



Harmonized Sales Tax

Place of supply rules



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Introduction

- On February 25, 2010, the Department of Finance issued a Backgrounder entitled *Place of Supply, Self-Assessment and Rebate Rules for the Harmonized Sales Tax (HST)*.
- Place of supply is to be based on current rules and new rules for certain types of supplies.
- Backgrounder also announced expanded rules with respect to self-assessment and rebate of the provincial component of the HST

Technical Information Bulletin

B-103

- On February 26, 2010, the CRA released GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province.*
- Explains both the current and proposed place of supply rules, and includes 128 examples.
- TIB B-103 was **updated in June**, based on the actual regulations in respect of the place of supply rules.

Background

- Section 144.1 of the *Excise Tax Act*
- Schedule IX to the *Excise Tax Act*
- The place of supply rules are set out in *Part 1 of the New Harmonized Value-added Tax System Regulations*.

Nature and place of supply

1. Determine the nature of the supply
2. Whether the supply is made in Canada and it is a taxable supply (other than zero-rated)
3. Determine the province in which the taxable supply is being made to determine the appropriate tax rate.

Place of Supply Rules

No changes are made for the place of supply rules for:

1. Tangible personal property (goods)
2. Real property
3. Freight transportation services
4. Postage and mail delivery services
5. Telecommunication services

Tangible Personal Property (Goods)

No changes are made to the current place of supply rules for supplies of goods by way of sale. A supply by way of sale of goods is deemed to be made in a province if the supplier delivers the property or makes it available in the province to the recipient of the supply.

For further clarification, go to pg.14, TIB B-103

Tangible Personal Property (Goods)

The application of this place of supply rule is generally based on the province in which legal delivery of the goods to the recipient occurs.

However, for purposes of the rule, the property is also deemed to be delivered in a particular province, and not in any other province, if the supplier either

Tangible Personal Property (Goods)

- ships the property to a destination in the particular province that is specified in the contract for carriage of the property or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination;

or

- sends the property by mail or courier to an address in the particular province.

Example 1

- A supplier in Alberta agrees to sell goods to a purchaser in BC.
- Based on the terms of delivery in the agreement for the supply of the goods, legal delivery of the goods to the purchaser occurs in BC.
- However, the supplier agrees also to have the goods shipped to the purchaser in BC.

Answer 1

- Although legal delivery of the goods to the purchaser occurs in Alberta, delivery of the goods to the purchaser is deemed to occur in BC because the supplier ships the goods to BC.
- The supply of the goods is therefore made in BC, and is subject to HST at the rate of 12%.

Place of Supply Rules

Significant changes have been made to the place of supply rules for:

1. Intangible personal property (IPP)
2. Services

Intangible Personal Property

- General rules will generally continue to be based in large part on where the IPP can be used, **but emphasis is on the location of the recipient of the supply of IPP.**



Intangible Personal Property

Common Scenarios:

- IPP can only be used primarily (>50%) in one province

The rate of GST or HST of that province will apply

- IPP can only be used primarily (>50%) in HST-participating provinces

HST will apply – the exact rate to be determined according to certain criteria

- IPP can be used anywhere in Canada

GST or HST may apply depending on particular facts

Intangible Personal Property

IPP that can be used anywhere in Canada

Rule 1

If the value of the consideration for the supply of the IPP is \$300 or less, the supply is made in a province if the supply is made through a PE of the supplier located in the province in the presence of an individual who is, or who acts on behalf of, the recipient, or through a vending machine situated in the province, and the IPP can be used in the province.

Intangible Personal Property

IPP that can be used anywhere in Canada

Rule 2

If Rule 1 does not deem the supply to be made in a province (i.e. where either the value of the consideration for the supply is more than \$300 or the supply is not made through a PE or vending machine as described above), the supply may be deemed made in a province if the supplier obtains an address of the recipient (i.e. home or business address) in the province in the normal course of business.

Example 2

- A supplier in BC supplies software by way of licence to a company in BC for use by its employees at its head office in BC.
- The software is downloaded electronically over the Internet.
- The licence provides that the software may only be used from the head office of the BC company.

