
GST/HST ON MEMBERSHIP FEES

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The Canada Revenue Agency (“CRA”) recently released a ruling issued in the Fall of 2006 with respect to whether Goods and Services Tax (“GST”) should be charged in respect of membership fees paid to a non-profit organization.¹ The ruling provides a useful discussion of the considerations involved in making the determination of whether a registered charity or non-profit organization should be charging GST in respect of its membership fees. This *Charity Law Bulletin* provides some background to the determination and summarizes some of the applicable principles. The GST rules present a minefield that charities or non-profit organizations and their boards of directors must navigate. As the CRA does not provide a definitive answer to the question, it is advisable that organizations seek advice from GST legal and accounting professionals or confirmation from CRA in order to make the proper determination and avoid unexpected liability exposure.

A. INTRODUCTION

Section 165 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (“ETA”), provides that every recipient of a taxable supply in Canada shall pay tax to the federal government in respect of the supply, calculated at a rate of 6 percent on the total value of the consideration for the supply. This is referred to as the GST. Three Atlantic provinces – Nova Scotia, New Brunswick and Newfoundland and Labrador – pay an amount equivalent to

¹ Excise and GST/HST Rulings Directorate, Canada Revenue Agency, Case No. 54497 (September 5, 2006). This ruling involves the situation of a non-profit organization involved in assisting charities and non-profit organizations to earn funds to support cultural, sporting, religious, youth, educational and community services activities. Membership in the organization was available to various associations and members received a number of important benefits: advocacy, advertising and promotions, reduced group insurance rates, reduced conference fees, and various publications. CRA ruled that the membership fees were taxable supplies.

the provincial sales tax in addition to the GST on the value of the consideration for the supply which is referred to collectively as the Harmonized Sales Tax (“HST”) and is calculated at a rate of 14 percent. Everyone in Canada, with the exception of provincial and territorial governments, Indians, and Indian bands, must pay the GST/HST on taxable supplies of goods and services made by a GST/HST registrant. Generally, organizations involved in commercial activities in Canada are obliged to register for GST/HST because most of their supplies are taxable and they do not qualify as small suppliers. Registered organizations must collect and remit the tax, although they can claim input tax credits (“ITC”) to recover the tax paid or owed on purchases and operating expenses used, consumed, or supplied in their commercial activities.

Charities and non-profit organizations are an exception to this general rule, with exemptions applying to most of their supplies of goods and services. *Charity Law Bulletin* No. 52, “Charities and the GST/HST” summarizes the general rules with respect to the application of GST/HST to charities. CRA’s publication entitled “GST/HST Information for Charities” can be found at <http://www.cra-arc.gc.ca/E/pub/gp/rc4082/rc4082-02e.pdf>. As different rules apply, non-profit organizations should refer to the CRA publication entitled “GST/HST Information for Non-Profit Organizations,” available at <http://www.cra-arc.gc.ca/E/pub/gp/rc4081/rc4081-e.pdf>.

However, in order for an organization or charity to determine its rights and obligations in respect of the GST/HST, the organization must first determine the nature and scope of its activities. Organizations usually fall into one of three categories:

1. All goods and services supplied are exempt goods and services;
2. Some goods and services are taxable, but the organization qualifies as a small supplier; or
3. Some goods and services are taxable and the organization does not qualify as a small supplier.

As a general rule, most supplies made by charities and non-profit organizations are exempt. For example, in many circumstances the following supplies will be considered exempt: used and donated goods, Meals-on-wheels programs, parking space or facility rentals, catering services for private functions, fund-raising activities that are not provided on a regular or continual basis, goods and services supplied for an amount that does not exceed the direct cost, recreational programs provided primarily for children 14 years of age or

younger,² supplies made for the relief of poverty, suffering or distress of individuals, and memberships supplied without significant benefit. In addition, where substantially all (i.e. 90 percent or more) supplies are made free of charge, then all supplies of that good or service will be exempt.³

B. GST/HST ON MEMBERSHIP FEES IN NON-PROFIT ORGANIZATIONS

For non-profit organizations, section 17 of Part VI of Schedule V of the ETA exempts a supply of a membership in a "public sector body"⁴ (other than a membership in a club the main purpose of which is to provide dining, recreational or sporting facilities or in a registered party) where each member does not receive a benefit by reason of the membership other than the "allowable benefits" listed in paragraphs 17(a) to 17(f) of that section. As stated in the ruling issued by CRA, generally a "benefit" of membership is the right to any property or service of value regardless of the extent to which the right is actually exercised by individual members and all possible benefits accruing to members must be taken into consideration in determining the tax status of a membership. The allowable benefits listed in paragraphs (a) through (f) include indirect benefits available to all members collectively, dispute investigation and resolution services, the right to vote, the right to purchase property or services for fair market value consideration that does not include the membership fee, discounts where the value of the discount is insignificant when compared to the membership fee, and certain periodic newsletters, reports or publications.

