

FOR DISCUSSION PURPOSES ONLY

Proposed Revisions to Policy P-077R Single and Multiple Supplies

Proposed revisions to Policy Statement P-077R, *Single and Multiple Supplies*, have been made in order to make the policy more clear and also to take into account recent jurisprudence.

This policy statement is being released by the CCRA in draft form for comments. Comments should be sent by November 28, 2003 to:

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GST/HST Policy Statement P-077R1:

SINGLE AND MULTIPLE SUPPLIES

Subject:

Single and multiple supplies

Legislative References:

Subsections 123(1), definition of "supply" and 165(1) and section 138 of the *Excise Tax Act* (ETA)

National Coding System File Number:

11755-20

Effective Date:

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

ISSUE

At issue is whether a transaction consisting of several elements is a single supply or two or more supplies.

DECISION

It is the Canada Customs and Revenue Agency's (CCRA's) position that, for GST/HST purposes, the determination of whether a transaction consisting of several elements is to be regarded as a single supply or multiple supplies is based on a determination of fact.

The CCRA will use the following principles that have emerged from jurisprudence to determine whether a transaction consisting of several elements is to be regarded as a single supply or multiple supplies.

1. Every supply should be regarded as distinct and independent.
2. A supply that is a single supply from an economic point of view should not be artificially split.
3. There is a single supply where one or more elements constitute the supply and any remaining elements serve only to enhance the supply.

DISCUSSION

General Comments

The following text discusses how to apply the principles set out above in order to determine whether a particular transaction consists of a single supply or multiple supplies. However, because of the variety of situations in both traditional and electronic commerce in which such a determination must be made, it is difficult to provide guidance covering every eventuality.

Multiple supplies occur when one or more of the elements can sensibly or realistically be broken out.

Conversely, two or more elements are part of a single supply when the elements are integral components; the elements are inextricably bound up with each other; the elements are so intertwined and interdependent that they must be supplied together; or one element of the transaction is so dominated by another element that the first element has lost any identity for fiscal purposes.

When performing an analysis, it is important that the analysis be confined to the transaction at issue, rather than referring to other possible transactions containing the same or similar elements. This process should not involve artificially splitting something that commercially is clearly a single supply. Moreover, when examining an agreement, it should not be viewed in isolation. Rather, it must be examined in the context of other factors such as the intent of the parties, the circumstances surrounding the transaction, and the supplier's usual business practices. It may be appropriate in some cases to discount the terms of an agreement if they do not reflect the reality of the transaction.

It should also be remembered that the way in which the price for a transaction is set out does not in itself determine whether there are one or more supplies. A single price does not automatically mean that there is one supply. Equally, separately identified prices for certain elements do not necessarily mean that there are two or more supplies.

Input, Part of a Supply, or a Supply

An element may generally be regarded as any property or service that could reasonably be supplied on its own. However, an element can also be an input to a supply or part of a supply.

In identifying and analyzing the various elements of a package of property and/or services, a distinction must be made between elements that are actually supplied to the recipient and those that are simply inputs consumed in making a supply

An analysis of the agreement may help determine whether some elements are inputs or form part of a supply. For example, an agreement may specify that just one element is to be supplied, although it may refer to other elements to be acquired by the supplier in the course of the transaction. In such a case, the analysis may lead to the conclusion that the

elements acquired by the supplier in the course of the transaction are merely inputs used in making a single supply.

Questions to Help Determine if a Transaction Consists of a Single Supply or Multiple Supplies

- ***Is the property/service provided by two or more suppliers?***

The provision of property and/or services by two or more suppliers generally indicates that multiple supplies are being made, even if the various supplies are provided together.

- ***Is there more than one recipient?***

The acquisition of property and/or services by two or more recipients generally indicates that multiple supplies are being made.

- ***What did the supplier provide for the consideration received?***

For an element to be characterized as a supply, what is provided should be distinct and independent. It should amount to more than merely a component of an overall supply.

It is necessary to determine what the parties agreed to in the context of the recipient's needs. If any one element could be viewed as satisfying the recipient's needs on its own, then the provision of that element could be viewed as a supply distinct from any other supplies or elements.

