



GST/HST Memoranda Series

4.5.3 Exports – Services and Intellectual Property

June 1998

Overview This section provides information on supplies of services (Part One) and intellectual property (Part Two) that are listed in Part V of Schedule VI to the *Excise Tax Act* as zero-rated exports for purposes of the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST). Information on supplies of tangible personal property is provided in Section 4.5.2, *Exports - Tangible Personal Property*. Information on the criteria for determining the non-residence status of persons to whom supplies are made in order to determine whether a supply may be zero-rated to that person is provided in Section 4.5.1, *Exports - Determining Residence Status*.

Disclaimer The information in this memorandum does not replace the law found in the *Excise Tax 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 a 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.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

Note This section of Chapter 4 supersedes paragraphs 72 to 114 of GST Memorandum 300-3-5, *Exports*. Due to the number of revisions, the changes have not been side-barred.

[Proposed amendments] [Where information reflects proposed amendments, the information is enclosed in square brackets.] In this section, the proposed amendments that are reflected through the use of square brackets arise from the Notice of Ways and Means Motion that was tabled on March 21, 1997. Any commentary in this section should not be taken as a statement by the Department that such amendments will in fact be enacted into law in their current form.

Part One - Services

Supplies to unregistered non-resident carriers

Services made to non-resident operators of ships, aircraft or railways
Sch. VI, Part V, s 2 1. A supply of a service (other than a sale of real property) made to non-resident operators of ships, aircraft or railways, who are not registered at the time the supply is made, is zero-rated where the supply is acquired by the operator for consumption, use or supply

4.5.3 Exports - Services and Intellectual Property (continued)

- (a) where the person carries on a business of transporting passengers or property to or from Canada or between places outside Canada by ship, aircraft or railway, in the course of so transporting passengers or property;

Note: The phrase “between places outside Canada” refers to situations where transportation of property or passengers does not originate or terminate in Canada, but where the conveyance travels through Canada, resulting in the zero-rating of supplies.

- (b) in the course of operating a ship or aircraft by or on behalf of a government of a country other than Canada; or
- (c) in the course of operating a ship for the purpose of obtaining scientific data outside Canada or for the laying or repairing of oceanic telegraph cables.

2. Examples of supplies that would be zero-rated, provided that the conditions of section 2 of Part V of Schedule VI are met, include:

- services supplied to an unregistered non-resident person in the operation of a ship, aircraft or railway, including services in respect of real property such as aircraft landing fees, railway right-of-way charges, warehouse fees, etc.,
- repair and maintenance services,
- railway junction and switching services, and
- pilotage services.

More information

3. Additional information on tangible personal property is available in Section 4.5.2, *Exports - Tangible Personal Property*, of this Chapter.

4. Supplies made to an unregistered non-resident person operating a ship, an aircraft or a railway, where the supplies are not for consumption, use or supply in the course of transporting passengers or property are not zero-rated. For the supply to be zero-rated, the ship, aircraft or railway must be in service (i.e., on its way to a destination).

[Air navigation services]

[Sch. VI, Part V, new s 2.2]

5. [An amendment proposes to zero-rate air navigation services supplied to air carriers registered for the GST/HST in relation to international flights when transporting passengers or property. This would apply to services performed after March 1997.]

Services performed on temporarily imported tangible personal property

Services on goods temporarily imported solely for service
Sch. VI, Part V, s 4

6. A supply of a service (other than a transportation service) in respect of tangible personal property that is ordinarily situated outside Canada and that is temporarily imported into Canada for the sole purpose of having the service performed is zero-rated. Effective on or after April 24, 1996, supplies of tangible personal property (e.g., parts) supplied in conjunction with such services are also zero-rated. The tangible personal property must be exported as soon as is practicable after the service is performed to qualify for this tax relief.

Example

A Canadian firm supplies goods and services for the maintenance and repair of trailers owned by U.S. clients. The trailers are imported for the purpose of maintenance and repair, and exported once these services have been performed. When invoicing its non-resident clients, the Canadian firm provides a breakdown of the costs -- one total for parts, and another total for labour. If the Canadian firm is making a supply of parts and a supply of labour, both the supplies will be zero-rated.

As soon as practicable after the service is performed

7. Whether the property was exported as soon as practicable after the service was performed depends on the facts of each situation, including the type of property involved and the general business practices of the recipient. Where the property was not exported either immediately after the supply was made or in the time-frame originally anticipated, the Department will consider documentary evidence provided by the supplier explaining the reason for the delay; for example, evidence that:

- (a) a late shipment from a subcontractor delayed the shipment of the whole consignment;
- (b) transportation obstacles have been encountered;
- (c) some tangible personal property is held in inventory while awaiting delivery of other property before exporting all of the property at once; or
- (d) other similar situations have resulted in unexpected delays.

