

Trusts

Social Service Tax Act

Are you a trustee of a trust?

Do you need to know how PST applies to trust?

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 trusts.

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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Overview

A trust is a legal relationship in which legal ownership of property is held by a trustee, for the benefit of others (i.e. beneficiaries). For a trust, there is normally a written

The revision bar (|) identifies changes to the previous version of this bulletin dated February 19, 2008.

document that sets out what the trustee's duties are in relation to the property held in trust.

If you are a trustee, you need to be aware of the PST implications whenever you transfer tangible personal property into, or out of, a trust. Tangible personal property includes goods that you can see, weigh, measure or touch, or that is in any other way perceptible to the senses, including software. Examples of taxable goods include motor vehicles, clothing and computers.

The laws relating to trusts are complicated. While we have set out guidelines and examples for you below, if you are unsure how tax applies, please contact us. We will provide you with an answer that applies to your particular situation.

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 092**](#), *Transfer of Business Assets Between Closely Related Parties*

[**SST 096**](#), *Partnerships*

Goods Transferred Into a Trust

When to Pay PST

Purchases of goods by a trust are considered purchases by the trustee of the trust. This means that as a trustee, if you purchase taxable goods, you pay PST. If the seller does not charge PST, you need to self-assess the PST payable.

Example:

You use trust funds to purchase a boat for the use of the trust's beneficiaries. As this is a purchase, you pay PST on the boat.

When Not to Pay PST

Change in Trustees

When you are replaced, legal title passes from you to the new trustee. However, as there is no consideration for this transfer, there is no tax payable as it is not a sale.

Gifts to a Trust

You do not pay PST on a gift of a good that is given to the trust. The person giving the gift is responsible for paying the PST as they are considered to be the user. However, if the gift is received outside British Columbia and involves two British Columbia

residents, tax may be payable by the trust. For more information, please see [Bulletin SST 118](#), *Out-of-Province Purchases: Goods for Personal Use*.

Example:

A person transfers his tax-paid sailboat into a trust for no consideration. This transfer is not a sale and no tax is payable.

Example:

A person transfers his own goods into a trust, to be held for his own benefit (i.e. the person is the sole beneficiary of the trust). Because the initial transfer of the goods into the trust is without consideration, there is no PST payable. However, if any consideration is paid on the transfer into the trust, then the trustee pays PST.

Goods Transferred Out of a Trust

When to Charge PST

If you sell or lease taxable goods from the trust, you charge, collect and remit PST. If you regularly sell or lease taxable goods from the trust, you need to register with the ministry. As a registered vendor, you collect PST on all taxable sales, leases and services, and remit the PST due with your tax return. For more information on registration, please see [Bulletin SST 044](#), *Registering to Collect Provincial Sales Tax (PST)*.

Please note: if you sell trust assets outside of your ordinary course of business, you do not need to register as a vendor. However, you are still required to collect and remit PST on your sales.

Example:

On a regular basis, a trust that holds motor vehicles makes taxable leases to customers. Therefore, you need to register with the ministry.

When Not to Charge PST

You do not charge PST if you transfer goods out of a trust to the beneficiaries of the trust without consideration, as the transfer is not a sale. In this case, you are making a gift to the beneficiary and the trust has previously paid the tax.

Trustee Liability

If you incur a tax liability in the administration of a trust for not paying, collecting or remitting PST, a lien can be registered against the assets of the trust. This liability can extend beyond the assets of the trust to your personal assets. If you are subsequently

removed and replaced as the trustee, the new trustee must not distribute any of the assets of the trust until a clearance certificate is issued. A clearance certificate is issued by the ministry, which certifies that all taxes relating to the lien have been paid. If the trust property is distributed without the new trustee ensuring that all taxes have been paid, the new trustee will be liable for the pre-existing tax liability.

Bare Trusts

A bare trust involves a relationship in which you, as a trustee, hold legal title to trust property and have no discretion and no responsibilities or duties in relation to the trust property other than to act strictly on the instructions of the beneficiaries.

Please note: As the nature of bare trust relationships can vary significantly depending on the circumstances, please contact us. We will provide you with an answer that applies to your particular situation.

Purchases and Sales

If the beneficiaries, as the beneficial owners of a trust, direct you to purchase or sell goods, the beneficiaries are liable for paying PST on taxable purchases, and collecting and remitting PST on taxable sales.

