



Canadian indirect tax news GST/HST, QST and dental practices

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The recent decision of the Tax Court of Canada in *Dr. Brian Hurd Dentistry Professional Corporation v. The Queen* provides some well-needed guidance regarding the claiming of input tax credits (ITCs) and input tax refunds (ITRs) on the goods and services tax/harmonized sales tax (GST/HST) and on the Quebec sales tax (QST), respectively, paid by dental practitioners. ITCs claimed by dental practitioners have been challenged by the Canada Revenue Agency (CRA) over the last several years, notwithstanding inconsistent enforcement of this policy by the CRA.

In this case, Dr. Brian Hurd Dentistry Professional Corporation (DPC), a GST/HST registrant, was providing orthodontic services to its clients and claiming ITCs on all its inputs at a rate of 35%. The 35% rate was based on

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guidelines established by the CRA.¹ DPC's services included both the provision of dental/orthodontic services and the provision of orthodontic appliances. A single contract was signed by the patient for the entire treatment and the appliance cost. The appliance cost was calculated at 35% of the total fees. This amount was determined not to be the actual cost of the appliance but was based on CRA's administrative policy.

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The court examined the following issues:

- (i) whether the registrant DPC provided a single supply of orthodontic treatments to its patients or multiple supplies consisting of an orthodontic appliance and the accompanying orthodontic services;
- (ii) if the registrant made a single supply, whether the single supply was exempt or zero-rated for GST/HST purposes;
- (iii) if the registrant made multiple supplies, whether those supplies were exempt or zero-rated for GST/HST purposes;
- (iv) if the registrant made taxable supplies whether it was entitled to ITCs; and
- (v) whether the registrant was entitled to ITCs on fixed asset purchases.

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The decision of the court, rendered by Campbell J, was as follows:

- (i) DPC provided a single supply of orthodontic treatments to its patients and the orthodontic appliances provided were not separate from the orthodontic treatments provided;
- (ii) this single supply of orthodontic treatments was an exempt supply of dental services for GST/HST purposes;
- (iii) there were not multiple supplies of dental services and orthodontic appliances provided;
- (iv) DPC was not entitled to ITCs, as its primary services were exempt orthodontic treatments; and
- (v) DPC was not entitled to ITCs on fixed assets purchased.

Of importance is that Campbell J stated that the CRA directive should not be relied upon in any manner and that it was simply wrong and misleading. Further, Campbell J stated that there was no doubt that the supply of an orthodontic appliance can be a zero-rated supply if it is sold separately from the treatment.

What does this decision mean to your practice?

The Tax Court of Canada has ruled that a single, professional dental corporation providing orthodontic services is not providing multiple supplies and is therefore not entitled to ITCs. It is not clear whether this decision would apply to other professional health care corporations. All entities should examine their eligibility to claim any ITCs; if no taxable activities are being carried out, they may consider deregistering for GST/HST purposes. It is important to note that deregistering would require the entity to repay any ITCs taken on fixed assets or inventory held at the time of deregistration. It is also important to note that

¹ In an administrative directive by the CRA which allowed orthodontists to claim ITCs in respect of orthodontic appliances based on the assumption that they were making multiple supplies consisting of exempt dental services and zero-rated supplies of appliances (provided that the cost of the dental services was shown separately from the cost of the appliances).

the sale of a professional dentistry corporation that is not entitled to claim ITCs will most likely not be a taxable supply if the corporation is involved exclusively in making exempt supplies (i.e., dental services).

For those dental/orthodontic practitioners who have structures with more than one entity providing services to their patients (i.e., technical service corporations along with professional dentistry corporations), it will be important to discuss the structures with their indirect tax advisors to determine whether it is still possible to claim ITCs. However, dental practitioners with a single structure similar to that of Dr. Brian Hurd should no longer claim ITCs based on that court decision and may wish to consider whether they should remain register for GST/HST.

Finally, for dental/orthodontic professionals practicing in Quebec, the same principles should apply for purposes of the QST.

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