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The 2016 Annual *Church & Charity Law*[™] Seminar


Mississauga – November 10, 2016

THE ABC'S OF GST/HST FOR CHARITIES & NPOs

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OVERVIEW

- Introduction to GST/HST
- Registration
- Exemptions and Exceptions
- Input Tax Credits and Rebates
- Tips and Resources




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A. INTRODUCTION TO GST/HST

1. Background


- The Goods and Services Tax ("GST") was introduced by the federal government in 1991 to "strengthen economic competitiveness, contribute to deficit reduction and lead to a fairer sales tax system" (*Budget Speech*, February 20, 1990)
- GST is imposed pursuant to ss 165(1) of the *Excise Tax Act* ("ETA"):
 - every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply



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- In Ontario, Harmonized Sales Tax ("HST") was introduced in 2010 to "harmonize" the provincial sales tax with the federal GST
- Provinces that have harmonized their provincial sales tax with the GST are referred to as "participating provinces" under the ETA
 - every recipient of a taxable supply made in a participating province shall pay to Her Majesty in right of Canada, in addition to the tax imposed by subsection (1), tax in respect of the supply calculated at the tax rate for that province on the value of the consideration for the supply (ss 165(2))



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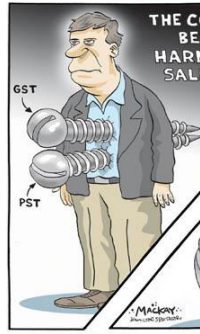
- Current HST rates for participating provinces are:
 - New Brunswick = 15%
 - Newfoundland and Labrador = 15%
 - Nova Scotia = 15%
 - Ontario = 13%
 - Prince Edward Island = 15%




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THE CONSUMER BEFORE A HARMONIZED SALES TAX ...



... AND AFTER.




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2. How Does the GST/HST Impact Charities and Non-profit organizations (“NPOs”)?

- Both types of organizations need to determine their status under the ETA and whether they:
 - Provide taxable supplies in Canada and a participating province
 - Should register for GST/HST
 - Provide exempt supplies
 - Are entitled to claim any rebates
 - Are currently complying with their ETA obligations





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3. Status Under the ETA


- An organization’s status under the *Income Tax Act* (“ITA”) is not necessarily the same as its status under the ETA:
 - A charity = a registered charity or registered Canadian amateur athletic association as defined in the ITA, but does not include a public institution
 - A public institution = a registered charity as defined in the ITA that is a school authority, a public college, a university, a hospital authority or a local authority determined to be a municipality by the Minister of Revenue

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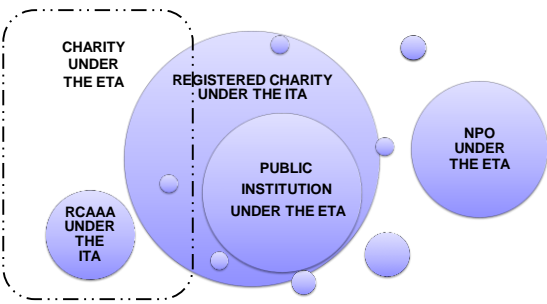
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- A NPO = a person that:
 - was organized and is operated solely for a purpose other than profit
 - does not make any part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder is a club, a society or an association the primary purpose and function of which is the promotion of amateur athletics in Canada
- As well, a NPO does not include an individual, an estate, a trust, a charity, a public institution, a municipality or a government



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B. REGISTRATION

- A charity, public institution, or NPO must register for GST/HST if it:
 - Provides taxable supplies in Canada and a participating province, and
 - Is not a small supplier
- A charity, public institution, or NPO may register if it provides taxable supplies in Canada and a participating province and is a small supplier
- A charity or public institution does not have to register in its first fiscal year
- A charity, public institution, or NPO cannot register if it provides only exempt supplies (most supplies by charities and public institutions are exempt)




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1. What is a “supply”?

