

**Please note that the following Policy Statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.**

## **GST/HST Policy Statement**

**P-182R      Agency**

**DATE OF ISSUE**

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**Legislative references:**

Section 177 and other provisions of the *Excise Tax Act* (see Appendix)

**National Coding System File Number:**

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January 1, 1991, for the GST, and April 1, 1997, for the HST

**ISSUE:**

At issue is whether a person is an agent of another person for a particular transaction. Whether a person acts as an agent in making a supply on behalf of a principal is relevant in applying the general rules of Part IX of the *Excise Tax Act* (the Act). For example, when a person acts as an agent in making a supply on behalf of a principal, generally the principal is required to collect and account for tax on the supply. However, when a person acts otherwise than as an agent in making a supply, the person is required to collect and account for tax on that supply. Conversely, the person who is considered to be the recipient of a supply and therefore entitled to any input tax credit (ITC) for the tax paid or payable on that supply would change depending on whether the supply was acquired by a person on its own behalf or as an agent of another person.

**DECISION:**

It is the Canada Customs and Revenue Agency's (CCRA's) position that, for GST/HST purposes, a person is an agent with respect to a particular transaction if that person is an agent based on a determination of fact and an application of principles of law, certain of which are described below. As a result, the application of the GST/HST to a particular transaction may vary depending on whether a person is acting as an agent in respect of that transaction.

Upon request and where all parties consent, the CCRA will give its views as to whether an agency relationship exists when all relevant documentation is provided in support of

the request as set out in Section 1.4, *Goods and Services Tax Rulings* of Chapter 1 of the *GST/HST Memoranda Series*.

In addition, the CCRA will, for the purpose of providing the ruling or interpretation, accept assertions made by the client as to the nature of the relationship. This acceptance should not be construed as agreement by the CCRA with these assertions. These assertions would remain subject to verification under audit.

#### **EXPLANATION:**

The following explains our understanding of the application of law (common law and civil law) that would apply in determining whether an agency exists. In particular, we will discuss the subject under the following headings: deeming provisions, essential qualities of agency and indicators, fiduciary nature and indicators of agency relationship and questions designed to help determine if the essential qualities of agency exist in a transaction. Lastly, we have provided four examples that illustrate the process of determining whether a person is an agent for a particular transaction.

In general terms, “agency” is a type of relationship where one person (the principal) uses another person (the agent) to perform certain tasks on its behalf. In Quebec, section 2130 of the Civil Code defines the mandate (which corresponds to agency) as “a contract by which a person, the mandator, empowers another person, the mandatary, to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power”. The Act uses the words “agent” and “agency” in a number of provisions that typically deal with a person making a supply as agent on behalf of a supplier or receiving a supply as agent on behalf of a recipient. The Act does not define either word.

Section 177 of the Act provides special rules that apply in certain cases where a person acts as an agent in making a supply on behalf of a principal. Where a person is acting as agent in making a supply on behalf of a supplier, the possible application of these rules should be considered.

In a sense, an agent is an extension of a principal, so the actions of the agent are those of the principal. Consequently, the principal acquires the rights, and is subject to, the obligations that may arise as a result of actions taken by the agent in the course of agency.

Agency exists where one person (the principal) authorizes another person (the agent) to represent it and take certain actions on its behalf. The authority granted by the principal may be express or implied. In other words, an agency relationship may be created where one person explicitly consents to having another act on its behalf or behaves in such a way that consent is implied.

Situations may arise where the agent does not disclose that it is acting as agent at all. The law does not require a person who is acting as an agent to disclose this fact to a third party. An agency relationship may be found to exist even where the third party is not aware of the identity of the principal or that there even is a principal.

## **DEEMING PROVISIONS**

Before applying the established legal principles of agency to a transaction, one must ensure that a transaction is not deemed by statute to have been made by a person as an agent of another person. Such a relationship may be deemed for the purposes of GST/HST under the Act (e.g., sections 265 and 266 of the Act which apply to bankruptcies or receiverships). Such a relationship may also be deemed to exist in the course of a transaction pursuant to provincial legislation applying to private transactions such as the Civil Code or various acts applying to the sale of goods in the common law provinces. For example, many provincial enactments codify the common law by deeming an agency relationship to exist where a supply is made by a person who sells goods on behalf of other persons in the course of that person's customary business.

