Ginsberg Gluzman Fage & Levitz, LLP
Chartered Accountants

Ontario Harmonized Sales Tax—Charities and Not-for-Profit Sector

Author: Sharat Gupta, Senior Tax Manager

Overview of Ontario Harmonized Sales Tax (HST)

Starting July 1, 2010, Ontario will be a HST province and the GST rate of 5% will be replaced by the HST rate of 13%. There will no longer be any Ontario retail sales tax. The following information is based on legislation that has been passed. Generally, forms are not yet available.

This memo deals with the Ontario HST from the perspective of charitable and not-for-profit entities and should be read in conjunction with our memo on the general operations of HST – "How Will the HST Affect Your Business?" As well, the Department of Finance has changed some rules regarding the place of supply, which we have outlined in our memo "Place of Supply Rules for GST/HST."

Fundamentally, HST is similar to the current GST; if GST applies now, HST will apply after June 30th. The changes to the place of supply rules for property and services are being implemented to accommodate the variable rates of the provincial component of the HST. It will be these rules, as well as the implementation of the HST itself, that will have a significant impact on operations.

Definition of a Charity

"Charity" means a registered charity within the meaning of the *Income Tax Act.* A charity can issue official donation receipts for income tax purposes.

Definition of a Qualifying Not-For-Profit Organization

"Qualifying not-for-profit organization" means a non-profit organization whose percentage of government funding in a particular fiscal year (or in the two previous fiscal years) is at least 40% of their total revenue.

Definition of a Public Service Body

Under the *Excise Tax Act*, a "Public Service Body" (PSB) is defined to be a non-profit organization, charity, municipality, school authority, hospital authority, public college, or university.

General Overview of Key Changes

HST and the Place of Supply Rules

Membership Fees

Membership fees in a club where the primary purpose is to provide dining, entertainment, or sporting facilities, would continue to be subject to GST/HST.

In general, any other membership in a PSB is exempt from GST/HST if the members do not receive any significant benefits from membership. The Canada Revenue Agency (CRA) has some specific factors to consider in that determination.

Nevertheless, many PSBs have elected to make such an exempt supply taxable for GST purposes. This election continues under HST and is also available for organizations who have not yet filed that election.

Currently, if the supply of a membership is made to an individual, and the Canadian rights in respect of membership can be exercised, other than exclusively in one province, GST is charged based on the address of the member. This rule is being changed under the new place of supply rules.

For memberships (considered "intangible personal property") that relate to services to be performed, the new place of supply rules read: "if the supplier can determine that those services would all be supplied in a single province if supplies of all of those services were made, the supply of intangible personal property will be regarded as having been made in the same province as that in which the supplies of those services would be made."

Examples of this would be:

- A local curling club can only provide services to its members in the province where the curling club is located. Therefore, for membership fees after July 1, 2010, the applicable HST rate for that province would be charged.
- A national not-for-profit association has members across Canada and the United States. While the employees providing the services to the members are in the head office, the members do not have to attend at the head office address to receive the benefits of membership. Therefore, they would be charged GST/HST based on their province of residence or, in the case of the United States, no HST would be charged.

Invoicing Membership Fees Between May 1, 2010, and July 1, 2010

The GST/HST will have to be pro-rated. For example:

- Membership of $1,200 for a PSB located in Ontario invoiced May 2, 2010.
- GST of $200 x 5% would be charged for May 1 to June 30, 2010 HST of $1,000 x 13% would be charged for July 1, 2010 to April 30, 2011.
- HST collected from May 1 to June 30, 2010, should be remitted on the first return after June 30, 2010. This is important, since GST remittances related to returns to June 30 belong to the federal government, whereas HST remittances will have to be shared with the province.

Conventions and Other Location-Specific Events

HST will be charged based on the location of the performance, festival, ceremony, convention, conference, symposium, or other similar event.

For example: an Ontario-based PSB holding a convention in Alberta would only charge GST of 5% on the convention fees. If the convention were held in British Columbia, 12% would be charged on the convention fees.

There are also some specific place of supply rules under Quebec Sales Tax legislation.

