

February 2014

GST/HST RELIEF FOR HOSPITAL PARKING? MAYBE!

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On January 24, 2014, the Department of Finance released draft legislation to provide a GST/HST exemption for public hospitals providing parking primarily for the use of their patients and visitors, effective immediately. The government stated: "Hospitals are encouraged to pass on the savings." It will remain to be seen if hospitals do pass these savings on to the public.

A little history of this issue will be helpful for readers. There are separate rules for charities that are registered charities or registered Canadian amateur athletic associations as defined by subsection 248(1) of the Income Tax Act and charities that are "public institutions" defined in the Excise Tax Act as school authorities, public colleges, universities, hospital authorities or local authorities as determined under paragraph (b) of the definition "municipality."

Under the GST/HST rules, to maintain competitive equity, supplies of paid parking are taxable, whether provided by the private or public sector, as the supply of paid parking is considered a commercial activity. A public sector body is a municipality, university, public college, school authority, hospital authority, charity, non-profit organization or government. However, there are specific rules for charities that trump the taxable rule for parking above. That is, the supply of parking by charities is exempt.

With this tax nuance in mind, a few years ago, a Big Four accounting firm approached hospitals in Ontario and convinced many that there were savings to be had if the hospital transferred the parking business to its foundation charity, *charged the same amount for parking fees* to the public since generally parking fees are shown as tax included, and retained the savings for charitable purposes. All of this seemed to be great tax planning. However, the Canada Revenue Agency (CRA) was not happy about losing tax revenues that became an extra funding source for hospital foundations.

The budget in 2013 initially proposed that the special GST/HST exemption for parking supplied by charities did not apply to supplies of paid parking that are made by way of lease, license or similar arrangement in the course of a business carried on by a charity set up or used by a hospital to operate a parking facility. This measure was intended to ensure consistent taxable treatment of supplies of paid parking made directly by hospitals and supplies made by charities set up or used by these entities to supply parking. The CRA wanted to close this loophole. However, in the second draft of the bill, this specific provision was not included and the Department of Finance advised that the issue is in discussion with stakeholders.

The recent draft proposed legislation and explanatory documents issued are so complicated and convoluted that they may take months to decipher. However, now that parking provided by hospitals for visitors and patients is not subject to tax and *if* hospitals pass these savings on to the public by lowering the stated tax included price for parking, it will be a big relief for taxpayers during a time when they are stressed and burdened. The CRA is making this policy change as a big promotional announcement. Let's hope the hospitals do the right thing. §

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PROVIDING SERVICES TO A NON-RESIDENT? PROVE IT!

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This article is to shed light on the age-old question – are the services I am providing to a non-resident exempt from tax or not? As is true of most questions relating to sales tax implications, there is no clear-cut answer. To answer this question, you need to contemplate several other questions first.

Zero-rated supplies

This term refers to goods and services that are taxable at a rate of 0%. Most taxable goods and services that are provided to a non-resident, including tangible personal property, services and intellectual property, are described in Part V of Schedule VI of the Excise Tax Act (Act). These goods and services would be given zero-rated consideration. More specifically, section 2, 5 to 10, 13, 14, and 17 to 23 of Part V of Schedule VI of the Act illustrate supplies that are zero-rated when received by a non-resident.

Non-resident determination

Subsection 123(1) of the Act defines a non-resident person as “not resident in Canada”. Furthermore, section 132 of the Act describes several guidelines for a person to be deemed a resident of Canada. Outside of these criteria, a person would be considered a non-resident of Canada. Generally, determining status requires the use of several legal principles, including but not limited to permanent establishments or deemed permanent establishments. In other instances, a resident of Canada having a permanent establishment outside of Canada may be considered a non-resident with respect to activities that are conducted through that establishment.

The determination of a supply made to a non-resident is the responsibility of the registrant supplier. Residence status is mandatory in determining if the supply can be zero-rated. The Canada Revenue Agency (CRA) has mandated that “satisfactory evidence” be provided to substantiate that the recipient of the good or service is a non-resident of Canada. Most registrants simply identify the recipient they are engaged with and their physical business location, which would not be sufficient proof of non-resident status. A due diligence defense would not be considered satisfactory evidence in case of audit; the supplier would be responsible to remit the taxes owed, in addition to any applicable penalty and interest.

The CRA has not created any prescribed forms. However, GST/HST memorandum 4.5.1 outlines different examples of satisfactory evidence that would be accepted. Appendix A describes the documentation that the Department of Finance will generally accept as proof that the person is a non-resident. Appendix B describes the documentation that the Department of Finance will generally accept as proof that the customer is both a non-resident and is not registered. This documentation should be dated and signed by the non-resident and be effective on the date of supply. The Department of Finance will also consider other forms of documentation as proof of non-residence and the non-registered status of the customer.

If you make sales to non-residents of Canada and you do not charge GST/HST, ensure you have this documentation in case the CRA comes knocking! §