

**Deloitte.**



Update on Outcome of HST Claim

# Background

- In February 2018, Ontario Electronic Stewardship (“**OES**”) was directed by the Minister of Environment and Climate Change (the “**Minister**”) to wind up the waste electrical and electronic equipment (“**WEEE**”) program. As required by the *Waste Diversion Transition Act* (“**WDTA**”), OES prepared a wind-up plan (the “**Wind-Up Plan**”), which was approved, with conditions, by the Resource Productivity and Recovery Authority (“**RPRA**”). The Wind-Up Plan contemplates that remaining residual funds of OES will be transferred to RPRA following the settlement of all financial obligations of OES. OES ceased operations on December 31, 2020.
- Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as liquidator (the “**Liquidator**”) of OES pursuant to a resolution of the board of directors of OES effective April 1, 2021. By order of the Ontario Superior Court of Justice (Commercial List) dated June 11, 2021, the Liquidator was appointed as a court-appointed liquidator of OES.
- The Liquidator’s role is to realize on the assets of OES, settle its financial obligations, implement the Wind-Up Plan and take other steps as set out under the Wind-Up Plan to wind up OES as a corporate entity.
- During its review of OES’ books and records, the Liquidator identified a possible overpayment of GST/HST by OES following receipt of a large windfall payment from CRA. After further review and analysis, the Liquidator filed amended HST returns (the “**HST Claim**”) and was successful in securing an HST refund of approximately \$15 million. Such funds were paid to the Liquidator on January 2, 2024.

# The Wind-Up Plan

- The Wind-Up Plan was prepared by OES in December 2018. Following a number of revisions and extensive stakeholder consultations, a final draft of the Wind-Up Plan was approved, with conditions, by RPRA in July 2019. The Wind-Up Plan includes the following provisions:
  - The elimination of steward fees for the period from February 1, 2019 to December 31, 2020 in accordance with a ministerial direction that required OES’ operating surplus be eliminated in a manner that benefits Ontario consumers; and
  - The transfer to RPRA of any residual funds remaining after the resolution of OES’ financial obligations and the completion of wind-up activities.
- The Wind-Up Plan estimated that approximately \$3.1 million would be transferred to RPRA following the completion of wind-up activities, which RPRA would use to offset *Resource Recovery and Circular Economy Act* (“**RRCEA**”) registry-related expenses.
- Following consultation with stakeholders, the rules created by OES pursuant to the WDTA to deal with the payment of fees by Stewards (the “**Steward Rules**”) were amended by RPRA in an attempt to eliminate any conflict between the Wind-Up Plan and the Steward Rules.

## The Wind-Up Plan (continued)

- OES had cash on hand of approximately \$4.5 million at the time of the Liquidator's appointment. The exact amount transferred to RPRA will depend on the quantum of OES' financial obligations, the proceeds of realization of OES' assets and the costs of the liquidation, as further set out herein.
- The Liquidator ran a Court-approved claims process to identify any financial obligations of OES. On completion of the claims process, the Liquidator issued payment of \$186,720 in final satisfaction of OES' remaining financial obligations. By virtue of the claims process, any financial obligations or claims not presented and resolved during the claims process are extinguished.
- As discussed in greater detail below, the Liquidator filed amended HST returns to recover HST overpayments in excess of \$15.8 million. The Liquidator has recovered approximately \$15.2 million to date and expects to recover an additional \$0.6 million related to an outstanding HST claim. The Liquidator anticipates the additional \$0.6 million will be realized in the next 6 – 8 months, depending on the timeliness of CRA's response.

# The HST Claim

- In 2018, a Tax Court of Canada (“**TCC**”) decision involving Stewardship Ontario resulted in a \$60.8M (as of February 2019) payment to OES, as previously denied input tax credits (“**ITCs**”) were refunded.
- OES funds its activities through the collection of an Environmental Handling Fee (“**EHF**”) from stewards. As the EHF was payable on a cost-recovery basis, OES decided to apply the HST payment against future amounts of EHF payable by the stewards. In other words, OES decided to reduce the amounts collected from the stewards by the amount so recovered from the CRA on previously denied ITCs.
- However, from February 2019 to December 2020, based on advice received from an external advisor, OES continued to remit to CRA the HST that it calculated (but not collected) on the EHF. Remittances over the period totalled \$15.3 million. The Liquidator’s review determined that this was unnecessary and that, consequently, OES was entitled to recover this HST from CRA.
- The Liquidator filed two amended HST returns with CRA. The first return, reflecting the Liquidator’s original calculation of HST owing, was assessed by CRA in December, 2023 and the Liquidator received an HST refund of \$15.2 million on January 2, 2024. The second return, reflecting adjustments to the review period, is expected to result in an additional refund of \$0.6 million.

# Anticipated Distribution Pursuant to Wind-Up Plan

- As at December 31, 2023, OES reported assets of \$17,685,203, including \$2.4 million of cash and accounts receivable of \$15.2 million representing the HST refund received in January 2024.
- The Liquidator estimates that its final distribution to RPRA will be in the range of \$17.0 million to \$18.0 million. The estimated distribution reflects information currently available to the Liquidator and is subject to change based on several factors including, but not limited to:
  - CRA's assessment of the outstanding amended HST return;
  - The length of time until CRA issues an assessment;
  - The receipt by the Liquidator of a notice from the Minister terminating the program; and
  - The Liquidator's ability to secure Court approval for certain steps incidental to the wind-up and dissolution of OES, including:
    - Final distribution of funds to RPRA to offset RRCEA registry-related expenses;
    - Filing of final tax returns and securing clearance certificate(s) from CRA;
    - Securing Court orders dissolving OES and extending regulatory notice deadlines; and
    - Approving the fees and disbursements of the Liquidator and discharging the Liquidator.

# Next Steps

- Upon receipt of a satisfactory notice of assessment from CRA in respect of the outstanding HST return, the Liquidator will:
  - File a motion with the Court for an order (i) approving the distribution of residual funds to RPRA, less a conservative holdback for the Liquidator's fees and expenses, (ii) discharging Deloitte Restructuring Inc. as Liquidator on the filing of a certificate attesting that the estate has been fully administered;
  - Distribute the residual funds to RPRA, net of the holdback described above;
  - Arrange for the submission of final tax returns and audited financial statements;
  - Submit a final report to the Authority and the Minister setting out the steps that were taken to implement the approved wind up plan and confirming that the plan has been implemented; and
  - Once the Minister has received the final report and issued a notice terminating the program the Liquidator will remit any balance of the holdback to RPRA after deducting the Liquidator's fees and expenses.

# Questions and Comments





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