

## GST - Definition of Coupon Bill Credit - Sas Ansari

Author : admin

### What is Needed to Make Sure a Coupon is a Coupon and a Rebate is a Rebate?

[Tele-Mobile Company Partnership v The Queen, 2012 TCC 256](#)

The issue here was whether the promotional programs by TELUS - billing credits and mail-in coupons - met the definitions and requirements of the [Excise Tax Act](#), RSC 1985 c E-15 ("ETA"), sections 181 and 181.1 for coupons and rebates. [Justice Miller](#) for the TCC held that TELUS had failed to design its programs to adhere to the statutory requirements, and as such did not fall within the definitions in the sections in question.

This decision highlights the need to design commercial programs so that they meet the statutory requirements of the legislations that apply. Although the court was troubled by the effect of the decision, being a violation of the spirit of the legislation, the words of the provision did not allow for a different outcome.

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";  
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;  
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +  
(isSSL ? '&https=1' : ''); document.write(""); })();
```

### FACTS

TELUS ("taxpayer") had several promotional programs aimed at attracting subscribers to long-term service plans. One was a mail-in rebate program, and the other was a Billing Credit arrangement.

The billing credit varied depending on the length of the term of the contract the customer entered into and appeared on the customer's first invoice. The mail-in rebate was one that applied to the purchase of particular cell phones and was an amount sent by cheque to the customer after the customer had paid for the phone and been assessed GST on the retail price of the phone. The court highlighted the following with respect of the coupon used in the mail in rebate program:

- a) it is for new activations of the phone;
- b) the rebate is based on the purchase price of the phone and the term activation;
- c) the rebate arises even if there is no term contract as long as a contract is activated (that is, there could be a month-to-month contract rather than a term contract);

- d) the contract must be activated for a minimum of 31 days;
- e) nothing in the coupon indicates the rebate amount included GST.

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";  
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;  
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +  
(isSSL ? '&https=1' : ''); document.write(""); })();
```

## STATUTORY PROVISIONS

The ETA subsection 181(1) defines "coupon" as:

“coupon” includes a voucher, receipt, ticket or other device but does not include a gift certificate or a barter unit (within the meaning of section 181.3).

Subsection 181(3) deals with the effect on how the coupon value is to be dealt with for purposes of the Excise Tax, and reads:

(3) Where at any time a registrant accepts, in full or partial consideration for a taxable supply of property or a service (other than a zero-rated supply), a coupon that entitles the recipient of the supply to a reduction of the price of the property or service equal to a fixed dollar amount specified in the coupon or a fixed percentage, specified in the coupon, of the price (the amount of which reduction is, in each case, referred to in this subsection as the “coupon value”) and the registrant can reasonably expect not to be paid an amount for the redemption of the coupon by another person,

(a) the registrant shall, for the purposes of this Part, treat the coupon as

(i) reducing the value of the consideration for the supply as provided for in subsection (4), or

(ii) a partial cash payment that does not reduce the value of the consideration for the supply; and

(b) where the registrant treats the coupon as a partial cash payment that does not reduce the value of the consideration for the supply, paragraphs (2)(a) to (c) apply in respect of the supply and the coupon and the registrant may claim an input tax credit for the registrant's reporting period that includes that time equal to the tax fraction of the coupon value.

Section 181.1 deals with rebates and states in part:

181.1 Where

- (a) a registrant makes a taxable supply in Canada of property or a service (other than a zero-rated supply),
- (b) a particular person acquires the property or service, either from the registrant or from another person,
- (c) the registrant pays, at any time, a rebate in respect of the property or service to the particular person and therewith provides written indication that a portion of the rebate is an amount on account of tax, and
- (d) subsection 232(3) does not apply to the rebate,

the following rules apply:

- (e) the registrant may claim an input tax credit for the reporting period of the registrant that includes that time equal to the product obtained when the amount of the rebate is multiplied by the fraction (in this section referred to as the "tax fraction in respect of the rebate")

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";  
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;  
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +  
(isSSL ? '&https=1' : ''); document.write(""); })();
```

## ARGUMENTS

The Taxpayer argued that the Billing Credit arrangement was a coupon ("device"), or in the alternative a rebate. The Crown argued that:

- a) The Billing Credit arrangement is not a coupon that invokes s.181 of the ETA as:
  - i) it was a rebate on the price of the phone, not a coupon presented to TELUS for its services;

- ii) it does not meet the definition of coupon;
  - iii) even if the Billing Credit is considered a coupon, it was not based on "a fixed dollar amount", nor was it in a form that could be "accepted" by TELUS.
- b) In the alternative, s.181.1 of the ETA is not applicable as:
- i) the rebate relates to the supply of the phone (not a supply by TELUS) and not the supply of TELUS' services; and
  - ii) there is no written indication that a portion of the rebate is an amount on account of tax.

With respect to the mail-in coupons, the taxpayer argued that they were non-reimbursable coupons. The Crown argued that it was not a coupon, but a rebate on the price of the phone (not supplied by TELUS), and that the refund cheque did not indicate that the rebate was GST included.

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";  
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;  
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +  
(isSSL ? '&https=1' : ''); document.write(""); })();
```

## ANALYSIS

Justice Miller began by dealing with the Billing Credits.

