



GST Memoranda Series

1.4 Goods and Services Tax Rulings

Overview

This section explains the conditions under which Revenue Canada issues a ruling or an interpretation in respect of Part IX of the *Excise Tax Act* (Goods and Services Tax). Note that persons located in the Province of Quebec should forward requests for rulings or interpretations to the ministère du Revenu du Québec (MRQ).

Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

Note

This section of Chapter 1 supersedes GST Memorandum 100-3, *Goods and Services Tax Rulings*. Side-barring indicates significant changes.

Nature of the rulings service

Free service

1. At present, Revenue Canada does not charge a fee for GST rulings. These are provided for the convenience and guidance of registrants and other persons in applying the provisions of the *Excise Tax Act* that relate to the GST.

Not published separately

2. There are no plans at the present time to publish GST rulings. Rather, Revenue Canada incorporates the policy content of a GST ruling that sets a precedent into such publications as the GST memoranda series and the GST guides when these are updated. When a policy paper is released, it is added to the databases that are available through the electronic information service. For more information, see section 1.1, *GST Technical Information Program* in this chapter.

Types of GST rulings

Two types

3. There are two types of GST rulings: advance GST rulings, and GST application rulings.

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- Advance ruling

4. An advance GST ruling is a written statement Revenue Canada gives to a registrant or other person, stating how Revenue Canada will interpret specific provisions of Part IX of the *Excise Tax Act* with respect to supplies, actions, transactions or series of transactions, which the person is contemplating. An advance GST ruling refers to specific persons, specific transactions and specific time periods within which the transactions must be completed.

5. A request that relates to a hypothetical situation cannot be accepted as a request for an advance ruling. (In such instances, an interpretation of the relevant sections of the legislation may be appropriate. For information on interpretations, see paragraphs 8 and 9 of this section.)
- Application ruling

6. An application ruling provides Revenue Canada's position on specific provisions of the legislation as these relate to a clearly defined fact situation of a particular person. Generally, application rulings relate to ongoing transactions and do not specify time limits. When an application ruling is given in advance of any transaction, it does not become an "advance" ruling. The nature of the transactions determine the type of ruling and if the transactions are ongoing, the ruling is an application ruling.
- Example

For example, a registrant develops a new product and wishes to know whether the supply of the product is considered to be a zero-rated supply of a medical device as provided for under Part II of Schedule VI to the Act. The registrant requests the ruling before making any supplies of the new product.

In this case, Revenue Canada provides an application ruling, rather than an advance ruling, even though the ruling request is made before any transactions have taken place. This is because the registrant does not want a ruling limited to a specific time period or single transaction, but needs a ruling that applies to all future supplies of the device.

7. Unless otherwise stated, a reference to a GST ruling in this memorandum is to both types of GST rulings.

Interpretations

- Interpretation vs ruling

8. In addition to GST rulings, Revenue Canada offers interpretations of specific provisions of the law to registrants and other persons. An interpretation is a general explanation of how the law would apply; it does not relate to any specific contemplated or completed transaction by a specific requester. If requesters ask for an interpretation relating to a proposed activity or set of activities, their request should be for a GST ruling rather than an interpretation and all necessary facts should be provided.

9. Where insufficient facts are provided to issue a definitive GST ruling, Revenue Canada may provide an interpretation of the relevant portions of the legislation in order to assist the requester in fulfilling its obligations under the law. Interpretations are not binding on the Department.

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Limitations on GST rulings

Limitations stated	10. GST rulings are subject to all qualifications stated in the ruling and to the following general qualifications.
No rulings with draft legislation	11. GST rulings are binding only as long as the law, its interpretation or the administrative policy does not change. While Revenue Canada does not provide GST rulings on proposed or draft legislation, draft regulations, Budget resolutions, or Ways and Means motions that are not yet law, Revenue Canada does provide interpretations on GST matters contained in these documents.
Subject to change in policy	12. Changes to the law, its interpretation, or the administrative policy may affect GST rulings that have been issued. Revenue Canada publicizes significant changes in the <i>Excise/GST NEWS</i> , which is distributed to all registrants, and in its other GST information publications.

