

Canada Revenue Agency Notice
Notice 194
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FOR DISCUSSION PURPOSES ONLY

Revised GST/HST Policy Statement P-051R2 *Carrying On Business In Canada.*

This policy statement is being disseminated by the Canada Revenue Agency in draft form for comments.

Comments or suggestions should be sent by November 30, 2004 to:

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GST/HST Policy Statement P-051R2:
CARRYING ON BUSINESS IN CANADA

SUBJECT:

Carrying on business in Canada

LEGISLATIVE REFERENCES:

Definition of "business" in subsection 123(1), subsections 143(1), 240(1), and 240(4) of the *Excise Tax Act* (the "Act").

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ISSUE:

At issue is whether or not a non-resident person is carrying on business in Canada for GST/HST purposes. This determination is important for purposes of determining if the non-resident is required to register for GST/HST purposes and to collect GST/HST on its taxable supplies.

DECISION:

The phrase "carrying on business in Canada" is not defined in the Act. The determination of whether a person is carrying on business in Canada for GST/HST purposes is a question of fact requiring consideration of all relevant facts. This policy statement sets out factors and principles to be considered in making such a determination, be it in a traditional or electronic commerce environment.

DISCUSSION:

Every non-resident person who carries on business in Canada, other than a small supplier, must register for GST/HST purposes if the non-resident person makes a taxable supply in Canada¹.

If a non-resident person does not carry on business in Canada and has not registered voluntarily for GST/HST purposes, any supplies made in Canada by the non-resident are deemed to be made outside Canada² and the non-resident is consequently not required to collect tax on those supplies. Tax may nevertheless have to be paid on the taxable importation of goods³ or self-assessed by Canadian residents on imported taxable supplies of intangible personal property and services⁴. When a non-registered non-resident person purchases goods in Canada from a registrant for subsequent supply to recipients in Canada, the registrant may be liable to collect tax from the non-resident generally calculated on the fair market value of the goods under the GST/HST drop-shipment rules⁵.

Even if a non-resident person is not carrying on business in Canada, the non-resident may register voluntarily for GST/HST if in the ordinary course of carrying on business outside Canada, the non-resident regularly solicits orders for the supply by the person of tangible personal property for export to, or delivery in, Canada, or has entered into an agreement for the supply by the person of services to be performed in Canada or of intangible personal property to be used in Canada⁶.

Prior to considering whether a non-resident person is "carrying on business in Canada", it is necessary to establish whether that non-resident is engaged in a "business", and whether that business is "carried on".

It should first be noted that the definition of "business" in the Act as set out below differs from the definition of that term in the *Income Tax Act*⁷, and that the Act does not contain the extended definition of "carrying on business" that the *Income Tax Act* does⁸. Therefore, a non-resident person considered to be carrying on business for income tax purposes is not necessarily considered to be carrying on business for GST/HST purposes. Equally, where it is determined that a non-resident person is carrying on business in Canada for GST/HST purposes, this does not necessarily mean that the non-resident is considered to be carrying on business in Canada for income tax purposes.

It is also important to note that there are specific provisions in the Act that make it unnecessary to determine whether certain persons are carrying on business in Canada in accordance with this policy. For instance, every person who enters Canada for the purpose of making taxable supplies of admissions in respect of a place of amusement, a seminar, an activity, or an event, is automatically required to register for GST/HST and must apply for registration before making

¹ Subsection 240(1) of the *Excise Tax Act* (the "Act")

² Subsection 143(1) of the Act

³ Division III of the Act

⁴ Division IV of the Act

⁵ Section 179 of the Act

⁶ Subsection 240(3) of the Act

⁷ Subsection 248(1) of the *Income Tax Act*

⁸ Section 253 of the *Income Tax Act*

such supplies⁹. Similarly, any person (other than a small supplier) who in Canada, be it through an employee or agent or by means of advertising directed at the Canadian market, solicits orders for the supply of prescribed property (such as magazines, books or periodicals) that is to be sent by mail or courier to the recipient at an address in Canada, is deemed to be carrying on business in Canada and is required to be registered¹⁰.

