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# THE 2008 ANNUAL CHURCH & CHARITY LAW™ SEMINAR

Toronto – November 6, 2008

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## GST for Charities: A Primer

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By Karen J. Cooper, LL.B., LL.L., TEP

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**Offices / Bureaux**

Ottawa (613) 235-4774

Mississauga (905) 306-2791

Orangeville (519) 942-0001

**Toll Free: 1-877-942-0001**

**By Appointment / Par rendez-vous**

Toronto (416) 675-3766

London (519) 937-2333

Guelph (519) 838-2004

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GST for Charities: A Primer

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OVERVIEW

- Introduction
- Two Types of Charities With Different Rules
- GST Exemptions for Charities
- Special Taxing Considerations
- Tax Rebates and Tax Credits

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A. INTRODUCTION

- Section 165 of the *Excise Tax Act* (“ETA”) provides that every recipient of a taxable supply in Canada must pay tax in respect of the supply of 5% of the total value of the consideration for the supply
- This is referred to as the Goods and Services Tax (“GST”)

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- Everyone in Canada must pay GST, except provincial and territorial governments, Indians, and Indian bands
- Generally, businesses in Canada are obliged to register for GST because most of their supplies are taxable and they do not qualify as small suppliers

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- Organizations registered for GST must collect and remit the tax, but 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
- Registered charities are an exception to this general rule, with exemptions on most of their supplies of goods and services
- However, registered charities need to be aware of their GST obligations because not everything is exempt

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**B. TWO TYPES OF CHARITIES WITH DIFFERENT RULES**

1. Definitions

- “Charity” is any organization registered as a charity under the *Income Tax Act* but excludes public institutions
- “Public Institution” is a registered charity that is a: school authority, public college, university, hospital authority, and local authority determined to be a municipality

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2. Basic Differences

- General exemption for “Charities”
  - Any supply made by a charity of any property or service is exempt from GST unless it is specifically listed
  - Taxable supplies include memberships, admissions, goods acquired for resale, and real estate (all in specified circumstances)
  - Listed in section 1 of Part V.1 of Schedule V
  - In addition to the general exemption, there are specific exemptions elsewhere in Schedule V that apply only to charities

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- General exemption for “Public Institutions”
  - Similar to charities but a few more exceptions
  - Taxable supplies include:
    - Short term leases of real property (less than a month)
    - Parking
    - Catering services
  - Section 1 of Part VI of Schedule V
  - Additional specific exemptions available elsewhere in Schedule V

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C. GST EXEMPTIONS FOR CHARITIES

- In order for a charity to determine its rights and obligations under the GST, the charity must first determine the nature and scope of its activities
- Charities fall into three categories:
  - All goods and services supplied are exempt goods and services
  - Some goods and services are taxable, but the charity qualifies as a small supplier, or
  - Some goods and services are taxable and the charity does not qualify as a small supplier

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**1. Charities with all Exempt Goods and Services**

- As a general rule, most supplies made by charities are exempt
- CRA does not have a definitive list of exempt goods and services, but does provide guidance through its publication entitled “GST Information for Charities”

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- Examples of goods and services that are exempt when provided by charities include:
  - Most services provided by a charity
  - Supplies of used and donated goods
  - Short-term residential accommodation (less than one month of occupancy)
  - Parking space rentals
  - Facility rentals
  - Catering services for private functions

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- 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
- Memberships supplied without significant benefit and
- Supplies made for the relief of poverty, suffering or distress of individuals

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- If a charity’s activities all fall within these categories of exempt goods and services, then specific rules apply
  - The charity cannot register for GST
  - The charity cannot charge GST on its supplies
  - The charity cannot claim ITCs to recover the GST paid or owing on its purchases
  - The charity would be eligible to claim a public service bodies’ (“PSB”) rebate of 50% of the GST paid or owing on eligible purchases or expenses

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- 2. Charities with Taxable Goods and Services**
- The supply of goods and services that fall outside of the previously-listed exemptions may mean the charity is providing taxable goods and services
  - As such, the charity must determine if the scope of its activities requires it to register for GST and to charge and remit tax on its supply of goods and services

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- A charity must register for GST if two conditions are met:
  - The charity provides taxable goods and services in Canada, and
  - The charity does not qualify as a small supplier
- Two tests are available to determine if a charity qualifies as a small supplier

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- A charity need only meet one of the two following tests to qualify as a small supplier, i.e. either:
  - The Gross Revenue Test, or
  - The \$50,000 Annual Taxable Supplies Test
- Gross Revenue Test
  - A charity will qualify as a small supplier if gross revenues for the fiscal year amount to \$250,000 or less
  - Gross revenue includes business income, donations, grants, gifts, property income, and investment income, less any amount considered a capital loss for income tax purposes

