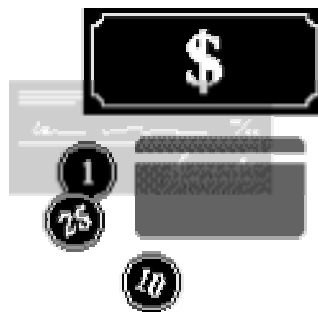


TAXING TIMES

AND OTHER ISSUES



SPECIAL BULLETIN FOR HEALTH-CARE PROFESSIONALS JULY 2003

NOTICE TO READER

The following commentary has been prepared by Parker Garber & Chesney, LLP based on information available as at July 17, 2003. Parker Garber & Chesney, LLP does not ensure the accuracy of the information herein provided that may result from errors or omissions in the source documents.

Readers are cautioned that this commentary is informational only and that any issues specific to the reader's needs be addressed with the appropriate tax professional.

GST/HST

The Canada Customs and Revenue Agency (CCRA) has recently been targeting health-care professionals with associates for special audits. The concern is that, under certain circumstances, the arrangements for associates or locums may not be consistent with the Agency's policies.

Ever since the establishment of GST/HST in 1991 there has been an issue that the substance of the associateship arrangement may attract GST/HST. Recently the Canadian Dental Association came out with a review of these arrangements and the possible results of different transactions.

Because of the concerns expressed by clients and our own feeling that the CDA's memo may not be complete, we have prepared the following review of common issues.

LOCUMS

In the situation where a temporary replacement is introduced into the practice to cover for vacation or sickness it is common that the locum receives the payments and pays the principal a percentage of the fees. The patients are those of the practice and all staffing and supplies are also usually the principal's. In the case of physicians, usually the provincial health ministry will pay the attending doctor but in the case of dentists the funds can be collected by the principal.

This arrangement should usually be exempt from GST/HST because the nature of the fee arrangement is based on the actual fees charged and is commonly known as "fee-sharing". Also, since the patients are usually the principal's and the arrangement is temporary, there should be no GST/HST problem. It is our preference that fees be collected by the principal and the fee sharing is paid to the locum as that is more indicative of the nature of the arrangement.

We also suggest that an agreement be put in place, even for short-term arrangements, that would support the nature of the arrangement. A simple agreement can be prepared in blank and simply signed by both parties whenever the situation does occur.

ASSOCIATES

In the case of full-time or part-time long-term associate arrangements it is also important that the remuneration be based on fee-sharing. It is a necessity that a comprehensive agreement be in place.

Once again, all fees should be collected by the principal wherever possible and that the associate be remunerated on a basis that is clearly related to the fees generated by the associate (usually a percentage of fees collected). While the

presentation of the office may give the impression that the practice is a partnership, it is important that record keeping reflect the nature of the arrangement. Separate accounts receivable records and schedules are important.

It is also imperative that the agreement outline the fact that the office staff, equipment and charts are the property of the principal and that the associate is providing services to the patients of the practice and that the patients remain in the practice. This would likely work in conjunction with a carefully and reasonably drawn non-competition clause.

The agreement and the actual operation should be consistent in order to ensure the remuneration paid to the associate remains exempt from GST/HST.

COST-SHARING

Some practices operate on a cost-sharing basis. This can happen where a professional allows a colleague or someone in a related specialty to use the office at times when the principal may not be working. Usually the colleague is using only the space and possibly equipment, supplies or staff. In most cases the patients are not patients of the principal and the colleague is doing their own billing and collecting.

In this case the payments are normally not related to fees but are a fixed-price. In that case the payments may be taxable, depending upon whether the principal is a registrant for GST/HST or would be required to be one as the result of these payments.

However, if the arrangement is strictly cost-sharing where the colleague pays a percentage of rent, overhead and staffing based on a formula such as time spent in the office, then additional GST/HST can be avoided if the appropriate system is put in place and supported by a contract.

In this case, assuming that the principal would pay or be invoiced for all of the expenses and would then pass on the agreed percentage to the colleague, it is important that the principal be acknowledged as an agent. In the past CCRA required that the agency arrangement be disclosed (i.e. suppliers must be notified that the principal was acting as an agent for the others). This requirement has been removed and now the agency only needs to be acknowledged within the written agreement between the principal and colleague.

TECHNICAL SERVICE COMPANIES

Payments by a professional to a service company, whether or not arm's length, may be subject to GST/HST depending on the nature of the payment. Management fees and leasing payments would normally be subject to the tax.

But some companies also provide technical services such as testing, hygiene, x-ray, laboratory work and associate operations. As these fees are usually exempt services, the fact that they are received by the corporation should not change the tax status of the income.

Once more it is essential that a proper agreement outlining the arrangement be in force.

HYGIENISTS

A further issue to be addressed is the situation where hygienists are introduced into a practice as independent contractors. This often happens when the hygienist is working in more than one office and may be able to support the contention that they are self-employed. There is a conflict of rulings between the income tax division and the source deductions division of CCRA. In particular, there have been occasions where income tax accepts the hygienist as self-employed for income tax purposes but source deductions still rules that they are employees for purposes of making payroll deductions.

Some concern has been expressed in the past about whether or not fees paid to a hygienist would be subject to GST/HST. If they are considered employees then there is no issue because payroll is not subject to the tax. The issue may less clear if they are independent contractors. Since most are paid an hourly fee rather than fee-sharing, CCRA may be tempted to reverse it's previous policy and treat the fees as taxable. If the arrangements are similar to those for associates then there should be no problem.

This would necessitate the re-evaluation of current arrangements and we would again urge the use of a comprehensive written contract.

CONCLUSIONS

While this memo is not exhaustive and each situation can be unique the most important factor to protect you from unnecessary application of GST/HST is the use of an appropriate written agreement and operating in accordance with that agreement.

If you are in one of these arrangements and do not have an agreement or if you have an agreement that may be somewhat outdated you should discuss these issues with your professional advisors.