Rebate Percentage

In general, a PSB that currently qualifies for a rebate of the GST or federal part of HST would be eligible to claim a PSB rebate for a percentage of the provincial part of the HST paid while carrying out its activities, starting July 1, 2010. The provincial portion of HST of 8% will be eligible separately for the rebate. PSBs will need to track both the federal (5%) and Ontario (8%) portions of the HST paid on expenditures. The PSB rebates will be as follows:

Particulars	Federal (5%)	Ontario (8%)
Municipalities	100%	78%
Universities and colleges	67%	78%
School boards	68%	93%
Hospitals	83%	87%
Charities and Qualifying Not-for-profit organizations	50%	82%

Rebate Filing Frequency

PSBs will continue to be able to file for rebates twice a year, unless they are registered to charge GST/HST on some of their sales, in which case the rebates are filed with the same frequency as the GST/HST returns. While the rebates will be larger for transactions after July 1, there has been no indication from the Minister of Finance that they will allow quarterly or monthly rebates for non-registrants.

The rebate calculation must be broken out into the federal and provincial components. Accounting systems should be revised to ensure that this calculation can be done accurately.

Transitional Credits

A transitional credit (maximum of $1,000) is being offered to small organizations to address the costs of transitioning to HST. “Small” is defined as an organization with under $2,000,000 in revenue. Therefore, if the PSB is registered to collect GST and is below that threshold, it is eligible for the credit. This can be included on the first HST return after July 1, 2010.

For the many PSBs that are just collecting their rebate, and not registered for GST, there will be no transitional credit, despite the costs of transitioning to HST.

Ontario Government Grants

The HST status of grants from the Ontario government is currently unclear and will be a challenge for the not-for-profit sector. Under GST rules, these grants were never subject to GST. With the introduction of HST, it is possible that HST may be payable on certain grants from the provincial government.

GST Bulletin B-067 addresses the GST (HST) tax treatment of grants and subsidies. If it can be established that the PSB supplied “something” to the provincial government in return for the transfer payment, the payment may be regarded as “consideration” for a supply and HST would be due.

Review of General Rules

Charities

The revenues of most charities are typically GST-exempt, for example: donations, grants, goods sold for “direct costs,” etc. There are some specific taxable revenues, such as snack shops, subscriptions, certain memberships and certain real property supplies. Charities can recover a portion of the GST/HST paid or payable on their purchases (subject to some restrictions) by claiming a public service body (PSB) rebate.

Not-for-Profit Organizations

On the other hand, not-for-profit organizations (NPOs) supply services that are generally subject to GST/HST. Where the NPO has both taxable and exempt sales, they have to pro-rate GST/HST paid between taxable and exempt sales. NPOs can recover 100% of the related input tax credits on the taxable sales.

Registration Requirement for Charities and NPOs

If a charity or NPO provides only exempt property and services, it cannot register for GST/HST purposes. A charity or NPO does not have to register for GST/HST purposes, if it provides taxable property and services in Canada and is a small supplier; however, it can elect to register if it wishes.

A charity or NPO will qualify as a small supplier, if:

1. The gross revenue for a charity/NPO in either of the previous two fiscal years is $250,000 or less. Gross revenue is generally the total of business income, donations, grants, gifts, property income, investment income, and any other amount considered a capital gain/losses;

OR

2. The taxable supplies are $50,000 or less. For the taxable supplies test, a charity/NPO has to consider total revenue from taxable supplies in the current calendar quarter and the total revenues from taxable supplies in the last four calendar quarters.

If the charity or NPO cannot satisfy either of the above conditions, it would not be considered a small supplier and would be required to register for GST/HST.

Different Tax Calculation Methods and Rebates Under GST/HST Rules

A) Net Tax Calculation

Charities that are GST/HST registrants are generally required to use a special net tax calculation, which is described as the "Net tax calculation for charities." When this calculation is used, the charity would generally remit 60% of the GST/HST it collected and claim input tax credits (ITCs) only on certain items. The charity, as a whole, can **elect not to use** the net tax calculation for charities if, in the ordinary course of its business, it makes supplies outside Canada or other zero-rated supplies or if 90% or more of its supplies are taxable. In this case, HST would be collected as required, ITCs would be claimed, and the net amount remitted as with most businesses.

B) Special Quick Method

The Special Quick Method is a simplified option available to selected public service bodies, qualifying non-profit organizations, specified facility operators, and certain charities. This method reduces paperwork and makes it easier to calculate GST/HST remittances and file GST/HST returns, because it eliminates the need to keep track of the actual GST/HST paid on most purchases and to separate purchases that are for commercial activities from those making exempt supplies.

When an organization uses the Special Quick Method, it still collects 5% GST or 13% HST on its taxable supplies of goods or services. However, to calculate the amount of GST/HST to remit, the organization multiplies its total taxable supplies (including GST/HST) for the reporting period by the remittance rate of 3% for supply made in a non-HST province and 9.9% for supplies made in an HST province. This means that the organization remits only a part of the tax collected. The part of the tax that is retained accounts for the approximate value of the ITCs that would normally have been claimed if the Special Quick Method were not used. The Special Quick Method can be revoked only after it has been in effect for a minimum of one year.