However, how PST applies depends on the extent to which you exert control over the property at the direction of the beneficiary. In some situations, an agency relationship may supersede the bare trust relationship. In this case, you, as an agent, may be liable for the payment or collection of the tax. For more information, please contact us.

Exempt Goods Transferred Into a Bare Trust

If goods are purchased exempt from tax and are later transferred into a bare trust, the property remains tax exempt, as long as:

- you, as the trustee, simply hold legal title,
- the beneficiaries qualify for the exemption, and
- the beneficiaries retain beneficial ownership and control of the goods.

In this situation, the tax status of the beneficiaries determines whether the property remains exempt. This applies even though you may not qualify for the same tax-exempt status as the original purchaser who transferred the property to the trust. Similarly, a transfer of legal title between trustees in a bare trust is not taxable if there is no change in the beneficial ownership.

Example:

Goods are purchased tax-exempt by a qualifying First Nations individual in eligible circumstances and then transferred into a bare trust. If the beneficiaries of the trust also qualify for the First Nations exemption, the property will remain tax exempt even if you, the trustee, are not a qualifying First Nations individual.

Family Trusts

A family trust is a trust whose only beneficiaries are either a person, the person's family members (spouse or children), or both the person and the person's family members. The PST rules that apply to trusts for paying and charging PST also apply to family trusts. However, as outlined below, you need to be aware that some transactions involving family trusts may impact the PST exemption that applies to the transfer of tax-paid goods by a person into a company when the company is newly incorporated. For a detailed explanation of this exemption, including all the criteria for exemption, please see [Bulletin SST 092](#), *Transfer of Business Assets Between Closely Related Parties*.

Gift of Shares to a Family Trust

If a person claims an exemption for the transfer of tax-paid goods into a newly incorporated company, the person must continue to wholly own and control the new corporation for at least eight months after the date of transfer. Wholly own and control means that the person beneficially owns at least 95% of the issued shares of each class of the share capital. However, even if the person gives shares of the new corporation to a family trust **within eight months** after the transfer of the goods, the new corporation can continue to qualify for the exemption if:

- the person and the person's family members (i.e. spouse and children) are the only beneficiaries of the trust,
- no consideration is received from the family members for the shares, and
- the person and their family trust together beneficially own and control at least 95% of the shares of the corporation for at least eight months after the date of the transfer of tax-paid goods to the new corporation.

Share Purchases by a Spousal Trust

As explained above, if a person claims an exemption for the transfer of tax-paid goods into a newly incorporated company, the person must continue to wholly own and control the new corporation for at least eight months after the date of transfer.

A spousal trust is a family trust whose only beneficiary is a person's spouse or both the person and their spouse. Even if a spousal trust purchases shares in a corporation wholly owned and controlled by the other spouse **within eight months** of the transfer of the goods, the new corporation can continue to qualify for the exemption if the spouse and the spousal trust together own at least 95% of the issued shares of each class for at least eight months after the date of the transfer.

Example:

A husband transfers tax-paid goods to a new corporation on or before it starts operations and claims an exemption from PST. His wife's spousal trust purchases shares in the corporation from the husband within eight months after the transfer, so that the husband, alone, no longer owns 95% of the shares in the corporation. Under the wife's spousal trust, she is the beneficial owner of the shares. Therefore, as long as the husband and the spousal trust together beneficially own at least 95% of the issued shares of each class for eight months following the transfer, the initial purchase of goods by the new corporation continues to be eligible for an exemption.

Share Purchases by a Family Trust

If a person claims an exemption for the transfer of tax-paid goods into a newly incorporated company, and later sell shares of the new corporation to the person's family trust (other than a spousal trust), the person must continue to wholly own and control the new corporation for at least eight months after the transfer of the goods.

If the person sells the shares to the person's family trust within eight months of the transfer, the person must continue to own at least 95% of the issued share of each class or the new corporation will no longer qualify for the exemption. In this case, the new corporation pays PST on the goods transferred.

Example:

A person transfers tax-paid goods to a new corporation on or before it starts operations and claims an exemption from PST. Then, within eight months after this transfer, the person sells 20% of the shares of the new corporation to a family trust, the beneficiaries of which are the person's children. The trust now owns 20% of the shares, and the person no longer wholly owns and controls 95% of the shares of the corporation. PST must now be paid by the new corporation on the goods originally transferred from the person to the corporation as the goods no longer qualify for exemption.



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*, Sections 1 and 104, and Regulations 3.14, 3.14.1, 3.14.2 and 3.14.3