It is also possible that a transaction that would otherwise be considered as being made by a person as an agent of a principal is deemed to be made by that person on its own behalf.

Therefore, consideration must be given to statutory provisions regarding agency before applying the legal principles examined below.

## **AGENCY — ESSENTIAL QUALITIES AND INDICATORS**

Despite an extensive body of jurisprudence, whether a person is acting as an agent in a transaction is not always clear. Where there is uncertainty as to whether a transaction has been made by a person on its own behalf or as agent of another person and there is some dispute on the issue, only a court can provide a definitive ruling. In the absence of a court ruling, one can only assess the likelihood of whether a court would find a transaction to have been made by an agent on behalf of a principal based on established legal principles.

The following sections examine how these legal principles may be applied in different situations and sets out the “essential qualities of agency” that may be used to help determine whether a transaction is made by an agent on behalf of a principal. Additional indicators of the presence of these essential qualities may also be useful in determining whether these qualities are present in a given transaction. These indicators are described below. Four examples are also provided to demonstrate the application of these qualities and indicators.

### **Essential Qualities Of Agency**

The essential qualities of an agency relationship are as follows:

1. Consent of both the principal and the agent;
2. Authority of the agent to affect the principal's legal position; and
3. The principal's control of the agent's actions.

## 1. Consent of Both the Principal and the Agent

Persons have a certain amount of freedom to arrange their affairs in a way that would bring their relationship within the domain of agency. This means that the intention of the parties is an important determinant when deciding the nature of the relationship. However, a mere declaration by the parties that they have established, or not established, an agency relationship for a particular purpose is not conclusive in itself as to whether or not an agency relationship has been established.

A principal may grant authority in a written agency agreement, which constitutes evidence of the type of relationship intended by the parties. Nevertheless, despite the fact that an agreement containing an express declaration of agency is indicative of an agency relationship, it remains open to a court, having regard to any other pertinent facts, to make a contrary finding. Similarly, while a written agreement may state that a person is not an agent, a court may find that the person is an agent. In addition, while a written agreement may provide tangible evidence that an agency relationship exists, such a relationship may also arise from a verbal agreement between parties.

Generally, in an agency relationship, the principal will authorize the agent to provide representation on the principal's behalf. Consequently, in considering whether a relationship is an agency relationship, it should be evident that the purported agent is arranging transactions for the principal and is not trading on its own account.

While two parties may agree that one party is to act as agent with respect to transactions undertaken on behalf of the other party, the absence of such an agreement is not sufficient to conclude that an agency relationship does not exist.

Although the intention of the parties is an important determinant of the nature of the relationship between the parties, case law supports the possibility that two parties may be engaged in an agency relationship without even being aware of it, provided their actions indicate that one party is acting as agent on behalf of another. In other words, agency is generally evident from the conduct of the parties.

## 2. Authority of the Agent to Affect the Principal's Legal Position

The most common example of the ability of the agent to affect the legal position of the principal is where the agent is authorized to enter into contracts with third parties on the principal's behalf. For instance, suppose A asks B to negotiate and purchase some equipment from a third person (C). B signs the contract with C, but A is identified in the contract as the purchaser of the equipment. In this case, B has bound A to the terms of the contract. In other words, B's actions have caused A to acquire the same rights and be subject to the same obligations as if A had signed the contract.

It should be evident that the principal has empowered the agent to act or enter into contracts on its behalf, and any transactions undertaken by the agent should be clearly authorized by the principal. Consequently, the agent, through its actions, can affect the principal's legal position.

The presence of the authority of a person to bind another person in a contract for certain transactions could be seen, in certain circumstances, as an indicator of the parties' consent to establish an agency relationship in respect of these transactions. Also, in the absence of an explicit mention of an authority to bind another person, this authority may be inferred from the presence of the two other essential qualities of agency.

