

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-051R2	Carrying on business in Canada
DATE OF REVISION	April 29, 2005. This policy statement cancels P-051R1, dated March 8, 1999.
LEGISLATIVE REFERENCE	Definition of “business” in subsection 123(1); subsections 143(1), 240(1) and 240(4) of the <i>Excise Tax Act</i> (the Act)
NATIONAL CODING SYSTEM FILE NUMBER	11635-3
EFFECTIVE DATE	January 1, 1991 for GST and April 1, 1997 for HST

Issue

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

Decision

The phrase "carrying on business in Canada" is not defined in the Act. 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 an unregistered non-

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

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 non-resident 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. The Act does not have the extended definition of "carrying on business" that is contained in the *Income Tax Act*⁸. 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. On the other hand, unlike the definition in the *Income Tax Act*, the definition of "business" in the Act also 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. Therefore, 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 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.

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* provides that: "For the purposes of this Act, where in a taxation year a person who is a non-resident person or a trust to which Part XII.2 applies

(a) produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or constructs, in whole or in part, anything in Canada whether or not the person exports that thing without selling it before exportation,

(b) solicits orders or offers anything for sale in Canada through an agent or servant, whether the contract or transaction is to be completed inside or outside Canada or partly in and partly outside Canada, or

(c) disposes of

(i) Canadian resource property, except where an amount in respect of the disposition is included under paragraph 66.2(1)(a) or 66.4(1)(a),

(ii) property (other than depreciable property) that is a timber resource property or an interest therein or option in respect thereof, or

(iii) property (other than capital property) that is real property situated in Canada, including an interest therein or option in respect thereof, whether or not the property is in existence,

the person shall be deemed, in respect of the activity or disposition, to have been carrying on business in Canada in the year."

⁹ Subsection 240(2) of the Act

¹⁰ Subsection 240(4) of the Act

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 aspect of the definition together with the presence of any of the factors in the Guidelines section.

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 an 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 Canada¹³. For more information on the CRA's interpretation of the term permanent establishment, reference should be made to GST/HST Policy Statement P-208R, *Meaning of Permanent Establishment in Subsection 123(1) of the Excise Tax Act (the Act)*¹⁴.

¹¹ Subsection 123(1) of the Act

¹² Subsection 123(1) of the Act

¹³ For instance, see Example #15

¹⁴ A non-resident who has a permanent establishment in Canada is considered to be resident in Canada, in respect of, but only in respect of the person's activities carried on through that establishment. This results in the non-resident being required to register for GST/HST as a resident person as a result of taxable supplies the non-resident makes through the permanent establishment, unless the non-resident is a small supplier.

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 or an inventory of goods;
- the place where the business contracts are made¹⁵;
- 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. The determination of whether a non-resident is carrying on business in Canada for GST/HST purposes does not involve the mechanical application of a numerical test that is simply based on whether a specific number of the above factors are present in any given case. Rather, the determination requires judgment in establishing the importance of each factor in light of the type of supply that is being made in the context of the relevant facts.

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 goods 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

¹⁵ Any reference in this policy to the “place of contract” or to the place where the agreement or contract “is concluded” signifies the place where the contract or agreement is considered made at law.

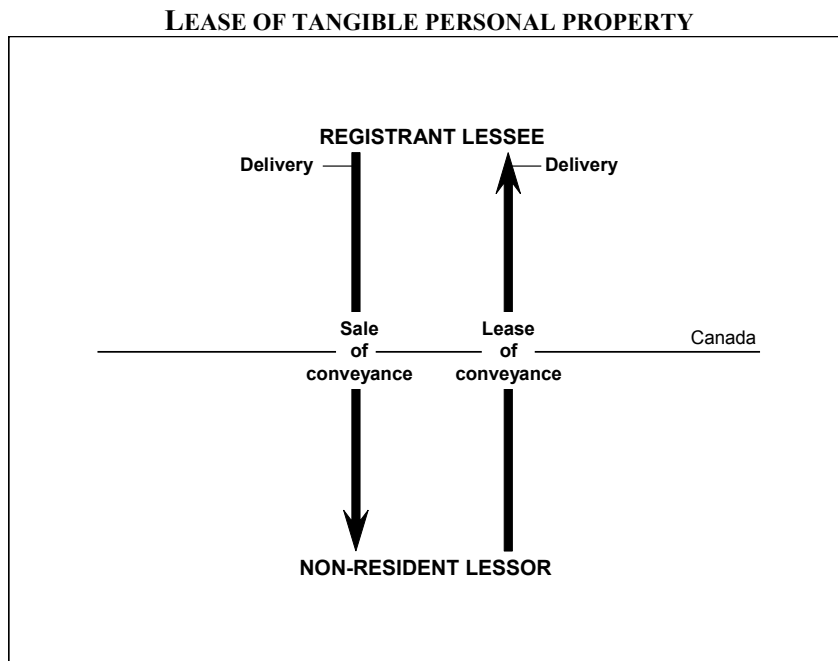
considered to be carrying on business in Canada, given that the above-noted factors will usually not be met to a sufficient degree.

