

Please note that the following Policy Statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.

GST/HST POLICY STATEMENT

P-193R SUPPLIES OF TANGIBLE PERSONAL PROPERTY OTHERWISE
THAN BY WAY OF SALE

DATE OF ISSUE

November 22, 1995

Revised February 10, 1999

SUBJECT

WHETHER SUPPLIES OF TANGIBLE PERSONAL PROPERTY
OTHERWISE THAN BY WAY OF SALE AND SUPPLIES OF SERVICES
ARE **DEEMED TO BE** MADE IN (OR OUTSIDE) CANADA

LEGISLATIVE REFERENCE(S)

Subsections 136.1(1) and 136.1(2) and paragraphs 142(1)(b), 142(1)(g), 142(2)(b)
and 142(2)(g) of the *Excise Tax Act*

NATIONAL CODING SYSTEM FILE NUMBER(S)

11680-6, 11680-7

EFFECTIVE DATE

January 1, 1991

April 1, 1997, with respect to subsections 136.1(1) and (2)

TEXT

Issue and Decision:

Supplies of Tangible Personal Property Otherwise than by Way of Sale

Paragraph 142(1)(b) of the *Excise Tax Act* (**Act**) deems a supply of tangible personal property (TPP) to be made in Canada if, in the case of a supply otherwise than by way of sale, possession or use of the property is given or made available in Canada to the recipient of the supply. Paragraph 142(2)(b) of the Act deems a supply of TPP to be made outside Canada if, in the case of a supply otherwise than by way of sale, possession or use of the property is given or made available outside Canada to the recipient of the supply.

It is generally understood that a supply of TPP "otherwise than by way of sale" includes a supply by way of lease, licence or similar arrangement. Nevertheless, other supplies

which are determined not to have been made by way of sale, would also be made "otherwise than by way of sale".

For purposes of paragraphs 142(1)(b) and 142(2)(b), the Department considers that the place where "possession or use of the TPP is given or made available" refers to the place where:

- 1) the recipient of the supply of the TPP obtains physical possession of the property **at the time the agreement is entered into**; or,
- 2) in situations where physical possession of the TPP is not obtained **at the time the agreement is entered into**, the recipient may obtain or have access to the property.

The place where possession or use of the TPP is given or made available can be determined based on the location of the property at the time the agreement is entered into. Generally, the location can be determined by reference to the terms of the agreement (e.g., lease or rental agreement). In those instances where there is no agreement, or the terms of the agreement are not conclusive, it will be necessary to look to the actions of the parties.

Subsection 136.1(1) of the Act provides that where property is supplied by way of lease, licence or similar arrangement, and consideration is paid on a periodic basis (**lease interval**), a separate supply is deemed to occur in respect of each lease interval. The Department's position is that for purposes of paragraphs 142(1)(b) and 142(2)(b), possession **or use** of the TPP is given **or** made available only once under the lease agreement. This point in time is at the beginning of the lease. **Therefore, for purposes of section 142 of the Act, it is only necessary to determine the place of supply once.** However, **if a supply is deemed to be made in Canada pursuant to paragraph 142(1)(b), and that supply is not deemed to be made outside Canada under another provision in the Act or zero-rated or exempted by the Schedules, a determination as to the place of supply for purposes of section 144.1 of the Act and Schedule IX, Part II to the Act will have to be made for each lease interval in order to determine the appropriate amount of tax applicable to each separate lease payment (i.e., GST at 7% or HST at 15%).**

Supplies of Services

Paragraph 142(1)(g) of the Act deems a supply of **any other service to be made in Canada if the service is, or is to be, performed in whole or in part in Canada.** Paragraph 142(2)(g) of the Act deems a supply of **any other service to be made outside Canada if the service is, or is to be, performed wholly outside Canada.** "Any other service" refers to a service other than a service in relation to real property, a prescribed service or a telecommunication service.

Subsection 136.1(2) of the Act provides that where the consideration for a supply of a service includes a payment that is attributable to a period (**billing period**) that is the whole or a part of the period during which the service is to be rendered, there is a separate supply for each billing period. **For purposes of paragraphs 142(1)(g) and 142(2)(g), the determination as to whether a supply of any other service is made in (or outside) Canada is made only once -- at the time the agreement is entered into. When making the determination, the entire period during which the service is, or is to be, performed under the agreement for the supply must be considered. If a supply is deemed to be made in Canada pursuant to paragraph 142(1)(g), and that supply is not deemed to be made outside Canada under another provision in the Act or zero-rated or exempted by the Schedules, a determination as to the place of supply for purposes of section 144.1 and Schedule IX, Part V to the Act will have to be made for each billing period in order to determine the appropriate amount of tax applicable to each payment (i.e., GST at 7% or HST at 15%).**

SAMPLE RULINGS

SUPPLIES OF TANGIBLE PERSONAL PROPERTY OTHERWISE THAN BY WAY OF SALE

SAMPLE RULING NO. 1

Our understanding of the facts and transactions is as follows:

Statement of Facts

1. A **GST/HST** registered Canadian boat manufacturer leases a yacht to a non-resident individual for a 36-month period.
2. The non-resident takes delivery (i.e., possession and use) of the yacht at the wharf in Halifax, Nova Scotia, and sails the yacht to the United States.
3. The yacht remains in the United States for the entire period of the lease.

