

Transfer of Business Assets Between Closely Related Parties

Social Service Tax Act

This bulletin provides specific tax information to help individuals and businesses understand how the social service tax, also called the provincial sales tax (PST), applies to transfers of business assets between related businesses.

For general PST information that applies to all businesses, such as who needs to register, when general exemptions apply, and how to charge and collect the PST, please read our [Small Business Guide to Provincial Sales Tax \(PST\)](#).

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The revision bar (|) identifies changes to the previous version of this bulletin dated October 2006.

Overview

Sections 3.14 to 3.14.3 of the regulations to the *Social Service Tax Act* provide an exemption from PST on transfers of tangible personal property between parent and subsidiary corporations where specific conditions are met. They also allow for the continuity of business through a change in the organizational structure, such as the incorporation of a proprietorship, without attracting a social service tax liability.

The regulations do not provide an exemption on transfers of tangible personal property among two or more partnerships, among corporations that are related only by common shareholders, or among unrelated corporations.

For other types of business asset transfers, please see the following bulletins.

[SST 091](#), *Transfers of Business Assets as Part of a Winding Up, as a Dividend in Kind, or as a Return of Capital*

[SST 093](#), *Trusts*

[SST 096](#), *Partnerships*

For the purposes of this bulletin, the following definitions apply.

Beneficial Ownership

The ability to exercise any or all of the rights and privileges inherent in the ownership of shares.

Business Assets

Tangible personal property as defined in the *Social Service Tax Act*.

Parent Corporation

A corporation that beneficially owns at least 95% of the outstanding shares of each class of share capital of its subsidiary corporation.

Tax-Paid Assets

Business assets on which PST was paid when initially purchased, or which were acquired prior to the enactment of the *Social Service Tax Act* in June 1948, or which, with the exception of the barrier to exemption under section 3.14.2 of the regulations, were not subject to PST under the Act at the time they were acquired. This includes

assets previously acquired exempt under section 3.14 provided all other criteria for exemption were met at the time of acquisition. It does not include assets acquired by the seller through self-manufacture.

Barrier to Exemption

Under section 3.14.2, "Barrier to Exemption", assets initially acquired without payment of PST because they were purchased for a specific use which qualified for exemption, cannot be subsequently transferred exempt unless the transferee also qualifies for that specific exemption. For example, a company that qualifies for exemption as a *bona fide* farmer cannot transfer exempt farm equipment to a subsidiary company that does not also qualify as a *bona fide* farmer.

Similarly, goods initially purchased without payment of PST because they were acquired for sale or lease cannot be subsequently transferred exempt, unless the transferee also acquires them for sale or lease.

Related Corporation

A corporation associated with another corporation because that other corporation is:

- its parent corporation, or
- its wholly-owned subsidiary, or
- another wholly-owned subsidiary of the same parent corporation.

Wholly-Owned Subsidiary

A corporation where at least 95% of the outstanding shares of each class of its share capital are beneficially owned by another corporation referred to as its parent corporation.

Transfers Among Parent Corporations and Wholly-Owned Subsidiaries

Exemption

Sections 3.14(2) and 3.14(3) of the regulations provide an exemption on the transfer, by sale or lease, of tax-paid business assets from a:

- parent corporation to its wholly-owned subsidiary corporation, or

- wholly-owned subsidiary corporation to its parent corporation, or
- wholly-owned subsidiary corporation to another wholly-owned subsidiary of the same parent corporation.

Sections 2.47(b) and 8.7 of the regulations provide an exemption from PST on purchases of taxable services and of legal services where a corporation purchases these services from a related corporation as defined in section 3.14 of the regulations.

Eligibility Criteria

To qualify for the exemption, the following criteria must be met.