Services of agents or representatives

Agents or representatives of non-residents
Sch. VI, Part V, s 5

8. A supply made to a non-resident person of a service of acting as an agent or representative of that person or of arranging for, procuring or soliciting orders for supplies by or to the person is zero-rated to the extent that the service is in respect of a supply that is

- (a) a zero-rated export to the non-resident under Part V of Schedule VI to the Act, or
- (b) a supply made outside Canada by or to the non-resident person.

4.5.3 Exports - Services and Intellectual Property (continued)

Example	An unregistered non-resident corporation located in the United States (USCo) contracts with a Canadian sales representative to promote USCo's products in a specific geographic area, i.e., Manitoba and Saskatchewan. The solicitation is done by mail, telephone, door-to-door, including the provision of product information (e.g., advertising brochures), and participation in trade shows where product information is provided, free samples are distributed and demonstration of the products is given. The sales representative may also assist customers with the completion of purchase orders. However, purchase orders are accepted by USCo in the United States. The sales representative is paid a fee (i.e., commission) for her services, based on 5% of the value of the sales of USCo's products in Manitoba and Saskatchewan. The supply of the service provided by the sales representative is zero-rated.
Supplies outside Canada	9. For information on supplies made in or outside Canada, refer to GST Memorandum 300-5, <i>Place of Supply</i> , (to be re-issued as Section 3.3, <i>Place of Supply</i> , in Chapter 3, <i>Tax on Supplies</i>).
General legal principles	10. General legal principles will be referred to in determining whether a person dealing with a non-resident is providing the services of an agent. According to those principles, an agent includes a person who is authorized to bring another party for whom the person acts (i.e., the principal) into contractual relations with third parties. Detailed information on what constitutes an agency relationship is available in Policy Statement P-182, <i>Determining the Meaning of "Agent" and "Agency"</i> .
Agency relationship	11. Whether a person will be considered an agent of another person is a question of fact. The onus is on the parties involved in a transaction to determine whether an agency relationship exists and to ensure that their agreement reflects their intentions in this regard.

Emergency repair services

Emergency repairs to conveyances or cargo containers Sch. VI, Part V, s 6	12. A supply made by a person to a non-resident recipient of an emergency repair service, and of any tangible personal property supplied in conjunction with such a service, in respect of conveyances or cargo containers while the conveyances or containers are being used or transported by that person in the course of a business of transporting passengers or property, is zero-rated. Effective for supplies made on or after April 24, 1996, this zero-rating provision applies whether or not the carrier is using the particular conveyance or cargo container, provided it is being transported (i.e., it also applies to empty conveyances or cargo containers).
Example	Where a domestic carrier is responsible for repairing damaged cargo containers or conveyances that belong to other carriers while the containers or conveyances are in the domestic carrier's possession, and where a non-resident is the recipient of the repair service or tangible personal property supplied in conjunction with the service, the supply will be zero-rated.

4.5.3 Exports - Services and Intellectual Property (continued)

"Emergency"	<p>13. An "emergency" is an unforeseen event or combination of events that calls for immediate action. For example, the repairs must be of an urgent nature in that if they are not immediately undertaken they could seriously affect the safety of the conveyance, the property or passengers being transported or the people working on or about the conveyance. The application of this section would depend on the facts associated with each situation. For example, on-going maintenance and upkeep that would reasonably allow a vessel to safely continue its journey in Canada would not be considered an emergency, and would therefore not meet the requirement of section 6 of Part V of Schedule VI, but may meet the requirements of zero-rating under section 2 (supplies to unregistered foreign carriers) of Part V of Schedule VI.</p>
Emergency repairs to railway rolling stock Sch. VI, Part V, s 6.1	<p>14. Effective for supplies made on or after April 24, 1996, an emergency repair service (including any tangible personal property supplied in conjunction with the service) in respect of railway rolling stock is zero-rated when supplied to an unregistered non-resident, provided the railway rolling stock is being used in the course of a business to transport passengers or property.</p>
Example	<p>While transporting an empty tank car from Montreal to Quebec City, the domestic carrier notices that one of the wheels of the tank car is damaged. The carrier delivers the empty tank car to a repair facility. The repair firm contacts the unregistered non-resident lessor of the tank car and obtains authorization to repair the tank car. Following the repairs, the tank car is returned to the carrier for transportation to Quebec City. The repair service, including the parts, supplied by the repair firm to the unregistered non-resident is zero-rated.</p>
Emergency repairs to or storage of empty cargo containers Sch. VI, Part V, s 6.2	<p>15. Effective for supplies made on or after April 24, 1996, certain emergency repair or storage services in respect of empty cargo containers (and any tangible personal property supplied in conjunction with the repair services) are zero-rated. To qualify for zero-rating, the following conditions must be met:</p> <ul style="list-style-type: none">(a) the service must be supplied to an unregistered non-resident;(b) the cargo container must be used to transport property to or from Canada;(c) the cargo container must be classified under heading 98.01 or subheading 9823.90 of Schedule I to the <i>Customs Tariff</i> (as it read before January 1, 1998); and(d) the container must be 6.1 metres in length or longer, or must have an internal capacity of 14 cubic metres or more.
Example	<p>Goods are imported into Canada. After clearance by Canada Customs, the goods are unloaded and the empty container, which measures 21 feet (6.4 metres) in length, is transferred to a cargo container storage depot located in Canada for storage purposes. The owner of the container is an unregistered non-resident. The container remains in storage until the container owner directs the container storage depot to turn the container over to a carrier. The container storage service supplied by the cargo container storage depot to the unregistered non-resident owner of the container is zero-rated.</p>

Exports of services - general provision for zero-rating

General provision for exported services
Sch. VI, Part V, s 7

16. Section 7 of Part V of Schedule VI is a general zero-rating provision concerning the export of services. Other sections in Part V of Schedule VI address situations involving the zero-rating of specific services.