Note that the ability to bind the principal may also come from other mechanisms such as ratification or operation of law. Ratification may occur where a principal, by its actions, accepts that an agent was acting on its behalf for a certain transaction even though the agent acted without the authority of the principal in respect of a particular transaction. Ratification commonly applies where a person already acting as an agent exceeds its authority. Although the effect of ratification is to "backdate" the authority of the agent, there are rules limiting its application, and therefore it must be treated as a special type of agency.

Additionally, a person may be an agent of a principal even without having been given authority to enter into contracts. For example, where a lawyer pays property taxes owed by a client, the lawyer is discharging an obligation of the client, thus affecting the client's legal position. Consequently, the lawyer acts as an agent of the client in respect of the payment even if the lawyer does not have the authority to enter into contracts on the client's behalf.

Agency by operation of law includes agency of necessity and agency by estoppel. In certain cases of necessity, the law may operate to treat one person (B) as agent of another person (A) so that B may take any action necessary to protect the interests of A. Agency of necessity deals with the extension of authority for an existing agent. It arises when an agent with limited express powers is required to take prompt action beyond the scope of authority given. The agent must show an inability to communicate with the principal, that the action taken was reasonable and prudent in the circumstances and in the best interests of the parties concerned. Agency by estoppel arises in two types of situations: where an agent with no actual authority does an act which, by operation of law, binds the principal, or where the agent exceeds its authority and the law operates to bind the principal with such unauthorized acts.

### 3. The Principal's Control of the Agent's Actions

In an agency relationship, the principal exerts a degree of control over the agent. Evidence of that control could include the requirement for the agent to obtain approval to incur certain expenses or the requirement for the agent to provide ongoing reports.

Generally, a principal exercises a greater degree of control over the actions of an agent than would a person over the actions of an independent contractor. An agent acts under the authority granted by the principal and the principal may amend the scope of that authority or revoke it. In addition, the agent has a duty to account to the principal for the agent's actions.

In some instances, the principal's control of the agent's actions may be limited to ensuring that the agent remains within the scope of the mandate and acts in a competent manner.

### **Fiduciary Nature And Indicators Of Agency Relationship**

An agent's relationship with a principal is fiduciary in nature. That is, the agent must act in the best interests of the principal and may not put its own interests before those of the principal. Where the agent is in a position in which its interests conflict with those of the principal, the agent is obliged to fully disclose that conflict to the principal.

One of the ways in which an agent's fiduciary duty serves to restrict the agent's actions concerns secret profits. Except with the consent of the principal, an agent is not permitted to receive any financial advantage in excess of that which the agent is entitled to as remuneration. The agent must not allow its interests to conflict with the duties owed to the principal. The agent is accountable for profits gained from the use of opportunities or knowledge resulting from the fiduciary relationship. For example, an agent is retained to acquire certain property on behalf of a principal. If the agent happens to own an interest in such property and decides to sell it to the principal without disclosing this fact, the agent may be in breach of its fiduciary duty if it derived any financial advantage from the sale.

Another example is where an agent agrees to acquire property on behalf of a principal for a certain price and it turns out that it is able to acquire the property for less. If the agent does not disclose to the principal the lower cost and simply invoices the principal for the higher amount and keeps the difference, the agent is liable to the principal for breach of its fiduciary duty.

While all agents are under a fiduciary duty, not all persons for whom a fiduciary duty exists are agents. Although the existence of a fiduciary duty is not conclusive of the existence of an agency relationship, it highlights those situations that require closer examination.

Some indicators are helpful in determining whether the essential qualities of agency exist in respect of a transaction. Some may be indicative of the existence of one essential quality of agency, while others may reflect the existence of two or all three of these qualities.

#### *Assumption of Risk*

An agent usually does not assume the risk of loss from a transaction with a third party. For example, if the value of property diminishes after it is acquired from the third party, the loss normally would be borne by the principal. This is not to say that an agent does not bear any risk at all. For example, an agent could be liable for damages caused by its own negligence. Whether a person has liability insurance, or insurance on the property itself can give an indication on whether or not two persons have an agency relationship in respect of the property. If the person does not own the property but has responsibilities in

respect of the property towards its owner, such as an agent, this person is more likely to obtain insurance in respect of his/her liability rather than on the property itself.