Carrying on a business

As defined in the Act, "business"¹¹:

"includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment".

The definition of "business" explicitly includes any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement. In determining whether a person who supplies property by way of lease is considered to be carrying on business for GST/HST purposes, it is important to take into account this particular aspect of the definition together with the presence of any of the factors indicated below.

The definition only makes reference to what the term "business" includes. Accordingly, what constitutes a business for GST/HST purposes is not limited by the definition, but also encompasses the commonly accepted meaning of "business" set out in jurisprudence as "...anything which occupies the time and attention and labour of a man for the purpose of profit is business". As indicated above, the expanded definition of "business" in the Act provides that a business can exist "whether the activity or undertaking is engaged in for profit".

The courts have held that to be carrying on business, the activities in question must be considered to occur on a regular or continuous basis. There are no definitive criteria or thresholds to establish how many activities constitute "regular", or how long a period is necessary to be "continuous". Each case must be determined based on its particular facts, including the history of the person's activities and the person's intention.

Carrying on business in Canada

The mere fact that a non-resident person undertakes a particular activity that falls within the definition of a "business" does not mean that the business is being carried on in Canada.

It is important to note that a non-resident person may be considered to be carrying on business in Canada even though that person may not have a permanent establishment¹² in Canada. For more information on the CRA's interpretation of the term permanent establishment, reference should be made to GST/HST Policy Statement P-208R: *Permanent Establishment*.

⁹ Subsection 240(2) of the Act

¹⁰ Subsection 240(4) of the Act

¹¹ Subsection 123(1) of the Act

¹² Subsection 123(1) of the Act and GST/HST Policy Statement P-208R *Permanent Establishment*

Guidelines

The factors that will be considered in determining whether a non-resident person is carrying on business in Canada for GST/HST purposes in a particular situation include:

- the place where agents or employees of the non-resident are located;
- the place of delivery;
- the place of payment;
- the place where purchases are made or assets are acquired;
- the place from which transactions are solicited;
- the location of assets (“profit making apparatus”) or an inventory of goods;
- the place where the business contracts are made;
- the location of a bank account;
- the place where the non-resident's name and business are listed in a directory;
- the location of a branch or office;
- the place where the service is performed; and
- the place of manufacture or production.

The importance or relevance of a given factor in a specific case depends on the nature of the business activity under review, and, as always, the particular facts and circumstances of each case.

For instance, the factors that are relevant to the determination of whether a non-resident supplying property by way of lease is carrying on business in Canada will differ from those that are relevant to the determination of whether a non-resident supplying services is carrying on business in Canada. In the case of a supply of property by way of lease, factors that are typically of greater importance include the place where the property is acquired by the non-resident lessor and the place where the property is delivered to the lessee. In the case of a supply of a service that is the principal object of the contract (as opposed to a service that is merely ancillary to the supply of property), factors that are typically of greater importance include the place where the service is performed and the place where employees are located.

Some of the factors that are relevant for businesses engaged in conventional business transactions may not be applicable to businesses engaged in electronic commerce (i.e., engaged in the making of supplies delivered by electronic means over the Internet). This would be the case for factors that relate to a physical presence in Canada, such as the place where the goods in question are manufactured. In addition, some factors must be interpreted to take into account the particular nature of electronic commerce. For example, in determining the place where payment

is made, it may be more appropriate, depending upon the circumstances, to consider the place where approval for the electronic transfer of funds takes place, rather than the place of posting or receipt of cheques.

In general, a non-resident person must have a significant presence in Canada to be considered to be carrying on business in Canada. Generally, isolated transactions carried on in Canada as part of a business that is carried on by a non-resident person outside Canada may not result in the person being considered to be carrying on business in Canada, given that the above-noted factors will usually not be met to a sufficient degree.