17. A supply of a service made to a non-resident is zero-rated provided the supply is not specifically excluded under paragraphs (a) to (h) of section 7. Although a service may be excluded from zero-rating under this provision, the service may still qualify for zero-rating under one of the other sections contained in Part V of Schedule VI. Since some of the relevant legislative provisions have recently been amended, a comparison of the current and previous exclusions is provided in Appendix A, *Specific services excluded from section 7 - general provision for zero-rating exported services*.

Exclusions from the general provision

Status of recipient
Sch. VI, Part V,
paras 7(a) and (a.1)

18. Effective for supplies for which all of the consideration was paid without becoming due or became due on or after July 1, 1996, the provision for zero-rating services to non-resident persons clarifies that services made or rendered to a non-resident individual do not qualify for zero-rating if the non-resident individual is in Canada at any time when the individual has contact with the supplier in relation to the supply or where the service is rendered to the individual while the individual is in Canada, whether the individual is the recipient of the supply or not.

Example

A non-resident corporation sends its employees to Canada for training in the operation of a new computer system. The resident firm providing the training invoices the non-resident corporation for the training service. The training service supplied to the non-resident corporation is subject to the 7% GST or 15% HST, whichever is applicable, because the service was rendered to individuals while the individuals were in Canada, unless the service is zero-rated under another provision.

Advisory, consulting or professional service
Sch. VI, Part V,
para 7(b) and
s 23

19. Advisory, consulting or professional services are excluded from the general provision for zero-rating exported services. However, section 23 zero-rates certain supplies of advisory, professional or consulting services made to non-residents subject to certain exclusions. These supplies of zero-rated advisory, consulting or professional services are explained in paragraphs 41 to 50.

Postal service
Sch. VI, Part V,
para 7(c) and s 22

20. A postal service is excluded from the general zero-rating provision for exported services. However, certain postal services are zero-rated under section 22. These supplies are explained in paragraph 37.

Real property/tangible personal property
Sch. VI, Part V,
paras 7(d) and (e) and
s 23

21. Services in respect of real property situated in Canada and services in respect of tangible personal property that is situated in Canada at the time the service is performed are excluded from the general zero-rating provision for exported services. Paragraphs 44 to 50 contain more information on the exclusions of a service in respect of real property and tangible personal property.

4.5.3 Exports - Services and Intellectual Property (continued)

Acting as agent
Sch. VI, Part V,
para 7(f) and s 5

22. Effective for supplies made on or after April 24, 1996, a service of acting as an agent of the non-resident person or of arranging for, procuring or soliciting orders for supplies by or to the person is excluded from the general provision for zero-rating exported services. However, section 5 zero-rates certain supplies of the service of acting as an agent or representative for non-residents. These supplies are explained in paragraphs 8 to 11.

Transportation
Sch. VI, Part V,
para 7(g) and
Sch. VI, Part VII

23. Transportation services are excluded from the general provision for zero-rating exported services. However, certain transportation services are zero-rated under Part VII of Schedule VI. Additional information on zero-rated transportation services is available in GST Memorandum 300-3-7, *Transportation Services*, (to be re-issued in Chapter 28, *Special Sectors: Transportation*).

Telecommunication
Sch. VI, Part V,
para 7(h)

24. Effective for supplies made on or after December 16, 1996, telecommunication services are excluded from the general provision for zero-rating exported services. However, certain telecommunication services are zero-rated under section 22.1 as explained in paragraphs 38 to 40.

Advertising services

Sch. VI, Part V, s 8

25. A supply of a service of advertising made to a non-resident person who is not registered for purposes of the GST/HST at the time the service is performed is zero-rated.

Meaning of advertising
service

26. An advertising service is generally considered by the Department to be

• creating a message

(a) a service of creating a message oriented towards soliciting business, attracting donations, or calling public attention in the form of an information notice, a political announcement or other similar communication by any means including oral, written, or graphic statements and representations disseminated by any means, including,

(i) in a newspaper or other publication,

(ii) on radio or television,

(iii) in a notice, handbill, sign, catalogue, or letter, and

(iv) on a billboard or on real property; and

• communicating a
message

(b) a service directly related to the communication of such a message (e.g., air time on a broadcasting service, space in a publication) where,

(i) the communication service is supplied as part of the supply of a message as defined in paragraph (a) above, or

4.5.3 Exports - Services and Intellectual Property (continued)

- (ii) the person providing the communication service can demonstrate that, at the time the supply is made, the service is in relation to the supply of a message as defined in paragraph (a) above.