### *Accounting Practices*

A person's accounting practices may reveal how the person perceives its role in a relationship. For example, an agent will generally not record in its books, as expenses, amounts paid toward the cost of property or services acquired in its capacity as an agent. Similarly, the agent will not record, as revenues, amounts received for property or services supplied as agent. Moreover, an agent will generally not record an acquisition made in its capacity as an agent as an asset and will not record an obligation incurred as an agent as a liability.

In addition, the fact that a person segregates from its own funds any monies received or paid in connection with another person is indicative of an agency relationship. For example, a person may deposit amounts received on behalf of another person into a separate bank account, or pay amounts on behalf of another person from a separate bank account. While agents are not necessarily required to keep segregated funds, such arrangements are consistent with agency.

The manner of recording revenues and expenses for income tax purposes is not a determining factor, although it may be instructive. This *Income Tax Act* treatment of disbursements is not a suitable basis on which to determine whether a person is acting as agent on behalf of another person and in respect of which actions.

### *Remuneration*

Remuneration of an agent generally takes the form of a set fee. This fee is sometimes referred to as a commission. However, sometimes an agent may be paid an hourly wage.

An agent may also be reimbursed for amounts expended on behalf of a principal, although such reimbursements can also be made in other types of relationships. A reimbursement by the principal is not part of the remuneration of the agent. Instead, a reimbursement is paid because the agent paid an amount on behalf of the principal to a third party. Because the supply acquired by the agent on behalf of the principal from a third party has not been made by the agent, the reimbursement to the agent is not consideration for a supply and is not subject to GST/HST.

### *Best Efforts*

An agent usually undertakes to use its best efforts in acting for a principal but does not guarantee a certain result. However, the best efforts criterion may also exist in the absence of an agency relationship where, for example, the supplier of a service assumes the obligation to use its best efforts in rendering the service to the recipient.

For example, B is an agent of C. B agrees to use its best efforts to purchase goods of a certain quality at a certain price for delivery at a certain time. B, as agent of C, enters into a contract with A, a seller of goods. A is responsible for providing goods to C in

accordance with the terms of the contract. If there are any problems with the quality, price or delivery of the goods, the responsibility lies with A. B has discharged its responsibility by using its best efforts to arrange for A to provide the goods. As a result, B will not be liable for negligence.



### *Alteration of Property Acquired*

In general, agents do not alter the nature of property acquired from a third party before it is passed on to the principal, although this is also true in many cases where someone acquires property from a third party otherwise than as agent.

### *Use of Property or Service*

Where a person acquires property or services, the consumption or use of the property or services by the person generally indicates that the person did not acquire them as agent on behalf of another person. Nevertheless, there may be cases where a person acquires property or services as agent on behalf of a principal for use in making a supply to the principal. For example, a manufacturer may agree to produce a certain product for a local organization that the organization wants stamped with the logo of its parent. The right to use the logo will be granted by the parent organization to the local organization. The manufacturer, as agent of the local organization, may obtain a die of the logo for use in stamping the manufactured product.

### *Liability under Contract/Liability for Payment*

Where a person sells goods on behalf of a supplier, the supplier is liable to provide whatever it is that the purchaser has bought. That is, if the terms of the agreement are not met, the purchaser will generally have recourse against the supplier as opposed to the person selling on behalf of the supplier. Similarly, where a person purchases goods on behalf of another person, the other person is liable to pay for whatever it is that the supplier has sold. In such circumstances, the person acting on behalf of the purchaser is considered an agent of the purchaser.

Whether a person has the capacity to bind another person may be inferred from the application of the two other essential qualities of agency in respect of a transaction, in the absence of any specific indication of such capacity from a contract, from the conduct of the parties, or some other indication.