Examples

EXAMPLE NO. 1 – LEASE OF TANGIBLE PERSONAL PROPERTY

Facts

1. A non-resident lessor 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 partly in Canada. The lease begins on the day on which the agreement is entered into.
2. Pursuant to the agreement, delivery of the conveyance sold to the non-resident lessor 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 lessor has no agents or employees in Canada.
7. Payments are made to the non-resident lessor outside Canada.
8. The non-resident lessor does not have a bank account in Canada and is not listed in a directory in Canada.
9. The non-resident lessor does not solicit business 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 attributable¹⁶. Also, a supply by way of lease, licence or similar arrangement of the use or the right to use tangible personal property is deemed to be a supply of the tangible personal property¹⁷.

In this case, delivery of the conveyance to both the lessor and the lessee under the agreement occur in Canada and the conveyance is based in Canada during the term of the lease. Based on these facts and the application of the GST/HST provisions that relate to the supply of property by way of lease, the non-resident lessor is carrying on business in Canada¹⁸.

EXAMPLE NO. 2 – LEASE OF TANGIBLE PERSONAL PROPERTY

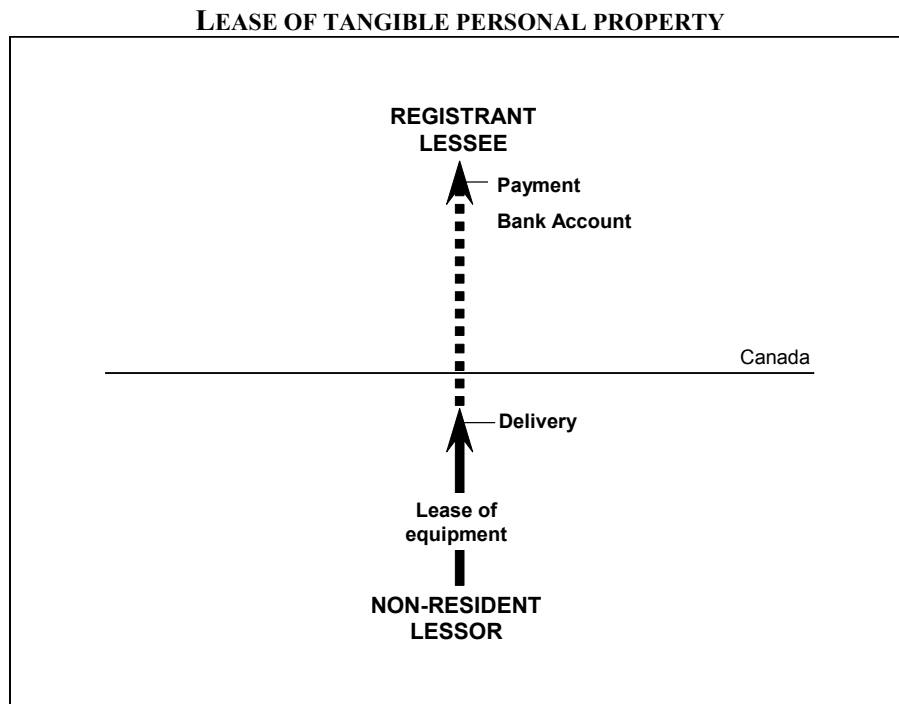
Facts

1. A non-resident lessor 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 concluded outside Canada.
3. Pursuant to the lease agreement, the lessee acquires possession of the equipment outside Canada at the beginning of the lease. The lessee subsequently imports the equipment for use at its business facilities in Canada.
4. Under the terms of the lease agreement 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 lessor does not solicit business in Canada.
6. The non-resident lessor has no agents or employees in Canada or facilities (either management, sales or service) of any kind in Canada.
7. The non-resident lessor is not listed in any directories in Canada.
8. The non-resident lessor has a bank account in Canada.
9. The lease payments are made in Canada.

¹⁶ Subsection 136.1(1) of the Act

¹⁷ Subsection 136(1) of the Act

¹⁸ The non-resident lessor in this case would be considered to be carrying on business in Canada for GST/HST purposes effective the day on which the lessor entered into the sale-leaseback agreement.



