

After the Asset Purchase Agreement: Forms, Filings, and Fees

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In Manitoba, an asset purchase and sale transaction won't be complete without considering these three forms:

1. CRA: GST Form 44

A joint election under subsection 167(1) of the *Excise Tax Act* (Canada) generally allows a person (the "Vendor") to sell a business or part of a business to a recipient (the "Purchaser") with no GST payable on the property or services sold under the agreement if certain conditions are met. To qualify, the Vendor must be selling a business or part of a business, and the Purchaser must be acquiring all or substantially all of the property (generally 90% or more) that can reasonably be regarded as being necessary for the Purchaser to be capable of carrying on the business or part of the business.



To make this election, the Vendor and the Purchaser must jointly complete GST Form 44 "Election Concerning the Acquisition of a Business or Part of a Business". This form is available on the CRA website. Once completed, the Purchaser must file the form, with their GST return for the reporting period in which the acquisition was made, to the address specified on the return. There is no processing fee required for GST Form 44. It is important to remember that GST Form 44 must be filed on or before the day that the Purchaser would have been required to file a return for the first reporting period in which GST would have become payable, if no election was made.

For more information, see GST/HST Memorandum 14.4 "Sale of a Business or Part of a Business".

2. Manitoba Finance: Application for a Bulk Sales Clearance Certificate

A Bulk Sales Clearance Certificate, issued under section 45 of *The Tax Administration and Miscellaneous Taxes Act* (Manitoba), indicates that the Manitoba Taxation Division has no security interest in the business assets sold at the date of the sale. An application is required

when the Vendor is ceasing to carry on business in Manitoba and selling the business assets (a “Bulk Sale”).

To make this application, the Vendor must complete an Application for a Bulk Sales Clearance Certificate form. This form is available on the Manitoba Finance website. Once completed, the Vendor must file the form, with a \$50 processing fee payable to the Minister of Finance and a copy of the purchase and sale agreement, to the Bulk Sale Officer at the Manitoba Taxation Division. Once a Bulk Sales Clearance Certificate is issued, the Vendor must provide a duplicate copy to the Purchaser.

For more information, see Bulletin No. TAMTA 002 “Bulk Sales – Buying and Selling Business Assets”.

3. Manitoba Finance: Casual Purchaser’s Return

Since a Vendor ceases to carry on business in Manitoba in a Bulk Sale, they will not collect RST on their sale of taxable assets. A Casual Purchaser’s Return is required when RST is payable on the purchase of taxable assets in a Bulk Sale. Taxable assets commonly sold in a Bulk Sale include machinery and equipment, storage structures and containers, office furnishings and supplies, and cash registers and computer equipment. Non-taxable assets commonly sold in a Bulk Sale include land, buildings, goodwill, inventory for resale or for use in manufacturing goods for sale, and accounts receivable.

To make this return, the Purchaser completes a Casual Purchaser’s Return form. This form is available on the Manitoba Finance website. Once completed, the Purchaser must file the form, with the Purchaser’s remittance of RST payable to the Minister of Finance, to the Manitoba Taxation Division. There is no processing fee required for filing the Casual Purchaser’s Return. It is important to remember that payment of the RST payable is due by the 20th day of the month following the month of the sale, and late payments are subject to a 10% late filing penalty plus interest.

For more information, see Bulletin No. TAMTA 002 “Bulk Sales – Buying and Selling Business Assets”.

Depending on the nature and complexity of the asset purchase and sale transaction, the above forms may not be applicable, or other forms may be required. If you need assistance with any of these matters, please contact our **TDS Business Law Lawyers** to help navigate your transaction.

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