- The business assets being transferred qualify as tax-paid assets by a related corporation.
- Where the transfer is by way of a purchase, the relationship between the corporations must be maintained for a period of at least eight months after the date of the transfer, except in the case of a wind-up or dissolution of a company (see the section below, **Transfers on Wind-up or Dissolution**).
- Where the transfer is by way of a lease, no PST is payable on lease payments as long as the relationship between the corporations is maintained. If the relationship between the corporations ceases, PST becomes payable by the lessee on all lease payments subsequent to the cessation of the relationship.

Examples of Exempt Transfers

Examples of exempt transfers between parent and subsidiary corporations are illustrated below. In these figures, the lettered boxes represent corporations and the arrows indicate the relationship between the corporations.

Example 1:

In Figure 1, A is a parent corporation; B and C are wholly-owned subsidiaries of A. Business assets may be transferred between A, B, and C without attracting PST, provided the business assets are tax-paid by either A, B, or C.

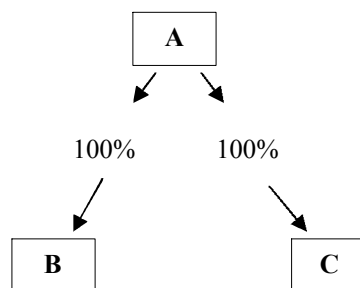


Figure 1

Tax-paid assets may be transferred from A to B and the same assets may later be transferred from B to C without attracting PST because B and C are wholly-owned subsidiaries of the same parent (A) and the business assets were tax-paid by A.

Example 2:

In Figure 2, D is a wholly-owned subsidiary of B, and B and C are wholly-owned subsidiaries of A, the parent corporation. Companies A, B and C may transfer tax-paid assets freely among themselves without attracting PST. This is the same situation as in Example 1.

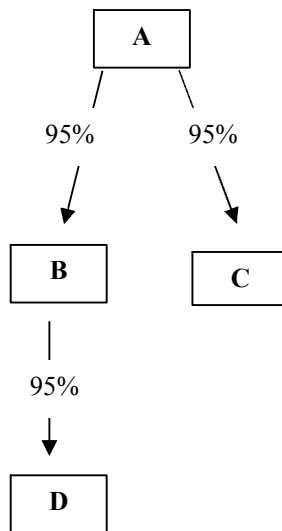


Figure 2

Tax-paid assets may be transferred between A and D without payment of PST because A wholly owns and controls B, the parent corporation of D.

D can transfer tax-paid assets received from A to B because B is D's parent and PST was paid on the assets by A, a related corporation to B.

B can transfer tax-paid assets received from D to C because B and C are wholly-owned subsidiaries of the same parent and PST was paid on the assets by D, a related corporation to B.

D can transfer directly to C because A controls D through B, its wholly-owned subsidiary, and C is also a wholly-owned subsidiary of A.

Example 3:

In Figure 3, Company A, B, and C or B, D and E may transfer tax-paid assets without payment of PST. Tax-paid assets may be transferred among A, B, C, D, E, F and H without payment of PST because of the unbroken chain of at least 95% ownership between each of the corporations. This is the same situation as outlined in Example 2.

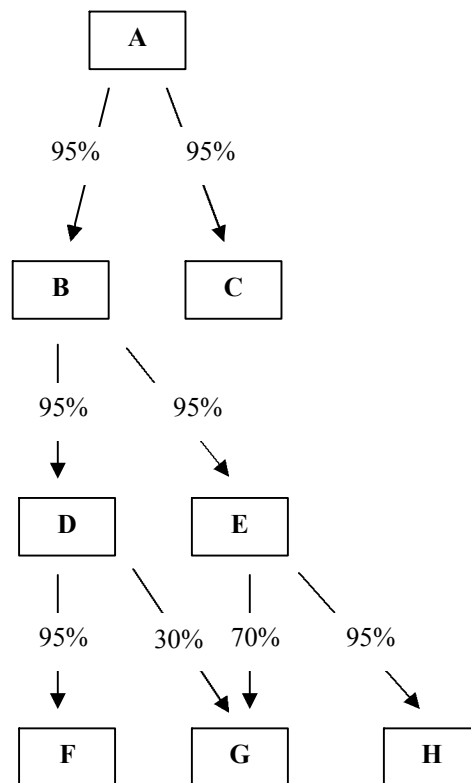


Figure 3

A or B can transfer to G because B wholly owns G through D, and E and A wholly owns B. Similarly, G can transfer to A or B.