EXAMPLES

EXAMPLE #1 - LEASE OF TANGIBLE PERSONAL PROPERTY

Facts

1. A non-resident person that has a leasing business outside Canada enters into a sale-leaseback agreement to purchase a conveyance and supply it by way of lease to a resident registrant who will use the conveyance in Canada.
2. Pursuant to the agreement, delivery of the conveyance sold to the non-resident occurs in Canada.
3. The lessee has physical possession of the conveyance when the agreement is concluded.
4. The agreement is concluded outside Canada.
5. The conveyance is to be maintained by the lessee at its own expense.
6. The non-resident has no employees in Canada.
7. Payments are made to the non-resident outside Canada.
8. The non-resident does not have a bank account in Canada and is not listed in a directory in Canada.
9. The non-resident does not solicit orders in Canada.

Decision

The non-resident lessor is carrying on business in Canada.

Rationale

For GST/HST purposes, a "business" includes any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease. The non-resident lessor is considered to be in the business of supplying tangible personal property by way of lease. For GST/HST purposes, the supply of property under a lease is considered to be made on a regular and continuous basis. The non-resident lessor is considered to have made a separate supply of the property for each period to which a lease payment is attributable¹³. Also, a supply by way of lease, licence or similar arrangement of the use or the right to use tangible personal property is

¹³ Subsection 136.1(1) of the Act

deemed to be a supply of the tangible personal property¹⁴. The "profit making apparatus" for GST/HST purposes is considered to be the tangible personal property being leased.

In this case, both delivery of the conveyance to the lessor and the lessee under the agreement occur in Canada and the conveyance (i.e. the "profit making apparatus") is based in Canada during the term of the lease. These facts combined with the application of the GST/HST provisions indicate that the non-resident lessor is carrying on business in Canada.

EXAMPLE #2 - LEASE OF TANGIBLE PERSONAL PROPERTY

Facts

1. A non-resident person engaged in the business of supplying industrial equipment outside Canada by way of lease enters into an agreement to supply equipment by way of lease to a resident registrant.
2. The lease agreement for the equipment is accepted and concluded at the non-resident's place of business outside Canada.
3. Pursuant to the lease agreement, the lessee acquires possession of the equipment outside Canada at the beginning of the lease.
4. Under the terms of the lease contract it is the lessee who is responsible for all maintenance and servicing of the equipment during the course of the lease.
5. The non-resident does not engage in any solicitation activities in Canada.
6. The non-resident has no employees in Canada or facilities (either management, sales or service) of any kind in Canada.
7. The non-resident is not listed in any directories in Canada.
8. The non-resident has a bank account in Canada.
9. The lease payments are made in Canada.

Decision

The non-resident lessor is not carrying on business in Canada.

Rationale

Other than the place of payment and a bank account, there are not enough factors present in Canada in this case to conclude that the non-resident is carrying on business in Canada.

¹⁴ Subsection 136(1) of the Act

EXAMPLE #3 - LEASE OF TANGIBLE PERSONAL PROPERTY

Facts

1. A non-resident person who is in the business of leasing tangible personal property outside Canada enters into a lease agreement to supply by way of lease a piece of industrial equipment to a resident registrant who will use the equipment at its business facility in Canada.
2. The non-resident acquires the equipment outside Canada.
3. The lessee is given physical possession of the equipment at its facility in Canada at the beginning of the lease.
4. The lease agreement is concluded in Canada.
5. The equipment is to be maintained by the lessee at its own expense.
6. The non-resident has no employees in Canada.
7. The non-resident is not listed in a directory in Canada.
8. The non-resident does not solicit orders in Canada.
9. Payments under the lease are made in Canada.
10. The non-resident has a bank account in Canada.

Decision

The non-resident lessor is carrying on business in Canada.