27. There are occasions where the person broadcasting or communicating a message, within the meaning of subparagraph (b) above, will not be the same person supplying the message (i.e., the creative aspect). Generally, the person supplying the broadcast or communication service will be in possession of the message or will have received sufficient information as to the content of the message prior to the supply of the service to know that the message is in the nature of advertising. In these situations, the supply of the broadcast or communication service will be considered to be a supply of an advertising service.

Advisory, consulting or research services

Supplies to persons moving to or establishing businesses in Canada
Sch. VI, Part V, s 9

28. A supply of an advisory, consulting or research service made to a non-resident person is zero-rated where it is intended to assist the non-resident person to:

- (a) become a resident of Canada; or
(b) establish a business venture in Canada.

Policy statement
P-173

The service may continue to be zero-rated up to the moment when the non-resident becomes a resident of Canada or establishes a business venture in Canada. The terms “advisory” and “consulting services” are explained in paragraph 41. Policy Statement P-173, *Meaning of the Phrase “Establishing a Business in Canada”*, which focuses on those situations where services are “intended to assist the (non-resident) person in...establishing a business venture in Canada”, provides further information on the supply of advisory, consulting and research services.

Example I

Legal services provided to non-residents advising of the various laws and regulations with which they must comply to obtain Canadian residency are zero-rated.

Example II

Where a Canadian law firm advises a non-resident corporation about the various laws and regulations with which the corporation is required to comply in establishing a business venture in Canada (e.g., opening a branch in Canada where none existed before), its services qualify for zero-rating. If the law firm prepares a purchase agreement for real property or tangible personal property (e.g., furniture, equipment, machinery, etc.) to be used in a plant that is being built by the non-resident, these services may not be zero-rated by virtue of section 9 because they go beyond being advisory or consulting services. The supply, however, may be considered a professional service which would be zero-rated under section 23 of Part V of Schedule VI. Refer to paragraphs 41 to 50 for more information.

Service under warranty of non-resident

Services and parts under warranty Sch. VI, Part V, s 13	29. A supply made to an unregistered non-resident person of tangible personal property, or a service performed in respect of tangible personal property pursuant to a warranty provided by the non-resident person is zero-rated.
Warranty	30. The warranty may be issued by any non-resident person, including a dealer or a manufacturer.
Example	A Canadian subsidiary charges its non-resident parent company, which is not registered for GST/HST purposes, for the supply of services of repairing cars pursuant to a warranty provided by the parent company. The charge for the service is zero-rated.

Custodial or nominee services

Safekeeping of securities Sch. VI, Part V, s 17	31. A supply made to a non-resident person of custodial or nominee services in respect of securities or precious metals of the person is zero-rated. This section was amended to include supplies of custodial or nominee services in respect of precious metals made after 1996.
Meaning of custodial services	32. The term custodial service is not defined in the Act. The Department's position is that, where a separate fee or charge is made, custodial services in respect of securities mean either
Policy statement P-189	(a) the service of safekeeping of the securities, or (b) the service of safekeeping of the securities together with the following related activities that normally pertain to the safekeeping of securities: (i) the administrative activities involved with the settlement of securities traded; (ii) the collection or disbursement of income (dividends/interest) for the client; and (iii) account maintenance and reporting of securities transactions.
Example	A financial institution provides corporate trust services to a non-resident person. This service includes maintaining a register of Canadian share/bond holders, printing and disbursing of dividend/interest cheques, and communicating with share/bond holders. The services provided by the financial institution include the safekeeping of the non-resident client's securities and the duties that relate to the custody of the securities. The service, therefore, qualifies for zero-rating.

Instructing/administering examinations

Sch. VI, Part V, s 18 33. A supply made by a person to an unregistered non-resident person, other than an individual, of a service of instructing non-resident individuals in, or administering examinations in respect of, courses leading to certificates, diplomas, licences or similar documents, or classes or ratings in respect of licences, that attest to the competence of those individuals to practise or perform a trade or vocation is zero-rated. This would include supplies made to a school authority, vocational school, public college or university, but rendered to individuals.

Example A supply made by a vocational school to a non-resident corporation that is not registered of a service of instructing the corporation's employees in flight-training may be zero-rated if all other conditions outlined in section 18 are satisfied.

Destroying/discarding tangible personal property

Sch. VI, Part V, s 19 34. A supply made to an unregistered non-resident person of a service of destroying or discarding tangible personal property in Canada is zero-rated.

Dismantling property for export

Sch. VI, Part V, s 20 35. A supply made to an unregistered non-resident of a service of dismantling property for the purpose of exporting the property is zero-rated.

