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***BCFHPS***  
***2019 CONFERENCE***  
**GST/HST Issues**

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# *Agenda*

## **Refresher**

- Definitions

## **Supplies – Revenues**

## **Purchases – PSB Rebates vs ITCs**

## **Section 211 Election!**

## **Areas of Opportunity!**

## **Areas of Risk/Exposure**

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## ***To Start***

- Who has seen my act before?
- Who has been audited by the CRA or Ministry of Finance?
- Who is concerned about a GST or PST audit?
- How comfortable are you that your organization has GST and PST figured out?
  
- I will do my very best not to keep you from your lunch

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# REFRESHER

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# ***Refresher***

## **Some definitions**

- Public Sector Body – *means a government or a public service body*
- Public Service Body – *means a non-profit organization, a charity, a municipality, a hospital authority, a school authority, a public college or a university*
- Hospital Authority - *means an organization that operates a public hospital and that is designated by the Minister as a hospital authority*

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# Refresher

## Some more definitions

- Public Institution – *means a registered charity (subsection 248(1) of the Income Tax Act) that is a **hospital authority**, a public college, a university, a school authority or a local authority determined under paragraph (b) of the definition “municipality” to be a municipality*
- Charity - *means a registered charity or registered Canadian amateur athletic association within the meaning assigned to those expressions by subsection 248(1) of the Income Tax Act, but does not include a public institution*

***A public hospital is generally a « hospital authority » and a « public institution » and a « public service body » and a « public sector body ». But it is not a charity!***

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# *Refresher*

## **Some definitions to begin with**

- Taxable supply – means a supply that is made in the course of a commercial activity

Commercial activities – means

- a) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,
- b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and
- c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply;

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# SUPPLIES - REVENUES



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# *Supplies*

- Taxable supply
  - GST/HST to collect – 5% HST for a supply made in British Columbia
  - Input Tax Credit (ITC) for tax paid on related expenses
- Zero-rated supply – a supply included in Schedule VI.
  - Taxable, but at 0%
  - No GST/HST to collect
  - ITC for tax paid on related expenses.
- Exempt supply – a supply included in Schedule V.
  - Not taxable
  - No GST/HST to collect
  - No ITC for tax paid on related expenses

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# *Supplies*

## **General Rules**

- A supply made in Canada is generally subject to GST/HST unless it is exempt or zero-rated
- A supply made by a charity or public institution is generally exempt, unless the supply is specifically identified as being taxable
- A supply made by a non-profit organization is generally taxable unless specifically identified as being exempt

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## ***Supplies made by Hospitals***

### ***Healthcare Services – Part II of Schedule V***

**Cosmetic procedures** – will be taxable if not for medical or reconstructive purposes.

**Institutional Healthcare Services** – provided in a healthcare facility, including:

- Laboratory and diagnostic services
- Drugs, prosthetics, etc., when used/installed in the provision of an exempt healthcare service
- Use of operating rooms, etc., and associated equipment
- Accommodation
- Meals

**Lease of medical equipment** - supplied to a consumer on the written order of a medical practitioner

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# ***Supplies made by Hospitals***

## ***Healthcare Services***

**Non-Medical Care** – Rendered to an individual by a practitioner, including:

- Optometric
- Chiropractic
- Physiotherapy
- Midwifery
- Acupuncture

## **Dental Hygienist Services**

**Training Services** – Certain training services to assist persons living with a disability

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## ***Supplies made by Hospitals***

### ***Public Institution – Section 2 of Part VI of Sch. V***

#### **General Exemption**

Most Intangible personal property and services

#### **Goods**

- Donated goods
- Used goods
- Sales of assets (equipment) used primarily in exempt activity
  - Used computers
  - Used furniture

**Zero-rated supplies are excluded from exemption**

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# *Supplies made by Hospitals*

## *Public Institution*

### **Taxable – Exception to the general exemption**

#### Intangibles and services

- General exemption **not** applicable to:
  - Memberships to recreational or athletic facilities
  - Supervision/instruction in any recreational or sport activity for children over 14 years old
  - Summer camps involving overnight supervision

#### Goods

- Sales of assets used primarily in taxable activities
- Sales of goods acquired for resale – if **not** at direct cost
  - Items for sale through a gift shop
  - Items for sale to patients