Rationale

In this case, delivery of the equipment to the lessee occurs in Canada, the place of contract is in Canada, payment is made in Canada and the non-resident has a bank account in Canada. Also, the equipment (i.e. the "profit making apparatus") is located in Canada during the term of the lease. These facts combined with the application of the GST/HST provisions that relate to the supply of property by way of lease indicate that the non-resident lessor is carrying on business in Canada.

EXAMPLE #4 - ASSIGNMENT OF LEASE

Facts

1. A resident registrant (the "original lessor") who is in the business of leasing tangible personal property outside Canada enters into a lease to supply by way of lease a piece of industrial equipment to another resident registrant (the "lessee") who will use the equipment at its business facilities in Canada.
2. Pursuant to the lease, possession of the equipment is given to the lessee in Canada.
3. The original lessor subsequently enters into an agreement (the "agreement") to sell, assign, and transfer all rights, title, and interest in the lease and the equipment to a non-registered non-resident person, resulting in that non-resident becoming the new lessor of the equipment.

4. Pursuant to the agreement, delivery of the equipment sold to the non-resident occurs in Canada.
5. The lessee has physical possession of the equipment in Canada when the agreement is concluded.
6. The agreement is concluded outside Canada.
7. Pursuant to the terms of the lease with the original lessor, the equipment is to be maintained by the lessee at its own expense.
8. The non-resident has no employees in Canada.
9. The lease payments are made to the original lessor in Canada on behalf of the non-resident. The original lessor forwards the lease payments to the non-resident.
10. The non-resident does not have a bank account in Canada and is not listed in a directory in Canada.
11. The non-resident does not solicit orders in Canada.

Decision

The non-resident is carrying on business in Canada.

Rationale

In this case, the non-resident is acquiring the equipment in Canada and the lessee has acquired possession of the equipment in Canada and the equipment (i.e. the "profit making apparatus") is also located in Canada during the term of the lease. The lease payments are also made in Canada. These facts combined with the application of the GST/HST provisions that relate to the supply of property by way of lease indicate that the non-resident lessor is carrying on business in Canada.

EXAMPLE #5 - RENEWAL OF LEASE

Facts

1. A non-resident person engaged in the business of supplying industrial equipment by way of lease outside Canada enters into an agreement to supply equipment by way of lease to a resident registrant.
2. The lease agreement for the equipment is accepted and concluded at the non-resident's place of business outside Canada.
3. Pursuant to the lease agreement, the lessee acquires possession of the equipment outside Canada at the beginning of the lease.
4. At the end of the term of the lease agreement, the lessee opts to renew and extend the lease as contemplated in a clause in the original lease agreement.
5. The equipment is in the possession of the lessee at its facilities in Canada at the time of the renewal.
6. Under the terms of the lease it is the lessee who is responsible for all maintenance and servicing of the equipment during the course of the lease.
7. The non-resident does not engage in any solicitation activities in Canada.

8. The non-resident has no employees in Canada or facilities (either management, sales or service) of any kind in Canada.
9. The non-resident is not listed in any directories in Canada.
10. The non-resident does not have a bank account in Canada.
11. The lease payments are made outside Canada.

Decision

The non-resident is not carrying on business in Canada.

Rationale

When the lease agreement is first entered into, there are not enough factors present in this case to conclude that the non-resident is carrying on business in Canada. With respect to the subsequent renewal of the lease, other than the fact that the lessee has physical possession of the equipment in Canada, there are not enough factors present in Canada to consider the non-resident to be carrying on business in Canada.

EXAMPLE #6 - LEASE OF REAL PROPERTY

Facts

1. A non-resident leasing company purchases an existing commercial building in Canada in which office space is rented out to businesses.
2. Pursuant to a lease agreement that is concluded outside Canada, the non-resident leases the entire building to a registrant. The registrant in turn leases out the individual offices to commercial tenants and is fully responsible for the management of the building at its own expense.
3. The non-resident's involvement is essentially limited to receiving monthly lease payments from the registrant. These payments are made outside Canada.
4. The commercial building is the only asset that the non-resident owns in Canada.
5. The non-resident has no employees in Canada.
6. The non-resident does not have a bank account in Canada and is not listed in a directory in Canada.
7. The non-resident does not solicit business in Canada.