Decision

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

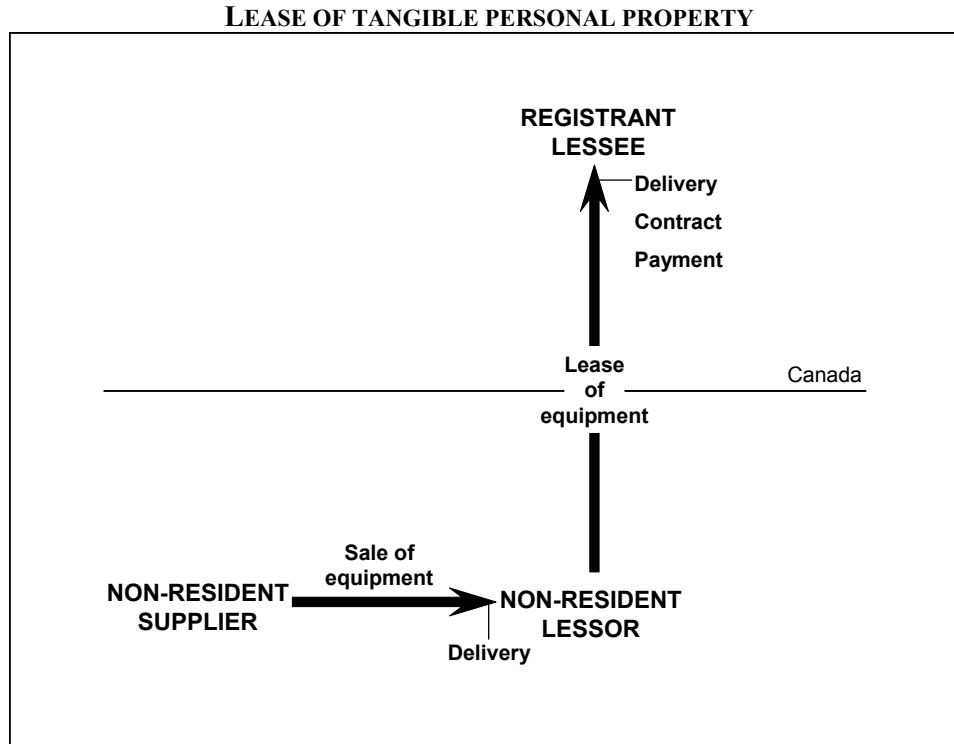
Rationale

The only factors present in Canada in this case are the place of payment and a bank account. These factors are insufficient to support a conclusion that the non-resident is carrying on business in Canada.

EXAMPLE NO. 3 – LEASE OF TANGIBLE PERSONAL PROPERTY

Facts

1. A non-resident lessor who is in the business of leasing tangible personal property outside Canada enters into an 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 lessor acquires the equipment outside Canada from a non-resident supplier.
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 lessor has no agents or employees in Canada.
7. The non-resident lessor is not listed in a directory in Canada.
8. The non-resident lessor does not solicit business in Canada.
9. Payments under the lease are made in Canada.
10. The non-resident lessor has a bank account in Canada.



Decision

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

Rationale

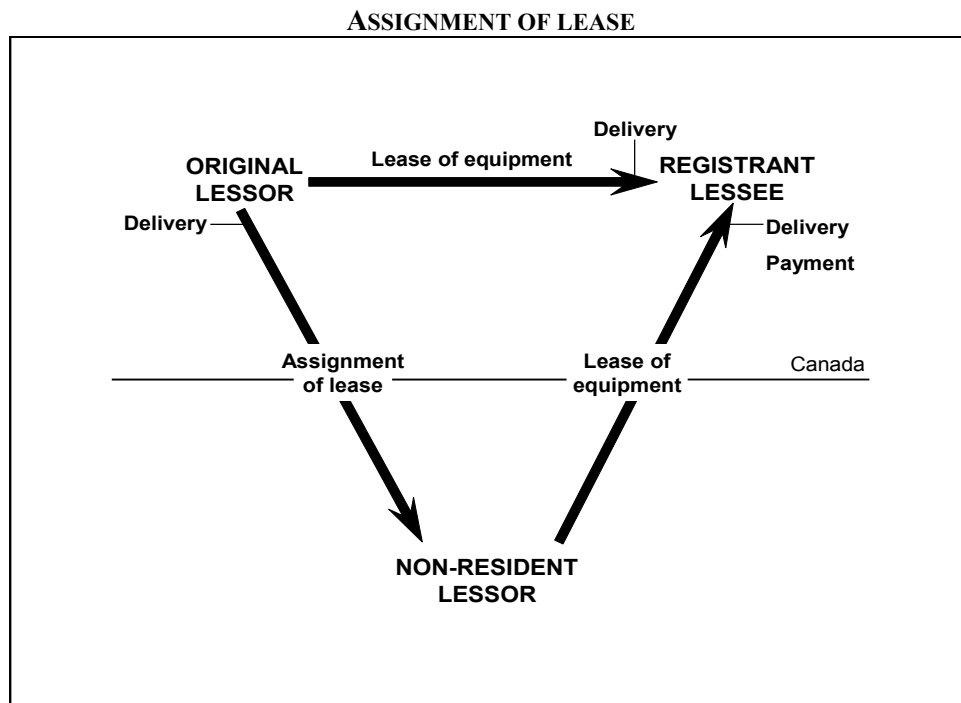
In this case, delivery of the equipment to the lessee occurs in Canada, the place of contract is in Canada, payment is made in Canada and the non-resident lessor has a bank account in Canada. Also, the equipment is located in Canada during the term of the lease. Based on these facts and the application of the GST/HST provisions that relate to the supply of property by way of lease, the non-resident lessor is carrying on business in Canada.