C) Public Service Body Rebate

As discussed above, there is a PSB rebate that allows certain public service bodies, including all charities and qualifying NPOs, to recover a percentage of the GST/HST that they pay on their “eligible” purchases. Most purchases are eligible for the PSB rebate.

Depending on the nature of the organization’s expenditures, it may be better or worse off after the change to HST in Ontario. For example: A charity in Ontario has an eligible expense of $1,000 on which the charity has paid HST of $130 (Federal portion $50 and Provincial portion $80). The charity would be eligible for a federal rebate of $25 (50% of $50) and a provincial rebate of $66 (82% of $80).

For organizations that currently receive a 50% rebate on their GST, the HST will impact them as follows:

- On purchases that are now subject to GST only, the move to HST will increase their costs by 1.4%.
- On purchases currently subject to both GST and Ontario RST, the move to HST will reduce their costs by 5.9%.

A charity or NPO may claim the PSB rebate, both federally and provincially, by completing and filing Form GST66 (or Form GST284, a personalized version).

Charities that are not registrants can file for the PSB rebate twice in a fiscal year: one rebate application for the first six months of their fiscal year, and another for their last six months of the fiscal year.

Charities that are registrants file their PSB rebate applications with the same frequency as they file their GST/HST returns (monthly, quarterly or annually).

D) Other Rebates

A charity may be entitled to claim other GST/HST rebates. These rebates (some up to 100%) have different eligibility requirements and not all charities may qualify. For example, rebates are available for GST/HST paid on:

- printed books;
- purchases related to providing qualifying rent-geared-to-income housing;
- property and services exported from Canada;
- goods removed from the HST provinces; and
- intangible personal property (e.g., rights and goodwill) and services acquired for consumption, use or supply primarily outside the HST provinces.

Transitional Rules for Charities and Not-For-Profit Sector

The CRA and Ontario Ministry of Revenue have released transitional rules related to the implementation of the HST. These rules are applicable for transactions that straddle the July 1, 2010, implementation date.

There are some key dates to be aware of when considering the transitional rules:

- July 1, 2010 - Implementation date
- May 1, 2010 - HST will apply to amounts paid or payable on or after this date for goods or services that will be provided on or after July 1, 2010, even if they are fully paid before July 1, 2010.
- October 14, 2009 - For services received from October 14, 2009, to April 30, 2010, it is the response-bility of the non-consumer to self-assess the Ontario HST on the portion of services for the period after June 30, 2010.

Charities and NPOs are considered non-consumers because they are not individuals (non-business) and are not allowed to claim the full amount of ITCs. This will include charities and NPOs using the Net Tax Calculation method or Special Quick Method to calculate their GST/HST.

Therefore, if an Ontario charity paid a $1,000 membership fee, subject to GST, with a calendar 2010 membership year, and the national body was in Ontario, it is required to self-assess and remit to the CRA the provincial portion of HST, as follows: $1,000 x 8% x ½ year x 18% rebate = $7.20.

The CRA has not prescribed any self-assessments forms to date.

Planning Opportunities

The implementation of HST instead of GST and RST is considered to be a major change in the taxation of various goods and services. With any tax change, there is a scope for tax planning opportunities. Some general tax planning opportunities are as follows:

- Charities and NPOs that currently pay RST on purchases should delay large purchases at this time. From July 1, 2010 onwards, any HST paid on purchases will be eligible for PSB rebate, resulting in a saving of 5.9%.
- Charities and NPOs will want to maximize purchases of property and services which are not subject to RST at present, but will have HST from July 1, 2010. Some examples are customized software, legal and accounting services.

- Charities and NPOs should accelerate capital expenditures, such as purchases of real property, which are currently exempt from RST. From July 1, 2010, there would be only a partial rebate on the provincial portion of HST.
- Charities and NPOs receiving funding from various external sources should keep a close eye on funding and budgeting requirements.

GGFL's tax experts have been following the federal government's actions and implications of the new HST since it was first announced. Please call our tax experts at 613-728-5831 to help you "get ready."

May 2010

GGF&L
Chartered Accountants

287 Richmond Road, Ottawa, ON K1Z 6X4
Tel: 613-728-5831 / Fax: 613-728-8085
www.ggfl.ca

DFK An Independent Member Firm of
DFK Canada Inc. and DFK International