

# Recent Tax Developments\*

MARY LOUISE DICKSON

*Dunbar, Sachs and Appel, Barristers and Solicitors, Toronto*

LAURENCE C. MURRAY

*Peat Marwick Thorne, Chartered Accountants, Toronto*

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## **Fund-Raising Events and the GST**

Because of the importance of fund raising to charitable organizations, this column is devoted entirely to the goods and services tax implications arising from fund-raising events.

Registered charitable organizations, like all other persons with activities in Canada, are affected by the seven per cent goods and services tax (GST). However, as charities are subject to special provisions, the application of the GST to their activities is often complex and confusing.

It is the classification of an activity as “tax-exempt”, “taxable” or “zero-rated” that determines whether or not GST must be collected and, if collected, whether or not a full recovery of GST as an “input tax credit” is available. For taxable activities of a charity, the full seven per cent GST must be collected on the sale price. Relief is available in the way of an input tax credit for the GST paid on any supplies<sup>1</sup> used by the charity in these activities. Zero-rated activities are treated identically except that no GST need be levied on the sale price of the supply. Where a supply is tax-exempt, no GST need be levied and no input tax credit is available for the GST paid on supplies used in these activities; however, in this connection the registered charity may recover 50 per cent of its GST costs relating to these activities by way of a rebate. Some charities such as hospitals and prescribed institutions, will recover more than 50 per cent of their GST costs.

Various transactions, such as donations, while not tax-exempt or zero-rated, are outside the scope of the GST. Specifically, amounts received as donations are not treated as consideration received in respect of a supply.

In the case of a fund-raising event, the portion of the supply for which no donation receipt is issued must be categorized as taxable or tax-exempt under the normal GST rules to determine what, if any, tax implications arise. In this regard, a

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charity's activities are tax-exempt unless they are specifically described as taxable under section 2 of Part VI of Schedule V of the *Excise Tax Act (Act)*. However, if it is established that the supply is taxable, other exemptions may apply, namely the small supplier's exemption where taxable annual sales do not exceed \$30,000, or the volunteer's or direct-cost exemption.

A charity with one or more activities in separate branches or divisions may elect to have the small supplier's (exemption) rules apply to each branch or division. In order to qualify, the charity must satisfy the Minister of National Revenue that the branch/division is separate on the basis of its location or the nature of its activities, and that separate records are maintained in respect of that operation. This section can be of great benefit since it enables the charity to decide whether or not it wants an activity or operation to be tax-exempt or taxable.

### **The Basic Calculations**

If the charity does not qualify as a small supplier, or for the overriding exemptions for direct cost, or the volunteer's exemption does not apply, the charity must charge and remit GST in respect of this taxable activity. However, input tax credits are available (to a charity holding taxable fund-raising events) for all GST paid in respect of its expenses associated with the event, such as the printing of tickets, rental of hotel space, caterer's charges, and so on. Apportionment of the charity's overhead and day-to-day expenses which relate to its taxable activities is also available; however, if the goods and services making up the expenses are used exclusively (defined as 90 per cent or more) for exempt activities, no apportionment is permitted.

For fund-raising events, the unreceipted portion of the event is taxable where it represents (i) the supply of new tangible personal property, (ii) admission to a place of amusement, (iii) a service involving recreation or athletics, or (iv) a right to play or participate in a game of chance. (It is unlikely that any of the other taxable activities described in section 2 of Part VI of Schedule V of the *Act* would apply to a fund-raising event.)

Those selling tickets to fund-raising events must determine what is being sold—a service, goods, or an intangible. In the case of a ticket, it appears to be a “right” or an intangible entitling the ticket holder to admission to an event or activity, or a right to participate in a game of chance, e.g., a raffle ticket. Where this right represents admission to a “place of amusement” or a right to play or participate in a game of chance, the unreceipted portion is subject to GST. (The value is determined in accordance with the *Income Tax Act*, but is usually “the fair market value”.)

A ticket sale to a fund-raising event represents admission to a “place of amusement”, where the event is held at:

... any premises or place, whether or not enclosed, at or in any part of which is staged or held any

- (a) film, slide show, sound and light or similar presentation,
- (b) artistic, literary, theatrical, musical or other performance, entertainment or exhibition,
- (c) fair, circus, menagerie, rodeo or similar event, or
- (d) race, game of chance, athletic contest or other contest or game,

and includes a museum, historical site, zoo, wildlife or other park, place where bets are placed and any place, structure, apparatus, machine or device, the purpose of which is to provide any type of amusement or recreation.

### **March 27, 1991 Technical Release**

Given the above definition, it appears that an event must have an element of entertainment or amusement or recreation to be taxable. Initially, it appeared that ticket sales to such events as a dinner or a wine and cheese tasting without entertainment would not be “admission to a place of amusement”. If the supply was not taxable, it would therefore be tax-exempt. However a March 27, 1991 Technical Release indicates that a supply of a right of admission to a dinner, ball, concert, or similar fund-raising event will be taxable. This change was to take effect for events after April 30, 1991. By virtue of this amendment, it appears that admission to a dinner, concert or other similar event, prior to May 1, 1991, was not taxed. Nevertheless, after discussions with Revenue Canada—Excise, it is my understanding that they administered the *Act* so that admission to a dinner or similar event with entertainment was taxable as admission to a place of amusement. Was a dinner without entertainment or with only a guest speaker (which is not considered to be entertainment) a tax-exempt supply? Draft legislation outlining the above amendments which may help to clarify the May 1 change is not yet available and it is likely to be some time before the text is released.

The March 27th Technical Amendments also indicate that GST in respect of such events will apply on the portion of the admission price that represents the fair market value of the right of admission.

### **Mixed Supplies**

Charities also have to consider the GST implications of fund-raising events that represent a mixed supply of goods, services, and admission to a place of amusement. For instance, a ticket to a gala event for which payment covers a donation, a dinner with entertainment, and advertising space in a memento publication represents more than admission to a place of amusement. Is the entire supply taxable or tax-exempt? Should the charity collect and remit tax only on the taxable portion of the supply? Recent discussions with Revenue

Canada—Excise indicate that the policy covering mixed supplies is not yet firm.

### **Incidental Supplies**

In respect of mixed supplies, charities also need to consider the incidental-supply rule. Specifically, this provision deems a particular property or service to form part of another property or service where the former is incidental and provided for a single consideration with the other property or service. The term incidental is not defined in the *Act* and could have various meanings depending on the nature of the supply.

As yet, the legislation dealing with charitable activities raises many questions and concerns. What is clear is that the government intends to tax certain fund-raising events based on the fair market value of the event. However, a charity must question whether the event represents a mixed supply, an admission, a supply of tangible personal property, a service, or a right to participate in a game of chance. Once the nature of the supply is determined, the charity then has the task of determining whether that supply is in fact taxable or tax-exempt. The answers to these questions are not easy and may require consultation with professional advisors and/or Revenue Canada—Excise.

#### FOOTNOTE

1. [The language of the GST is confusing. The tax is levied on a “supply”. A “supply” is a good or service for which a charge is made (or implied by law). Thus a fund-raising event is itself a “supply”, and the goods and services used by the charity in putting on such an event are “supplies”. This article uses “activity”, “event”, or “supply” more or less interchangeably.]