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# ***Supplies made by Hospitals***

## ***Public Service Body – Part VI of Schedule V***

### **Exempt**

#### **Admissions**

- Dinner, ball, concert, show or similar event
- Fund-raising activities
- Part of the admission may be regarded as a donation for which a charitable receipt *may be or could be* issued if the recipient was an individual
  - No obligation to issue a charitable receipt

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# ***Supplies made by Hospitals*** ***Public Service Body***

## **Fundraising Exemption**

### **Goods or Services**

- Non-recurring fundraising activity
  - Such supplies not made on a regular/continuous basis throughout the year

### **Goods**

- Selling price not exceeding \$5
- All salespersons are volunteers; and
- Not made by persons carrying on business of selling such property
- Examples:
  - Christmas cards
  - Valentine roses



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# ***Supplies made by Hospitals*** ***Public Service Body***

## **Direct Cost Exemption**

### **Goods purchased for resale**

- Flow through without mark-up
- Example: patient toiletries

### **Goods produced, manufactured or processed for resale**

- Cost of inputs - without mark-up, overhead, salaries or administrative costs
- Example: photocopies or reports

### **Services purchased for resale**

- Flow through without mark-up
- Example: exercise training for staff

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# ***Supplies made by Hospitals*** ***Public Service Body***

## **Amateur Performances and Events**

### **Exempt**

- **Admission fees**
  - Athletic or competitive event or performance
  - 90% of the athletes, competitors or performers not remunerated
  - No advertisement or representation may “feature” any of the participants this are remunerated

### **Taxable**

- **Admission fees**
  - Professional events
  - Events where at more than 10% participants are remunerated

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# ***Supplies made by Hospitals***

## ***Public Service Body - Real Property***

### **Exempt**

- **Sale**
  - Real property used primarily (more than 50%) in exempt activities
- **Long term lease**
  - Continuous possession or use of at least one month

### **Taxable**

- **Sale**
  - Real property used primarily (more than 50%) in taxable activities
- **Short term lease**
  - Continuous possession or use of less than one month
- **License**
- **211 election**

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## ***Supplies made by Hospitals***

### ***Public Service Body – Exempt Hospital Parking***

- a) When the supply is made:
  - i. all of the spaces in the specified parking area are reserved for individuals accessing a public hospital, or
  - ii. it is reasonable to expect that the SPA will be used primarily by individuals accessing a public hospital, during the particular calendar year;
- b) It is not the case that:
  - i. all or substantially all spaces are reserved for staff/contractors,
  - ii. the supply or consideration is conditional on being staff/contractor, or
  - iii. the supply is for a period of more than 24 hours for use by staff/contractor; and
- c) There is no section 211 election in place.

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# ***Supplies made by Hospitals***

## ***Zero-rated Drugs and Medical Devices***

### **Drugs**

- Prescription drugs
- Certain federally controlled drugs (e.g., Schedule C and D to the FDA)
- Drug dispensing fees

### **Medical Devices – most come with conditions**

- Communication devices specially designed for use by individual with hearing, sight, or speech impairment.
- Heart monitoring device on written order of a specified professional
- Breathing apparatus designed for individual with respiratory disorder
- Asthma device on written order of a specified professional
- Control device designed to enable an individual with a disability to control household, industrial, or office equipment.

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# ***Supplies made by Hospitals***

## ***Zero-rated Drugs and Medical Devices***

### **Medical Devices (con't)**

- Artificial eyes, teeth, hearing aids, laryngeal speaking aid
- Wheelchair, walker, lift or similar aid to locomotion designed for use by individual with a disability
- Chair designed for person with a disability on the written order of a specified professional
- Insulin injection devices
- Artificial limbs
- Cane or crutch
- Prosthesis or appliance – A supply of a medical or surgical prosthesis or an ileostomy, colostomy or urinary appliance or similar article that is designed to be worn by an individual.
- A part, accessory, or attachment designed for a zero-rated medical device

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# ***Supplies made by Hospitals***

## ***Zero-rated Exports***

Many supplies made to non-residents are conditionally zero-rated. Watch the conditions!

