

Response of the Canadian Medical  
Association to the Canada Revenue  
Agency Draft GST/HST Policy Statement\*  
(GST/HST Notices - Notice 286)

February 23, 2015



\*Draft GST/HST Policy Statement - Qualifying Health Care Supplies and the Application of Section 1.2 of Part II of Schedule V to the Excise Tax Act to the Supply of Medical Examinations, Reports and Certificates (GST/HST Notices - Notice 286, October 2014)

The Canadian Medical Association (CMA) is the national voice of Canadian physicians. Founded in 1867, CMA's mission is to help physicians care for patients.

On behalf of its more than 82,000 members and the Canadian public, CMA performs a wide variety of functions. Key functions include advocating for health promotion and disease prevention policies and strategies, advocating for access to quality health care, facilitating change within the medical profession, and providing leadership and guidance to physicians to help them influence, manage and adapt to changes in health care delivery.

The CMA is a voluntary professional organization representing the majority of Canada's physicians and comprising 12 provincial and territorial divisions and 51 national medical organizations.



## Introduction

The 2013 Federal Budget introduced amendments to the *Excise Tax Act* that extend the application of the Goods and Services Tax/Harmonized Sales Tax (GST/HST) to supplies of reports, examinations and other property or services that are not made for the purpose of the protection, maintenance or restoration of the health of a person or for palliative care: new sections were added to the *Excise Tax Act* introducing additional conditions that must be met before uninsured health care services will be exempted from the GST/HST. These amendments are retroactive to March 22, 2013, for most provinces (exception: April 1, 2013, for Prince Edward Island).

In response, the Canadian Medical Association (CMA) detailed the concerns of its members in a formal letter to the Canada Revenue Agency (CRA) and requested that the CRA conduct a consultation with stakeholders.

On October 31, 2014, the CRA released a draft GST/HST policy statement, *Qualifying Health Care Supplies and the Application of Section 1.2 of Part II of Schedule V to the Excise Tax Act to the Supply of Medical Examinations, Reports and Certificates*, herein referred to as the draft policy.

The CRA notes that these “amendments clarify that [the] GST/HST applies to supplies of reports, examinations and other property or services that are not made for the purpose of the protection, maintenance or restoration of the health of a person or for palliative care.”

The CMA has consulted with all provincial and territorial medical associations on this matter and is pleased to provide its comments with respect to the draft policy. This document is intended to (1) highlight CMA’s concerns with respect to the draft policy and (2) provide recommendations to improve it.

## Overall comments

Although the draft policy is intended to clarify CRA’s position with respect to the meaning of the term “qualifying health care supply” (QHCS), it provides insufficient guidance with respect to the CRA’s view on (1) the meaning of the different elements of a QHCS, (2) the factors to be considered when determining if a supply is a QHCS and/or (3) the documentation required to support a physician’s conclusions regarding the nature of his/her supplies. The CMA is concerned that this ambiguity will ultimately lead to confusion for patients and

clinicians alike.

Moreover, the CMA has identified the following high-level concerns with the draft policy:

- Changes in the draft policy are retroactive to March 22, 2013, for most provinces (exception: April 1, 2013, for Prince Edward Island). There is a prolonged gap between the coming into force date (budget date) and the date on which CRA issued guidance on the new tax rules.
- The draft policy places the responsibility for determining the purpose of a supply on the practitioner. The policy needs to provide additional guidance to practitioners on how to determine the purpose of a particular supply.
- The CRA must ensure that the audit process respects patient-physician confidentiality. The draft policy should indicate the record-keeping/reporting requirements a physician should consider.

The scope of the policy is also limited in some other ways. The policy does not address the implications for a physician of making a taxable supply, such as (1) how to apply the coming into force rule, (2) when to register for the GST/HST and (3) which rate of GST/HST to apply.