Example A trust operating in Europe leased plant equipment and machinery to a Canadian firm that went into receivership. To facilitate the repossession of the equipment and machinery, the trust has contracted with a Canadian firm to arrange to have the leased equipment and machinery dismantled, crated, transported, stored, and finally exported. The supply of the service of dismantling this property is zero-rated, provided the trust is an unregistered non-resident person.

Service of testing or inspecting tangible personal property

Sch. VI, Part V, s 21 36. A supply made to an unregistered non-resident person of a service of testing or inspecting tangible personal property that is acquired or imported for the sole purpose of having the service performed and that is to be destroyed or discarded in the course of providing the service or upon completion of the service is zero-rated.

Postal service

Sch. VI, Part V, s 22 37. Postal services made by a registrant who carries on the business of supplying postal services to a non-resident person who is not a registrant and who carries on such a business are zero-rated.

Telecommunication services

Sch. VI, Part V, s 22.1 38. Effective for supplies made on or after April 24, 1996, telecommunication services previously zero-rated under section 22 are now zero-rated under new section 22.1. Telecommunication services are zero-rated when the supply is made by a registrant who carries on a business of supplying such services to a non-resident who is not a registrant and who also carries on a business of supplying a telecommunication service. However, the supply of a telecommunication service where the telecommunication is emitted and received in Canada is now excluded from zero-rating.

Sch. VI, Part V, s 22.1 39. Section 22.1 applies to supplies made on or after April 24, 1996, unless the supply was not treated as taxable, i.e., if the supplier did not charge tax or an amount was charged as tax and a refund of the amount was claimed in an application received before April 23, 1996, or a deduction under subsection 232(3) in respect of the amount was claimed in a return filed before that day.

Example A non-resident is on holiday in Canada. She places a long distance call from Cambridge, Ontario, to Kelowna, British Columbia, and pays for the call with her calling card issued by a non-resident telephone company (NRTelco). As the telephone call was emitted and received in Canada, the supply cannot be zero-rated. Therefore, when the Canadian telephone company (CTelco) bills the NRTelco for the call, the CTelco will charge the tax on the amount of the bill.

Definitions ss 123(1) of the Act 40. Definitions of telecommunication service and telecommunications facility have been added to the Act in respect of supplies relating to telecommunication services. These definitions are effective for supplies made on or after April 24, 1996, and will be included in Section 1.5, *Definitions*, of Chapter 1, *GST Information*, of the GST/HST Memoranda Series.

Advisory, consulting and professional services

Sch. VI, Part V, s 23 41. An advisory, consulting or professional service made to a non-resident person is zero-rated provided the supply is not specifically excluded. The services that are excluded are described in paragraphs 42 to 50. For purposes of section 23 (and paragraph 7(b) which excludes advisory, consulting or professional services from the general zero-rating provision for exported services), the Department will generally interpret these terms as follows:

Meaning of advisory (a) an advisory service refers to a service of giving an opinion, or counsel, or of recommending a plan or course of action;

Meaning of consulting (b) a consulting service refers to a service of providing information, instruction or expert advice;

A consultant generally provides services relating to a field of specialized knowledge or training.

4.5.3 Exports - Services and Intellectual Property (continued)

Advisory or consulting inclusions/exclusions (c) an advisory or consulting service may address business, management, marketing, data processing, public relations or other issues or problems faced by the client;

An advisory or consulting service is not considered to include any work that might be undertaken or performed as a result of the plans or recommendations accepted by the client or the advice provided to the client.

Meaning of professional service (d) a professional service is generally defined in terms of the individual providing the service;

If the person making the supply of the service is other than an individual, for example, a partnership or company, the Department will consider the status of the individual professional or professionals assigned to provide the service in determining whether the service is a professional service.

Professional service inclusions/exclusions (e) a professional service refers to a service provided by an individual whose vocation or occupation requires special, usually advanced, education and skills;

For purposes of this provision, the individual providing the service may be a member of a professional association, a professional corporation or a similar body, which is recognized by a statute in at least one province or territory or by one federal body, and which enforces standards of professional practice as well as a code of ethics. However, a professional service will be considered to include the services provided by articling or other students and support staff, to the extent that their services are intended to assist the professional in the provision of the professional's service and are undertaken under the supervision of the professional.

Duties and labour (f) finally, the duties and labour performed in the provision of the professional service must be related to the vocation or occupation of the individual.

Exclusions - advisory, consulting and professional services

Excluded services Sch. VI, Part V, paras 23(a) to (d) 42. The following services are excluded from zero-rated status under section 23 of Part V of Schedule VI:

- litigation services (a) a service rendered to an individual in connection with criminal, civil or administrative litigation in Canada, other than a service rendered before the commencement of such litigation (See explanation in paragraph 43.);
- real property/tangible personal property (b) a service in respect of real property situated in Canada and a service in respect of tangible personal property that is situated in Canada at the time the service is performed (Criteria for determining if a service is in respect of real property and tangible personal property situated in Canada are set out in paragraphs 44 to 50.);

4.5.3 Exports - Services and Intellectual Property (continued)

- acting as an agent (c) a service of acting as an agent of the non-resident person or of arranging for, procuring or soliciting orders for supplies by or to the person, effective for supplies made on or after April 24, 1996. This amendment parallels the amendment to section 5 of Part V of Schedule VI explained in paragraphs 8 to 11.