EXAMPLE NO. 4 – ASSIGNMENT OF LEASE

Facts

1. A resident registrant (the "original lessor") who is in the business of leasing tangible personal property enters into an agreement 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 (the "non-resident lessor"), 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 lessor 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 lessor has no agents or employees in Canada.
9. The lease payments are collected by the original lessor in Canada on behalf of the non-resident lessor. The original lessor forwards the lease payments to the non-resident lessor.
10. The non-resident lessor does not have a bank account in Canada and is not listed in a directory in Canada.
11. The non-resident lessor does not solicit business in Canada.



Decision

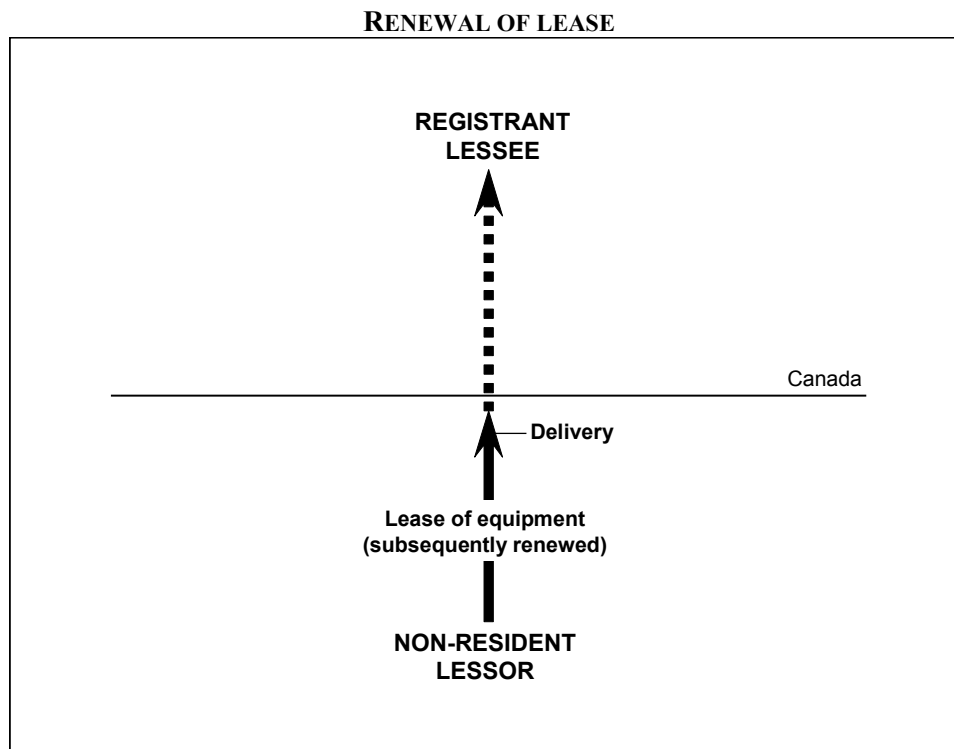
The non-resident lessor is carrying on business in Canada.

Rationale

In this case, the non-resident lessor is acquiring the equipment in Canada and the lessee has acquired possession of the equipment in Canada and the equipment is also located in Canada during the term of the lease. The lease payments are also made in Canada. Based on these facts and the application of the GST/HST provisions that relate to the supply of property by way of lease, the non-resident lessor is carrying on business in Canada.

EXAMPLE NO. 5 – RENEWAL OF LEASE**Facts**

1. A non-resident lessor 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 concluded outside Canada.
3. Pursuant to the lease agreement, the lessee acquires possession of the equipment outside Canada at the beginning of the lease. The lessee subsequently imports the equipment for use at its business facilities in Canada.
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 lessor does not solicit business in Canada.
8. The non-resident lessor has no agents or employees in Canada or facilities (either management, sales or service) of any kind in Canada.
9. The non-resident lessor is not listed in any directories in Canada.
10. The non-resident lessor does not have a bank account in Canada.
11. The lease payments are made outside Canada.