- General services supplied to a non-resident of Canada (with exceptions including services rendered to an individual)
- Professional, advisory, or consulting services
- Supplies of intangible personal property/intellectual property made to non-residents of Canada that are not registered for GST/HST
- Training for non-residents
- Property or service supplied to a non-resident/not registered person in the business of transporting passengers or property to or from Canada
- Services performed on temporarily imported property
- Property shipped out of Canada
- Testing/inspecting property that will be destroyed/discarded on completion

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# PURCHASES – PSB REBATES vs ITCs



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# ***PSB Rebates***

## ***General Rules***

### **PSB Rebates Claim**

- Rebate generally available for GST/HST paid by Public Service Bodies (including Hospital Authorities)
  - Registrants and non-Registrants
  - Expenses paid by Hospital Authorities
  - Expenses paid by departments within a hospital (e.g., Petty cash)
- For all amounts of GST/HST non recoverable as an ITC – “non-creditable tax charged”
- PSB rebates – GST/HST payable on expenses directly related to exempt activities

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## ***PSB Rebates***

### ***Hospital Authority Rebate***

- A Hospital Authority is entitled to claim a rebate of 83% of non-creditable tax charged to the extent that it intended to consume, use or supply the property or services in activities engaged in by the person in the course of operating a public hospital
- If tax is incurred otherwise than in the operation of a public hospital, generally not entitled to rebate at the hospital rate
- Over-ride rule - if a hospital authority incurs all or substantially all of the tax included in determining non-creditable tax charged, **for a particular claim period**, in relation to the operation of a public hospital, it is deemed to have paid all of the tax for these purposes.
- Policy Statement P-245 identifies activities undertaken in the operation...  
Issued August 2005

GST/HST Notice 274 - Research Activities Undertaken by Hospital Authorities - Issued May 2012. Still in draft!

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## ***PSB Rebates***

### ***Hospital Authority Rebate***

#### **Activities undertaken in the operation...**

##### ***Inpatient goods and services***

- accommodation and meals;
- nursing services;
- laboratory, radiological and other diagnostic procedures, with necessary interpretations;
- drugs, biologicals and related preparations administered in the hospital;
- the use of operating rooms, case rooms (i.e., obstetrical delivery rooms), and anesthetic facilities, including necessary equipment and supplies;
- medical and surgical equipment and supplies;
- the use of radiotherapy facilities; and
- rehabilitative services such as physiotherapy, occupational therapy, speech language pathology and audiology.

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## ***PSB Rebates***

### ***Hospital Authority Rebate***

#### **Activities undertaken in the operation...**

##### ***Outpatient goods and services***

- day surgeries and the provision of drugs, biologicals and related medically necessary preparations;
- laboratory, radiological and other diagnostic procedures with necessary interpretations;
- dialysis units;
- rehabilitative services; and
- outpatient and emergency visits

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## ***PSB Rebates***

### ***Hospital Authority Rebate***

#### **Activities undertaken in the operation...**

##### ***Other activities related to patient care***

- teaching services in the hospital; the provision of student residences;
- ambulance services or other patient transportation services on admission or upon discharge;
- programs identified as falling under the operational plan of the public hospital such as outpatient educational services;
- pastoral care and other patient and family support services;
- volunteer support services including gift shops and library carts;
- shampoo and hair cutting services; pet therapy; caring clowns, toys and play activities for children; services provided by social workers; and
- patient discharge assistance.

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## ***PSB Rebates***

### ***Hospital Authority Rebate***

#### **Activities undertaken in the operation...**

##### ***Goods and Services Related to Own Use***

- research performed by the public hospital for its own use;
- fund-raising activities for its own use;
- medical libraries;
- record keeping;
- housekeeping services,
- maintenance services and custodial services;
- materiel and facilities management;
- security services; and
- staffing and human resources.