G can also transfer exempt to D, E, F and H because G is 95% wholly-owned by B through D and E, and F and H are subsidiaries of D and E, respectively.

G can also transfer exempt to C because A wholly owns G through B, and C is another wholly-owned subsidiary of A.

95% Ownership

To qualify for exemption in the above examples, it is essential that a relationship of at least 95% beneficial ownership can be traced through a chain of parent/subsidiary relationships and that the assets qualify as tax-paid by a related corporation.

Transfers of Assets Acquired From a Company That is No Longer Related

Relationship Between Companies Ceases

Where an asset is initially acquired exempt from PST under section 3.14 of the regulations and, at least eight months following the transfer, the relationship between the companies ceases, the asset retains its tax-paid status on future transfers under section 3.14 of the regulations.

Example 4:

Company A pays PST on its purchase of equipment and subsequently transfers the equipment exempt to its wholly-owned subsidiary, Company B. The parent/subsidiary relationship between A and B is maintained for a period of at least eight months. The shares of Company B are then sold by Company A to unrelated Company C. Company B then transfers the equipment to Company C, which is now its parent.

The transfer from Company B to Company C qualifies for exemption under section 3.14(2)(b) of the regulations because no PST was payable by B at the time it acquired the equipment. However, for this exemption to apply, the relationship between A and B had to be maintained for at least eight months after the initial transfer. Furthermore, the relationship between B and C must be retained for a period of at least eight months after the subsequent transfer.

Change in How Companies are Related Within Eight Months

Where there is a sale of company ownership among related corporations, the transfer of tax-paid assets is eligible for exemption as long as the seller and purchaser always remain related corporations, as defined in the regulation, throughout the eight-month period.

Example 5:

Step 1: C transferred tax-paid assets to D. At the time of transfer, C and D qualified as related companies as follows.

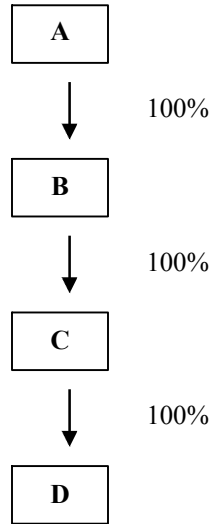


Figure 4

Step 2: Before eight months passed, C sold its shares in D to A. Under the resulting structure, C and D remained related corporations for the purposes of section 3.14.

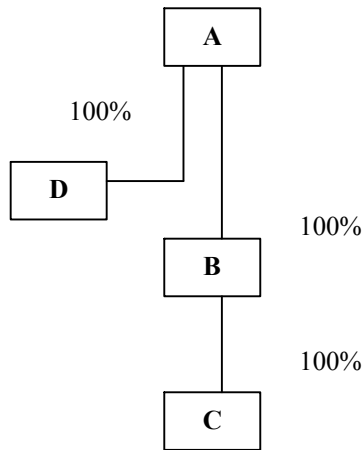


Figure 5

Step 3: A then sold its shares in D to B. This sale also occurred within eight months after the transfer of tax-paid assets from C to D. Under the resulting structure, C and D remained related corporations.

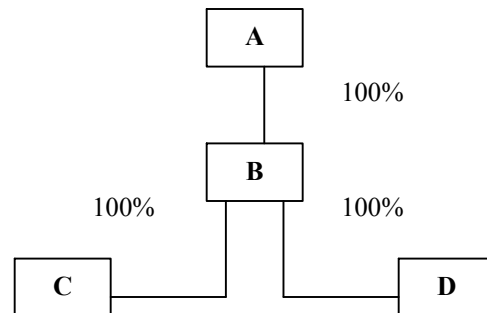


Figure 6

In this situation, the transfer of tax-paid assets from C to D under Step 1 retains its exempt status.