### *Ownership of Property*

Generally, an agent does not acquire an interest in any property it acquires as agent on behalf of a principal, as the ownership of the property passes directly to the principal. However, a principal and an agent may agree that the agent will hold title to the property.

When making a supply of the ownership of tangible property, one must take account of the rules that specifically apply to such supplies under common law or provincial legislation (civil law or legislation in common law provinces, such as Sales of Goods Acts). In the common law provinces, most of the common law rules in respect of the sale of goods have been codified in provincial legislation. As previously noted, provincial legislation may deem an agency relationship to exist in certain situations.

## **QUESTIONS DESIGNED TO HELP DETERMINE IF THE ESSENTIAL QUALITIES OF AGENCY EXIST IN A TRANSACTION**

The three essential qualities of agency must exist in respect of a transaction for that transaction to be considered as being made by an agent on behalf of a principal. The indicators may be helpful in determining whether an essential quality, or essential qualities, exist in respect of a particular transaction. Depending on the type of transaction, some indicators will be given more weight than others in making that determination. The following questions may be asked with respect to each transaction to determine the likelihood that the transaction was undertaken by one person as agent for another.

Generally, the approach is to examine the role of, and transactions undertaken by, the purported agent. Therefore, the questions have been worded to refer to the purported agent as "the person" and to the purported principal as "the other party". An affirmative answer suggests the possibility that an agency relationship exists.

### **Essential Qualities of Agency**

#### **1 - Consent of Both Parties**

- Has the other party agreed to have the person act as its agent?
- Has the person agreed to act as the agent of the other party?
- Is there a written agreement or evidence of an oral agreement indicating an agency arrangement?
- Does the conduct of the parties indicate an agency relationship?

#### **2 - Authority of the Person to Affect the Other Party's Legal Position**

- Has the other party given the person the authority to affect that other party's legal position, e.g., by written agreement or power of attorney?
- Can the person bind the other party in a contractual agreement with a third party?
- Is the person authorized to pay an amount that was the legal liability of the other party?
- Can the authority of the person to affect the other party's legal position be inferred from the conduct of the parties?

#### **3 - The Other Party's Control of the Person's Actions**

- Does the other party have the power to control the actions of the person?
- Does the other party retain the right to approve certain expenditures?
- Does the other party require periodic reports?

## **Additional Indicators of the Essential Qualities**

### Assumption of Risk

- Is it understood between the parties that the person is not responsible for any risk of loss from the transaction with a third party?

### Accounting Practice

- Does the person record the revenue (asset) or expense (liability) separately from its own revenue and expenses for purposes of its books of accounts?
- Does the person separate from its own monies any money received or paid out which is considered to belong to the other party?

### Remuneration

- Is the person paid a set fee or remunerated on an hourly basis or by commission for services rendered rather than earning revenue by selling property or services for an amount greater than cost?
- Is the person being reimbursed for expenses incurred on behalf of the other party?

### Best Efforts

- Does the person undertake to use its best efforts to acquire a service on behalf of the other party rather than assume liability to provide the service to the third party?

### Alteration of Property Acquired

- Does the person maintain the property in the same form as when it was acquired?
- Does the person maintain the same quantity of property as that which was initially acquired?
- Does the person maintain the property in the same condition as when it was acquired?

### Use of Property or Service

- Does the person neither consume nor use the property or service in making a supply?

### Liability under Contract/Liability for Payment

- Does legal liability for payment rest with the other party rather than the person?

### Ownership of Property

- In the case of an acquisition, does title pass directly to the other party rather than rest with the person?
- In the case of a sale of property, does title pass directly to a third party (a purchaser) rather than pass to the person and then to the purchaser?
- Does the right to use the property rest with the other party rather than with the person?

### **EXAMPLE NO 1**

#### ***Property managers***

##### **Statement of Facts**

Property Management Company (PMC) manages a number of residential apartment buildings for various landlords. PMC is responsible for all management activities.