- The ETA defines a supply as “the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition”
 - Property = “any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money”
 - Service = “anything other than” property, money, and most services supplied by an employee to an employer




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2. What is a “taxable supply”?

- Under the ETA, a taxable supply is “a supply that is made in the course of a commercial activity”
- Commercial activity under the ETA basically means:
 - A business that does not involve the making of exempt supplies,
 - An adventure or concern in the nature of trade, and
 - The making of a supply of real property
- Taxable supplies include zero-rated supplies
- Charities, public institutions, and NPOs that make taxable supplies in Canada or a participating province must register for GST/HST if they do not meet the ETA’s definition of a “small supplier”



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3. What is a “small supplier”?

- Under the ETA a charity or public institution may qualify as a small supplier in two ways:
 - The gross revenue test
 - The taxable supplies test
- NPOs can only qualify as small suppliers under the taxable supplies test

4. The Gross Revenue Test for Charities and Public Institutions

- A charity or public institution will not be a small supplier under the ETA’s gross revenue test if its gross revenue for the particular fiscal year exceeds \$250,000



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YEAR 1	YEAR 2	YEAR 3+
<ul style="list-style-type: none"> Organization is a small supplier even if gross revenue exceeds \$250,000 Do not need to register 	<ul style="list-style-type: none"> If gross revenue exceeds \$250,000 in Year 1, organization is not a small supplier Must register if does not also qualify as a small supplier under the taxable supplies test 	<ul style="list-style-type: none"> If gross revenue in both of the preceding two fiscal years exceeds \$250,000, organization is not a small supplier Must register if does not also qualify as a small supplier under the taxable supplies test

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- Under the ETA gross revenue means:
 - Gifts
 - Grants, subsidies, forgivable loans or other assistance in the form of money from a government, municipality or other public authority
 - Revenue from property, a business, an adventure or concern in the nature of trade or other source
 - Capital gains from the disposition of property
 - Other revenue of any kind whatever (minus amounts included in determining the amount of a capital gain or loss)






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5. The Taxable Supplies Test for Charities, Public Institutions, and NPOs

- Charities and public institutions that qualify as small suppliers under the gross revenue test do not need to complete the taxable supplies test
- A charity, public institution, or NPO will not be a small supplier under the ETA’s taxable supplies test if its revenue from taxable supplies exceeds \$50,000 in either of:
 - The four preceding calendar quarters
 - The current calendar quarter



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If revenue from taxable supplies in the preceding 4 calendar quarters exceeds \$50,000, organization is not a small supplier

Must Register

If revenue from taxable supplies in the current calendar quarter exceeds \$50,000, organization is not a small supplier


- Revenue from taxable supplies includes revenue from:
 - Supplies made inside and outside Canada
 - The organization and its associates
- Revenue from taxable supplies does not include revenue from goodwill, supplies of financial services, or supplies by way of sale of capital property

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6. Registration


- A charity, public institution, or NPO that is required or chooses to register for GST/HST is referred to as a "registrant" and will need to:
 - Charge and remit GST/HST on taxable supplies of goods and services that it makes
 - Verify if it can claim Input Tax Credits ("ITCs")
 - File GST/HST returns for each reporting period
 - Filing frequency depends on ETA status and the amount of annual revenue from taxable supplies
 - Keep related books and supporting records in English or French for a minimum of six years from the year to which the records relate



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- A charity, public institution, or NPO that is not required to or chooses not to register for GST/HST cannot:
 - Charge GST/HST on its supplies of goods and services
 - Claim any ITCs to recoup GST/HST it has paid

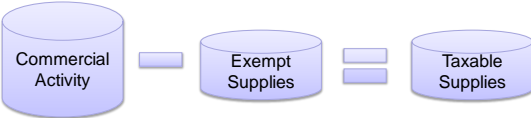


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C. EXEMPTIONS AND EXCEPTIONS