### **New purpose test**

The CMA believes that physicians will find it problematic to apply the new purpose test in certain situations. This is because the purpose test is subjective and needs to be applied on a case-by-case, patient-by-patient basis. As a result, different individuals may reach different conclusions, depending on their expertise (i.e., physicians vs. CRA auditors).

Furthermore, the draft policy does not provide comments on the meaning of terms such as “for the purpose of” or the terms “maintaining health,” “preventing disease” and “treating ... illness, disorder or disability.” Moreover, the draft policy does not mention the first order supply principle or specify CRA’s view on whose health must be maintained or whose disease, injury, illness, disorder or disability must be addressed. Must it be the recipient of the supply, the person to whom the services are rendered, or may it be another person? The answers to these questions are determined based on the particular scenario.

The draft policy places the responsibility for determining the purpose of a supply on the practitioner. However, the draft policy does not provide guidance on how to determine the purpose of a particular supply. Furthermore, it is conceivable that the purpose of a supply could change either during an initial visit (i.e., if an illness is identified) or over time (as a result of changing medical opinions on certain procedures).

Moreover, the draft policy does not recognize and consider that the diagnostic procedures performed by a practitioner when examining a patient are the same whether or not the practitioner is being paid by or providing a report to a third party. It also does not recognize and consider that even though the practitioner may be reporting to a third party, he/she is also discussing his/her recommendations for treatment with the patient.

### Recommendations

1. Expand on the meaning of “for the purpose of,” as follows:
  - Discuss the first order supply principle and how it would apply to the purpose test in this circumstance (e.g., is the purpose the immediate reason for the supply or does one have to consider the eventual or ultimate goal?).
  - Provide a list of factors that practitioners should consider when they are determining the purpose of the supply (see Appendix 1 for other CRA policy statements that include such lists).
  - Discuss the impact of an additional purpose arising during the course of an examination.
  
2. Clarify the meaning of the following terms:
  - maintaining health
  - preventing disease
  - treating, relieving or remediating an injury, illness, disorder or disability
  
3. Recognize and consider that the diagnostic procedures used by a practitioner when examining a patient are the same whether or not the practitioner is being paid or providing a report to a third party (e.g., insurance company, court) and that even though the practitioner may be reporting to a third party, the practitioner is also discussing their recommendations for treatment with the patient. The draft policy should address and explore this issue.

4. Provide examples of documentation that could be used to support a practitioner's decision, taking into account the need to maintain the confidentiality of patient records.

### **Assisting (other than financially) an individual in coping with an injury illness, disorder or disability**

Without further guidance, the meaning of "assisting (other than financially) an individual in coping with an injury illness, disorder or disability" is subjective. Practitioners may disagree on whether or not a particular supply meets the definition.

The current policy provides insufficient guidance on how to determine if a report is for financial assistance or for coping with an injury, illness, disorder or disability. For example, reports to employers could be for either purpose.

### Recommendations

5. Provide greater clarity with respect to the concept of "assisting (other than financially) an individual in coping with an injury illness, disorder or disability."
6. Provide comments on the meaning of the following terms:
  - financial assistance
  - injury, illness, disorder or disability
7. Provide factors to guide practitioners in determining when a report to a third party is for financial assistance or for another purpose.
8. Provide examples of documentation that would be sufficient to demonstrate to the CRA the validity of the practitioner's conclusion that a supply is a QHCS.

### **Single- versus multiple-supply analysis**

The draft policy states:

*"In cases where a supply is made for more than one purpose, all of these purposes would be considered when determining if the supply is a qualifying health care supply. If one of the purposes for the supply meets the definition of 'qualifying health care supply' then the supply*

*would be a qualifying health care supply. However, it should be noted that supplies are generally made for a single purpose. In cases where a health care service, such as an examination or assessment, is supplied together with a report or certificate it is necessary to determine if the supplier has made a single or multiple supplies.”*

The addition of the single versus multiple supply analysis adds significant complexity to the process of determining whether a supply is a QHCS. If a service is considered by the CRA as constituting multiple supplies, each with a different tax treatment, the practitioner will have to apportion the fees between the supplies for tax application purposes.