- ***Is the recipient made aware of the elements (in detail) that are part of the package?***

Sometimes the recipient is made aware of the elements that make up a package of property and/or services. This detail may help to establish the relationship amongst the individual elements and the importance of each element. A detailed indication of specific elements might include the quantity of the particular elements being supplied, their physical characteristics, or the steps to be followed in providing a particular element.

If the recipient is not made aware of the specific elements, there is likely only a single supply.

- ***In the context of the particular transaction, does the recipient have the option to acquire the elements separately or to substitute elements?***

The purpose of this question is to establish the strength of the relationship between/amongst the different elements.

The structure of the transaction should be examined to determine if the provision of a particular element is contingent on the provision of another element. If the recipient does not have the option to acquire the elements separately, then there is likely a single supply.

Conversely, if a supplier were to allow certain elements of a transaction to be substituted for others, then the provision of some elements would not be contingent on the provision of the others, which could indicate that multiple supplies are being made.

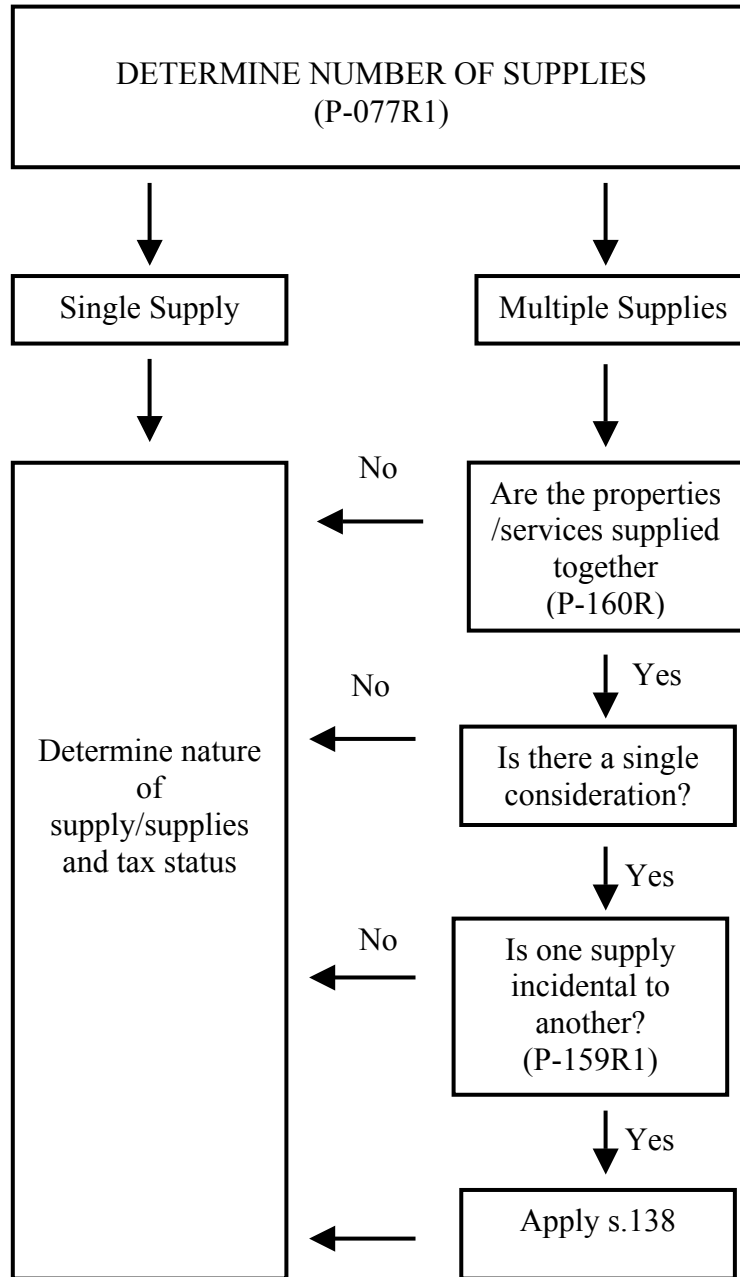
NEXT STEPS

If the above single/multiple supply analysis concludes that there are multiple supplies, it is then necessary to determine whether one of those supplies is incidental to another and whether it may consequently be deemed to form part of a single supply pursuant to section 138 of the ETA. To be considered incidental, a supply generally plays only a minor or subordinate role in relation to the provision of another supply.

