

GST and Assessments

Canada Revenue's Confusing New Policy



Canada Revenue Agency has released its policy pertaining to the conditions under which GST will need to be charged and remitted for assessments performed.

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On September 21, 2006, the Canada Revenue Agency (CRA) finally released its new policy regarding the Goods and Services Tax (GST/HST) and its application to independent medical examinations (IMEs) and other independent assessments (IEs) supplied to third parties. This new policy, while clearly identifying the application of GST to the performance of assessments by individual health-care practitioners, is both confusing and potentially unfair as it relates to the supply of the services by IME and IE companies.

THE ISSUE

Since 1993, the practice of charging GST/HST on assessments supplied to insurance companies, lawyers, tribunals or government has been inconsistent across the industry. With the CRA's previous Policy Statement P-080, entitled "Medico-Legal Reports," dated June 30, 1993, and its subsequent interpretations and rulings, there was no clear guideline on the applicability of GST/HST to assessments. On September 21, 2006, the CRA released Policy Statement P-248, entitled "The Application of the GST/HST to the Supply of an Independent Medical Examination ("IME") and to Other Independent Assessments." This new policy aims to identify those situations in which the supply of an assessment is exempt and when it is taxable.

INDIVIDUAL HEALTH-CARE PRACTITIONERS

Under the new policy, the supply of IMEs by medical practitioners and the supply of independent assessments by other health-care practitioners are exempt for GST/HST purposes. Medical practitioners are defined as those

individuals who practise medicine (physicians) and also include dentists for purposes of Section 5, Part II, of Schedule V of the Excise Tax Act.

Other health-care practitioners include optometrists, chiropractors, physiotherapists, chiropodists, podiatrists, osteopaths, audiologists, speech therapists, occupational therapists and psychologists, for purposes of Section 7, Part II of Schedule V of the Act.

Effectively, when individual medical and other health-care practitioners perform and charge for their assessments, the supply is exempt when the assessment is provided directly to an insurance company. The supply is also exempt if provided to a multidisciplinary or other facility. These services would likely also be exempt if provided through the individual practitioner's professional corporation, where allowed in a particular province.

A consequence of the services being exempt is that Input Tax Credits (ITCs) can no longer be claimed unless the practitioner has other taxable services. As a result, the only way for a practitioner to recover any GST paid is as an expense.

HEALTH-CARE AND MULTIDISCIPLINARY FACILITIES

In most cases, patients who are referred by third parties for assessments need to be seen by more than one type of health-care practitioner. As a result, many multidisciplinary

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facilities have been created to allow patients to be examined or have their files reviewed in one location. The services provided by these facilities may be taxable or exempt, depending on certain criteria and which type of practitioner participates in the assessment.

The type of facility that determines whether the supply is exempt is defined in the policy statement as a "health-care facility." This multidisciplinary facility is

one in which physicians practise medicine. In other words, if a medical practitioner examines a patient or reviews a patient file on the facility's premises, the supply of the entire assessment by the facility to the third party is considered exempt. If a medical practitioner is not involved on the file or if the medical practitioner reviews the file away from the facility, the supply of the entire assessment by the facility to the third party is taxable.

Since a hospital is considered to be a health-care facility, assessments

performed there are exempt. Assessments performed at a multidisciplinary facility where physicians examine the patients or review the patient files on the facility's premises would be exempt. What this policy suggests is that, in order for the facility's supply to the third party to be exempt, a physician on the premises must in some way be involved with the patient's file.

There are larger ramifications. Firstly, since it is possible that in one facility some assessments may be taxable and others are exempt, it becomes difficult to determine how to apply Input Tax Credits (ITCs). Secondly, in trying to avoid the extra GST/HST cost, insurers may become more inclined to refer patients to multidisciplinary facilities that have physicians on staff who examine the patients or review the patient files on the facility's premises. This, in turn, could lead to the restructuring of multidisciplinary facilities in order to remain competitive.

EFFECTIVE DATE AND TRANSITION

The CRA will apply this policy on a prospective basis from the date of the policy's issue, September 21, 2006. The agency has also offered to have the policy apply retroactively, if it is beneficial to the individual. Retroactive application is only available to "persons" and not "companies," according to the statement.

While the policy statement is unambiguous in its application to individual practitioners, it raises questions and concerns in its application to multidisciplinary facilities. The statement does outline various criteria and provides six examples to show the applicability of GST. But in my discussion with its co-author from the CRA, I offered a number of other examples that I've seen in practice that would require clarification to determine GST applicability. It was indicated to me that should clarification be required relating to a particular set of circumstances, a request for ruling must be made in writing.

In my opinion, further discussion and consultation is required with the CRA in order to ensure that the policy on GST is administered on an equitable basis, levelling the playing field for all who are involved. •

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