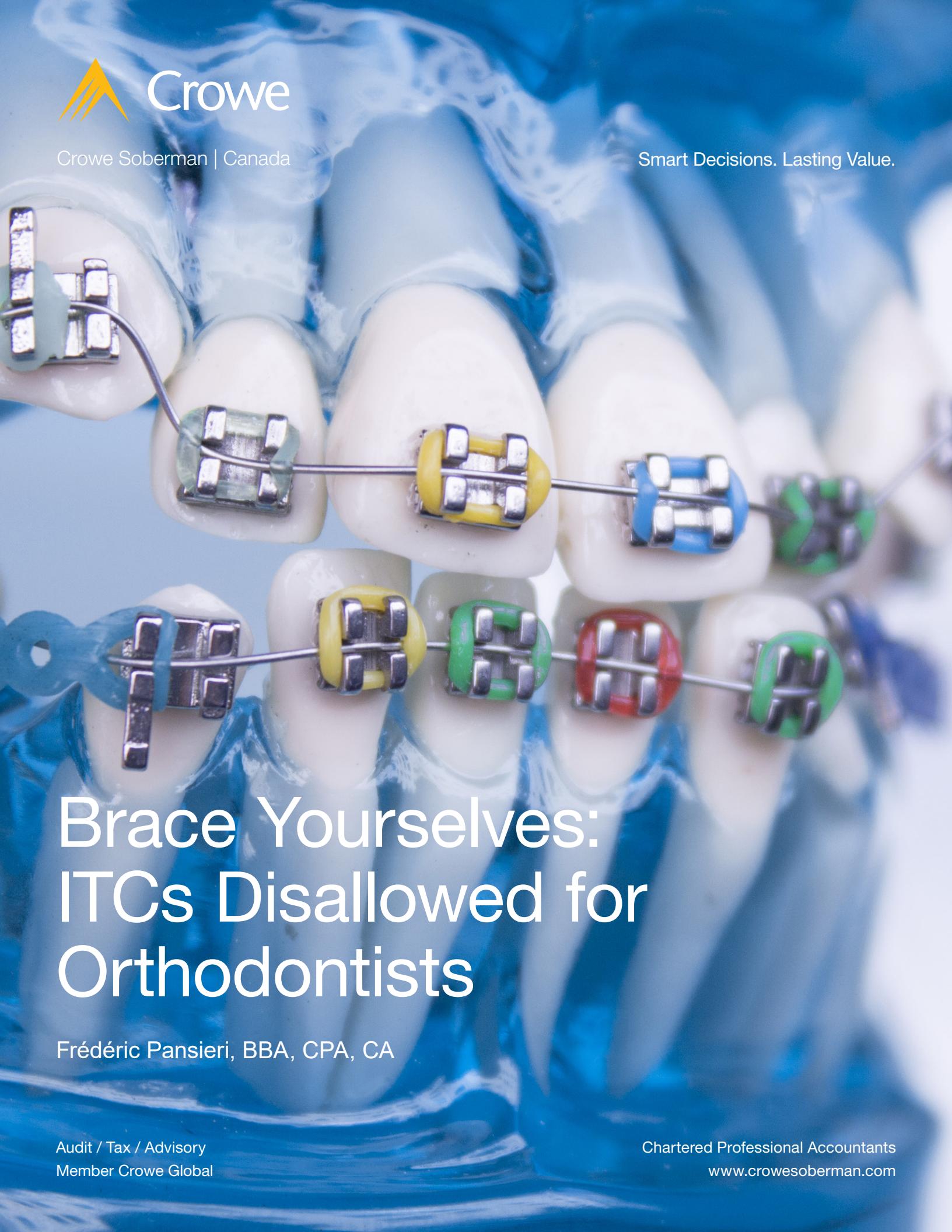




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A close-up, slightly blurred photograph of a person's upper teeth with orthodontic braces. The braces are metallic with colorful, translucent plastic buttons in shades of yellow, green, blue, and red. The background is a soft, out-of-focus blue.