Decision

The non-resident is carrying on business in Canada.

Rationale

In this case, the "profit making apparatus" (i.e. the building) is located in Canada. This fact combined with the application of the GST/HST provisions that relate to the supply of property by way of lease indicate that the non-resident lessor is carrying on business in Canada.

EXAMPLE #7 - SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident manufacturer supplies goods by way of sale on a worldwide basis, including the supply of goods by way of sale in Canada.
2. The goods are manufactured by the non-resident at a place outside Canada.
3. The non-resident solicits orders for the supply of goods in Canada through advertising directed at the Canadian market.
4. The contract for the supply of goods is concluded outside Canada.
5. Delivery of the goods to the customers occurs in Canada.
6. Payment for the goods is made outside Canada.
7. The non-resident has no bank account in Canada.
8. The non-resident has no employees in Canada.
9. The non-resident's inventory of goods is stored outside Canada.

Decision

The non-resident manufacturer is not carrying on business in Canada.

Rationale

The only factors in this case that are indicative of the non-resident carrying on business in Canada are the place of delivery and solicitation. These factors are insufficient to conclude that the non-resident is carrying on business in Canada.

EXAMPLE #8 - SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident supplies goods by way of sale on a worldwide basis, including the supply of goods by way of sale in Canada.
2. The non-resident solicits orders for the supply of goods in Canada through advertising and an independent sales representative.
3. The contract for the supply of goods is concluded outside Canada.
4. Payment for the goods is made outside Canada.
5. The non-resident has no bank account in Canada.
6. The non-resident has no employees in Canada.
7. The goods are manufactured outside Canada.
8. The non-resident maintains an inventory of existing goods for sale at a warehouse in Canada where the non-resident rents space.
9. Upon receiving orders outside Canada, the non-resident arranges to have the goods shipped from the warehouse to the customers in Canada.

10. Delivery of the goods to the customers occurs in Canada.

Decision

The non-resident is carrying on business in Canada.

Rationale

The non-resident is carrying on business in Canada based on the fact that the non-resident has an inventory of goods for sale in Canada, the goods are delivered in Canada, and the non-resident solicits orders in Canada.

EXAMPLE #9 - SUPPLY OF GOODS BY WAY OF SALE

Facts

1. As a non-resident person receives orders from its customers in Canada, the non-resident purchases goods from a registrant in Canada for resale to the customers.
2. The registrant delivers the goods directly to the non-resident's customers in Canada on the non-resident's behalf.
3. The non-resident does not solicit orders for the supply of its goods in Canada.
4. The contract for the supply of goods by the non-resident is concluded outside Canada.
5. Payment by the customers for the goods is made outside Canada.
6. The non-resident has no bank account in Canada.
7. The non-resident has no employees in Canada.

Decision

The non-resident is not carrying on business in Canada.

Rationale

The only factors in this case that are indicative of the non-resident carrying on business in Canada are the place of purchase and delivery of the goods. These factors are insufficient to conclude that the non-resident is carrying on business in Canada.

EXAMPLE #10 - SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident manufacturer supplies highly specialized industrial machinery by way of sale on a worldwide basis, including Canada.
2. The machinery requires installation by the non-resident and pursuant to the sales agreement is to be supplied by the non-resident on an installed basis.

3. Employees of the non-resident enter Canada to install the machinery at the purchasers' premises. The installation requires work to be done over a short period of time.
4. The non-resident solicits orders for the supply of the machinery in Canada through advertising directed at the Canadian market.
5. The contract for the supply of the machinery is concluded outside Canada.
6. Delivery of the machinery to the purchasers occurs in Canada.
7. Payment for the machinery is made outside Canada.
8. The non-resident has no bank account in Canada.
9. The non-resident has no employees in Canada other than the employees who install the machinery.