The written management agreement between PMC and a given landlord stipulates that:

- PMC will rent, lease, operate and manage the property as agent for the landlord;
- PMC agrees to exercise due diligence in the management of the premises;
- PMC will render monthly statements of receipts, expenses, and charges;
- In the event that expenses incurred by PMC as agent exceed rents collected, the landlord agrees to pay such excess promptly to PMC. Expenditures over \$5,000 must be pre-approved by the landlord;
- The landlord authorizes PMC to rent the premises, to collect rents, to enter into contracts for property insurance and utilities and pay bills relative to the operation of the building as agreed; and
- The landlord agrees to pay a commission to PMC equal to 10% of the gross rental revenues.
- The landlord agrees to pay PMC part of the overhead and the expenses incurred by PMC for the purpose of supplying the services provided for in the contract.

PMC has its own support staff in its management office. When PMC submits its monthly accounting to each landlord, it allocates a portion of its overhead expenses to that landlord.

PMC never reports the gross rental revenues as its revenues in its own books of account; rather, it records its 10% commission and its operating expenses.

PMC deposits gross revenues of each building in a separate bank account from which it pays all expenses for that building, including its own 10% commission.

The activity for the month of September for a certain building is summarized below:

- PMC rented three previously vacant apartments;
- PMC collected a total of \$99,690 of rental revenue;
- PMC entered into a contract of property insurance for that building and out of the rental revenue paid the bill of \$2,598;
- PMC paid, from rental revenues deposited, utility costs of \$3,383;
- PMC allocated overhead costs of \$985 to the operations of this building; and
- PMC paid itself a commission of \$9,969 that it took directly from the rental revenue deposited.
- PMC has incurred \$864 for the maintenance of the building. The supplies acquired with these expenses have been acquired by PMC on its own behalf. These supplies are inputs acquired by PMC for the purpose of supplying the services provided for in the contract.

To what extent and for which transactions is PMC acting as agent of the landlord?

### **Application of the Essential Qualities of Agency and Additional Indicators of these Qualities to the Transactions of PMC**

The explicit mention in the written agreement that “PMC will rent, lease, operate and manage the property as agent for the landlord” indicates agency. Nevertheless, the substance of these transactions and of the contractual context in which they are made should be examined to determine if, indeed, these transactions are made by PMC as an agent of the landlord.

Only the landlord, as the owner of the building, has the power to lease the building or parts of it, to another party in the examined fact pattern. In these circumstances, the landlord alone had the power to supply the use of the landlord’s property. PMC cannot supply the right to use property it does not own, unless having itself acquired such right (e.g., by way of lease), which is not the case here. Also, the landlord has given PMC the authority to bind the landlord to eventual lessees. As the landlord is the supplier of the right to use the space, payments by the lessees are payable to the landlord, and collected by PMC on the landlord’s behalf. It can be concluded that PMC acts as an agent of the landlord in supplying customers the right to use the landlord’s property and in collecting the rent.

The acquisition of the insurance is for insuring the landlord’s property and the landlord has given PMC the authority to acquire the insurance on the landlord’s behalf. The

landlord has also given PMC the authority to use the amounts collected as rent to pay utility costs for operating the landlord's business. The payment of these costs is subject to control by the landlord, through the monthly reporting obligation and the obligation to have expenditures over a certain amount approved. These acquisitions meet the consent and control criteria of the essential qualities of agency, which give PMC the authority to bind the landlord with respect to obligations to third parties in respect of these acquisitions. Accordingly, PMC acts as an agent of the landlord in respect of insuring the property and paying utility costs.

PMC's overhead costs, including the cost of its own employees, and the expenses are not incurred as agent of the landlord but on its own behalf. Although the allocated amount for overhead costs is reported to the landlord, these costs and the expenses are used or consumed by PMC to provide property management services. The fact that PMC has that part of its overhead costs attributable to the operations of the property and its expenses for the maintenance of the property taken from the gross rental revenues due to the landlord constitutes a form of payment, by the landlord, of part of the consideration for the services supplied by PMC. Since the supply made by PMC is a taxable supply (other than zero-rated), these consideration, including that part taken from the gross rental revenues, is subject to tax.

The 10% commission is the fee for providing property management services. The landlord hired PMC to provide these services. Therefore, it is a taxable supply made by PMC to the landlord.