Brace Yourselves: ITCs Disallowed for Orthodontists

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Historically, the Canada Revenue Agency (CRA) has had an administrative policy allowing orthodontists to claim input tax credits (“ITCs”) at a rate of 35 per cent of the GST/HST incurred on their purchases in certain circumstances.

Dr. Brian Hurd Dentistry Professional Corporation v. The Queen

In the case of Dr. Brian Hurd Dentistry Professional Corporation v. The Queen (2017 TCC 142), the issue at hand was when providing an orthodontic treatment that included both the appliance and the service for a single fee, whether Dr. Hurd was providing a single exempt supply of orthodontic treatment or multiple supplies consisting of a zero-rated supply of an orthodontic appliance and the accompanying exempt supply of an orthodontic service, each with its own GST/HST status. That determination was relevant for the purpose of claiming ITCs as input tax credits are generally only available when the property or service on which GST/HST was payable was acquired for

use, consumption or supply in the course of commercial activities of the registrant. A “commercial activity” for GST/HST purposes is defined as a business carried on by the registrant except in the case where the business involves the making of exempt supplies by the individual.

Justice Campbell concluded that Dr. Hurd (through his professional corporation) made a single supply of orthodontic treatment, which is an exempt supply for GST/HST purposes, on the basis that the appliance and the associated adjustment and maintenance services were so dependent on each other, that the treatment goals for the patient’s dental issues could not be achieved unless both were engaged.

Patients seek out an orthodontist for orthodontic treatment and professional care, not to simply purchase an orthodontic appliance on its own - thus the fees charged to the patient were for the treatment he provided. Dr. Hurd also agreed with Respondent counsel’s suggestion that orthodontic services without the appliance would be useless and vice versa. As such, Dr. Hurd was not eligible to claim any ITCs in that the supply of the treatment as a whole, was an exempt supply.

In Practical Terms

As a result of this decision, the CRA has indicated it will be withdrawing its current administrative practice to treat 35 per cent of most of the dentist’s purchases as eligible for ITCs.

However, the administrative arrangement will continue to apply where a dentist or dental corporation follows the terms of the arrangement such that:

- The dentist identifies the two separate supplies. For example, the invoice issued to the patient identifies the consideration for the supply of the orthodontic appliance or artificial tooth separately from the consideration for the supply of the dental service.
- The ITC claim relates to mixed-use purchases (to make both taxable and exempt supplies) such as overhead and general operating expenses and certain direct expenses or inputs (for example, personal property such as arch wires used exclusively to fabricate orthodontic appliances).

The administrative arrangement does not include ITCs for capital property.

However, because it is an administrative arrangement, if a dentist does not follow the terms of the administrative arrangement (i.e., the dentist considered their supplies to be exclusively zero-rated orthodontic

appliances when in fact dental treatments were provided, OR did not separately identify on the patient invoice the supply of the orthodontic appliance or artificial tooth and the supply of the dental service in order to determine the extent of the dentist's commercial activity as well as perform a year-end ITC claim reconciliation), the CRA will not be bound by the arrangement. Therefore, no ITCs will be allowed based on the principles of that arrangement.

The CRA intends to apply the Hurd decision on a prospective basis, recognizing that given the circumstances, it will be necessary to communicate appropriate guidance to affected stakeholders (including CRA officials), and to provide a period of time for the industry to transition away from the administrative arrangement. The CRA is currently preparing a publication outlining the principles set out in the Hurd decision, which will explain the application of GST/HST to the services rendered by dentists and orthodontists and the ITC entitlement of dentists and orthodontists in a general manner. As a result, the current administrative arrangement will

continue to apply until further notice and stakeholders will be provided with advance notice so they can prepare accordingly.

The Takeaway?

Dentists claiming ITCs should, for the time being, continue to (or begin) charging separate fees on their invoices for the orthodontic appliance and for the dental service as well as perform a year-end reconciliation based on actual figures to support its ITC claims. The CRA is expected to provide advance notice of when the current administrative arrangement will be withdrawn.

This article has been prepared for the general information of our clients. Specific professional advice should be obtained prior to the implementation of any suggestion contained in this article. Please note that this publication should not be considered a substitute for personalized tax advice related to your particular situation.

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