

January 15, 2015

**To:** LEG Leads

**Re: Update on the Applicability of Harmonized Sales Tax (HST) to AFP Payments**

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The Chairs and Administrators of the 17 Academic Health Science Centre (AHSC) AFP agreements meet monthly to review issues. For the last year, the applicability of Harmonized Sales Tax (HST) to payments from the AFP has been an agenda item as a result of the decision of the Canada Revenue Agency (CRA) to conduct an HST audit of a practice plan receiving funding from various sources including the AFP.

In my memo of November 14, 2013, an update was provided regarding the decision of the Chairs and Administrators to employ a unified approach to deal with the issue given the impact to all AFP governance organizations. The OMA and The Ottawa Hospital Academic Medical Organization (TOHAMO), the AFP governance organization paying the practice plan under audit, engaged tax lawyers and accountants to request a ruling from the CRA regarding payments from the AFP. The results were provided to the NOAMA Board in November 2014.

AFP payments/funding include:

- 1) AFP payments from the Ministry of Health and Long Term Care to Governance Organizations. (NOAMA is the governance organization that administers the NOSM AFP)**
- 2) AFP payments from Governance Organizations to practice plans. (LEGs in NOAMA's case.)**

"The good news is the ruling provides clarity as to the treatment of AFP funding received by the practice plans and there should be no exposure to practice plans for failure to have collected HST on this funding." This covers AFP payments under 1 and 2 above.

While the rulings are specific to TOHAMO, it is the opinion of the tax lawyers and accountants that it can be assumed that CRA would reach the same conclusion for all payments made under agreements that follow the 2012 AHSC AFP Template Agreement.

- 3) AFP Funding provided by the Governance Organization under an Innovation Fund Project:**  
As CRA was not provided with details of the AFP Innovation Fund terms of reference, they declined to rule on the HST status of these payments, Item 3 above.

Request for a ruling on the distribution of AFP Innovation Project Funding will be shared with all AHSC governance organizations. NOAMA will await the results of the ruling.

- 4) AFP Funding paid to physicians and Medical Corporations by a practice plan. (LEGs in NOAMA's case.)**

The CRA also provided an **interpretation** on HST implications relating to the AFP funds received by the practice plan from TOHAMO and subsequently paid to physicians or their medicine professional

corporations (MPC). The **interpretation is not conclusive**, but does provide some guidance on how HST rules are likely to apply in certain fact situations

CRA interpretation suggests “HST would likely apply where a supply of academic research or administrative services are provided to a hospital, university or third party through a payment of AFP funds by the practice plan to the physician or MPC”.

In effect, CRA assumes the practice plan is the end recipient of the transfer payment, and no longer views the payment from the practice plan to the physician or MPC as a transfer.

Distribution of funds from the practice plans is governed by the terms of their agreements. The tax lawyers concluded:

**“There could be HST consequences to the distribution of AFP funds by the practice plans to individual physicians or their MPCs, and it is recommended each practice plan work with professional advisors to review how funds are distributed and whether it could be viewed as a supply of services.”**

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**NOAMA’s ACTION PLAN:**

Given the complexity of this issue and the significance to the LEGs, NOAMA has engaged the services of Colin Smith, Thorsteinssons LLP Tax Lawyers, the firm that has been working with the OMA and the AFP Chairs and Administrators .

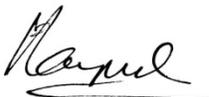
Colin Smith will be reviewing the NOSM AFP Agreement and specifically the LEG Agreements for the unincorporated associations. OMA legal will also be assisting given their knowledge of the LEG agreements. The intent is to determine applicability of HST to the payments made in accordance with the specific LEG governance agreements.

You may be requested to provide specific details as to how the AFP funds are being distributed to your members in order for legal counsel to complete their assessment and issue an opinion. **PLEASE DO NOT TAKE ANY UNILATERAL INDEPENDENT ACTION AS LEGS UNTIL WE HEAR FROM COLIN SMITH.**

Copies of the summary report provided to the NOAMA Board and letters from the tax lawyers and accountants are available on the NOAMA website at <http://www.noama.ca/site/local-education-groups/hst-issue/> (Password: legs13).

If you have any questions or required further clarification please contact Dorothy Wright at [dwright@noama.ca](mailto:dwright@noama.ca)

Sincerely,



Dr. Rayudu Koka, Co-Chair  
NOAMA Board



Dr. David Marsh, Co-Chair  
NOAMA Board