## EXAMPLE NO 2

### *Cost sharing arrangements*

#### **Statement of Facts**

Three professionals, a computer consultant, a graphic designer and a motivational speaker decided to share office space and operating expenses. They discussed the matter informally and did not enter into a written agreement. They did not discuss all of the aspects of the agreement in detail but agreed on the kind of office space and equipment that would be acceptable. Each party is a sole proprietor who advertises for, markets to, and bills its own clients. The parties are not engaged in a partnership or association of any kind.

The parties all agreed that one of them, Ms. Green, had more experience in administrative matters than the others and would therefore be responsible for making the arrangements with respect to shared costs. Ms. Green opened a bank account to be used for their shared expenses. She has sole signing authority on the account and must provide a quarterly report of all deposits and operational costs related to this account. Each of the three parties agreed to deposit \$2,000 per month into the account to cover their one-third share of the total estimated operational costs.

Ms. Green then signed a lease for office space, furniture and equipment, and contracted for the required utilities. The vendors, including the landlord, were not aware of the arrangements between the three parties at the time they dealt with Ms. Green.

The arrangement has been in place for about one year. Each party has been reporting one-third of the total accommodation expenses for income tax purposes.

As agreed, all the operating expenses have been paid out of the bank account opened by Ms. Green. The account has not been used to pay any other expenses. Ms. Green has been reporting the expenses and deposits every quarter as agreed. None of the parties have objected to any decision made by Ms. Green and none have opted out of the arrangement. All three continue to use the premises and equipment.

Ms. Green was not paid for setting up the office and is not paid for paying the bills and preparing the accounts. The other parties are aware of Ms. Green's activities on a day to day basis and are in a position to object if they do not agree.

Over the year, Ms. Green has completed the following transactions:

- She entered into contracts for lease of the office space and all utilities and subsequently paid those bills; and
- She entered into lease agreements for the lease of office furniture and equipment and subsequently paid those bills.

To what extent and for which transactions is Ms. Green acting as agent of each of the other two professionals?

### **Application of the Essential Qualities of Agency to the Acquisitions of Ms. Green**

As there is no written agreement, we can only examine the actions of the individuals in light of what they have indicated was the agreed upon arrangement.

The reports of their original discussions and the subsequent actions of the parties, indicate that the other two parties gave Ms. Green, and Ms. Green accepted, authority to act on their behalf and affect their legal positions with respect to the lease of, and operating expenses for, the office space.

The two parties exercise control through their awareness of Ms. Green's activities on a day to day basis and their ability to object if she acts outside the scope of her authority. They also require quarterly reports of the activities undertaken by Ms. Green on their behalf.

Therefore, we can conclude that the acquisitions made by Ms. Green pursuant to that agreement are made as an agent for the other two individuals as well as on Ms. Green's own behalf. We can accept that Ms. Green acts as agent on behalf of the other two individuals as well as on her own behalf for expenses incurred in setting up the office

(i.e., office space, furniture and equipment, utilities) and its ongoing operating requirements, including the payment of bills.

### **EXAMPLE NO. 3**

#### *Reimbursement of expenses*

##### **Statement of Facts**

A consulting firm (Consulting Co.) has secured a large service contract with a department of the federal government. Consulting Co. is to provide consulting services to the Systems Group of the department which is installing a new computer system across Canada. Consulting Co. will also submit periodic reports of its activities and interaction with the Systems Group. In turn, the department agrees to pay, on submission of invoices and time records, an hourly fee of \$150.00 for the services of Consulting Co.'s president, who is considered an expert in his field, and \$100.00 per hour for the services of the other employees. Also, the department agrees to reimburse car travel costs based on \$.25 per kilometre and the cost of hotels and meals based on the submission of actual receipts.

In its first billing, Consulting Co. charges:

4 h @ \$150.00	\$600.00
10 h @ \$100.00	\$1,000.00
Hotel (\$340 + \$23.80 GST)	\$363.80
Meals (\$90 + \$6.30 GST)	\$96.30

Have the accommodation (hotel) and meals supplies been acquired by Consulting Co. as an agent of the federal government department?