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## ***PSB Rebates***

### ***Hospital Authority Rebate***

#### **Activities NOT undertaken in the operation...**

- Long-Term Care
- Applied research services that are not directly connected to patient care, such as research contracts with pharmaceutical companies;
- Central purchasing operations not related to patient care, for example, services related to purchasing and resupplying drugs for third parties;
- Food preparation services not related to patient care such as catering services, preparation of frozen meals for sale and provision of meals for visitors;
- Laundry services provided to outside parties where there is no connection to patient care;
- Leases or licenses of real property such as room rentals for meetings or banquets, leases of retail space, etc.;

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## ***PSB Rebates***

### ***Hospital Authority Rebate***

#### **Activities NOT undertaken in the operation...**

- Supplies of steam to outside parties;
- Sales of books, publications or tapes, other than in the hospital gift shop;
- Sales of medical or surgical supplies not related to patient care;
- Nursery and day care services not related to patient care;
- Fitness and public recreational classes not related to patient care; and
- Community outreach activities



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# ***PSB Rebates***

## ***General Rules***

### **Claim Periods**

- Hospitals are typically GST registrants
- PSB rebates claim frequencies = reporting periods
- Monthly filings for most Hospitals
- Due on or before the last day of the following month

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# ***PSB Rebates***

## ***General Rules***

### **Timing**

- If a rebate is not claimed during a particular claim period, the rebate could be claimed in a subsequent claim if:
  1. The rebate has not been claimed in any claim period
  2. The application for the subsequent claim period is filed within two years after the particular claim is required to be filed.
  3. The specified % of the rebate remains the same.

### **Comments**

- If a rebate is denied by the CRA because of lack of documentation, the rebate could not be claimed in a subsequent claim period in which the documentation is sufficient
  - Need to amend the particular claim

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# ***PSB Rebates***

## ***General Rules***

### **Comments**

- If a rebate is not claimed in a subsequent claim period within the 2-year period
  - The rebate could still be claimed by filing an amended claim for the particular period, as long as it is within the general 4-year period
- If a PSB was using the wrong PSB rebate rate in a particular period, it could not claim the difference in a subsequent claim period
  - Need to amend the particular claim

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# ***ITCs***

## ***General Rules***

### **ITCs Claims**

- ITCs for GST/HST payable on expenses directly related to commercial/taxable activities (to the extent ...)
  - The consideration for the taxable supply should **not** be nil or nominal
- Within GST/HST returns

### **Timing**

- Within a 4-year period after the due date to file a GST/HST return
- If a hospital authority is a “specified person” → Within a 2-year period
  - Specified person: registrant with more than \$6M of taxable supplies in each of its last 2 fiscal years
  - Test to be done annually

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# ***PSB Rebates vs ITCs***

## ***Allocation***

### **ITCs vs PSB Rebates**

- ITCs for GST/HST payable on expenses directly related to commercial/taxable activities (to the extent ...), except for charities who have specific ITC restrictions.
- PSB rebates – GST/HST payable on expenses directly relate to exempt activities and GST/HST payable by a charity for which no ITC may be claimed.

### **Allocation method**

- Fair and reasonable (not the most fair and reasonable!)
- ITCs vs PSB rebates
- PSB rebates between different activities (Hospital vs Charities, QNPOs vs municipalities, etc.)

# *PSB Rebates vs ITCs*

## *Allocation*

	<b>Usage (%) – Commercial activities</b>	<b>ITC</b>	<b>PSB rebate</b>
<b>OPEX</b>	$\% \leq 10\%$	No	100%
	$10\% < \% < 90\%$	Yes - % commercial	Yes – % exempt
	$\% \geq 90\%$	100%	No
<b>CAPEX</b>	$\% \leq 50\%$	No	100%
	$\% > 50\%$	100%	No
<b>Real Property – without 211</b>	$\% \leq 50\%$	No	100%
	$\% > 50\%$	100%	No
<b>Real Property – with 211</b>	$\% \leq 10\%$	No	100%
	$10\% < \% < 90\%$	Yes - % commercial	Yes – % exempt
	$\% \geq 90\%$	100%	No

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# ***PSB Rebates vs ITCs***

## ***Section 211 Election***

### **Absent section 211 election:**

- Long term supplies of real property made by a PSB are exempt
- ITC in respect of acquisition of or improvement to capital real property may only be claimed if the property is used primarily in commercial activities

### **Section 211 election in place:**

- Most otherwise exempt supplies of real property become taxable
- A number of deemed transactions occur that deem the electing party to have paid GST, some of which may be recoverable as an ITC
- ITCs may generally be claimed to the actual extent that property is used or supplied in the course of a commercial activity

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# ***PSB Rebates vs ITCs***

## ***Section 211 Election***

- A section 211 election may be made in respect of:
  - Real property that is capital property of a public service body,
  - Real property of the PSB that is held by the body in inventory for the purpose of supply, or
  - Real property acquired by a PSB by way of lease, license, or similar arrangement for the purposes of making a supply of the property by way of lease, license, or similar arrangement
- It is generally beneficial for a PSB to make a section 211 election if:
  - The real property is used between  $> 10\%$  and  $\leq 50\%$  use in commercial activities (If 10% or less, no ITC. If greater than 50%, full ITC)
  - The degree to which the property will be used in the foreseeable future will not decrease significantly.



