

# GST/HST Info Sheet

## Agents

November 2005

The purpose of this information sheet is to help in determining whether a person is acting as agent in making a transaction on behalf of another person for GST/HST purposes. In general terms, an agent is a person who performs certain tasks for or in place of another person (the principal). An agent is considered to be an extension of the principal, and as a result, the actions of the agent are generally regarded as being those of the principal.

This info sheet applies to agents, other than auctioneers, who purchase or sell goods or services on behalf of another person. Persons, such as receivers and trustees, who are deemed to be agents under the *Excise Tax Act*, do not have to determine whether they are acting as agent in making a transaction on behalf of another person.

In this publication, “taxable” means subject to the goods and services tax/harmonized sales tax (GST/HST) at a rate of 7% or 15%. “Registrant” means a person who is registered or is required to register for GST/HST purposes.

Whether a person is acting as agent in making a sale on behalf of another person is important when determining how GST/HST applies to the sale. For example, when a registrant acts as agent in selling taxable goods or services on behalf of a principal, generally it is the principal who must charge and account for GST/HST on the sale of the goods or services.

However, special rules apply when a registrant acts as agent in selling taxable goods on behalf of a principal who would not have been required to charge GST/HST had they sold the goods directly to the purchaser. In this case, it is the agent who must charge and account for GST/HST on the sale of the goods. For more information on the application of GST/HST to the sale of goods by an agent, please refer to the section entitled “Sale by agent arrangements” in the GST/HST Info Sheet, *Consigned Goods* (GI-009).

In addition to determining how GST/HST applies to a sale, whether a person is acting as agent on behalf of another person is also important when determining who is entitled to claim an input tax credit for the GST/HST paid on a purchase.

For example, when a registrant acts as agent in purchasing taxable goods or services on behalf of a principal, it is the principal who would be entitled to claim any input tax credit for the GST/HST paid on the goods or services. The principal would reimburse the agent for its costs, including any GST/HST paid on behalf of the principal.

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GI-012

La version française de ce document est intitulée *Mandataires*.

**Canada**

### Joint elections by a principal and agent

In certain circumstances a registrant principal and a registrant agent may make a joint election with respect to the liability for charging and/or accounting for the tax.

For example, in the case where a principal would be required to account for the tax, an election allows an agent (which under a proposed amendment to the *Excise Tax Act* includes a billing agent) to account for the GST/HST instead of the principal. This election does not apply to goods sold by auction. For more information on goods sold by auction on behalf of the owner, please refer to the GST/HST Info Sheet, [Auctioneers](#) (GI-010).

Also, a principal may elect to charge and account for the tax, instead of the agent, when the principal would otherwise not have to charge the tax. This election can be made where the principal last used or acquired the goods for consumption or use in a business or an adventure or concern in the nature of trade.

Please call a GST/HST Rulings Centre at 1-800-959-8287 if you require information on these elections.

Whether a person is acting as agent in making a transaction on behalf of another person is not always clear. For example, although a person may be referred to as an “agent”, they may only be facilitating a purchase or sale instead of actually making the purchase or sale on behalf of another person.

When it is unclear whether a person acts as agent in making a transaction on behalf of another person, please contact a GST/HST Rulings Centre to request a ruling or interpretation.

### Essential qualities of agents

There are three essential qualities that help in determining whether a person is acting as agent in making a transaction on behalf of another person. These qualities, along with indicators to help in determining whether a person is acting as agent, are discussed below.

The three essential qualities are:

- consent of both the principal and the agent;
- authority of the agent to affect the principal’s legal position; and
- the principal’s control of the agent’s actions.

Please note that questions follow the explanations of the essential qualities and indicators. For each question a *yes* answer would suggest that a person may be acting as agent in making a transaction on behalf of another person. The terms “agent” and “principal” appear in those questions in quotation marks since the relationship between the persons has yet to be determined.

### Consent of both the principal and the agent

When a person is acting as agent in making a transaction on behalf of a principal, the principal will generally authorize the agent to do something on the principal’s behalf. Therefore, in considering whether a person is acting as agent on behalf of another person, it should be clear that the agent is making purchases or sales for the principal and not on its own account. While the persons may agree that one acts as agent on behalf of the other, the absence of such an agreement, by itself, is not enough to indicate that a person is not acting as agent on behalf of another.