Services in connection with litigation services

Sch. VI, Part V, s 23, paras 23(a) to (d) 43. When an advisory, professional or consulting service is not rendered to an individual, or rendered to an individual in connection with litigation but before commencement thereof, the supply of such a service may be zero-rated if not specifically excluded under paragraphs 23(b) through to 23(d).

Example On June 10, 1997, a non-resident individual residing in Chicago, Illinois, retained the services of a Canadian defence lawyer in Canada. The accused had received a summons on June 6, 1997, which indicated that the charge was laid on June 2, 1997. Services were rendered by the criminal lawyer to the accused only after the commencement of litigation (i.e., June 2, 1997). Therefore, all of the services rendered in connection with the litigation are excluded from zero-rating.

Services in respect of real property and tangible personal property

Services excluded from zero-rating Sch. VI, Part V, paras 7(d) and (e) and s 23 44. Advisory, professional or consulting services supplied to a non-resident person in respect of real property situated in Canada and tangible personal property that is situated in Canada at the time the service is performed are not zero-rated under section 23. Paragraphs 7(d) and (e) also exclude these services from the general zero-rating provision for exported services.

Direct connection between service and property Policy statement P-169 45. For purposes of paragraphs 7(d) and (e) and paragraphs 23(b) and (c), the Department's position is that there must be more than a mere indirect or incidental connection between a service and the underlying real or tangible personal property before the supply of a service "in respect of" real property or tangible personal property will be excluded from zero-rating. Whether the relationship between the service and the property is sufficiently direct to be "in respect of" property will depend on the particular circumstances of each case. Policy Statement P-169, *Meaning of "In Respect of Real Property Situated in Canada" and "In Respect of Tangible Personal Property That is Situated in Canada at the Time the Service is Performed", for Purposes of Part V of Schedule VI to the Act*, contains more information on the connection between service and property.

Determining connection between service and property 46. The following guidelines help in determining whether the connection between the service and the real or tangible personal property is sufficient for the service to be "in respect of" the property for purposes of paragraphs 7(d) and (e) and paragraphs 23(b) and (c) of Part V of Schedule VI.

- purpose or objective (a) Was the service designed, developed or undertaken to fulfil or serve a particular need or requirement arising from or relating to the property? This guideline involves determining the purpose or objective of the service.

4.5.3 Exports - Services and Intellectual Property (continued)

- contract between supplier and recipient (b) The purpose or objective of the service may often be determined by examining a written contractual agreement for the supply between the supplier and the recipient of the service. If there is no formal written agreement, other documentation such as purchase orders, correspondence between the parties or invoices or receipts may be useful in establishing the purpose or objective of the service. It is important that the supplier's understanding of the purpose or objective of the service, as reflected in the contractual agreement with the non-resident customer, be taken into consideration. The supplier's perspective is important because it is the supplier who must determine whether the consideration for the service is zero-rated. The Department may assess a supplier for uncollected GST/HST, whichever is applicable, if the supply was zero-rated in error.

- relationship between service and property (c) Is the relationship between the purpose or objective of the service and the property reasonably direct? The relationship between the service and the real or tangible personal property must be more direct than indirect for the service and the property to be considered by the Department to be "in respect of" each other for purposes of paragraphs 7(d) and (e) and paragraphs 23(b) and (c) of Part V of Schedule VI. If some object comes between the service and the property, the connection becomes more remote.

Service and property in respect of each other 47. A service and property would generally be regarded as being in respect of each other pursuant to the above guidelines if the purpose of a service is to:

- (a) physically count the property;
- (b) appraise or value the property;
- (c) physically protect or secure the property; or
- (d) enhance the value of the property.

Similarly, if the service is aimed at effecting or dealing with the transfer of ownership of, claims on or rights to real property or tangible personal property, or determining title to the property, the service will generally be regarded as in respect of property, and will therefore be excluded from the zero-rating provision.

Example

A non-resident retains a Canadian GST/HST-registered lawyer on June 11, 1997, to recover payment for a debt incurred by a Canadian resident in 1996. The debt arose as a result of the sale of tangible personal property situated in Canada. The debt is recovered as a result of a series of telephone calls and demand letters sent by the lawyer to the debtor. The legal collection service is zero-rated pursuant to section 23 of Part V of Schedule VI, since the purpose or object of the service is considered to be related to the debt and not to the tangible personal property.