Transfers on Wind-up or Dissolution

Where a corporation is to be wound up or dissolved, it may transfer its tax-paid assets to a related corporation exempt of PST provided the transfer otherwise qualifies for exemption and meets the following conditions.

- The seller and the purchaser were related corporations for a period of not less than eight months before the date of purchase.
- At or after the time of the purchase, the seller is dissolved or wound up under the *Business Corporations Act*, the *Canada Business Corporations Act* (Canada), the *Bank Act* (Canada) or the *Winding-up and Restructuring Act* (Canada).
- The seller and the purchaser remain related corporations until such time as the seller is dissolved or wound up.

If these criteria are met, it is not necessary for the companies to remain related for eight months after the transfer.

Example 6:

Subsidiary B transfers assets to its parent company A. B is subsequently wound-up, and the same assets are transferred by A to another wholly-owned subsidiary C. The transfer between A and C is exempt if B and A were related until B's winding-up and the relationship between A and C is maintained for a period of at least eight months following the transfer from A to C.

Transfers of Assets to a New Company Wholly-Owned and Controlled by the Transferor

Exemption

Section 3.14.1(2) of the regulations provides exemption from PST on the transfer of tax-paid business assets when a new company is incorporated by a person, partnership or corporation that wholly owns and controls the new corporation and the intention is to have the same principals operate the business. Wholly owns and controls means that the transferor beneficially owns at least 95% of the outstanding shares of each class of the share capital of the new company.

Eligibility Criteria

To qualify for exemption, the following conditions must be met.

- The person(s), partnership or corporation incorporating the new company wholly owns and controls it.
- The business assets being transferred qualify as tax-paid assets by the transferor.
- The transferor continues to wholly own and control the new corporation for a period of at least eight months after the date of the transfer.
- The business assets being transferred are available to the newly incorporated company on the first day that it commences to carry on business – for example, by marketing, manufacturing, or producing products or providing services.

Examples of Exempt Transfers

Following are examples illustrating situations in which tax-paid business assets may be transferred exempt, provided the above conditions are met.

Example 7:

In Figure 7, A is a proprietorship and incorporates A Ltd., which it wholly owns and controls.

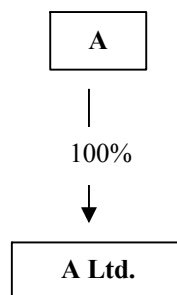


Figure 7

A may transfer tax-paid assets to A Ltd. without payment of PST provided all other conditions for exemption are met.

Example 8:

In Figure 8, A, B and C are in partnership. They incorporate ABC Ltd., which they wholly own and control.

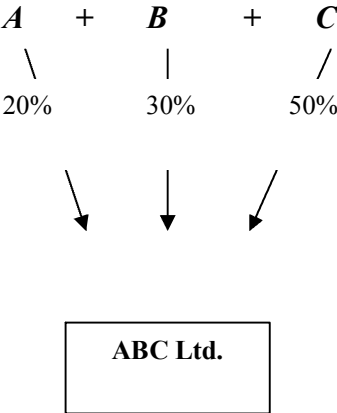


Figure 8

A + B + C may transfer their tax-paid assets to ABC Ltd. without payment of PST, provided all other conditions for exemption are met.

When the Transfer of Assets Qualifies for Exemption

Transfers of assets under this section will qualify for exemption when the accounting entries are recorded in the company's books of account after the company has begun its intended business, provided that the effective date of the transfer is no later than the date when the firm first commenced to carry on business, for example, by marketing, manufacturing, or producing products or providing services. Transfers of assets after the date the corporation began carrying on business, for example, where the assets could not effectively be transferred by that date because the transferor continued to use the assets, would not qualify for exemption under section 3.14.1 of the regulations.