It is also important to note that an oral or written agreement might say that one person is not an agent, but a court may decide that the person is an agent.

A person can be acting as agent in making a transaction on behalf of another person without even knowing it, provided their actions indicate as much. In other words, whether a person is acting as agent in making a transaction on behalf of another person is generally evident from the conduct of the persons.

Questions:

- Has the “principal” agreed to have the “agent” act as its agent?
- Has the “agent” agreed to act as agent of the “principal”?
- Is there a written agreement or evidence of an oral agreement indicating that the parties intend to have the “agent” act as agent of the “principal”?
- Does the behaviour of the parties indicate that the parties intended to have the “agent” act as agent of the “principal”?

### **Authority of the agent to affect the principal’s legal position**

When a person is acting as agent in making a transaction on behalf of a principal, the agent will have the ability to affect the principal’s legal position. The most common example of this is where the agent is authorized to enter into contracts with third parties on the principal’s behalf.

A asks B to negotiate and purchase some equipment from a third person (C). B signs the contract with C, but A is listed 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 have the same obligations as if A had signed the contract.

It should be clear that the principal has authorized the agent to act or enter into contracts on its behalf, and any sales or purchases made by the agent should be clearly authorized by the principal.

In other words, giving authority to a person to bind another person in a contract could indicate that a person is acting as agent in making a transaction on behalf of a principal. If the authority to bind another person is not mentioned, this authority may be implied from the presence of the two other essential qualities.

Questions:

- Has the “principal” given the “agent” the authority to affect the “principal’s” legal position, e.g., by written agreement or power of attorney?
- Can the “agent” bind the “principal” in a contract with a third party?
- Is the “agent” authorized to pay an amount that is the legal liability of the “principal”?
- Can the authority of the “agent” to affect the “principal’s” legal position be implied from the conduct of the persons?

### **The principal’s control of the agent’s actions**

When a person is acting as agent in making a transaction on behalf of a principal, the principal has some control over the agent. Evidence of that control could include the requirement for the agent to provide periodic reports or to get approval to pay certain expenses.

Generally, a principal exercises more 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 change 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 making sure that the agent stays within its authority and acts in a competent manner.

Questions:

- Does the “principal” have the power to control the actions of the “agent”?
- Does the “principal” retain the right to approve certain expenditures?
- Does the “principal” require periodic reports?

### Indicators of agency

#### *Assumption of risk*

An agent usually does not assume the risk of loss from a purchase or sale made with a third party. However, an agent could be liable for damages caused by its mistakes. In the case of goods, whether a person has liability insurance, or insurance on the goods, can indicate whether a person acts as agent on behalf of a principal in respect of such goods. If the person does not own the goods but has responsibilities in respect of the goods towards their owner, as an agent does, this person is more likely to have liability insurance rather than insurance on the goods themselves.

Question:

- Is it understood between the persons that the “agent” is not responsible for any risk of loss from the transaction with a third party?

#### *Accounting Practices*

A person’s accounting practices may indicate how the person views their role. For example, an agent will generally not record in its books, as expenses, amounts paid toward the cost of goods or services acquired in its capacity as an agent. Similarly, an agent will not record, as revenues, amounts received for sales of goods or services made in its capacity as agent. Moreover, an agent will generally not record a purchase made in its capacity as agent as an asset and will not record an obligation incurred as an agent as a liability.

In addition, the fact that a person keeps separate from its own funds any money received or paid in connection with another person may indicate that a person is acting as agent in making a transaction on behalf of a principal. While agents are not necessarily required to keep funds separate, such an arrangement is consistent with agency.

Questions:

- Does the “agent” record the revenue (asset) or expense (liability) separately from its own revenue and expenses for purposes of its books of account?
- Does the “agent” separate from its own monies any money received or paid out which is considered to belong to the “principal”?

#### *Payment*

Payment for an agent’s service generally takes the form of a set fee. This fee is sometimes referred to as a commission. However, sometimes an agent may be paid on an hourly basis.

