



August 4, 2017

## Emblem Corp Submission to the House of Commons Standing Committee on Finance's 2018 Pre-Budget Consultations

### Introduction

Emblem Corp welcomes the opportunity to contribute to the House of Commons Standing Committee on Finance's 2018 pre-budget consultations. Our objective is to help government strengthen the medical cannabis system to benefit patients.

Emblem is a licensed producer of medical cannabis in Canada, led by a team of former healthcare & pharma executives who have built & run multi-billion dollar companies.

Emblem's work on medical cannabis is based on the fact that cannabinoids and other components of cannabis have real therapeutic value. Emblem is identifying the cannabis strains with the greatest evidence of benefit in various conditions, cultivating those strains at medical grade and developing advanced dosage forms to provide patients with accurate, consistent, high quality and convenient to use cannabis formulations.

### Recommendations

The Committee asked "What federal measures would help Canadians to be more productive?"

Ensuring that Canadians can receive appropriate medications for medical conditions with minimal side effects can contribute positively to improved health and increased productivity.

Thousands of Canadian patients are currently benefiting from treatment with medical cannabis, and many more will benefit as research further defines the conditions and dosage regimens in which cannabis offers meaningful benefits. Medical cannabis also has the potential to substitute for a significant percentage of opioid prescriptions being written today, reducing side effects and potential for abuse. Medical cannabis has also been shown to reduce use of other medications, such as benzodiazepines, which in certain circumstances present challenges for both physicians and patients.

Unfortunately, medical use of cannabis is deterred by a ruling from the Federal Court of Appeal that medical cannabis should be subject to GST/HST, unlike prescription pharmaceuticals.

*Recommendation 1: Provide medical cannabis with the same tax treatment as prescription pharmaceutical products.*

*Recommendation 2: Fully exempt medical cannabis supplied by a producer licensed by Health Canada on the written authorization of a medical practitioner from any GST/HST, sales tax, excise tax (or comparable tax) or social responsibility tax (or comparable levy) that the federal government may levy, alone or with the Provinces upon cannabis sold for a recreational purpose.*



## Tax Treatment of Prescription Pharmaceuticals

The supply of a drug intended for human use is zero-rated under the GST and HST systems when the drug is dispensed by a pharmacist on the prescription of a medical practitioner (defined as a written or verbal order)<sup>1</sup>.

The same applies when the drug is dispensed by a medical practitioner to an individual for consumption or use by the individual or a related individual.

## Current Tax Treatment of Medical Cannabis

In 2014, a tax-court judge ruled<sup>2</sup> that medical marijuana is subject to federal sales tax, despite that fact that the medication is dispensed by a licensed producer on the written authorization of a medical practitioner for the consumption or use by the individual named in the authorization.

The Canada Revenue Agency, however, includes medical marijuana on its list of eligible medical expenses, so money spent on medical marijuana can be claimed as a medical expense for purposes of the medical expense tax credit.

## Equitable Tax Treatment for Medical Cannabis

Both the Tax Court and the Federal Court of Appeal recommended in the Hedges case that the legislation be amended to state clearly how it applies to marijuana, as it is unclear<sup>3</sup>. The determination and classification of medical marijuana as it currently stands is unclear, as it must be prescribed by a medical practitioner, yet it is taxed as a non-prescription medication.

With the introduction of the Cannabis Act, Canada is moving towards a legislative regime where there is a clear distinction between recreational cannabis, which will be available to all adult Canadians, and medical cannabis products, which will only be available to those who have received written authorization from a medical practitioner.

Now is therefore the appropriate time to clarify the tax status of medical cannabis as the Tax Court suggested. As a medication supplied by a producer licensed by Health Canada on the written authorization of a medical practitioner, medical cannabis would more appropriately be treated in the same manner as all other prescription medications for GST/HST purposes.

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<sup>1</sup> *Drugs and biologicals* (GST/HST Memorandum 4.1), Canada Revenue Agency, June 2000.

<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/4-1-drugs-biologicals/drugs-biologicals.html> (Accessed August 3, 2017)

<sup>2</sup> *Hedges v. Canada*, 2014 TCC 270, [2014] G.S.T.C. 116, 2014 CCI 270.

<sup>3</sup> "The judge noted that the ambiguity led to uncertainty and confusion and concluded that the legislation "needs work." I agree." *Hedges v. Canada*, [2016] FCA 19.

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Zero-rating medical cannabis under the GST/HST regime will make this treatment more accessible for patients, improving access and as such health benefits. Doing so will also help make Canadians more productive.

## [Additional Potential Taxes That May Become Exigible with Respect to Recreational Cannabis](#)

It is quite likely that the introduction of the regime for adult recreational use of cannabis will be accompanied by the introduction of taxes at both the federal and provincial levels in recognition of the costs of regulating the underlying recreational regime and issues of social responsibility regarding the recreational use of cannabis. Commentary on the proposed Cannabis Act has referred to a possible excise tax (or comparable tax) and a possible social responsibility tax (or comparable levy). The federal government may participate, either alone or with the Provinces, in imposing such taxes on the sale of recreational cannabis.

Emblem, for all of the reasons set out above regarding the tax treatment of prescription medical cannabis for the purposes of HST, strongly recommends that medical cannabis supplied by a producer licensed by Health Canada on the written authorization of a medical practitioner, be fully exempted from any excise tax (or comparable tax) or social responsibility tax (or comparable levy) that the federal government may levy, alone or with the Provinces upon cannabis sold for a recreational purpose.

## [Conclusion](#)

Emblem Corp wishes to thank the members of the House of Commons Standing Committee on Finance for their consideration of this submission to the committee's 2018 Pre-Budget Consultation Process. We look forward to continued engagement with the members of the Committee on matters related to the taxation of medical cannabis, and would be pleased to answer any questions.

[For further information, please contact:](#)

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