The Court determined that the credit applied to the provision of the mobility services and not to the purchase of the handsets, as this was the only supply references on the invoice. The question then was whether the billing-credit was a coupon, which includes a device "entitling the recipient to a reduction of the price of the service equal to a fixed dollar amount specified in the device, and accepted by TELUS as consideration".

The Crown argued on the basis of the sui generis rule, that "device" should share similar characteristics to voucher, receipt, and ticket, each of which refers to something used during the transaction and not after. Miller J disagreed with this reasoning, and stated that the billing-credit arrangement does meet the "characteristic of immediacy to the transaction shared by a voucher, receipt and ticket in that it is granted simultaneously with the charge of the service, being the first TELUS invoice", but the billing-credit was the actual reduction and NOT the device entitling the customer to a reduction. The latter distinction was seen as significant. There was nothing held by the customer, electronic or otherwise, that entitled the customer to a credit - the customer simply gets the credit. This is just a discount offered by TELUS. Section 181 deals with a coupon, and not a straightforward discount.

Miller J said at paragraph 30:

Once it is accepted the credit relates to the TELUS service, then yes the denial of ITCs result in GST being exigible on the amount of the credit with no offset. This may well breach the spirit of sections such as s.181, 181.1 and 232 of the ETA, which maintain the integrity of a system that imposes tax on a recipient on the value of the consideration for the supply, ensuring tax is exigible on the net consideration an end consumer pays. I am troubled by the result that the Government may have got a windfall in this situation. But the purpose is not met by torturing the language to, as one of my favourite expressions puts it, fit a round peg into a square hole: TELUS cannot make the square hole big enough. S.181 of the ETA is a recognition that while tax is collectible on the price charged by a vendor for a service or supply, if that price is partially covered by the vendor, it would be unreasonable to consider that portion as part of the value of the consideration from the recipient for the supply: **but only if the Registrant plays by the rules and can point to a coupon or device. I suggest the Registrant, in this case, is attempting to bend the rules to overcome a result brought on by itself by establishing a program without due consideration of GST ramifications** [emphasis added].

The Court also addressed the requirement that a coupon have a "fixed amount". Although "where the fixed amount is clearly known to both sides, and is evidenced in writing, as hard copy or electronically, that can be offered by a customer as partial consideration, the requirement has been met, [this was] not what happened here. [This was] TELUS merely advertised its discount." (para 35). Also, the wording of section 181 does not require that there be a single fixed amount (here, depending on the length of the contact, a different reduction applied), but only refers to "a reduction of a fixed dollar amount of the price of the service". Thus, where the supply being purchased is different, there can attach a different amount to each different supply - and the amount was fixed for each different supply.

One final issue in relation to the billing-credit being a coupon was that there was nothing that could constitute "acceptance" by TELUS of a coupon. Here, the discount was something that TELUS offered the customer and not something that the customer presented TELUS.

The Court next turned to the question of the billing-credit as a rebate, where the only contention was whether TELUS had provided a written indication that a portion of the rebate was an amount on account of tax. TELUS argued that the bill makes it clear that the rebate had been paid to cover the price and GST, and that is sufficient to be a "written indication". The Crown argued that a customer should not have to resort to a calculator to be put on notice as to the tax consequences of a rebate.

Justice Miller took an expansive view of "written indication", and held that it doesn't require the specificity of a statement so that the amount is broken down into its component parts, but it does require some clarity so that "recipient with minimum effort can discern that the rebate must include a GST element" (para 48). Here, the placement of the credit on the invoice did not clearly indicate that it included tax. IT may well be necessary to take out a calculator, but only

when the invoice is sufficiently clear so that the amount "has to have included GST". He concluded:

The TELUS invoice is confusing. A "written indication" should be clear. It is not – to anyone. It invites the recipient to assume the credit has been offset against the price, yet then goes on to calculate the GST as though the credit was applied after the GST attached to the price. It takes too much sorting out to figure this out and falls well short, I find, of "written indication".

The Court next dealt with the mail-in coupons, which resulted in a payment by cheque without an indication on the cheque as to what service or product it was in relation to. After reviewing the matter, the court concluded that from the customer's view the amount related to the phone and not the service, but the court also held that TELUS business includes the sale of phones to retail suppliers. The problem for TELUS here was that the person who received the rebate (the customer) was not the person who received the supply (the retail supplier), and thus section 181 did not fit the circumstances. Also, the coupon is not accepted by TELUS in consideration for anything, this was not a coupon but a rebate. Here TELUS did not argue that the rebate provisions in section 181.1 applied.

***Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 &3***

[If you like this website, please share it with others.](#)

[Back To Top OR Home](#)

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +
(isSSL ? '&https=1' : ''); document.write(""); })();
```