Jamie M. Wilks, L.L.B.

How to Reduce Your GST Burden

Unlike most businesses, dentists are restricted from claiming input tax credits (ITCs) to recover the GST paid on their business purchases. For that reason, it is important that dentists do not absorb, as costs of doing business, more GST payable than is necessary. Two 2006 Tax Court of Canada cases illustrate certain opportunities available to dentists to reduce the GST burden. Realizing these savings should translate into increased incomes.

Obviously it is important for dentists to correctly evaluate the GST status of their "supplies" as either taxable (subject to 6 percent GST) or as exempt or zero-rated (no GST), in order to correctly charge, collect, and remit GST. Also important, but less obvious, is the impact that the GST status of "supplies" has in determining the extent to which dentists can claim ITCs. In particular, only taxable and zero-rated, but not exempt, supplies can give rise to ITC claims.

Case One

In *Dr. X v Her Majesty the Queen,* the Tax Court of Canada confronted these issues. The dental corporation owned by Dr. X claimed ITCs of $14,900 during the GST assessment period. The Canada Revenue Agency (the "CRA") disallowed $12,075 or 81 percent of the ITCs claimed. The dispute between Dr. X and the CRA arose as the result of each assigning a different GST status to certain supplies purchased by Dr. X. He claimed his supply and installation of crowns, bridges, and dentures and related dental services were zero-rated. While the CRA conceded that the supply of "artificial teeth" and "orthodontic appliances" were zero-rated supplies, it maintained that the related dental services were exempt supplies. Accordingly, the CRA allocated significantly more taxable expenses to exempt supplies as opposed to zero-rated supplies than Dr. X did, thus severely restricting his ITC claims.

The Tax Court disallowed Dr. X's appeal. His representative, an accountant, did not lead sufficient evidence to support the assumptions on which Dr. X's case depended. Dr. X's failure to appear on his own behalf to give evidence proved fatal to his case. While the judge commended the accountant for his efforts, an experienced tax lawyer and litigator would have known what evidence would be needed and how best to introduce such evidence into court.

The Tax Court did agree with Dr. X's zero-rating treatment of certain services. In the court's opinion, the installation of the teeth and artificial appliances were zero-rated supplies, regardless of whether the procedures were for cosmetic or medical purposes. Despite the Court's agreement with Dr. X on this point, the appeal was dismissed due to insufficient evidence.

Case Two

In *1524994 Ontario Ltd. v The Queen* there existed a somewhat unusual arrangement between two medical doctors and a licensed audiologist. Nonetheless, it has valuable lessons for dentists concerning GST planning. The key point was that a signed written agreement entered into between the audiologist's numbered company (the "Corporation") and the two medical doctors (the "Agreement") was a sham. The Corporation carried on the business of an audiology clinic.

By virtue of the Agreement, the Corporation purported to lease premises and equipment and to provide consulting or management services to the two doctors. The CRA assessed the Corporation $31,686 for failure to charge, collect, and remit GST on the taxable supplies of premises, equipment, and services made to the two doctors. Because the doctors made exempt supplies of medical services, they would be ineligible to claim ITCs to recover any GST payable to the Corporation. Fortunately, the Tax Court allowed the Corporation's appeal and vacated the assessment. *The court found that, in fact, the Corporation did not make the taxable supplies set out in the Agreement.*

To provide insurance coverage, OHIP required hearing tests to be conducted under the supervision of medical doctors. To circumvent this, the parties entered into the Agreement so that it appeared that the doctors conducted or supervised the hearing tests actually carried out by the Corporation, and the doctors billed OHIP accordingly. The court found that the doctors did not actually provide any of the audiology services billed to OHIP, but simply acted as billing agents for the Corporation (with the doctors retaining $1,000 monthly from the gross billings to OHIP for their 'billing agency' services).

To avoid incurring unrecoverable GST, dentists should enter into written agreements to structure their office and equipment-sharing arrangements so that they do not make taxable supplies of property or of administrative and management services between them. Business activities should be conducted in a manner consistent with the governing agreement.

Jamie M. Wilks is a tax, customs and trade lawyer with McMillan Binch Mendelsohn LLP Barristers & Solicitors in Toronto. He may be reached at Jamie.wilks@mcmbm.com or 416-865-7804.