Decision

The non-resident manufacturer is not carrying on business in Canada.

Rationale

The only factors in this case that are indicative of the non-resident carrying on business in Canada are the place of delivery and solicitation. Although employees of the non-resident are in Canada to install the machinery, the supply being made is a supply of tangible personal property in relation to which the installation is merely ancillary.

EXAMPLE #11 - SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident supplies goods by way of sale on a worldwide basis, including in Canada.
2. The non-resident acquires the services of a manufacturer in Canada to manufacture the goods.
3. The non-resident purchases in Canada from various registrants the raw materials necessary to make the products and has the materials shipped to the manufacturer for use in the manufacturing process.
4. The non-resident maintains an inventory of the manufactured goods in Canada at the manufacturer's premises that is drawn upon to fill future orders for the goods for delivery both inside and outside Canada.
5. The non-resident solicits orders for the supply of the goods in Canada.
6. All contracts for the supply of goods are concluded outside Canada.
7. Payment for the goods is made outside Canada.
8. The non-resident has no bank accounts in Canada.
9. The non-resident has no employees in Canada.

Decision

The non-resident is carrying on business in Canada.

Rationale

The non-resident is carrying on business in Canada based on the fact that the non-resident purchases the raw materials in Canada, has the goods manufactured in Canada, has an inventory of the goods in Canada for sale, delivery of some goods occurs in Canada, and the non-resident solicits orders for the goods in Canada.

EXAMPLE #12 ELECTRONIC COMMERCE - DIGITIZED PRODUCTS

Facts

1. A non-resident corporation supplies downloadable audio files by way of sale.
2. The non-resident has a Web site hosted on its own server located at its main office located outside Canada, and advertises its Web site on the Internet.
3. The advertisements are directed to the Canadian market.
4. The Web site and server are fully interactive: the customer in Canada may view product listings of music and other advertising, place orders (including payment for audio files selected), and download a copy of the purchased audio files without any contact with the non-resident's personnel.
5. The place of contract is in Canada.
6. The customer pays by credit card and an independent service provider located in Canada processes payments for the non-resident.
7. Once the audio files are received by the customer, they may be used in Canada.
8. All customer service and after-sales support is provided by means of telephone or e-mail communication by the non-resident's personnel located in its main office outside Canada.
9. The non-resident has no employees in Canada.
10. The non-resident has no premises or equipment in Canada.
11. The non-resident has no bank account in Canada and is not listed in any business directory in Canada.

Decision

The non-resident is not carrying on business in Canada.

Rationale

Most of the relevant factors in this case occur at a place outside Canada. Of the list of factors to be considered, only the following would indicate some business activity of the non-resident in Canada: advertising is directed to potential customers in Canada; the place of contract is in Canada; product purchases are made in Canada; and payment is processed in Canada. However, in general these factors would not, by themselves, indicate that the non-resident is carrying on business in Canada.

EXAMPLE #13 ELECTRONIC COMMERCE - SOFTWARE APPLICATIONS

Facts

1. A non-resident vendor supplies the right to use various software applications to customers in Canada.
2. The non-resident owns a Web site stored on a server in Canada.
3. The server that stores and provides access to the Web site is owned and operated by an independent Internet Service Provider and is therefore not at the non-resident's disposal.
4. The non-resident advertises its software applications on its Web site, directed to the Canadian market, and also advertises its software applications and Web site in Canadian newspapers.
5. The software applications are stored on the server as part of the Web site.
6. Customers in Canada can order software applications by completing and submitting order forms on-line.
7. Once a form is submitted, the order is processed automatically and the customer is granted a right of access to the selected software applications. Customer access is controlled and monitored by use of a computer-generated user ID and password.
8. Customers are invoiced electronically, automatically, according to the number of hours the applications are used, and may pay by credit card or cheque.
9. An independent service provider located in Canada processes payment for the vendor.
10. An independent contractor located in Canada provides after-sales customer support on behalf of the non-resident.