Section 138 deems a supply to form part of another supply provided that the supplies are supplied together for a single consideration. Further, for section 138 to apply, it must be reasonably regarded that the provision of one property or service is incidental to the supply of the other. Policy Statements P-159R1 *Meaning of the Phrase "reasonably regarded as incidental"* and Policy P-160R *Meaning of the Phrase "where a particular property or service is supplied together with any other property or service"* provide the CCRA's position with respect to two of the conditions that must be met for section 138 to apply.

Lastly, for each supply identified in the analysis, the nature of the supply must be identified, which, in turn, will assist in determining the tax status of the supply. Specifically, when the supply consists of several elements, does the supply take on the nature of one of the properties or services supplied together or are the properties and services combined to create a supply different from any of the elements?

SUMMARY



EXAMPLES

The following examples illustrate the application of the principles in determining whether a transaction consists of a single supply or two or more supplies:

EXAMPLE NO. 1

Statement of Facts:

A registrant operates a vocational school and offers courses in business and computer training. The courses lead to diplomas.

The registrant purchases quantities of textbooks used in the courses and offers them for sale to the students. These books are also widely available at bookstores. It is explained to students that the books offered by the registrant are marked up but that they are less expensive than if the students purchase them from retailers. Students are not required to purchase the books. Although the registrant recommends that students purchase the books, students can successfully complete the courses without them.

When a student enrolls in a course the student is informed that the cost of tuition is separate from the cost of the books. The student is also informed that if full payment for the course is made within seven days of enrolment, the tuition fee will be discounted by 10%. This discount is not offered on the cost of the course textbooks. In addition, students are informed that tuition fees are eligible for income tax credits but that the cost of books supplied is not. Another information sheet containing rules and regulations again includes the fact that the cost of books is not included in the tuition fees for the courses.

Sometimes students do not purchase books from the registrant. These students may purchase books from other sources, borrow them, or own them prior to enrolling in a course.

Decision:

This transaction consists of a supply of an educational service and a separate supply of textbooks.

Rationale:

The fact that a student may take the course and be successful without the use of textbooks indicates that the provision of the educational service can be viewed as satisfying the student's needs on its own. The provision of the educational service can be considered to be a supply distinct and independent from the supply of the books.

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In addition, the student has the option of acquiring the books separately from other sources, or not at all. The supply of the educational service is not contingent on the supply of the books. The student is made aware of the various elements that make up the package.

The provision of the textbooks is not so intertwined and interdependent with the educational service that they cannot be separated.

For purposes of the ETA, neither of the two supplies are incidental to the other as a separate consideration is charged for each supply.

EXAMPLE NO. 2

Statement of facts:

A registrant operates a vocational school and provides courses in computer training that lead to diplomas and enhance students' occupational skills.

Prospective students receive literature that provides a brief description of the objectives of the courses, topics taught, the duration of the courses, prerequisites for the courses, and graduation requirements. There is a note in the literature that the total fees include tuition and books. For any given course, the registrant has determined that the cost of books averages \$500. The cost of the books is not described in the literature.

The registrant purchases books for resale to the students. It is compulsory for students to have the recommended books but it is not compulsory for the students to purchase them from the registrant. Students cannot succeed in the courses without the recommended books. If a student withdraws from a course, a portion of the tuition fee is refunded. However, the cost of the books will not be refunded.

Decision:

This transaction consists of a single supply of an educational service.

Rationale:

For the consideration received from a student, the registrant supplies the student with instruction in a course that develops or enhances his/her occupational skills. A student pays a single consideration for instruction in a course that may consist of several components but is nevertheless a single supply of a course.

