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CHARITIES, NPOS AND THE HST

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A. INTRODUCTION

On July 1, 2010 the provincial sales tax ("PST") was replaced by the harmonized sales tax ("HST") in Ontario and British Columbia. Administered by the Canada Revenue Agency, the HST combines the federal goods and services tax (GST) with the PST in participating provinces. Newfoundland, New Brunswick and Nova Scotia adopted the HST on April 1, 1997. The HST rate in Ontario is 13%, which combines the 5% GST with an 8% provincial component. The HST rate in British Columbia is 12%, where the provincial component is 7%. Also on July 1, 2010, the HST rate in Nova Scotia increased from 13% to 15% (5% federal part and 10% provincial part).

This *Charity Law Bulletin* provides an overview of the implications of the HST for charities and non-profit organizations ("NPOs"). A "charity" for GST/HST purposes includes most registered charities for income tax purposes, but does not include a registered charity that is a school authority, a public college, a university, a hospital authority, or a local authority determined to be a municipality. For more information on the basic GST/HST rules for charities, see *Charity Law Bulletin* No. 52, available online at: http://www.carters.ca/pub/bulletin/charity/2004/chylb52.htm. Also see the *GST/HST checklist for charities*, available on CRA's website at: http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/gsthst-cfc-eng.html. For more information about the implementation of the HST in Ontario, see the Ontario Ministry of Revenue's web page at http://www.rev.gov.on.ca/en/taxchange/hst.html.

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B. OVERVIEW OF THE HST

1. What is subject to the HST?

The amount of tax paid by charities and NPOs on the purchase of many goods and services has not changed under the HST. Certain supplies of goods and services are exempt from the GST regardless of their source, such as basic groceries and most services provided by financial institutions. These items remain exempt from the HST. Likewise, many goods and services which were subject to both the GST and the PST pre-harmonization continue to be taxed at the same rate. According to the Ontario Ministry of Revenue, about 83 per cent of products and services purchased by consumers will see no new tax.[1] However, some services which were previously not subject to the PST, are now taxable at the applicable HST rate, resulting in increased tax costs. For instance, electricity and heating costs were previously only subject to the GST at a rate of 5%, but are now taxed at 13% in Ontario. The following are examples of newly taxed items which may be of significance to charities and NPOs in Ontario:

- Internet access services;
- Gasoline/diesel;
- Hockey rink and hall rental fees;
- Domestic air, rail and bus travel originating in Ontario;
- Service calls by electricians/plumbers/carpenters etc;
- Legal services; and
- Real estate commissions

In Ontario, some products will be eligible for a point-of-sale rebate for the provincial component of the HST, meaning that the consumer will pay only that 5% federal component. The point-of-sale rebate will be available on the following items:

- Books, including a bound or unbound printed version of a scripture of any religion;
- Print newspapers;
- Children’s clothing and footwear;

[1] Ontario Ministry of Revenue, “What's Taxable Under the HST and What's Not?” available online at: http://www.rev.gov.on.ca/en/taxchange/taxable.html#Footnote_1_1.

- Children's car seats and booster seats;
- Diapers;
- Feminine hygiene products; and
- Qualifying prepared foods and beverages that are ready for immediate consumption and are sold for a total price of not more than $4.00.

2. Who can claim a rebate?

The public service body rebate allows certain public service bodies ("PSBs") to recover a percentage of the HST paid on eligible purchases and expenses. PSBs include charities, non-profit organizations, municipalities, school authorities, hospital authorities, public colleges, and universities. A PSB does not have to be a HST registrant to qualify for the rebate. Most charities and qualifying NPOs[2] are entitled to a 50% rebate of the 5% GST or federal portion of the HST. In addition, many charities are entitled to claim a PSB rebate on the provincial component of the HST in participating provinces. There was no such rebate for the PST prior to harmonization.

According to the Ontario Ministry of Revenue, the provincial PSB rebates are intended to keep each PSB sector fiscally neutral relative to the PST it currently pays. Therefore, in Ontario charities and qualifying NPOs will receive a rebate of 82% on the 8% provincial component of the HST, in addition to the 50% rebate on the federal component. Different rebate rates apply for other types of PSBs.