Examples of services in respect of real property situated in Canada

48. The following are examples of services that are considered to be in respect of real property for purposes of Part V of Schedule VI:

- (a) services physically performed on the real property (e.g., construction and maintenance);

4.5.3 Exports - Services and Intellectual Property (continued)

- (b) services that enhance the value of the real property, affect the nature of the real property, relate to preparing the real property for development or redevelopment, affect the management of the real property, or affect the environment within the limits of the real property (e.g., engineering, architectural services, surveying and subdividing, management services, security services);
- (c) services related to:
 - (i) the transfer or conveyance of the real property or the proposed transfer or conveyance of the real property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of the real property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of real property as a result of a will or testament);
 - (ii) a mortgage interest or other security interest in the real property; or
 - (iii) the determination of the title to the real property.

Examples of services in respect of tangible personal property situated in Canada at the time the service is performed

49. The following are examples of services considered to be in respect of tangible personal property:

- (a) services physically performed on the tangible personal property (e.g., repair, restoration and maintenance);
- (b) services that enhance the value of the property or affect the nature of the property, or protect or secure the property (e.g., the docking or storage of a boat ordinarily situated in Canada, the safekeeping of jewels in a safety deposit box); or
- (c) services related to:
 - (i) the transfer or proposed transfer of the tangible personal property (e.g., acquiring or proposing to acquire the property, legal services rendered to the owner or beneficiary of property as a result of a will or testament);
 - (ii) a chattel mortgage interest or other security interest in the tangible personal property; or
 - (iii) the determination of the title to the tangible personal property.

50. The supply of a service made to a non-resident, which is related to the further processing of imported tangible personal property before delivery to a Canadian consumer, is considered to be in respect of tangible personal property, and therefore will not be zero-rated under this provision.

Part Two - Intellectual Property

Supplies of intellectual property

Zero-rated intellectual property
Sch. VI, Part V, s 10

51. A supply of an invention, patent, trade secret, trade-mark, trade-name, copyright, industrial design or other intellectual property, or any right, licence or privilege to use any such intellectual property made to a non-resident recipient who is not registered at the time the supply is made is zero-rated.

Example

A Canadian company sells the international rights to operate a global database to a foreign company who pays the royalties to the Canadian company. As the recipient of the supply is a non-resident that is not registered for the GST/HST, the supply of such rights is zero-rated.

52. Intangible personal property that is not intellectual property such as the right to use a membership is not zero-rated.

4.5.3 Exports - Services and Intellectual Property (continued)

Appendix A

Specific services excluded from section 7 - general provision for zero-rating exported services

Current	Previous
	a supply of a service to a non-resident person who was outside Canada at all times when the individual had contact with the supplier in relation to the supply where (Refer to Appendix B.)
(a) - a service made to an individual who is in Canada at any time when the individual has contact with the supplier in relation to the supply; (a.1) - a service is rendered to an individual while that individual is in Canada - all of the consideration became due on or after July 1, 1996, or was paid on or after that day without having become due.	(a) the service was primarily for consumption, use or enjoyment in Canada (Refer to Appendix C.)
(b) an advisory, consulting or professional service	(b) an advisory, consulting or professional service
(c) a postal service	(c) a postal service
(d) a service in respect of real property situated in Canada	(d) a service in respect of real property situated in Canada
(e) a service in respect of tangible personal property that is situated in Canada at the time the service is performed	(e) a service in respect of tangible personal property that is situated in Canada at the time the service is performed
(f) a service of acting as an agent of the non-resident person or arranging for, procuring or soliciting orders for supplies by or to the person - effective for supplies on or after April 24, 1996	(f) a service of acting as an agent of the non-resident person or individual
(g) a transportation service - certain transportation services are zero-rated under Part VII of Schedule VI - additional information will be available in Chapter 28, <i>Special Sectors: Transportation</i>	(g) a transportation service
(h) a telecommunication service - effective for supplies made on or after December 16, 1996	

Appendix B

Supplies to individuals outside Canada

1. The following are the rules and guidelines for zero-rating exported services prior to July 1, 1996.

Status of recipient
Sch. VI, Part V, s 7
effective June 10, 1993

2. A supply of a service made to a non-resident individual was zero-rated if the individual was outside Canada at all times during which the individual had contact with the supplier in relation to the supply. Under this provision, the supply of a service made to a non-resident individual was zero-rated even where the individual visited Canada during the time the service was performed as long as that visit was for reasons unrelated to the performance of the service and hence the individual was not in contact with the supplier in relation to the supply while in Canada.

Personal care services, entertainment services, restaurant, lodging and repair services on an individual's vehicle, rendered while the non-resident individual was in Canada, could not be zero-rated under section 7 of Part V of Schedule VI.

Criteria for "outside
Canada"

3. The following criteria were considered in determining whether a non-resident individual was outside Canada throughout the time the service was being performed:

- (a) if the purpose of the non-resident individual's stay in Canada was totally unrelated to the service being performed, the individual would not be considered to be in Canada for purposes of section 7 of Part V of Schedule VI; and
- (b) if the non-resident individual, while in Canada, retained the services of a registered person and the individual was not charged by the person for the services provided while the individual was in Canada, the individual would not be considered to be in Canada for purposes of section 7 of Part V of Schedule VI. This criterion was specific to the retaining or hiring of a registrant and did not extend to any subsequent contact by the individual with the registrant while the individual was in Canada or any chargeable fees which might be incurred while the individual was in Canada for reasons unrelated to the performance of the service.