Limited application

Accurate information	13. Rulings or interpretations provided by Revenue Canada are limited in their application by the completeness and accuracy of the information on which they are based. Moreover, while Revenue Canada provides as much assistance as possible, it is not responsible for any misapplication of its rulings or interpretations.
Specific to situation	14. A GST ruling applies only to the person who requests it or on whose behalf it is requested, and applies only to the specific activities described in the ruling.
Must have all the facts	15. GST rulings are issued when a determination on a question of fact is required, but only if it is possible to determine all the material facts, and only if those facts can reasonably be expected to prevail.

Invalid and revoked GST rulings

Invalid rulings	16. If, after Revenue Canada has issued a GST ruling, it is established that there was a misrepresentation or material omission in the statement of relevant facts by the person making the request or that person's representative, the GST ruling is not valid, and Revenue Canada is not bound by it.
Revoked rulings	17. When Revenue Canada issues a GST ruling that covers an ongoing activity or series of activities, or when the transactions are not yet complete and it is later determined that the GST ruling is in error, Revenue Canada may revoke the ruling. <ul style="list-style-type: none">• If the erroneous GST ruling results from Revenue Canada misinterpreting the facts even though the Department was in possession of all relevant facts, the revocation applies only to those activities or transactions that take place after the date of revocation.• If the GST ruling is in error due to misinformation from the person requesting the GST ruling or that person's representative, then the ruling is revoked and was not valid at any time.

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- Changes to law or policy 18. If the laws, regulations or policies that affect a ruling are changed, and these changes are publicly announced, for example in press releases from the Department of Finance, the GST memoranda series or the *Excise/GST NEWS*, the GST ruling will no longer be binding on Revenue Canada effective from the date of the change.
- Specific event/ time limit 19. When Revenue Canada gives an advance GST ruling in respect of a proposed single activity or single series of activities, the ruling will specify a time limit within which the activity or activities must be substantially completed. If the activity or activities are not substantially completed within the specified period of time, Revenue Canada is no longer bound by the GST ruling. Revenue Canada can grant an extension to the time limit, if requested and if appropriate.

Exclusions

- Reasons for not issuing a ruling 20. Revenue Canada reserves the right not to issue a GST ruling when it considers that one would be inappropriate. The following are some of the circumstances under which the Department can refuse requests for GST rulings:
- (a) when a transaction is the same in character as a completed transaction entered into by the person in a prior GST fiscal period and the GST effect of the earlier transaction is under discussion with the person, in dispute, or under assessment or proposed assessment, but is not before the courts;
 - (b) when the central issue involves a matter that is before the courts or, if a judgement has been issued, an appeal to a higher court is being considered;
 - (c) when the request for a GST ruling contains alternative courses of action on the part of the person;
 - (d) when the matter involved is the determination of fair market value of property;
 - (e) when the question concerns GST-related calculations (e.g., the amount of net tax due);
 - (f) when a GST ruling would involve an interpretation of a provision in Part IX of the *Excise Tax Act* that requires a regulation, and the regulation has not been passed;
 - (g) when a GST ruling would require an opinion on generally accepted accounting principles or commercial practices;
 - (h) when a matter, on which a determination is requested, is primarily one of fact, and the circumstances are such that all the pertinent facts cannot be established at the time of the request for the GST ruling (this could include issues involving the carrying on of a business, the existence of a partnership, and the reasonableness of a cost-allocation method);
 - (i) when an issue involves the interpretation of a foreign law; and
 - (j) when the GST ruling request does not comply with the requirements outlined here in section 1.4, *Goods and Services Tax Rulings*.

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Reasons announced 21. When a GST ruling is not issued, Revenue Canada will inform in writing the person who requested the ruling that a ruling has not been issued. If Revenue Canada cannot issue a ruling because the facts of the situation cannot be clarified well enough, a general interpretation may be provided to the requester.