Answer 2

- The Canadian rights in respect of the software can only be used primarily in participating provinces and an equal or greater proportion of the Canadian rights cannot be used in a participating province other than BC.
- The supply of the IPP is therefore proposed to be made in BC, and subject to HST at a rate of 12%.

Example 3

A franchise company in Alberta supplies a franchise to another Alberta company that provides the right to operate a franchise retail business in BC.



Answer 3

- The Canadian rights in respect of the franchise can only be used primarily in participating provinces and an equal or greater proportion of the Canadian rights cannot be used in a participating province other than BC.
- The supply of the IPP is therefore proposed to be made in BC and subject to HST at a rate of 12%.

Example 4

- An individual who lives in Alberta is a member of a national organization.
- The Canadian rights in respect of the membership can be used anywhere in Canada.
- At a storefront location of the national organization in British Columbia while on vacation, the individual renews the membership for consideration of less than \$300.

Answer 4

- The Canadian rights in respect of the membership can be used less than primarily in the participating provinces and less than primarily outside the participating provinces.
- The IPP is supplied in the presence of the recipient through a PE of the supplier that is in British Columbia and the IPP can be used in British Columbia.
- The supply of the IPP is therefore proposed to be made in British Columbia and subject to HST at a rate of 12%.

Services

- Significant changes are made to the current general place of supply rules for supplies of services.
- Key concepts:
 - The “Canadian element” of a service means the portion of the service that is performed in Canada.
 - The emphasis is on the home or business address of the recipient (or other address).
 - Such an address is obtained by the supplier in the ordinary course of its business.
 - 4 General Rules
 - Exceptions

Services

General Rules

1. The location of the recipient – based on the address in Canada (e.g. home or business address) of the recipient obtained by the supplier. (Rule #1)

The rate is the GST or HST rate for the province where the address is located

Services

General Rules

What if Rule #1 does not apply?

2. The location of the Canadian element of the service – Is more than 50% is performed in HST-participating provinces?

- If the answer is YES, then

HST will apply. The service is deemed to be made in the HST participating province that has the greatest proportion of the Canadian element of the service. (Rule #2)

If the proportion is equal among the HST-participating provinces, take the one with a higher rate. (Rule #3)

Services

General Rules

What if Rule #1 does not apply?

2. The location of the Canadian element of the service – Is more than 50% is performed in HST-participating provinces?
 - If the answer is NO, then
GST will apply. The service is deemed to be made in the non-HST participating province (Rule #4)

Exceptions

1. Passenger transportation services
2. Computer-related and internet access
3. Custom brokerage services
4. Air navigation services
5. Services of a trustee in respect of a trust governed by an RRSP, RRUI, RESP, TFSA or RDSP
6. Premium-related telephone services

Exceptions (cont'd)

7. Services related to TPP (goods)
8. Repairs, maintenance, cleaning, adjustments, alterations of TPP (goods)
9. Services related to real property
10. Services related to photographic-related goods
11. Services related to litigation in a province
12. Services related to a location-specific event, and
13. Personal services

Example 5

A supplier in Alberta agrees to design the Web site of a company in BC. The service is performed entirely in Alberta. The business address of the recipient obtained by the supplier in the normal course of its business is in BC.

Answer 5

Since the business address of the recipient in Canada that is obtained by the supplier in the normal course of business that is most closely connected with the supply is in BC, the supply of the service is proposed to be made in BC, and subject to HST at a rate of 12%.

Self-assessment of the provincial component of the HST

Self-assessment of the provincial component of the HST may be required in circumstances where a supply of property or a service is made in a non-participating province, but consumption, use or a subsequent supply of that property or service will occur in a participating province.

The situations where self-assessment may be required:

- acquiring the supply for consumption, use, or supply otherwise than exclusively in the course of your commercial activities (e.g., you are a business making GST/HST-exempt supplies)
- using simplified procedures for calculating your net tax (such as the Quick Method, the Special Quick Method, or the special net tax calculation for certain charities)
- being a non-registrant

Rebates of provincial component of the HST

Special rebate mechanisms apply where property or services are acquired in participating provinces, and the property is removed, or the services are for use, outside these provinces by certain persons that are not able to claim input tax credits

The mechanisms mirror the situations where self-assessment is necessary.

Contact Information

National Telephone Service **1-800-959-8287**

Specific ruling/interpretation can be sent to:

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