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- \$50,000 Annual Taxable Supplies Test
  - The annual taxable supplies limit is \$50,000 for charities
  - The charity must calculate its total revenue from taxable supplies in the current calendar quarter, and the total revenue from taxable supplies in the last four calendar quarters
  - If both amounts are \$50,000 or less, then the charity qualifies as a small supplier

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- 3. Charities that Do Not Qualify as Small Suppliers**
- Charities that do not qualify as small suppliers (neither of the above test is met) and provide taxable goods and services in Canada must register for GST
  - Once registered, they must collect and remit GST on taxable supplies of goods and services
  - They must file annual returns or they may elect to change their reporting period to file monthly or quarterly returns

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**D. SPECIAL TAXING CONSIDERATIONS**

**1. Donations and Gifts**

- Because a donation or gift is a voluntary transfer of money or property for which the donor receives no benefit in return, the GST does not apply
- This remains true even if the donor receives property in return that has a nominal value
- However, if the donor receives a good or service having more than nominal value in exchange for the donation, the donation may be subject to GST if it is not otherwise exempt

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**2. Grants and Subsidies**

- Grants and subsidies are generally viewed as transfer payments made in the public interest
- CRA does not generally regard them as payment for a supply subject to GST
- CRA indicates that as the tax treatment of transfer payments may be complex, the GST consequences need to be determined on a case-by-case basis

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**3. Sponsorships**

- Depending on the nature and the extent of the promotional benefits given to the sponsor, sponsorships may not be subject to GST
- If the payment made by the sponsor is made primarily in order to obtain advertising, CRA may consider it a payment for advertising services and not a sponsorship, and thus subject to GST (except when a charity provides the advertising services)

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**4. Memberships**

- **A membership which entitles the member to:**
  - **An admission in respect of a place of amusement that would otherwise be taxable**
  - **A discount on such an admission**
  - **A right to participate in a recreational or athletic activity or use facilities in a place of amusement**

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- **TAXABLE unless the value of the right etc. is “insignificant”**
  - **CRA says less than 30%**
- **Otherwise memberships covered by general exemption**
- **A service or membership entitling the member to supervision or instruction in a recreational or athletic activity is taxable unless:**
  - **Participants will be primarily children under age 14, or**
  - **Participants will be underprivileged or have a disability**

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**5. Auctions**

**Two possible supplies:**

- **Admission to the event**
- **Goods sold at the auction**
- **Admission may be exempt if:**
  - **Part may be receipted as a donation, or**
  - **Non-recurring fundraising event (e.g. a dinner followed by an auction)**
- **Sale of goods will be exempt if they are donated or previously used**

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**E. TAX REBATES AND TAX CREDITS**

**1. Rebates & ITC's – Getting Back GST Paid**

- The person making a taxable supply may recover the amount of GST paid on inputs to that supply by claiming an ITC
- Charities and public institutions eligible to claim rebates of part of GST paid
  - But only based on the portion that was not otherwise recoverable throughout the ITC

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**2. Public Service Bodies' ("PSB") Rebates**

- The PSB rebate allows certain public service bodies, including charities, to recover a percentage of the GST paid on purchases and expenses related to supplies
- Charities are eligible for a rebate of 50% of the GST paid or owing on eligible purchases and expenses
- Charities have four years from the end of the claim period to file the rebate application

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- Although original invoices or receipts do not have to be included in the rebate applications, for audit purposes, the charity must keep those documents for six years after the calendar year to which they relate
- If CRA designates a charity to be a municipality in relation to certain municipal services it provides, the charity may be able to recover approximately 57% of the GST paid or owing on purchases and expenses related to that designated activity
- GST paid or owing on purchases and expenses related to other activities will be subject to the regular 50% rebate

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**3. Exported Goods and Services**

- Charities can apply for a 100% rebate of the GST paid to suppliers on goods and services that have been exported outside Canada and for which the charity cannot claim ITCs
- The charity need not be registered for GST in order to receive this rebate
- This rebate does not apply to goods and services that are not exported, even if they are used in activities that support other activities outside of Canada

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**4. Purchases of Printed Books**

- A 100% GST rebate is also available to charities that operate a public lending library
- This rebate relates to GST paid or owing on publications purchased for the lending library that are not resold or given away

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**5. Input Tax Credits (“ITC”)**

- An ITC is a claim to recover the GST paid or owing to suppliers for goods and services acquired to provide taxable goods and services by GST registrants
- Simply put, ITCs are only available to the extent that purchases and expenses are for consumption, use, or supply in the charity’s commercial activities
- ITCs are claimed on the registered charity’s GST return

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**Key Points to Remember:**

- **Everything** is subject to GST unless an exemption applies
- A “supply” doesn’t necessarily involve cash
- **Charities and Public Institutions** have different rules, don’t extrapolate
- **Real property** is always tricky, seek help before the day of closing!

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