Decision

The non-resident is carrying on business in Canada.

Rationale

In this example the facts support the conclusion that the non-resident is carrying on business in Canada. In addition to the fact that independent contractors located in Canada are used for after-sales support, the following factors would indicate that the non-resident has significant business activity in Canada: advertising in Canadian newspapers; the provision of payment processing by independent service providers located in Canada; and activities carried out by means of the automated, interactive Web site stored on a server in Canada.

EXAMPLE #14 ELECTRONIC COMMERCE - APPLICATION HOSTING

Facts

1. For a single annual fee, a non-resident application service provider supplies access to a highly specialized Web-based software application that it hosts on its servers outside Canada. The software will track and process a customer's real-time data to allow the customer to manage its inventory more efficiently.

2. The non-resident provides its customers with technical support that allows them to interact by phone or e-mail with the non-resident's technicians located outside Canada.
3. The non-resident has business customers in various countries including Canada.
4. Each of the non-resident's customers can access and use the software application remotely over the Internet with a unique user ID and password.
5. The non-resident's Web site includes advertising specifically directed at the Canadian market.
6. The agreement for the supply with customers in Canada is concluded on-line and in Canada.
7. Payment for the supply is made outside Canada.
8. The non-resident has no employees in Canada
9. The non-resident has no premises or equipment in Canada.
10. The non-resident has no bank account in Canada and is not listed in any business directory in Canada.

Decision

The non-resident is not carrying on business in Canada.

Rationale

Most of the relevant factors in this case occur at a place outside Canada. Of the list of factors to be considered, the only factors indicative of the non-resident carrying on business in Canada in this case are the place of solicitation and the place of contract. These factors are insufficient to conclude that the non-resident is carrying on business in Canada.

EXAMPLE #15 - SUPPLY OF SERVICES

Facts

1. A large international non-resident corporation specializing in the provision of offshore engineering services has been contracted by a Canadian person to perform services on an oil rig stationed at a Canadian port. The contract is the non-resident's only contract in Canada.
2. The contract calls for an employee of the non-resident to enter Canada and to perform services for a period of one week on board the rig.
3. The non-resident does not solicit business in Canada.
4. The contract for the supply is concluded outside Canada.
5. Payment for the supply is made outside Canada.
6. The non-resident is not listed in any directories nor does it have any bank accounts or offices in Canada.
7. With the exception of the employee who temporarily enters Canada to perform the services, the non-resident has no employees in Canada.

Decision

The non-resident is not carrying on business in Canada for GST/HST purposes.

Rationale

Although an employee of the non-resident is entering Canada to perform the service to be supplied, in the context of the facts and the overall business activity of the non-resident, this does not result in the non-resident having a significant presence in Canada. The non-resident is therefore not carrying on business in Canada for GST/HST purposes.

EXAMPLE #16 - SUPPLY OF SERVICES

Facts

1. A non-resident company specializing in the cleaning of power generating facilities has entered into a contract to clean power-generating facilities located in Canada.
2. The service provided is comprehensive in nature and requires highly specialized equipment and know-how.
3. Due to the complexity of the project and the size of the facilities, the project will take at least one month to complete.
4. Ten employees of the non-resident will enter Canada to perform the service.
5. The non-resident will import the equipment necessary to perform the service.
6. The contract is concluded outside Canada.
7. The non-resident solicits business in Canada through advertising directed at the Canadian market.
8. Payment for the supply is made outside Canada.
9. The non-resident has no employees in Canada other than those performing the cleaning service.
10. The non-resident has no premises in Canada, and, other than the equipment temporarily imported to perform the service, the non-resident does not have equipment in Canada.
11. The non-resident has no bank account in Canada and is not listed in any business directory in Canada.