- GST/HST only applies to taxable supplies, i.e. supplies of goods and services made in the course of a commercial activity
- Commercial activity does not include the making of exempt supplies
- The ETA identifies an exempt supply as "a supply included in Schedule V" of the ETA



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- Most supplies of goods and services made by charities and public institutions are exempt unless a specific exception to the exemption applies
 - Part V.1 of Schedule V provides a general exemption of "[a] supply made by a charity of any property or service"
 - Part VI of Schedule V provides a general exemption for "a supply made by a public institution of any personal property or a service"
 - Personal property = "property that is not real property"
- Most supplies of goods and services made by NPOs are not exempt





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1. Exceptions to the General Exemption for Charities

- Supplies that are likely taxable by charities include:
 - New goods purchased for resale
 - Certain admissions to places of amusement, e.g. museums, theatres, historical sites where the cost of admission exceeds \$1
- Supplies that are likely exempt by charities include:
 - Used or donated goods
 - Parking spaces and facility rentals
 - Goods and services sold at direct cost
 - Irregular fundraising activities
 - Supplies in the course of an activity to relieve poverty, suffering, or distress






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2. Exceptions to the General Exemption for Public Institutions

- Supplies that are likely taxable by public institutions include:
 - Property or service under a contract for catering
 - Certain memberships
- Supplies that are likely exempt by public institutions include:
 - Certain fundraising activities
 - Certain sales related to a right to play in a game of chance
 - Used or donated goods






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3. Budget 2016 Changes

- A new paragraph was added to section 1 of Part V.1 of Schedule V of the ETA to clarify that a supply of a service rendered by a charity to an individual to enhance or otherwise alter the individual's physical appearance, and not for medical or reconstructive purposes will no longer be exempt from GST/HST
- Section 164 was added to the ETA so that where a charity or public institution receives a donation and provides a property or service to the donor, the part of the donation that exceeds the value of the gift would not be subject to GST/HST
- Both changes apply to supplies made after March 22, 2016






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4. Exemptions and Exceptions for NPOs

- Supplies that are likely taxable by NPOs include:
 - Registration fees for conferences, seminars, and trade shows
 - Theatre, magazine, and newsletter subscriptions
 - Advertising, books, and restaurant meals
- Supplies that are likely exempt by NPOs include:
 - Most educational services and music lessons
 - Certain child care services
 - Some admissions, memberships, and recreational programs
 - Goods and services sold at direct cost






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5. Not Sure if a Supply is Exempt?

- Consult your accountant and/or legal advisor
- Check to see if there are any relevant jurisprudence or technical interpretations/rulings issued by Canada Revenue Agency ("CRA")
- CRA's Excise and GST/HST Rulings and Interpretations Service is also available to help organizations comply with their obligations under the ETA
 - General assistance by telephone at 1-800-959-8287 (most of Canada) or 1-800-567-4692 (Quebec)
 - Obtain a non-binding written technical interpretation or a binding written ruling



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D. INPUT TAX CREDITS AND REBATES

1. Input Tax Credits

- Registrants are generally eligible to claim ITCs to recoup the GST/HST paid in relation to the provision of taxable supplies
 - ITCs cannot be recouped for GST/HST paid in relation to the provision of exempt supplies






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2. Rebates

- Regardless of whether an organization is a GST/HST registrant, it may be eligible to claim certain rebates, such as the:
 - Public Service Bodies' ("PSB") Rebate
 - Exported Property and Services Rebate
 - Rebate for Printed Books
 - Rebate for property or services removed from a participating province





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3. Public Service Bodies' ("PSB") Rebate


- Allows charities, certain public institutions, and qualifying NPOs to claim a rebate to recoup some of the GST/HST paid on eligible purchases and expenses for which ITCs cannot be claimed
- The percentage an organization is eligible to claim depends on its status under the ETA, activities carried out, and provincial residency
- RC4034, *GST/HST Public Service Bodies' Rebate*
- Eligible purchases and expenses may include:
 - Operating expenses
 - Some employment related expenses
 - Property and services "used, consumed, or supplied" in exempt activities



