plan related to dealing with tires in an environmentally sound manner; however, there are a number of factors that support a finding that the incentive payments are in the nature of a subsidy:

The details of the Program Plan provide that the incentives are intended to allow processors to compete: first by replacing the tipping fees which have been decreasing due to competition for tires from substitute fuel markets; and secondly, by providing additional funding that can be used by processors to recapitalize their operations. As such, in most cases OTS is paying more than they would if they were simply paying tipping fees to have the tires dealt with by processors.

The TDP has market value and is sold by processors, who must then provide OTS with proof of sale to third parties before an incentive is paid to them by OTS.

The incentive is not a fixed amount per program tire processed but is dependent on the extent to which the tires are processed (greater incentive for higher value added products). As OTS has no ownership over the processed material, paying more for further processing is indicative that the payments are intended to help support the processors to renew/recapitalize their operations as opposed to being an amount paid just to have tires processed.

Based on the above, it has been determined that the incentives paid to processors are subsidies and are not consideration for supplies.

2. Regarding the incentives paid to haulers, these payments result in OTS's "program" tires being transported from OTS registered collectors to OTS registered processors. As such, haulers are making a supply as a result of receiving the payments from OTS. The question is whether that supply is directly linked to the payment of the incentive. OTS argues that the payments are made to third parties for the public purpose of supporting the transportation of designated waste. However, under OTS's program plan for dealing with used tires, it is OTS that is contracting with tire haulers in order to get its "program tires" from its registered collectors to its registered processors. Therefore, the supply is being made to OTS and, as such, the incentive payment is directly linked to the supply provided by tire haulers.

Based on the above, the incentive payments made by OTS to haulers are consideration for the taxable supply of a service and are subject to the HST.

3. With respect to the incentives paid to tire collectors, these incentives result in persons collecting OTS's "program" tires for the purpose of getting them into OTS's waste diversion program. As such, collectors are providing a supply of a collection service as a result of receiving payments from OTS. If it were the case that the incentives simply funded a person's tire collection activities there would be an argument that the incentives were subsidies.

However, the collectors enter an agreement that provides that they will only be paid by OTS if the collected "program" tires are provided to OTS registered transporters. This is not a case of subsidies being provided to support a collector's on-going activities; it is a means for OTS to establish a tire collection system to support its program plan. As such, the collection service would be an input into OTS's waste diversion program and is directly linked to the payment of the incentive. Therefore, the incentives paid to tire collectors would be subject to the GST/HST.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at 613-954-7656 or Brent Fleming at 613-952-0370. Should you have additional questions on the interpretation and application of GST/HST, please contact a GST/HST Rulings officer at 1-800-959-8287.

Yours truly,



Philippe Nault

Director

Public Service Bodies and Governments Division

Excise and GST/HST Rulings Directorate