

## Contacts

**National Indirect  
Tax Leader**  
**Robert Demers**  
514-393-5156

**Quebec and Atlantic**  
**Robert Demers**  
514-393-5156

**Ontario**  
**Rory Pike**  
416-874-3330

**Michael Matthews**  
613-751-5310

**Toronto**  
**Danny Cisterna**  
416-601-6362

**Doug Myrden**  
416-601-6197

**Prairies**  
**Dean Grubb**  
780-421-3640

**Alberta**  
**Jason Riche**  
403-267-1702

**British Columbia**  
**Janice Roper**  
604-640-3353

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## Canadian indirect tax Parking spaces supplied by public sector bodies - recent developments

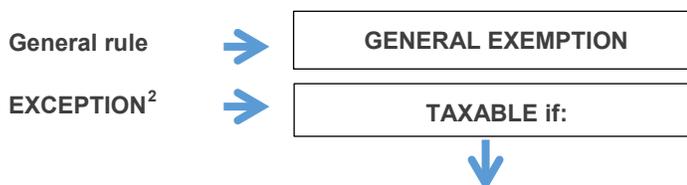
March 5, 2014 (14-3)

On January 24, 2014, the federal Minister of Finance announced measures regarding the supply of parking spaces by charities and other public sector bodies<sup>1</sup> including an exemption from the GST/HST for parking for patients and visitors provided by hospitals and their affiliated charitable foundations. The Quebec Finance Minister quickly followed with an announcement of harmonizing measures.

These proposals were highly anticipated as the 2013 federal Budget had introduced new rules that made supplies of parking spaces by charities in certain cases taxable supplies. These new measures, applicable to charities after March 21, 2013, implement the 2013 budget proposals and create exemptions under specific circumstances — particularly for public hospital parking.

These rules are complex and each situation must be carefully analyzed. The following is a brief diagram.

### Supplies of parking spaces by charities



1. the supply is made for consideration, by way of lease, licence or similar arrangement and in the course of a business carried on by the charity
- AND
2. it is reasonable to expect that the **specified parking area**<sup>3</sup> is primarily used (more than 50%) during the calendar year by individuals who are accessing a property **of a particular person**<sup>4</sup> or an establishment operated by a particular person
- AND
3. one of the following conditions is met:
    - a) the charity is expected to use a significant part of its income or assets for the benefit of any particular person

<sup>1</sup> Not-for-profit organizations, municipalities, school authorities, hospital authorities, public colleges or universities.

<sup>2</sup> Paragraph 1(o), Part V.1, Schedule V *ETA*, introduced on January 24, 2014, applicable to supplies made after March 21, 2013.

<sup>3</sup> Defined as all of those parking spaces that could be chosen for use in parking under the agreement for the supply of the parking space if all of those parking spaces were vacant and not reserved for any specific users.

<sup>4</sup> A "particular person" being a municipality, a school authority, a hospital authority, a public college or a university.

OR

- b) the charity and any particular person have entered into, with each other or with other persons, one or more agreements in respect of the use by the individuals of parking spaces in the specified parking area

OR

- c) any particular person performs any function or activity in respect of supplies by the charity of parking spaces in the specified parking area (e.g., snow removal or collection of fees)

### Supplies of parking spaces for hospital patients and visitors

In cases where the supplies of parking spaces would be taxable after the above-mentioned rules have been applied, they may still be exempt supplies as follows.

EXCEPTION<sup>5</sup>



EXEMPT if:



- 1. all of the parking spaces in the specified parking area are reserved for use by individuals who are accessing a public hospital

OR

- 2. it is reasonable to expect that the specified parking area will be primarily used (more than 50%) during the calendar year by individuals who are accessing a public hospital

AND

- 3. no election<sup>6</sup> was made in respect of the property on which the parking space is situated

However, in spite of the above, amounts will continue to be



TAXABLE if:

Reserved test

All or substantially all (90% or more) of the parking spaces in the specified parking area are reserved for use other than by individuals accessing a public hospital otherwise than in a professional capacity (i.e., persons other than patients or visitors)