**Decision**

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

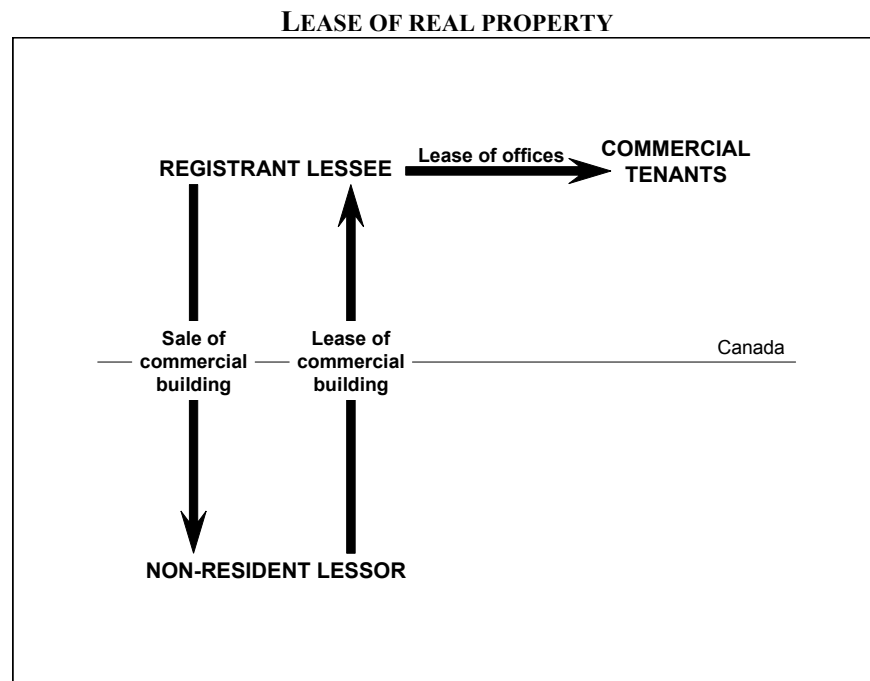
Rationale

When the lease agreement is first entered into, there are insufficient factors present in Canada in this case to conclude that the non-resident lessor is carrying on business in Canada. With respect to the subsequent renewal of the lease, although the lessee has physical possession of the equipment in Canada, there are insufficient factors present in Canada to support a conclusion that the non-resident lessor is carrying on business in Canada.

EXAMPLE NO. 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 lessor 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 lessor'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 lessor owns in Canada.
5. The non-resident lessor has no agents or employees in Canada.
6. The non-resident lessor does not have a bank account in Canada and is not listed in a directory in Canada.
7. The non-resident lessor does not solicit business in Canada.



Decision

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

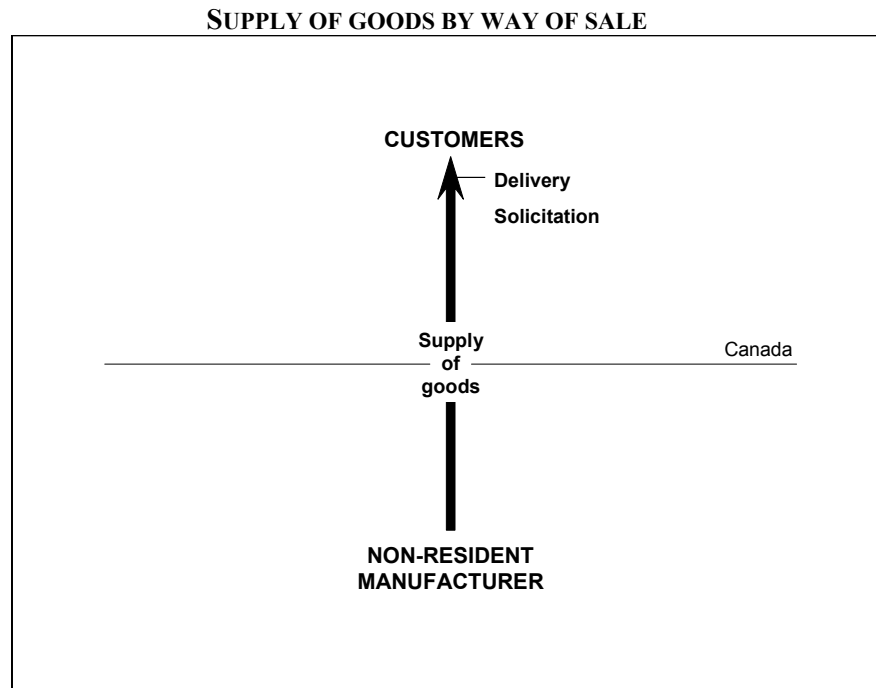
Rationale

Based on the fact that the building is located in Canada and the application of the GST/HST provisions that relate to the supply of property by way of lease, the non-resident lessor is carrying on business in Canada.

EXAMPLE NO. 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 in Canada.
2. The goods are manufactured by the non-resident manufacturer at a place outside Canada.
3. The non-resident manufacturer 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 manufacturer has no bank account in Canada.
8. The non-resident manufacturer has no agents or employees in Canada.
9. The non-resident manufacturer's inventory of goods is stored outside Canada.