A student cannot succeed unless the student has the textbooks. The books are an important part of the course and cannot realistically be omitted from the supply of the course. None of the various elements can be viewed as satisfying the recipient's needs on

its own. The elements are interdependent and intertwined and each is an integral part of the whole course of instruction.

EXAMPLE NO. 3

Statement of Facts:

Cardco supplies a plan that is intended to minimize a person's financial loss if the person's credit cards or other important documents are lost or stolen.

Purchase of the plan entitles the recipient to the following:

- confidential registration of all cards;
- \$1,500 insurance coverage per claim against fraudulent use on any one claim if loss notification is received within 24 hours of discovery of the loss;
- unlimited protection against fraudulent use after loss notification;
- 24 hour 1-800 telephone access to report a loss;
- ordering replacement cards;
- change of address service;
- key tags bearing a unique number so that lost keys can be returned;
- registration of serial numbers of property and details of policies, shares, passports etc. to assist the recipient in notifying police or making insurance claims. \$50 insurance coverage for telephone, correspondence, and postage costs incurred in assisting police or in making claims against personal insurance;
- \$1,000 emergency cash rushed anywhere in the world (upon approval) if the recipient has lost cards. This is an interest free advance if repayment is made within 14 days;
- Cardco stickers for luggage so that lost luggage can be identified. \$50 insurance coverage is provided for telephone, correspondence, and postage costs incurred in arranging for the recovery of lost luggage;
- emergency worldwide medical coverage for the recipient;
- emergency airline ticket if the recipient is stranded overseas. The cost of the ticket is repayable within 14 days;
- annual printout of card details;
- medical emergency warning cards; and
- discounts for various travel related services supplied by other suppliers.

When a recipient buys the plan, the recipient receives a registration form, a change of address form, telephone stickers, a medical emergency warning card, property tags, and luggage labels. Cardco records the recipient's name, address, and the serial number of credit cards and other property. If any of the documents covered by the plan are lost or stolen, Cardco takes the necessary steps to prevent or limit the loss.

Cardco purchases insurance to indemnify against any losses under the plan.

Decision:

The transaction is a single taxable supply of an insurance service. As Cardco is not an insurer as defined in subsection 123(1) of the ETA and the policy is not for the purposes of accident or sickness insurance, the supply is taxable at the rate of 7% or 15% (as applicable).

Rationale:

It is clear that some of the elements of the transaction provide for insurance and some do not. The dominant purpose of the plan, however, is to obtain insurance coverage against loss arising from the misuse of credit cards or other documents.

For losses to be kept to a minimum, customers must be able to notify Cardco promptly of any problems so that Cardco can take appropriate action. For this purpose, Cardco needs an accurate record of the documents with the necessary details. To assist in the administration of the plan, luggage tags and medical warning cards are useful. Nevertheless, none of these constitute an aim in itself for the recipient whose main objective is financial protection against loss.

The principal supply is one of insurance by Cardco. Elements that are not insurance cannot be viewed as satisfying the recipient's needs on their own and cannot realistically be omitted from the principal supply of insurance. They are so dominated by the insurance element that they lose any separate identity for fiscal purposes. Elements that are not insurance are minor features of the plan and they cannot be regarded as being sufficiently coherent to be treated as separate supplies.

EXAMPLE NO. 4

Statement of Facts:

An optometrist supplies zero-rated contact lenses and, for a separate consideration, a service plan. The purchase of the plan is optional and entitles the recipient to the following for the duration of the plan:

- contact lens checks;
- professional cleaning of the lenses.
- a discount on the price of replacement lenses; and
- a discount on the price of eyeglasses.

The recipient must renew the plan yearly and will receive a renewal letter one month before the plan expires.

Decision:

The transaction consists of a zero-rated supply of contact lenses and a separate taxable supply of the plan.

Rationale:

The plan is not an input into the supply of the contact lenses. The purchase of the plan is optional. The provision of the contact lenses by themselves satisfy the recipient's need for clear vision and therefore is a supply distinct and independent from the provision of the plan. The plan can realistically be omitted from the supply of the contact lenses and still satisfy the recipient's needs.

For purposes of the ETA, neither of the two supplies are incidental to the other as a separate consideration is charged for each supply.