##### **Application of the Essential Qualities of Agency to the Acquisition of Accommodation and Meals**

There is no written or verbal agency agreement and an agency relationship cannot be implied from the conduct of the parties in respect of the acquisition of the noted supplies. Consulting Co. does not have authority to affect the legal position of the department on the acquisition of these supplies. The accommodation and meals in respect of which the out of pocket expenses are incurred are inputs acquired by Consulting Co. for the purpose of supplying consulting services to the Systems Group which is installing the computer system. The noted supplies are considered to be acquired by Consulting Co. for Consulting Co.'s own behalf. Consequently, the amounts billed by Consulting Co. for hotel and meals are to be treated as part of the consideration charged by Consulting Co. for the supply of its consulting services. There is no evidence of an agency relationship between the parties.



## EXAMPLE NO. 4

### *Reimbursement of expenses*

#### **Statement of Facts**

A moving company (Moving) is in the business of removing houses from their foundations, moving them to new sites and installing them on new foundations. Moving entered into a contract with Pat Dawson to remove Pat's house from its foundation on her city lot, move it to her country lot and install it on the prepared foundation at that site.

The provincial government requires a special permit to move this type of overweight and oversized load on the roadways. Moving applied for the permit, paid \$250.00 and was granted the permit by the provincial government.

The work order between Moving and Pat Dawson indicated that the charge to Pat was to be calculated at \$200.00 per hour from the time the truck, flatbed, personnel and special equipment left Moving's yard until their return. The agreement also indicated a special permit charge of \$250.00 as a separate amount to be paid.

Did Moving acquire the permit as agent on behalf of Pat Dawson?

#### **Application of the Essential Qualities of Agency to the Acquisition of the Permit**

A review of the permit process revealed that the permit to move the oversize and overweight load identified Pat Dawson as the person whose house was being moved. However, the permission and restriction for the use of the roadways applied to Moving, as did any liability for non-compliance. It was also a condition of Moving's insurance coverage that it obtain all necessary permits.

As a result, the permit is considered to be acquired by Moving on its own behalf, and not as an agent of Pat Dawson. The permit acquired by Moving is an input to the supply by Moving of the moving service to Pat Dawson. The separate permit charge billed by Moving to Pat Dawson constitutes a part of the consideration for the moving service supplied to Pat Dawson.

**APPENDIX**

Provisions of Part IX of the *Excise Tax Act* where agency is mentioned

Subsection 123(1), Definition, "permanent establishment";  
Subsection 123(1), Definition, "specified Crown agent";  
Subsection 177(1), Supply on behalf of registrant;  
Subsection 177(1.2) Supply by auctioneer;  
Section 178.1, Definitions, "independent sales contractor";  
Subsection 183(11), Application of section 266;  
Section 188.1(1), Definitions, "distributor";  
Subsection 200(4) Sale of personal property of a government;  
Subsection 209(2) Real property of certain Crown agents;  
Subsection 221(1), Collection of tax;  
Subsection 225.1(1), Meaning of specified supply;  
Subsection 225.1(2), Net tax;  
Subsection 240(4), Suppliers of prescribed property;  
Subsection 252.1(3), Accommodation rebate to non-resident supplier;  
Subsection 252.1(8), Rebate paid by registrant;  
Subsection 265(1), Bankruptcies;  
Subsection 266(1), Definitions, "receiver";  
Subsection 266(2), Receivers;  
Section 367, Agents of suppliers;  
Subsection 368(3), Proof of offence;  
Section 330, Officers of corporation, etc.;  
Section 5 of Part V of Schedule VI — "Exports"  
Paragraph 7(f) of Part V of Schedule VI — "Exports"  
Section 23 of Part V of Schedule VI — "Exports"  
Subsection 1(1) of Part VII of Schedule VI — "Transportation Services"  
Subsection 1(2) of Part VII of Schedule VI — "Transportation Services"  
Section 12 of Part VII of Schedule VI — "Transportation Services"