Processing of requests for GST rulings

Request in writing 22. A request for a GST ruling may be submitted in writing to the nearest Revenue Canada office. The submission should be clearly identified as a request for an advance GST ruling, or a request for a GST application ruling. If the request is for an advance GST ruling, the office forwards it to the Policy and Legislation Branch for direct reply.

Processed by date of receipt 23. Staff at the Revenue Canada office review the request for a GST ruling as soon as possible after the office receives the request, in the order in which the requests are received. The issuing of a GST ruling may be delayed if it requires a review of an issue on which Revenue Canada has not yet adopted a position, or if Revenue Canada is currently in the process of reconsidering its existing position. If a ruling is required by a certain deadline (e.g., before the closing date of a contract), the request for the ruling must be submitted with reasonable lead time for the request to be processed and the ruling produced.

Meet with officials 24. After a written request for a GST ruling has been submitted, the requester can ask to meet with departmental officials. Revenue Canada encourages such meetings when the purpose is to provide new information, clarify facts, or correct any misunderstanding of information the requester previously provided.

Documentary requirements 25. Requesters should provide as much of the following documentation as possible when submitting a GST ruling request. Thorough documentation ensures that Revenue Canada can deal with the request as quickly as possible, and ensure that the GST ruling addresses the requester's particular situation. A GST ruling applies only to the facts the requester provides. An incomplete representation of the facts of the requester's operation may result in a GST ruling that is not binding on Revenue Canada. Requests for GST rulings should contain copies of all relevant documents, and include the following:

- (a) the name and address of the person making the request and, if that person is a registrant, the GST registration number; similarly, if the request is being made by a third party, the name and address of the third party's client and, where applicable, the client's registration number;
- (b) if a particular person (for example, an accountant, a bookkeeper, or a lawyer) is acting on behalf of another person, Revenue Canada requires that the particular person provide a statement of authorization, either RC form 59, *Business Consent Form*, or a letter containing the same information as the form to certify that the person may act on behalf of the GST client, and outline the purpose, scope and period of the authorization;
- (c) if another GST office is considering the GST ruling request, a statement to that effect;

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- (d) a complete description of the facts and a complete description of each transaction (for an advance GST ruling, a complete description of each proposed transaction);
 - (e) if the request is for an advance GST ruling, then for each proposed transaction covered by the ruling request:
 - (i) a statement of its purposes;
 - (ii) the person's interpretation of the application of the provisions of the *Excise Tax Act* or Regulations that are relevant;
 - (iii) a description of the GST concern that is the cause of the request for the GST ruling;
 - (f) to ensure that Revenue Canada completely understands the circumstances, a description of significant transactions that were completed by the person before the date of requesting the GST application ruling or, if the request is for an advance GST ruling, significant transactions that may be undertaken after the proposed transactions are completed and which may be part of the series of transactions;
 - (g) a summary of relevant facts contained in any supporting agreements or documents;
 - (h) when the requested GST ruling concerns the application of the general anti-avoidance rule to a transaction, documentation that the transaction will not result directly or indirectly in a misuse of the provisions of the *Excise Tax Act* or an abuse of the provisions of that Act read as a whole (note: for information on the general anti-avoidance rule, see GST Memorandum 500-6-9);
 - (i) when relevant to the request, an analysis of authorities (e.g., Canadian case-law citations, published commentaries, references to other jurisprudence, etc.) known to the person or their representative which support the person's position and those that do not, with submission why the authority and support of the person's position should prevail; and
 - (j) any other relevant material.
- Anti-avoidance rules 274
26. Revenue Canada accepts facsimile transmission of GST ruling requests and related documents at the risk of the sender. However, the requester should make sure that the original documents, including any authorizations, follow by mail.
27. Revenue Canada will not transmit client information and documentation by facsimile to the requester or anyone else who requested the ruling or interpretation. This policy applies even in cases where the requester authorizes Revenue Canada to forward the material by facsimile.
28. When Revenue Canada undertakes an audit, the activities on which Revenue Canada based its ruling are subject to review. The examination will determine whether all material facts were accurately stated in the GST ruling request, and whether the activities were carried out as described.
- Fax at sender's risk
- Basis of ruling subject to audit