The PSB rebate rates in Ontario are as follows:[3]

PSB Type	Ontario	Federal
Municipalities	78%	100%
Universities and Public Colleges established and operated on a nonprofit basis	78%	67%
School Authorities established and operated on a non-profit basis	93%	68%
Hospital Authorities (only for activities of operating a public hospital) Hospital Authorities (for eligible activities other than the	87%	83%

[2] An NPO is a "qualifying NPO" if its percentage of government funding for the fiscal year, or for the previous two fiscal years, is at least 40% of its total revenue.
[3] Ontario Ministry of Revenue, "Prepare for Ontario's HST: Public Service Bodies", available online at: http://www.rev.gov.on.ca/en/taxtips/hst/05.html#Footnote_1_1.

operation of public hospitals) Facility operators and external suppliers (for eligible activities)		
Charities and Qualifying Non-Profit Organizations	82%	50%

In British Columbia, charities and qualifying NPOs will receive a rebate of 57% on the 7% provincial component of the HST in addition to the 50% rebate on the federal component.[4] In New Brunswick, Newfoundland and Nova Scotia, charities and qualifying NPOs receive a rebate of 50% on both the federal and provincial components of the HST.[5]

The following example illustrates the operation of the PSB rebate for a charity or qualifying NPO in Ontario:

> The charity spends $100 on an eligible expense, such as rent or utilities, and is charged $13.00 HST ($100 x 13%). The charity will receive a rebate of $2.50 on the 5% federal component of the HST ($5 x 50%) and will receive a rebate of $6.56 on the 8% provincial component of the HST ($8 x 82%), for a total rebate of $9.06.

The PSB rebate is available in addition to other GST/HST rebates which may be applicable to a charity or NPO, including rebates of the GST/HST paid on printed books, expenses related to providing rent‑ geared‑ to‑ income housing, and goods and services exported outside of Canada.

3. Should you be charging the HST?

A charity's rights and obligations under the HST depend on the nature and scope of its activities. Many charities are not required to register for HST purposes. A charity that is not registered does not charge tax on its supplies of goods and services. However, some supplies of goods and services made by a charity may be taxable, in which case the charity may be required to register for HST purposes. A charity that is already registered for GST will automatically be registered for HST and be required to charge HST.

[4] B.C. Ministry of Finance, "Rebates for Municipalities, Universities, Public Colleges, School Authorities, Hospital Authorities, Charities and Qualifying Non-Profit Organizations", available online at: http://hst.blog.gov.bc.ca/faqs/rebates/.
[5] Canada Revenue Agency, "Public service bodies' rebates", available online at: http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/rbts/psb/menu-eng.html.

A charity cannot register for HST purposes if it provides only exempt property and services. As a general rule, most supplies made by charities are exempt. Examples of goods and services that are exempt when supplied 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);
- Meals-on-wheels programs;
- Parking space rentals;
- 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;
- Certain gambling events;
- Recreational programs provided primarily for children 14 years of age or younger;
- Where substantially all (i.e. 90 percent or more) supplies are made free of charge, then all supplies of that good or service are exempt;
- Memberships supplied without significant benefit;
- Admissions to places of amusement if the maximum admission charged is $1 or less, or where charitable receipts for income tax purposes may be issued, or where admission is supplied to an athletic event at which 90 percent or more of the athletes or competitors are not paid; and
- Supplies made for the relief of poverty, suffering or distress of individuals.

The supply of goods and services that fall outside of the above-listed exemptions may mean the charity is providing taxable goods and services. As such, the charity will be required to register for HST and charge and remit tax on its supply of goods and services, unless the charity qualifies as a small supplier. A charity that qualifies as a small supplier need not register for HST purposes, but may choose to register voluntarily. Two tests are available to determine if a charity qualifies as a small supplier. A charity need only meet one of the two following tests to qualify as a small supplier: (a) the Gross Revenue Test, or (b) the $50,000 Annual Taxable Supplies Test.

The annual limit for the gross revenue test for a charity is $250,000. Basically, a charity will qualify as a small supplier if gross revenues for the fiscal year amount to $250,000 or less. If the charity is in its first fiscal year, it need not register for HST, regardless of gross revenue. In the charity's second fiscal year, gross revenue is calculated from the first fiscal year to make the determination as to small supplier status. In subsequent years, the charity will calculate the gross revenue in each of the two previous fiscal years. If the total amount is $250,000 or less in either year, the charity will continue to qualify as a small supplier.