Decision

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

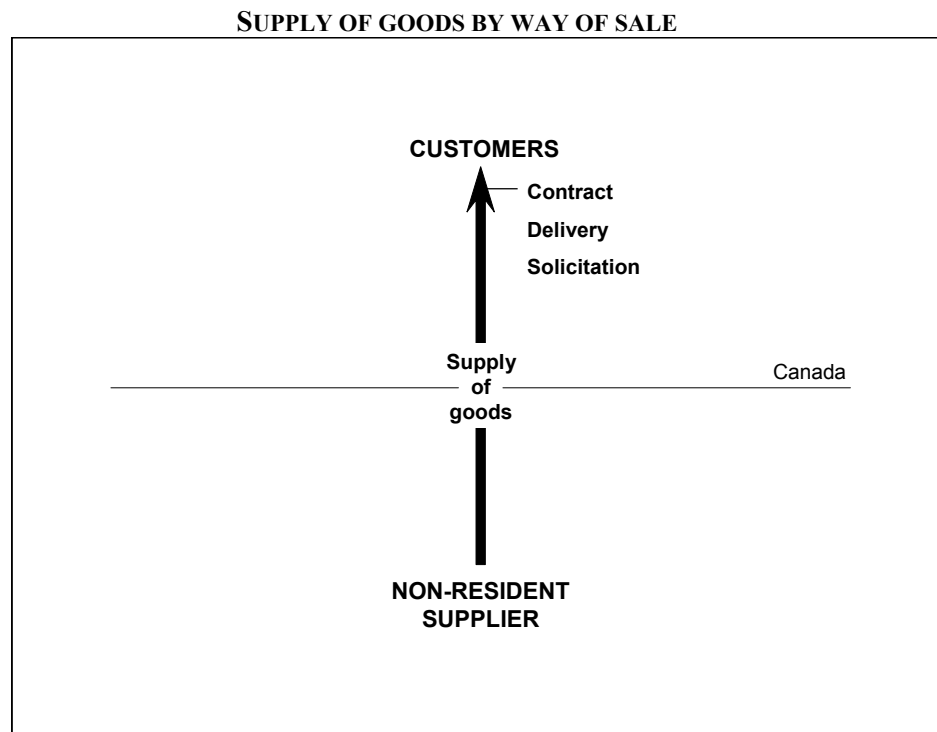
Rationale

The only factors present in Canada in this case are the place of delivery and solicitation. These factors are insufficient to support a conclusion that the non-resident manufacturer is carrying on business in Canada.

EXAMPLE NO. 8 – SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident person supplies goods by way of sale on a worldwide basis, including in Canada.
2. The goods are purchased by the non-resident supplier outside Canada.
3. The non-resident supplier solicits orders for the supply of goods in Canada through advertising directed at the Canadian market.
4. An independent sales representative in Canada accepts orders for the goods and concludes contracts on behalf of the non-resident supplier.
5. Delivery of the goods to the customers occurs in Canada.
6. Payment for the goods is made outside Canada.
7. The non-resident supplier has no bank account in Canada.
8. The non-resident supplier has no employees in Canada.
9. The non-resident supplier's inventory of goods is stored outside Canada.



Decision

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

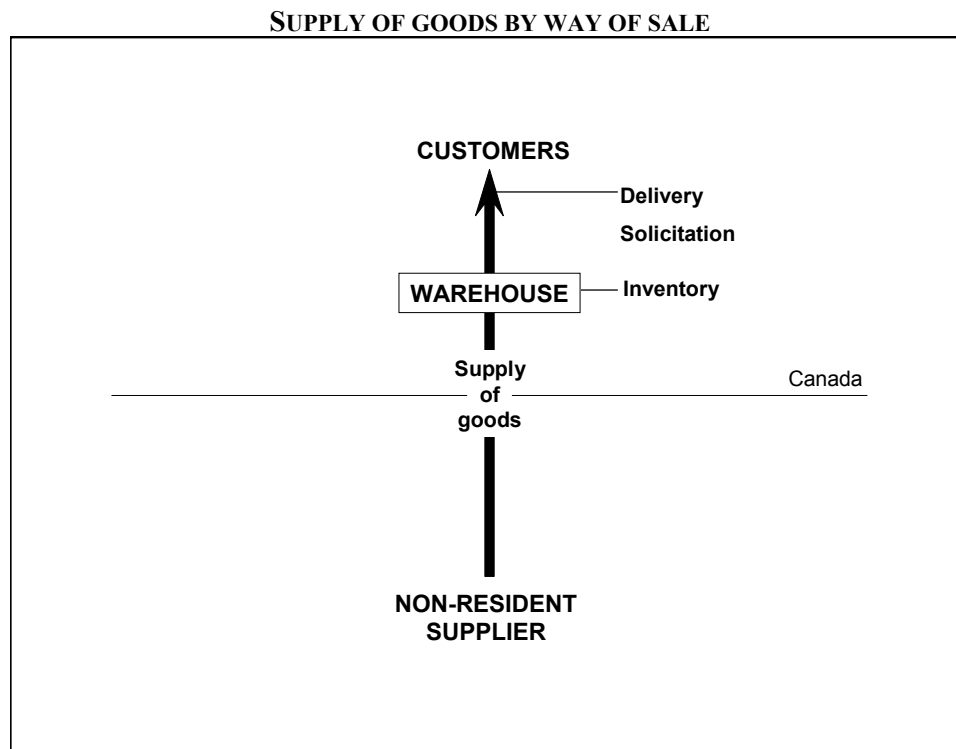
Rationale

The non-resident supplier is carrying on business in Canada based on the fact that the place of contract is in Canada, the goods are delivered in Canada, and the non-resident supplier solicits orders in Canada.