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# ***PSB Rebates vs ITCs***

## ***Section 211 Election***

### **The CRA's view:**

- Election may be made in respect of a legal parcel of land – e.g., it may not be made in respect of a single building situated on a parcel of land and a single election cannot be made in respect of numerous parcels owned by a public service body
- For purposes of allocating an input tax credit between commercial and exempt activities:
  - An indexing factor must be used in respect of portions of the property that have less monetary value – such as parking lots, and
  - External common areas are not used to any extent in commercial activities and therefore fall within exempt use

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## ***PSB Rebates vs ITCs***

### ***Section 211 Election***

#### **The Tax Court of Canada's view in University of Calgary and University of Alberta:**

- External common areas support all of the activities therefore apply overall taxable/exempt percentage to this element as well
- Indexing factor is not required. The Court found that a person is “... entitled to use any method that is fair and reasonable provided it complies with...the Act. The CRA cannot... substitute its method...”
- The Court also found that “a GST registrant...entitled to determine ...ITCs on the basis of information in its possession, without having to resort to hiring expensive third parties, such as valuers.”

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# ***PSB Rebates vs ITCs***

## ***Section 211 Election***

### **Things to watch for:**

- Change in use – up or down. If use in commercial activity goes up, may be additional recoveries. If use goes down, may be a requirement to repay some ITCs
- The percentage of ITC recovery is not cast in stone. ITC allocation is based on a fair and reasonable methodology based on the degree to which the property is used in commercial activities
- Tenants or parking lot customers may not be happy about paying GST if they cannot recover by way of ITC or rebate

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# *Areas of Opportunity*

## **Maximize taxable supplies**

- Standard rated and zero-rated

## **Section 211 Election**

## **Real Property ITCs**

- Group commercial activity on a single piece of property (legal description) – easier at the time of new construction/redevelopment
- If not possible to get a particular piece of property loaded to >50%, consider subdividing/severing to create new parcel.

## **Parking**

- Section 211 election?
- Move to Foundation?

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# *Areas of Opportunity*

## **Special Quick Method**

- Remit 4.2% of GST inclusive consideration on most taxable supplies
- Excludes sales of capital property, sales of real property, and supplies where tax was collected in error (e.g., tax collected on lease of real property and no Section 211 election)

### Example

- Lease of office space for \$1,000 + \$50 GST
- Calculate GST collectible as  $\$1050 \times 4.2\% = \$44.10$
- Remit GST of \$44.10, rather than \$50
- Keep the difference of \$5.90
- Do not claim ITCs in respect of operating expenses
- Claim rebate in respect of operating expenses

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## ***Areas of Risk/Exposure***

### **Failure to self-assess**

- GST and PST

### **Rebates and ITCs**

- Claimed at the wrong rate. Activities outside of public hospital.

### **Central purchasing**

- Is the central “agent” making a supply?
- Is the supply a taxable supply?
- Claiming rebate at the wrong rate – 83% vs. 50%

### **Section 211 Election**

- Not following the established ITC methodology
- Not keeping track of changes in use

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## ***Areas of Risk/Exposure***

**Special Quick Method** - Remitting reduced rate for tax collected in error

### **Outsourcing**

- No GST burden if activities performed by staff
- GST applies if performed by a third party unless supplies are exempt:
  - Consultative or diagnostic services of a medical practitioner
  - Laboratory services
  - Food and beverage for patients

**Amalgamation of Hospital Authorities** - Designation does not survive

**On-call fees paid to physicians** – January 2016 CRA interpretation letter states that fees are taxable and GST/HST News No. 101 – March 2017

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# *The End*

## *Thank you for your attention*

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