For the purposes of section 3.14.1 of the regulations, activities, such as arranging financing for a business or selling share capital will not in themselves be considered carrying on a business.

Transfers of Assets to a New Company the Transferor Does Not Wholly Own or Control

Criteria for Exemption

Sections 3.14.1(3) and 3.14.1(4) of the regulations exempt transfers of business assets from a person(s), partnership or corporation to a new corporation, which the transferor does not wholly own or control, provided that **all** the following criteria are met.

- The business assets being transferred qualify as tax-paid assets.
- The transferor receives shares of the purchasing corporation equal in value to the tax-paid assets transferred.
- The transfer of tax-paid assets to the purchasing corporation is concurrent with the transfer of shares to the transferor.
- The transfer takes place no later than the first day the new company commences business, for example, by marketing, manufacturing or producing products or providing services.
- The transferor retains all the shares accepted as payment for a period of at least eight months after the date of their issue or transfer.

Example of an Exempt Transfer

An example of an exempt transfer is as follows.

- A, a proprietorship, wishes to incorporate its business and bring B into the new company to form AB Ltd.
- Proprietor A transfers \$50,000 in tax-paid assets to AB Ltd. and receives \$50,000 in shares of AB Ltd. in return.
- B transfers \$30,000 in tax-paid assets to AB Ltd. and receives \$30,000 in shares of AB Ltd. in return.
- A and B receive shares equal in value to the tax-paid assets which they each transferred to AB Ltd., therefore no PST is due.

In this example, if either A or B received share capital of lower value than the value of the assets transferred, then PST would be payable by AB Ltd. on the difference in value.

Amalgamations

Corporations

In general, amalgamations are the merging of two or more businesses into a single one where all rights and obligations of the predecessor companies are continued in the new company.

Where business assets are transferred from a predecessor company to an amalgamated company, the transfer of the assets is not considered a sale of tangible personal property and PST does not apply if the amalgamation:

- is formed under the *Business Corporations Act* (BC), the *Canada Business Corporations Act* (Canada), or similar federal or provincial legislation (only amalgamations formed under a Canadian statute are eligible for this tax application), and
- meets continuation requirements.

This tax application also applies to amalgamations occurring under a plan of arrangement.

A predecessor company may have acquired the business assets exempt under section 3.14 of the regulations (i.e. a transfer between parent and subsidiary corporations) prior to the amalgamation. If this is the case, the amalgamated company must ensure that the section 3.14 requirements continue to be met. For more information, see the section below, **Subsidiaries**.

Continuation requirements

For corporate amalgamations, continuation is determined on the basis of the corporate law of the jurisdiction in which the predecessor corporations are amalgamated. If the corporate law provides that the predecessor corporations involved in the amalgamation are not continued, the resulting corporation will not be entitled to the exemption. For example, if a transaction involves the winding-up of one corporation into another corporation, and the predecessor corporation does not continue into the amalgamated corporation, or is dissolved, then the exemption is not allowed.

To show continuation, the predecessor corporations that held title or registered rights to use or occupy the property must continue into the amalgamated corporation and all of the property, interests, rights and liabilities of the predecessor corporations must become those of the amalgamated corporation.

The taxpayer must be able to provide evidence that the predecessor corporations continue into the amalgamated corporation. Where this criterion is not met, regardless of whether or not there was a change in the economic interest, or that the transactions were exempt from income tax, PST will apply to the transfer of tangible personal property to the amalgamated corporation.

The taxpayer must be able to produce some or all of the following:

- the amalgamation agreement,
- the articles of amalgamation,
- any court order approving the amalgamation,
- a *Certificate of Amalgamation* issued by the applicable corporate registry, or
- other relevant documents.

Other issues related to amalgamations

An amalgamation does not absolve the parties from any PST liability incurred prior to the amalgamation. The amalgamated company must retain business records for the predecessor corporations for at least five years prior to the amalgamation.