An agent may also be reimbursed for amounts it pays on behalf of a principal. A reimbursement of this nature is not part of the payment for the agent’s services. Instead, a reimbursement is paid because the agent paid an amount on behalf of the principal to a third party. Because the goods or services purchased by the agent on behalf of the principal have not been purchased by the agent for itself, the reimbursement to the agent is not payment for a supply and is not subject to GST/HST, and the agent is not entitled to claim an input tax credit.

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AB Funeral Homes, acting as agent on behalf of a client, Mrs. Robert, purchases an automobile service from Security Escorts Ltd. for a funeral. The fee for the automobile service is \$200 and it is subject to tax. AB Funeral Homes pays Security Escorts Ltd. \$200 plus \$14 GST for the service. AB Funeral Homes is not entitled to claim an input tax credit for the \$14 paid to Security Escorts Ltd. Rather, AB Funeral Homes is reimbursed by Mrs. Robert for \$214.

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Sometimes, an agent may be reimbursed for amounts it pays otherwise than on behalf of a principal. A reimbursement of this nature is part of the payment for the agent’s services because the agent paid an amount to a third party for the goods or services that the agent purchased for itself for use in providing the agent’s services to the principal. The reimbursement is subject to the GST/HST and the agent is entitled to claim an input tax credit.

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Ms. Jones, acting as agent on behalf of a client, Ms. Taylor, travels to another city to purchase property. Ms. Jones pays for accommodation at a hotel while travelling, but is reimbursed by Ms. Taylor for the hotel expense. The cost of the hotel forms part of the payment for Ms. Jones’ agent service, even though the hotel cost may be separately itemized and listed as a “reimbursement” on an invoice.

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Questions:

- Is the “agent” paid a set fee or 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 “agent” being reimbursed for expenses incurred on behalf of the “principal”?

#### **Best efforts**

An agent usually undertakes to use its best efforts in acting for a principal but does not guarantee a certain result.

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 according to the terms of the contract. If there are any problems with the quality, price or delivery of the goods, A is responsible. B has used its best efforts to arrange for A to provide the goods. As a result, B will not be liable for negligence.

Question:

- Does the “agent” use its best efforts to acquire goods or services on behalf of the “principal” rather than assume liability to provide the goods or services to the third party?

#### **Alteration of goods purchased**

In general, agents do not alter the goods purchased from a third party before they are passed on to the principal.

Questions:

- Does the “agent” maintain the goods in the same form and condition as when they were purchased?
- Does the “agent” maintain the same quantity of goods as that which was initially purchased?

#### **Use of goods or services**

Where a person purchases goods or services, the consumption or use of the goods or services by that person generally indicates that the person did not purchase them as agent on behalf of another person.

Question:

- Does the “agent” neither consume nor use the goods or services in making a supply?

#### **Liability under contract/liability for payment**

Where an agent sells goods on behalf of a principal, the principal is liable to provide these goods to the purchaser. That is, if the terms of the agreement are not met, the purchaser will generally have recourse against the principal instead of the agent selling the goods on behalf of the principal. Similarly, where an agent purchases goods on behalf of a principal, the principal is liable to pay for the goods.

Question:

- Does legal liability for payment rest with the “principal” rather than the “agent”?

#### **Ownership of goods**

Generally, an agent does not receive an interest in any goods it purchases on behalf of a principal, as the ownership of the goods passes directly to the principal.

Questions:

- In the case of a purchase of goods, does title pass directly to the “principal” rather than rest with the “agent”?
- In the case of a sale of goods, does title pass directly to a third party (a purchaser) rather than pass to the “agent” and then to the purchaser?
- Does the right to use the goods rest with the “principal” rather than with the “agent”?

Additional information is available in Policy Statement P-182R, [Agency](#).

## Agents

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This information sheet does not replace the law found in the *Excise Tax Act* (the 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 any 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. A ruling should be requested for certainty in any particular GST/HST matter.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec by calling the toll-free number 1-800-567-4692.

All GST/HST publications are available on the CRA's Web site at [www.cra-arc.gcca/tax/technical/gsthst-e.html](http://www.cra-arc.gcca/tax/technical/gsthst-e.html).

Reference in CRA publications is made to the harmonized sales tax (HST) that applies to property and services provided in Nova Scotia, New Brunswick and Newfoundland and Labrador (the "participating provinces") at a rate of 15%. The goods and services tax rate is 7%.