EXAMPLE NO. 9 – SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident person supplies goods by way of sale on a worldwide basis, including in Canada.
2. The non-resident supplier solicits orders for the supply of goods in Canada through advertising directed at the Canadian market.
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 supplier has no bank account in Canada.
6. The non-resident supplier has no agents or employees in Canada.
7. The goods are manufactured outside Canada.
8. The non-resident supplier maintains an inventory of existing goods for sale at a warehouse in Canada where the non-resident supplier rents space.
9. Upon receiving orders outside Canada, the non-resident supplier 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 supplier is carrying on business in Canada.

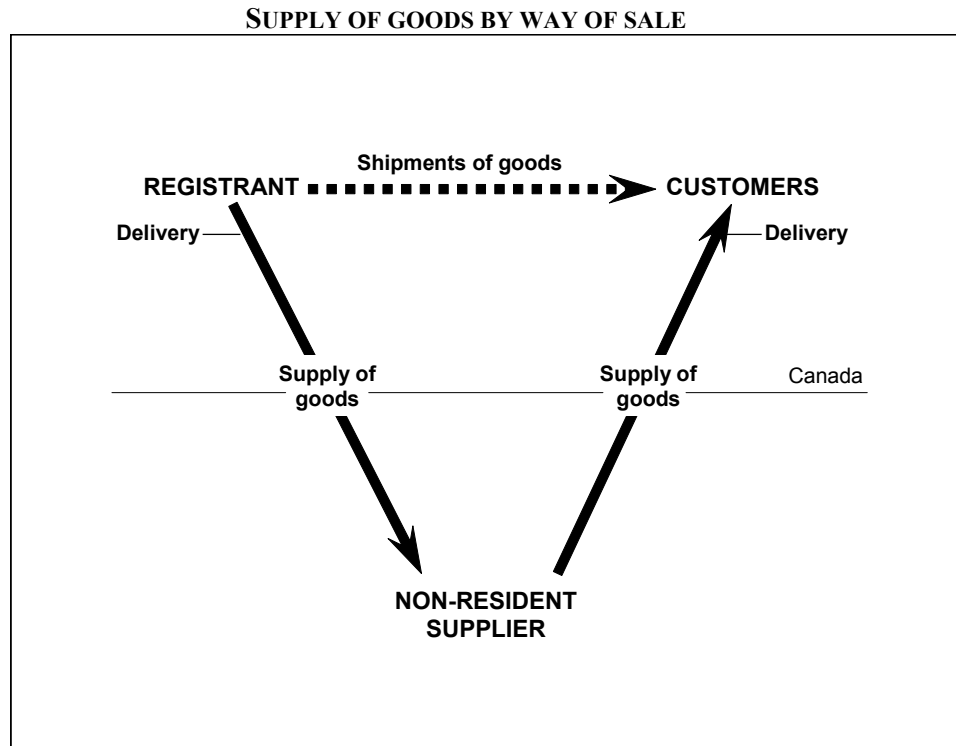
Rationale

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

EXAMPLE NO. 10 – SUPPLY OF GOODS BY WAY OF SALE

Facts

1. As a non-resident person receives orders from its customers located 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 supplier's customers in Canada on the non-resident supplier's behalf.
3. The non-resident supplier does not solicit orders for the supply of its goods in Canada.
4. The contract for the supply of goods by the non-resident supplier is concluded outside Canada.
5. Payment by the customers for the goods is made outside Canada.
6. The non-resident supplier has no bank account in Canada.
7. The non-resident supplier has no agents or employees in Canada.



Decision

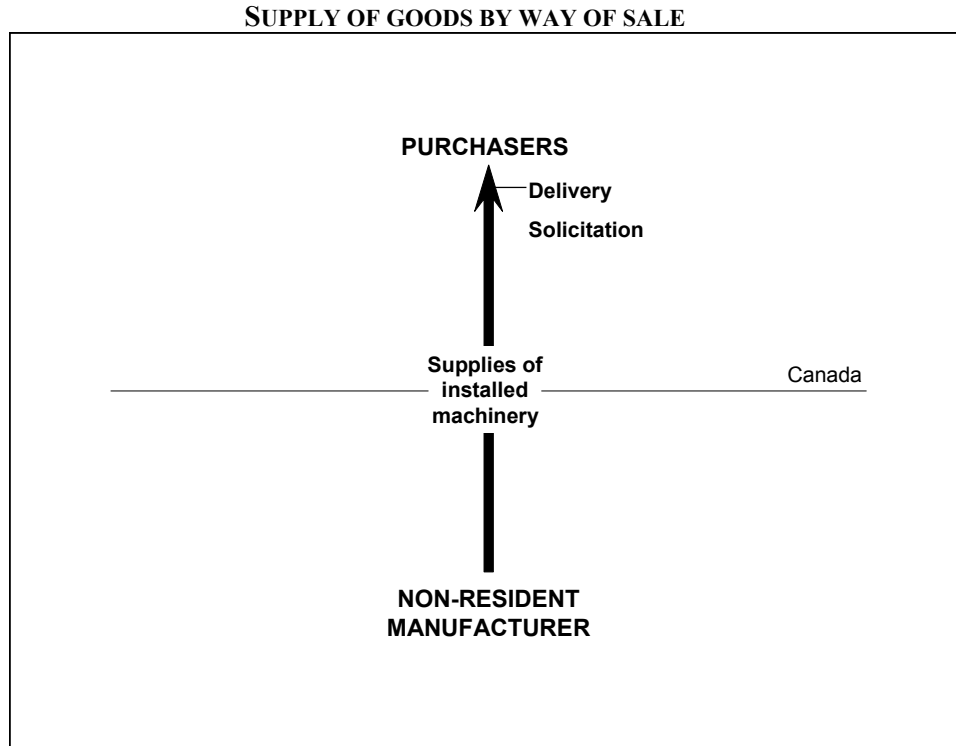
The non-resident supplier is not carrying on business in Canada.