Subsidiaries

If an amalgamation involves two wholly-owned subsidiaries of the *same* parent corporation, any assets either subsidiary acquired exempt under section 3.14 of the regulations retain their exempt status on amalgamation. To qualify, the amalgamated company must remain a wholly-owned subsidiary of the same parent for at least eight months.

This exemption applies even if the amalgamation occurs within eight months of the transfer of assets from the parent to the subsidiary company. However, if the parent/subsidiary relationship ends, the amalgamated company must pay PST on any assets received exempt from the parent within the previous eight months.

Example 9:

In Figure 9 below, A is the parent corporation and B and C are wholly-owned subsidiaries. Assume that business assets are transferred exempt from A to B. If B and C later amalgamate, the transferred assets retain their exempt status. However, if the amalgamated company later ends its subsidiary relationship

with A within eight months of the asset transfer, the amalgamated company must pay PST on the assets received exempt from the parent.

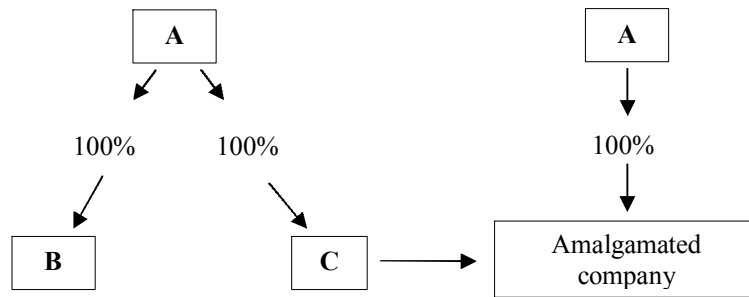


Figure 9

If the amalgamating companies are wholly-owned subsidiaries of *different* parent corporations, any assets received exempt under section 3.14 of the regulations from the respective parent corporations at least eight months prior to the amalgamation will retain their exempt status upon amalgamation. The amalgamating companies must pay PST on any assets received exempt from the respective parent corporations during the eight months prior to the date of amalgamation, unless the transferring company continues to be the parent corporation of the amalgamated company. See Figures 10 - 12 below for more details.

Example 10:

In Figure 10 below, A is the parent corporation of wholly-owned subsidiary C, and B is the parent corporation of wholly-owned subsidiary D. Assume that business assets are transferred exempt from A to C or from B to D. Assume also that C and D amalgamate so that each parent owns 50% of the amalgamated company (i.e. the amalgamated company is no longer wholly-owned by either of the parent corporations). If the amalgamation occurs at least eight months after the asset transfer, the transferred assets retain their exempt status. However, if C and D amalgamate within eight months of the asset transfer, the amalgamating company must pay PST on the assets received from the parent.

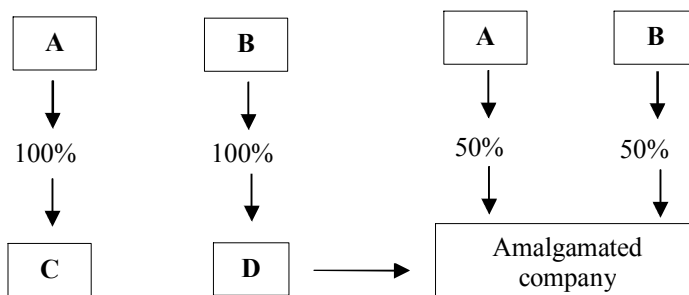


Figure 10

Example 11:

Figure 11 below is similar to Figure 10 except that A and B are related companies as they are both wholly-owned by corporation E. A is the parent corporation of wholly-owned subsidiary C, and B is the parent corporation of wholly-owned subsidiary D. Assume that business assets are transferred exempt from A to C and/or from B to D. Assume also that C and D amalgamate and that each parent owns 50% of the amalgamated company (i.e. the amalgamated company is no longer wholly-owned by either of the parent corporations). The assets transferred will retain their exempt status even if the amalgamation occurs within eight months of the transfer as parent companies A and B remain related after the amalgamation.