Gross revenue includes business income, donations, grants, gifts, property income, and investment income, less any amount considered a capital loss for income tax purposes. In making the calculations, the charity must include revenues from the organization as a whole, meaning income generated from branches or divisions must be included.

The annual taxable supplies limit is $50,000 for charities and other public service bodies ("PSBs"). 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. If the amounts are more than $50,000, the charity must register for HST and charge and remit the tax, unless the charity qualifies as a small supplier under the gross revenue test.

Charities that do not qualify as small suppliers and provide taxable goods and services in Canada must register for HST. Once registered, they must collect and remit GST/HST on taxable supplies of goods and services. They must file annual returns, or they may elect to change their reporting periods, and file monthly or quarterly returns. Charities should note that failure to remit tax can result in the directors, officers or members being held liable to remit an amount of the tax owing.

Unlike charities, the HST applies to most property and services that non-profit organizations supply. However, certain supplies may be exempt when they are made under specific conditions. In addition to the exemptions available to all organizations listed above, these include certain types of admissions, free supplies, certain fundraising activities, sales of tangible personal property and services at direct cost, certain membership fees and supplies of food, beverages, or short-term accommodation that are provided in the course of an activity the purpose of which is to relieve the poverty, suffering, or distress of individuals. A NPO must register for the HST if it provides taxable supplies in Canada and it does not qualify as a small supplier. A NPO is considered a small supplier in a particular calendar quarter and in the first month immediately following the particular calendar quarter if its revenues from worldwide taxable supplies are $50,000 or less in the previous four consecutive calendar quarters.[6]

4. <u>How does an organization calculate its HST remittance or refund?</u>

Pre-harmonization, charities that were GST registrants had to use a special net tax calculation for charities to calculate the charity's net GST remittance or refund. Using this calculation, the charity would generally remit 60 percent of the GST collected on most taxable supplies, less input tax credits ("ITCs") claimed on certain eligible items. With harmonization, Ontario has adopted the special net tax calculation that must be used by most charities.[7] Therefore, HST registrants will generally remit 60 percent of the HST collected on their taxable supplies and keep the remaining 40 per cent. In addition, a charity can claim the PSB rebate for the HST paid or payable on the charity's eligible purchases and expenses and for which the charity cannot claim ITCs, whether the HST relates to the charity's taxable or exempt activities. NPOs may also benefit from the Special Quick Method or the Quick Method of calculating their net tax, depending upon the circumstances.

5. <u>Transition rules - self-assessment</u>

Pursuant to Ontario's HST transition rules, persons who are not consumers, including charities, may be required to self-assess the Ontario component of the HST on consideration paid or payable after October 14, 2009 and before May 1, 2010 for property or services to be provided on or after July 1, 2010. A charity would be required to self-assess in the following circumstances:

- the consideration is for goods that are delivered, and for which ownership is transferred, to the recipient of the supply on or after July 1, 2010, or the consideration is for a service or a part of a service that is performed on or after July 1, 2010; and

[6] See CRA, "GST/HST Information for Non-Profit Organizations – RC 4081" available at http://www.cra-arc.gc.ca/E/pub/gp/rc4081/rc4081-10e.pdf.
[7] Ontario Ministry of Revenue, "Prepare for Ontario's HST: Public Service Bodies", available online at: http://www.rev.gov.on.ca/en/taxtips/hst/05.html.

- the property or services are acquired to make exempt supplies or a combination of taxable/exempt supplies.[8]

A charity that is required to self-assess in these circumstances must remit the Ontario component of the HST by the earlier of: (1) the due date of its GST/HST return for the reporting period that includes July 1, 2010; and (2) November, 2010.

C. CONCLUSION

The foregoing provides an overview of the implications of the HST for charities and NPOs. While the elimination of the PST and harmonization may have provided a small reduction in the administrative burden imposed on charities and NPOs, the overall complexity in the commodity tax regime has increased because of the different rates and changes to the types of exempt supplies, particularly for organizations that operate across the country. One questions whether the use of charitable or non-profit resources to deal with this complexity is appropriate. In any event, because of the complexity charities, NPOs and their advisors will have to become familiar with these new rules in order to ensure compliance.

[8] *Supra* note 3.

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