Where the benefits members have the right to receive exceed the allowable benefits under section 17 of Part VI of Schedule V, then the supply of the membership will not be exempt under that provision even when those benefits are available to each and every member.

With respect to indirect benefits intended to accrue to every member collectively,⁵ CRA indicated in the ruling that the fact that a benefit is available to all members does not necessarily mean that the benefit is indirect:

² Cooper, Karen J. "Are Camp Fees subject to G.S.T.?" in *Charity Law Update*, January 2007.

³ Please see the CRA publications referred to above for a more detailed list of exempt supplies and the exceptions that may apply to these supplies.

⁴ "Public sector body" is defined in section 1 of Part VI, Sched. V of the ETA to exclude registered charities and registered Canadian amateur athletic associations, but includes by virtue of the definition subsection 123(1) government, non-profit organizations, municipalities, school and hospital authorities, and public colleges and universities.

⁵ Paragraph (a) of section 17, Part VI, Sched. V of the ETA.

A benefit can be direct and accrue to all members or to all members in a particular class of membership where an organization has set out different classes of membership with different rights and privileges in its governing documents. A benefit has to be indirect and intended to accrue to all members collectively in order to fall under paragraph 17(a) of Part VI of Schedule V. Benefits that are meant to accrue only to members by reason of their membership are generally direct benefits.

CRA indicated that activities carried out by an organization on behalf of the general public such that both members and non-members alike benefit in a roundabout or secondary manner would be considered to be an indirect benefit, but not where the activities are directly aimed at benefiting only the members of the organization. With respect to the particular benefits provided to members of the organization at issue in the ruling, CRA considered that the right to be listed in promotional brochures distributed to various travel and tourist centres had a commercial application for members, that the benefit was aimed solely at members, and any gain resulting from the advertising was meant to accrue directly to those members since non-members did not have the right to acquire a listing in the brochures. As such, this benefit could not be considered a secondary or unintended consequence of membership and was not an indirect benefit. In addition, members received special discounts on insurance and attendance at conferences which were not allowable benefits within the meaning of paragraph (d) in respect of the right to receive or acquire property or services from the organization or a third party since the separate consideration paid would be less than the fair market value of the property or services received.

C. GST/HST ON MEMBERSHIP FEES IN CHARITIES

In 1997, the ETA was amended to simplify the exemption rules for charities by excluding charities⁶ from the application of the exemptions in Part VI of Schedule V and including a new Part V.1 which provides for exemptions specific to charities. Included in these specific exemptions are rules relating to memberships which are different than those discussed above.

A supply of a membership by a charity will be exempt, unless the value of the following benefits is significant (generally considered by CRA to be 30% or more) in relation to the cost of the membership:

1. free or reduced admission to a place of amusement;
2. the use of recreational or athletic facilities at a place of amusement; or

⁶ “Charity” is defined in subsection 123(1) of the ETA to include registered charities and registered Canadian amateur athletic associations within the meaning of those terms in subsection 248(1) of the *Income Tax Act*.

3. the right to participate in a recreational or athletic activity at a place of amusement.⁷

The supply of a service, membership, or right by a charity is not exempt where it provides for supervision or instruction in any recreational or athletic activity. However, this service, membership, or right remains exempt if it is provided primarily to children who are 14 years of age and under, and does not involve overnight supervision throughout a substantial portion of the program; or individuals who are underprivileged or who have a disability.⁸

D. CONCLUSION

If a charity or non-profit organization's membership fees are exempt, the organization cannot charge GST/HST on the supply. If the membership fees are not exempt, the organization will have to determine whether it is a small supplier or must register for GST/HST purposes. As indicated above, the rules in this regard are complex and advice should be sought from GST and accounting professionals. However, an understanding of the rules may provide some guidance to organizations when they are considering the benefits they want to provide to their members and help to avoid turning an otherwise exempt supply into a taxable membership fee.

⁷ Paragraph (g) of section 1, Part V.1, Sched. V. of the ETA.

⁸ Paragraph (f) of section 1, Part V.1, Sched. V. of the ETA.