Example

An individual non-resident who has entered into a contract for telemarketing services in Canada came to Canada for a vacation and the individual did not discuss the case with the telemarketing company while in Canada or otherwise contact the telemarketer while in Canada. The telemarketing services may qualify for zero-rated treatment. However, if the individual came to Canada to follow up on the telemarketing services, the individual would be considered to be in Canada and the services would be taxable at 7%.

Appendix C

Services not primarily consumed, used or enjoyed in Canada

Exclusions from zero-rating Sch. VI, Part V, para 7(a)	1. The following are the rules and guidelines for zero-rating exported services prior to July 1, 1996. Before that date, a service that was primarily for consumption, use or enjoyment in Canada was excluded from zero-rating under paragraph 7(a).
Primarily for consumption, use or enjoyment in Canada Policy statement P-180	2. When determining if a supply was primarily for consumption, use or enjoyment in Canada, it was necessary to consider each of these phrases separately, i.e., primarily consumed, primarily used and primarily enjoyed. The service was excluded from zero-rating under section 7 of Part V of Schedule VI to the extent that one of these terms met the primarily (in Canada) test.
“Primarily” test	3. The manner in which the “primarily” test was applied was based on the specific facts of each case, with consideration being given to the type of service that was being performed. Factors considered were: (a) where was the purpose or objective of the service to have been realized? (b) where was the service performed? (c) location of the recipient or other beneficiary (or beneficiaries) when the service was supplied.
Example	A sales representative of a non-resident had a specific sales territory (e.g., northeastern United States, Atlantic Canada, Quebec and Ontario) and, assuming consideration is based on a percentage of sales accepted by the non-resident client, a reasonable basis for applying the “primarily” test would have been the proportion of the commissions paid in respect of sales made in Canada versus outside Canada. Accordingly, reference would have been made to the contract or agreement (i.e., designated sales territory and how consideration was to have been calculated) between the recipient and the supplier to establish a basis for applying the primarily test.
Meaning of consumption	4. Consumption is generally defined as the act or instance of consuming or the process of being consumed. Consume is often associated with eating and drinking (i.e., a person consumed an entire pizza or a person consumed two glasses of wine), or using something up, such as time allocated to a particular activity. In addition, the common commercial application of the term consumption is often applied in the context of goods or materials being consumed (used up) in a manufacturing or production process. The consumption of services is also generally understood to occur in a manufacturing or production process. Whether a service would have been regarded as primarily for the consumption of any person in Canada depended on where the initial consumption took place.

4.5.3 Exports - Services and Intellectual Property (continued)

Example - consumption	A non-resident organization hired a Canadian caterer to organize a banquet to be held outside Canada. Although the activities of arranging for the banquet hall, staff, food, etc., were performed in Canada, the actual consumption of the banquet services, which included putting on the banquet itself, took place outside Canada. The service of organizing the banquet was primarily for consumption of the non-resident organization outside Canada.
Meaning of use	5. Use refers to the act or practice of using or employing something. Use stresses the practicality of the end result or purpose for which something was acquired. In the context of section 7 of Part V of Schedule VI, use stressed the purpose for which a service was acquired or performed.
Example - use	An executive of a Canadian parent corporation provided management services to a non-resident subsidiary company. The management services included recommendations on the purchase of equipment and the hiring and training of staff as well as the streamlining of the day-to-day operations of the subsidiary. The management services provided were intended to make the subsidiary more efficient and thus more profitable. The Canadian parent corporation charged the non-resident subsidiary a management fee. The management fee was calculated based on general and administrative costs such as utilities, office supplies and rent, the executive's salary, etc. The management services, although supplied from Canada, were for use of the subsidiary outside Canada.
Example - consumption and use	A resident company organized an investment seminar in Canada. Various non-resident financial institutions sent their employees to the seminar. The information received by the non-residents' employees was put to use when they returned home. The supply of the service of attending the seminar was considered to have been primarily consumed in Canada because one must look to the initial consumption of the service. Although the services were primarily for use outside Canada, the supply was excluded from zero-rated status because the supply was primarily consumed in Canada.
Meaning of enjoyment	6. Enjoyment refers to the action or state of enjoying something (i.e., the deriving of pleasure or satisfaction). Whether a service would have been regarded as primarily for the enjoyment of any person in Canada depended on where the initial enjoyment of the service took place. Although the enjoyment could have been invoked at a later time, for the purposes of section 7 of Part V of Schedule VI, it was the initial enjoyment that was relevant for the purposes of the former provision.
Example - enjoyment	A non-resident corporation purchased tickets to enable the corporation's employees to attend a performance of a play in Canada. The initial enjoyment the employees derived was while they were in attendance at the play. The supply was primarily for enjoyment in Canada, and therefore excluded from the zero-rating provision.