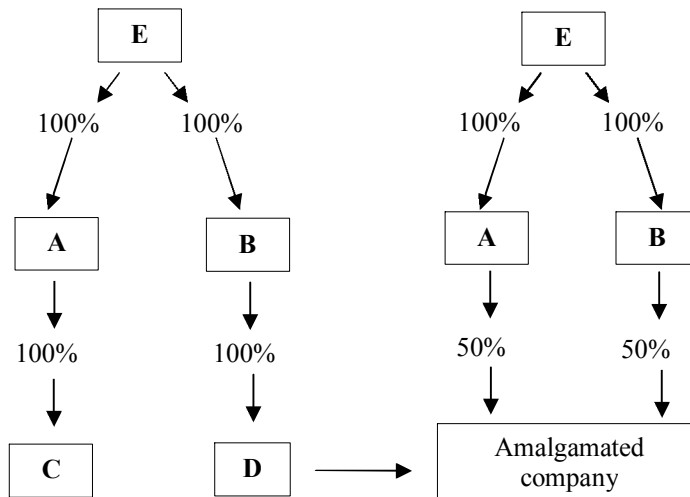


Figure 11

Example:

In Figure 12 below, A is the parent corporation of wholly-owned subsidiary C, and B is the parent corporation of wholly-owned subsidiary D. Assume that business assets are transferred exempt from A to C. Assume also that C and D amalgamate and that A now wholly-owns the amalgamated company. The assets transferred will retain their exempt status even if the amalgamation occurs within

eight months of the transfer as parent company A remains related to the amalgamated company after the amalgamation.

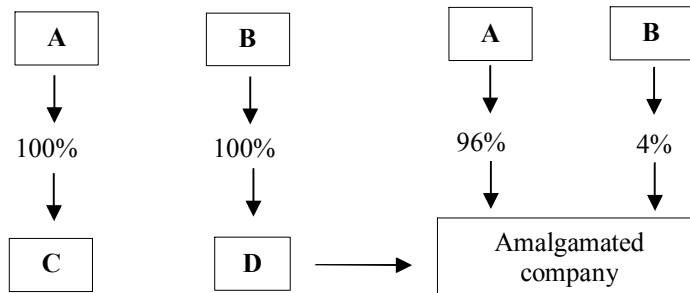


Figure 12

Cooperatives, Societies and *School Act* Corporations

PST does not apply to the transfer of tangible personal property as the result of the amalgamation of *School Act* corporations, cooperatives and societies.

Cooperatives

Where two or more cooperative associations amalgamate under the *Cooperative Association Act*, no PST is payable on the tangible personal property as there is a continuance of the property into the new cooperative association. The new association is liable, however, for all debts and obligations of the former associations.

Societies

When a society is converted into a corporation (provided section 74 of the *Society Act* and the requirements of the *Business Corporations Act* are met), it is still the same entity; only its status has changed. As a result, there is no transfer of tangible personal property from one entity to another, and no PST is payable.

However, when two or more societies amalgamate under the *Society Act*, the societies are dissolved and they do not meet continuation requirements. Therefore, any transfer of business assets from the predecessor society to the amalgamated society is a sale of tangible personal property and PST applies.

School Act Corporations

Under the *School Act*, a board of trustees for each school district is deemed to be a corporation. If two *School Act* corporations amalgamate, the transfer of tangible personal property is not taxable as the new corporation takes on both the assets and liabilities of the former corporation.



Need more info?

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The information in this bulletin is for your convenience and guidance and is not a replacement for the legislation. The *Social Service Tax Act* and Regulations are on our website at www.sbr.gov.bc.ca/business/Consumer_Taxes/Provincial_Sales_Tax/legislation.htm

References: *Social Service Tax Act*, Section 1, and Regulations 3.14, 3.14.1, 3.14.2 and 3.14.3