It is not practical for a clinician to analyze whether a particular patient visit is a single supply or whether it constitutes multiple supplies. This responsibility would be an onerous burden for practitioners.

### Recommendations

9. The draft policy should take the view that, in general, there is a single supply.
10. The draft policy should clearly indicate that the health care purpose is determinative and takes precedence over any other purpose. If a supply has multiple purposes, and one of the purposes is a qualifying health care supply, then the supply will be classified as a QHCS and thus exempt from GST/HST.
11. Provide practical examples of situations in which a practitioner could be making multiple supplies.
12. Provide a list of factors specific to the QHCS to help practitioners determine whether a supply constitutes a single supply or multiple supplies.

### **Examples**

The draft policy includes 23 examples that each set out the CRA's view on whether or not a particular supply or combination of supplies qualifies as a QHCS and is therefore exempt. All of the examples involve a single supply; there are no scenarios involving multiple supplies.

Furthermore, although the examples provide the CRA's decision on whether or not the supply in question constitutes a QHCS, they do not discuss the various factors/elements that the CRA

would consider in reaching that decision. For example, examples 3, 4 and 5 all involve an examination of a patient and a report or document that a patient provides to an employer or potential employer. The draft policy does not clearly explain why the supplies in examples 4 and 5 are QHCS but the supply in example 3 is not.

Moreover, in some cases, the examples provided by the CRA do not reflect all of the aspects of the scenario in question. For example, in Alberta, a driver's medical examination (and completion of the associated form) is an insured service after the age of 75 years, but example 10 makes the blanket statement that completion of such a form is not a QHCS. Another example is that in some cases there is a subtle distinction between sick notes and short-term disability forms, for time missed because of illness.

### Recommendations

13. If both single- and multiple-supply concepts are included in the final version of the policy, examples with multiple supplies should also be included.
14. For each example, clarify in the rationale section how the tax status was determined in each example.
15. Include a linkage to the factors discussed in the draft policy statement suggested above in making its determination of the tax status of the supply.
16. The CRA should maintain a repository and distribute a list of additional examples not included in this iteration of the policy (e.g., annual executive medical examinations, applications for Disability Tax Credit).
17. The policy could include comments on GST/HST registration, collection and reporting requirements, the association rules and the small supplier threshold as well as possible eligibility for recoveries of GST/HST by way of rebate or input tax credits (ITC) and ITC allocation requirements.

### **Conclusion**

The CMA appreciates the opportunity to comment on the draft policy as part of CRA's consultation process. To ensure that clinicians can implement the new requirements with minimal impact on their patients and their practice, additional clarity is required with respect to the meaning of the various elements in the definition of a QHCS, the factors to be



considered when determining if a supply is a QHCS, and the documentation required to support a physician's conclusions regarding the nature of his/her supplies.

The CMA would welcome the opportunity to comment on future iterations of this policy.

## Appendix 1

*Examples of GST/HST policy statements that include a list of factors to assist the reader in determining whether a particular set of facts meets the CRA's policy:*

- P – 244: Partnerships – Application of subsection 272.1(1) of the *Excise Tax Act*.
- P – 238: Application of the GST/HST to Payments Made Between Parties Within a Medical Practice Organization
- P – 228: Primary Place of Residence
- P – 208R: Meaning of Permanent Establishment
- P – 276R: Application of Profit Test to Carrying on a Business
- P – 167R: Meaning of the First Part of the Definition of Business
- P – 164: Rent-to-own Agreements
- P – 111R: The Meaning of Sale with Respect to Real Property
- P – 104: Supply of Land for Recreational Units Such as Mini-homes, Park Model Trailers, and Travel Trailers
- P – 090 Remote Work Site
- P – 077R2 – Single and Multiple Supplies
- P – 051R2: Carrying on Business in Canada