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- Charities in Ontario can generally claim a rebate of 50% for the federal component of the GST/HST and 82% for the provincial component, and may be eligible for different rates on some of their activities
- A public institution that is a selected PSB, e.g. a school authority, university, public college, or hospital authority, may be eligible, but how its rebate is calculated will vary based on its activities
- A NPO's entitlement depends on the amount of government funding received and whether it also qualifies as a selected PSB or a charity for the purposes of the PSB rebate



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- Registrants generally file their rebate at the same time as the GST/HST return, non-registrants claim their rebate twice yearly
 - The *Excise and GST/HST News* No. 96 published by CRA in June of 2015 reminded both registrants and non-registrants of these proper claim periods (<http://www.cra-arc.gc.ca/E/pub/gr/news96/news96-e.pdf>)
- Registrants have 4 years from the due date of their GST/HST return to file, non-registrants have 4 years from the last day of their claim period to file
 - The *Excise and GST/HST News* No. 89 published by CRA in Summer of 2013 contains further guidance on these time limits (<http://www.cra-arc.gc.ca/E/pub/gr/news89/news89-e.pdf>)




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E. TIPS AND RESOURCES


- If your organization is a sole legal entity with branches or divisions, check if you should apply to have them:
 - Designated as small supplier divisions
 - File separate GST/HST returns and PSB rebate applications
- If your organization is based in or makes supplies in Quebec, you must deal directly with Revenu Québec (1-800-567-4692 or <http://www.revenuquebec.ca>)
- Confirm your eligibility to file electronically
- Verify if you are resident in more than one participating province



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- Supplies of real property, e.g. sales and leases, are generally exempt if made by a charity, public institution, or NPO, but an organization should confirm the supply does not fall under an exception, e.g. it should review its sales of new housing, sales of housing used in commercial activities, and leases for short-term accommodation
- Confirm that you are using the appropriate accounting method and/or the proper net tax calculation, such as:
 - The net calculation for charities (does not apply to public institutions or NPOs)
 - Special quick method of accounting



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- In addition to its Rulings and Interpretations Service, CRA has a number of helpful resources available on www.cra.gc.ca that clarify how it administers and interprets the ETA for charities, public institutions, and NPOs, such as:
 - GST/HST Info Sheet GI-068, *Basic GST/HST Guidelines for Public Institutions*
 - GST/HST Info Sheet GI-067, *Basic GST/HST Guidelines for Charities*
 - GST/HST Info Sheet GI-066, *How a Charity Completes Its GST/HST Return*
 - RC4081, *GST/HST Information for Non-Profit Organizations*
 - RC4082, *GST/HST Information for Charities*
 - Electronic mailing list - Excise and GST/HST News
 - GST/HST Memoranda Series <http://www.cra-arc.gc.ca/menu/GTMS-e.html>




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- GST/HST Info Sheet GI-179, *Public Service Bodies' Rebate for Charities Resident in Two or More Provinces, at least One of Which Is a Participating Province*
- GST/HST Info Sheet GI-178, *Public Service Bodies' Rebate for Charities Resident in One or More Non-participating Provinces*
- GST/HST Info Sheet GI-177, *Public Service Bodies' Rebate for Charities Resident Only in Prince Edward Island*
- GST/HST Info Sheet GI-176, *Public Service Bodies' Rebate for Charities Resident Only in Ontario*
- GST/HST Info Sheet GI-175, *Public Service Bodies' Rebate for Charities Resident Only in Nova Scotia*
- GST/HST Info Sheet GI-174, *Public Service Bodies' Rebate for Charities Resident Only in Newfoundland and Labrador*
- GST/HST Info Sheet GI-173, *Public Service Bodies' Rebate for Charities Resident Only in New Brunswick*
- GST/HST Info Sheet GI-172, *Public Service Bodies' Rebate for Charities Resident Only in British Columbia*



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