Decision

The non-resident person is carrying on business in Canada.

Rationale

The service that is to be supplied is to be performed in Canada and several employees of the non-resident are entering Canada to perform that service. This, in addition to the relative significance of the service to the overall business activity of the non-resident and the fact that the non-resident is soliciting business in Canada is sufficient to conclude that the non-resident has a significant presence in Canada resulting in the non-resident carrying on business in Canada.

EXAMPLE #17 - SUPPLY OF SERVICES

Facts

1. A non-resident company is in the business of providing consulting and training on how to improve business productivity.
2. The supply made by the non-resident typically involves employees of the non-resident first visiting a client's business premises to analyze its existing production operations. The non-resident then makes recommendations to the management of the client on how to improve its productivity. This is followed by the delivery of an in-depth training session to the client's employees on the methodologies to be used to improve productivity taking into account the client's particular operations. The non-resident's employees will then remain at the client's premises for a period of time to monitor the implementation of the recommended new work processes and respond to client questions.
3. Based on the number of employees that the company has and the nature of the work involved, the company can typically undertake only one contract at a time.
4. The non-resident obtains a contract to supply its service to a Canadian company. This is the non-resident's only contract in Canada.
5. The contract requires five employees of the non-resident to enter Canada and to be present at the Canadian company's premises to perform the service. The specific work to be undertaken by the employees involves a two-week analysis of the client's operations, followed by the delivery of a one-month training session to all of the client's employees, followed by a two-week assessment of the implementation of the recommendations. The non-resident's employees will therefore be present at the client's premises for a period of at least two months.
6. The contract for the service is concluded outside Canada.
7. The non-resident does not solicit business in Canada.
8. Payment for the supply is made outside Canada.
9. The non-resident has no premises in Canada.
10. The non-resident has no bank account in Canada and is not listed in any business directory in Canada.

Decision

The non-resident is carrying on business in Canada.

Rationale

The service that is to be supplied is to be performed in Canada and several employees of the non-resident are entering Canada to perform that service. This, in addition to the relative significance of the service to the overall business activity of the non-resident is sufficient to conclude that the non-resident has a significant presence in Canada and is therefore carrying on business in Canada.

EXAMPLE #18 - SUPPLY OF SERVICES

Facts

1. A large non-resident painting company obtains a contract to paint the interior of a Canadian company's commercial building in Canada. The work is expected to take approximately seven months to complete.
2. The non-resident is based outside of Canada and does not have any employees to perform the work. Therefore, as allowed by the terms of the contract, the non-resident fully subcontracts the job to a Canadian painting company that is a registrant.
3. The registrant is a contractor that carries on business in Canada. Pursuant to the terms of the subcontract with the non-resident, the registrant is free to undertake the work in the manner that it chooses. The only requirements are that the work be completed within the agreed-upon time frame and painted in the colour stipulated in the contract between the non-resident and the Canadian building owner.
4. The non-resident will not be in Canada supervising the work performed in Canada by the registrant. The non-resident's involvement regarding the supply will be limited to occasionally contacting the registrant from outside Canada to see how the work to be done is progressing.
5. The contract between the non-resident and the Canadian building owner is concluded outside Canada.
6. The subcontract between the non-resident and the registrant is concluded in Canada.
7. Payment by the building owner for the supply made by the non-resident is made outside Canada.
8. Payment by the non-resident for the supply made by the registrant is made in Canada.
9. The non-resident has no employees or agents in Canada.
10. The non-resident does not solicit business in Canada.
11. The non-resident has no premises or equipment in Canada.
12. The non-resident has no bank account in Canada and is not listed in any business directory in Canada.

Decision

The non-resident is not carrying on business in Canada for GST/HST purposes.

Rationale

There are no factors in this case that would indicate that the non-resident is carrying on business in Canada for GST/HST purposes. In particular, the non-resident has no presence in Canada in the form of employees or agents in Canada.