

**FOR DISCUSSION PURPOSES ONLY**

**DRAFT POLICY STATEMENT ON THE APPLICATION OF SUBSECTION 272.1(1)  
OF THE *EXCISE TAX ACT***

This policy statement is being disseminated by the CCRA in draft form for comments. Comments or suggestions should be sent by June 28, 2002 to:

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**GST/HST Policy Statement**

**Date of Issue:**

**Subject:**

Application of subsection 272.1(1) of the *Excise Tax Act*

**Legislative Reference:**

Subsection 272.1(1)

**National Coding System File Number:**

11635-8

**Effective Date:**

April 24, 1996

**Issue and Decision:**

The issue is the interpretation of the phrase “anything done by a person as a member of a partnership” in subsection 272.1(1) of the *Excise Tax Act* (“ETA”). Specifically the determination of whether something is done by a general partner as a member of a partnership, or something is done by a general partner for its own purposes and supplied to a partnership of which it is a member.

The determination of whether a general partner does something as a member of a partnership for the purposes of subsection 272.1(1) depends on the particular provincial partnership law and the facts of a particular situation. Factors to consider include, but are not limited to, the following.

- The terms of the partnership agreement.  
If there is a written partnership agreement, is the partner clearly responsible for taking the action under the terms of the agreement? Is the partner's conduct consistent with the terms of the agreement?

If there is no written partnership agreement, does the conduct of the parties imply a partnership agreement? Do the facts indicate that there was agreement among the partners that the partner was responsible for taking the action? Is the partner's conduct consistent with the terms of that agreement?

- The nature of the action undertaken by the partner.  
Does the action taken by the partner relate to the purpose of the partnership's business? Who is liable for the action of the partner? Did the partner acquire or import property or a service on its own account such that subsection 272.1(2) applies? Did the partner make a capital contribution to the partnership such that subsection 272.1(3) applies?
- The partner's ordinary course of conduct.  
Is the partner doing the activity only for the partnership, or is the partner engaged in a separate business of doing the same activity for a number of other persons?

## **Examples**

### Example 1

#### Facts

1. A limited partnership was created to construct and operate a retirement residence in Ontario.
2. It was agreed under the written limited partnership agreement that the general partner, A Co., would be the sole manager of the retirement residence. A Co. will be paid a fee equal to x% of profits for the management services.
3. A Co.'s conduct in providing the management services is consistent with the related terms of the written limited partnership agreement.
4. A Co. will not be reimbursed by the partnership for property or services acquired or imported for consumption or use in providing the management services.
5. A Co. does not provide these services to any other persons.

## Issue

Does subsection 272.1(1) apply to the management services provided by A Co. so that they are deemed to have been done by the partnership?

## Comments

The general partner is clearly responsible for managing the residence under the terms of the written limited partnership agreement. Managing the residence is directly related to the business purpose of the partnership. Generally subsection 272.1(1) would apply to the management services provided by A Co. Where subsection 272.1(1) applies, the services would be deemed to be done by the partnership so there would be no supply of the management services from the partner to the partnership for GST/HST purposes.

Where A Co. acquires property or a service for consumption, use or supply in the course of the partnership activities but not on the account of the partnership subsection 272.1(2) applies. Therefore property or a service acquired by A Co. on its own account to perform the management services for the partnership is deemed not to be acquired by the partnership, and under paragraph 272.1(2)(b) for the purpose of determining an input tax credit (“ITC”) in respect of the property or service, or in applying subdivision d of Division II in relation to the property, A Co. is deemed to be engaged in those activities of the partnership.

## Example 2

### Facts

1. D Co. is engaged in a manufacturing business and is a partner in a financial services business.
2. Under the written partnership agreement, D Co. will provide certain accounting services to the partnership’s business.
3. D Co. will acquire property and services for consumption and use in the partnership’s business. D Co. will employ personnel who will work on the partnership’s business. The partnership will reimburse D Co. for the cost of the inputs consumed or used, and the salaries of the people working on, the partnership’s business.
4. D Co.’s conduct in providing the accounting services and requesting reimbursement of its costs is consistent with the related terms of the written partnership agreement.

## Issue

Do subsection 272.1(1) and/or subsection 272.1(2) apply to the actions of D Co.?

## Comments

D Co. is responsible for providing the accounting services under the terms of the written partnership agreement. The activities are related to the business purpose of the

partnership. Generally subsection 272.1(1) would apply to the accounting services provided by D Co.

However where D Co. acquires property or a service that is for consumption, use or supply in the partnership's activities but not on the account of the partnership, the rules in subsection 272.1(2) would apply to those inputs.

Under paragraph 272.1(2)(a), if subsection 175(1) does not apply, the partnership is deemed not to have acquired the property or service, and under paragraph 272.1(2)(b) for the purpose of determining an ITC in respect of the property, or in applying subdivision d of Division II in relation to the property, D Co. is deemed to be engaged in those activities of the partnership.

Subsection 175(1) applies where D Co. acquires property or a service for consumption or use in relation to the activities of the partnership, D Co. pays the tax payable in respect of the acquisition, and the partnership pays an amount to D Co. as a reimbursement in respect of the property or service. As a result, the partnership is deemed to have received a supply of the property or service, and any consumption or use of the property or service by D Co. in relation to the activities of the partnership is deemed to be consumption or use by the partnership and not D Co., and the partnership is deemed to have paid tax according to the formula in paragraph 175(1)(c).

Subsection 175(1) does not apply if paragraph 272.1(2)(b) applies and the reimbursement is paid to D Co. after D. Co. has filed a return claiming an ITC in respect of the property or service.

With respect to the cost of D Co.'s employees used in the course of the partnership's activities, paragraph (c) of the definition of "service" in subsection 123(1) of the ETA excludes "anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in the course of or in relation to the office or employment of that person". Subsection 272.1(2) applies "where property or a service is acquired or imported by a member of a partnership..." Therefore it would generally not apply where anything (other than property) is acquired by employers from their employees.

Since subsection 272.1(2) would generally not apply to the cost of D Co.'s employees used in the course of the partnership's activities, that cost would generally not be excluded from subsection 272.1(1). Generally subsection 272.1(1) would apply to the accounting services provided by these particular employees of D Co. Where subsection 272.1(1) applies to the action of the partner, it is deemed to be done by the partnership so there is no supply of that action to the partnership for GST purposes.

### Example 3

### Facts

1. Mr. J operates a landscaping business as a sole proprietor and is also a partner in a manufacturing business.
2. Mr. J will be paid a fee for planting shrubs in front of the building owned by the partnership. He will use shrubs from the landscaping business's inventory.
3. The service is not mentioned in the written partnership agreement.

### Issue

Does subsection 272.1(1) apply to the landscaping services provided by Mr. J so that they are deemed to have been done by the partnership?

### Comments

The landscaping service is not included in the written partnership agreement, it is incidental to the business of the partnership, and Mr. J carries on the landscaping business as a separate business.

Subsection 272.1(3) applies “where a person who is or agrees to become a member of a partnership supplies property or a service to the partnership otherwise than in the course of the partnership's activities”. Subsection 272.1(3) would apply to this landscaping service and GST/HST would apply to the consideration for the supply.