OR

Not accessing a public hospital

If the supply or the consideration for the supply is conditional on the parking space being used by a person other than an individual accessing a public hospital otherwise than in a professional capacity (i.e., persons other than patients or visitors)

OR

Parking passes

The agreement for the supply is entered into in advance; the period over which parking spaces in the specified parking area can be accessed under the supply is more than twenty-four hours; and the access is to be used by a person other than an individual accessing a public hospital otherwise than in a professional capacity (i.e., persons other than patients or visitors)

<sup>5</sup> Section 7, Part V.1, Schedule V *ETA*, introduced on January 24, 2014, applicable to supplies made after March 21, 2013.

<sup>6</sup> This refers to the election for real property under section 211 of the *Excise Tax Act* and section 272 of *An Act Respecting the Québec Sales Tax*.

## Supplies of parking spaces by public sector bodies

General rule<sup>7</sup>



TAXABLE

EXCEPTION<sup>8</sup>



EXEMPT if:



1. all of the parking spaces in the specified parking area are reserved for use by individuals who are accessing a public hospital

OR

2. it is reasonable to expect that the specified parking area will be used primarily (more than 50%) during the calendar year by individuals who are accessing a public hospital

AND

3. no election<sup>9</sup> was made in respect of the property on which the parking space is situated

However



TAXABLE if:

Reserved test

All or substantially all (90% or more) of the parking spaces in the specified parking area are reserved for use other than by individuals accessing a public hospital otherwise than in a professional capacity (i.e., persons other than patients or visitors)

OR

Not accessing a public hospital

The supply or the consideration for the supply is conditional on the parking space being used by a person other than an individual accessing a public hospital otherwise than in a professional capacity (i.e., persons other than patients or visitors)

OR

Parking passes

The agreement for the supply is entered into in advance; the period over which parking spaces in the specified parking area can be accessed under the supply is more than twenty-four hours; and the access is to be used by a person other than an individual accessing a public hospital otherwise than in a professional capacity (i.e., persons other than patients or visitors)

### Transitional rules

Relieving measures have been introduced for charities that have collected tax based on the Budget announcement on parking spaces made after March 21, 2013 and on or before January 24, 2014, where the supply would now be exempt. Under the relieving measure, the amount is deemed not to have been collected as or on account of tax for purposes of determining the net tax of the charity. This deeming rule has the effect of relieving the charity from the obligation to remit the amount or, if the amount has been remitted, allowing the charity to recover the amount as a tax paid in error rebate.

<sup>7</sup> Paragraph 25(h), Part VI, Schedule V, *ETA*.

<sup>8</sup> Section 25.1, Part VI, Schedule V, *ETA*, introduced on January 24, 2014, applicable after January 24, 2014.

<sup>9</sup> This refers to the election for real property under section 211 of the *Excise Tax Act* and section 272 of *An Act Respecting the Québec Sales Tax*.

A further special rule applies if an amount is subject to the deeming rule discussed above and that amount has been taken into account in assessing the net tax of a charity. In these circumstances, the amount could not be rebated as a tax paid in error rebate. The special rule allows the charity to request in writing, within one year after the enactment of new parking rules that the Minister of National Revenue assess, reassess, or make an additional assessment of, the net tax to take into account the effect of the deeming rule.

There are no further requirements for charities that did not collect tax based on the 2013 Budget announcement provided that the new exemption is applicable.

### **What to do next?**

These rules are complex and introduce new concepts, which will inevitably lead to many interpretation issues.

An analysis of the parking spaces operated by a charity or a public sector body must be performed based on the new rules to determine the status of the parking spaces for purposes of applying the GST and (QST).

Access the documents published by the Department of Finance Canada [here](#).

We are available to help you apply these new provisions. If you wish to discuss these or other subjects related to indirect taxes, please contact a Deloitte Indirect Tax advisor in your area or one of the Deloitte professionals listed in this newsletter.

*Robert Demers, National Leader*

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2 Queen Street East, Suite 1200  
Toronto, ON M5C 3G7 Canada

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