Ruling Given

The lease of the yacht is deemed to be a supply made in Canada under the provisions of paragraph 142(1)(b) of the Act. **As the provisions of Schedule IX, Part II, subparagraph 2(b)(ii) do not apply to deem the supply to be made in a province, the supply is deemed to be made in a non-participating province pursuant to section 144.1 of the Act. Because** there are no zero-rating provisions which can apply, the lease payments are subject to the GST at 7% under the provisions of subsection 165(1) of the Act.

Rationale

The agreement (i.e., lease) provides that actual possession and use of the yacht is given to the non-resident consumer in Canada (the yacht was located in Canada at the time the lease agreement was entered into). **In addition, the yacht will be ordinarily located outside Canada. As a result, the supply is not deemed to be made in a participating province.**

SAMPLE RULING NO. 2

Our understanding of the facts and transactions is as follows:

Statement of Facts

1. A non-resident individual rents a recreational vehicle (RV) from a **GST/HST** registered vehicle rental firm located in Great Falls, Montana, **U.S.A.**
2. The non-resident individual will pick up (i.e., take possession of) the RV at the Calgary, Alberta branch of the **U.S.A.** vehicle rental firm.
3. The non-resident intends to drive the RV in Canada and spend his three-week holiday touring, with his family, throughout the Canadian Rockies in Alberta and British Columbia.

Ruling Given

The supply of the RV is deemed to be made in Canada under the provisions of paragraph 142(1)(b) of the Act **and deemed, under the provisions of section 144.1 of the Act and Schedule IX, Part II, paragraph 2(a) to the Act, to be made in a non-participating province (i.e., Alberta).** As a result, the rental payment is subject to the GST at 7% under the provisions of subsection 165(1) of the Act.

Rationale

The rental agreement provided that actual physical possession or use of the RV was given and made available to the non-resident in Canada (the RV was located in Canada at the time the agreement was entered into). **The supply is deemed to be made in a (*non-participating*) province because the agreement is for a period of less than three months and the RV was delivered or made available to the non-resident in Alberta.**

SAMPLE RULING NO. 3

Our understanding of the facts and transactions is as follows:

Statement of Facts

1. A logging firm in New Brunswick leases logging equipment for one year from a **GST/HST registered non-resident person** located in Maine, U.S.A.
2. The New Brunswick firm takes possession of the equipment in Maine and brings **the** equipment into New Brunswick.
3. The New Brunswick firm makes monthly lease payments to the **registered non-resident in Maine**.
4. At the end of the lease, the New Brunswick firm returns the equipment to the **registered non-resident in Maine**.

Ruling Given

The supply of the equipment is deemed to be made outside Canada under the provisions of paragraph 142(2)(b) of the Act. **Therefore, the lease payments are not subject to the taxes** under Division II.

Rationale

The equipment was located in Maine at the time the lease agreement was entered into.

SUPPLIES OF SERVICES

SAMPLE RULING NO. 4

Our understanding of the facts and transactions is as follows:

Statement of Facts

1. A consultant registered for GST/HST is hired by a client resident in Canada to provide advice and assistance to the client.
2. The majority of **the services are performed by the consultant** at the client's offices in St. John's, Newfoundland.
3. However, as part of the consultant's work, **the consultant** attends a number of meetings with the client and other parties at a location outside Canada.
4. The consultant issues separate invoices to the client for fees **relating to** the work performed in St. John's and the meetings attended outside Canada.

Ruling Given

The supply of the consultant's services is deemed to be made in Canada under the provisions of paragraph 142(1)(g) of the Act. **The fee charged by the consultant for the work performed in St. John's is subject to the HST at 15% under the provisions of subsections 165(1) and 165(2) of the Act because the supply of the service during the billing period is deemed to be made in a participating province pursuant to Schedule IX, Part V, paragraph 2(a) to the Act and section 144.1 of the Act.** The fee charged by the consultant for attending the meetings outside Canada is subject to **the** GST at 7% under the provisions of subsection 165(1) of the Act **because the supply of the service for the billing period is deemed to be made in a non-participating province pursuant to section 144.1.**

Rationale

The consultant's services are to be performed both in and outside Canada. Therefore, because the services are, or are to be, performed in part in Canada, the supply is deemed to be made in Canada. Where the fee charged for the billing period relates only to those services performed in St. John's, the supply is deemed to be in a participating province pursuant to Schedule IX, Part V, paragraph 2(a) and section 144.1. Where the fee charged for the billing period relates only to those services performed while attending meetings outside Canada, the supply cannot be deemed, pursuant to Schedule IX, Part V, sections 2 or 3 to the Act, to be in a province. As a result, the supply is deemed to be in a non-participating province pursuant to section 144.1.