Rationale

The only factors present in Canada in this case are the place of purchase and delivery of the goods. These factors are insufficient to support a conclusion that the non-resident supplier is carrying on business in Canada.

EXAMPLE NO. 11 – 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 in Canada.
2. The machinery requires installation by the non-resident manufacturer and pursuant to the sales agreement is to be supplied by the non-resident manufacturer on an installed basis.
3. Employees of the non-resident manufacturer 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 manufacturer 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 manufacturer has no bank account in Canada.
9. The non-resident manufacturer has no agents or employees in Canada other than the employees who install the machinery.



Decision

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

Rationale

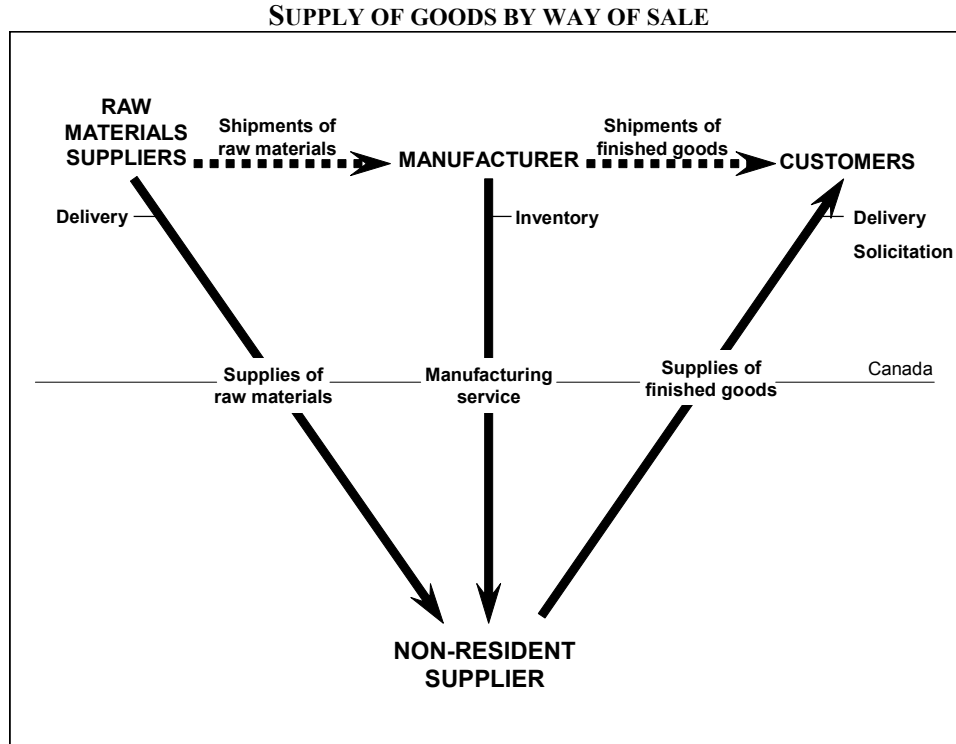
The only factors present in Canada in this case are the place of delivery and solicitation. These factors are insufficient to conclude that the non-resident manufacturer is carrying on business in Canada. Although employees of the non-resident are in Canada to install the machinery, the supply being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

EXAMPLE NO. 12 – SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident person supplies goods by way of sale on a worldwide basis, including in Canada.
2. The non-resident supplier acquires the services of a manufacturer in Canada to manufacture the goods.
3. The non-resident supplier purchases in Canada from various registrants the raw materials necessary to make the goods and has the raw materials suppliers ship the materials to the manufacturer for use in the manufacturing process.
4. The non-resident supplier 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 supplier solicits orders for the supply of the goods in Canada.
6. All contracts for the supply of the goods are concluded outside Canada.
7. Payment for the goods is made outside Canada.

8. The non-resident supplier has no bank account in Canada.
9. The non-resident supplier has no agents or employees in Canada.



Decision

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

Rationale

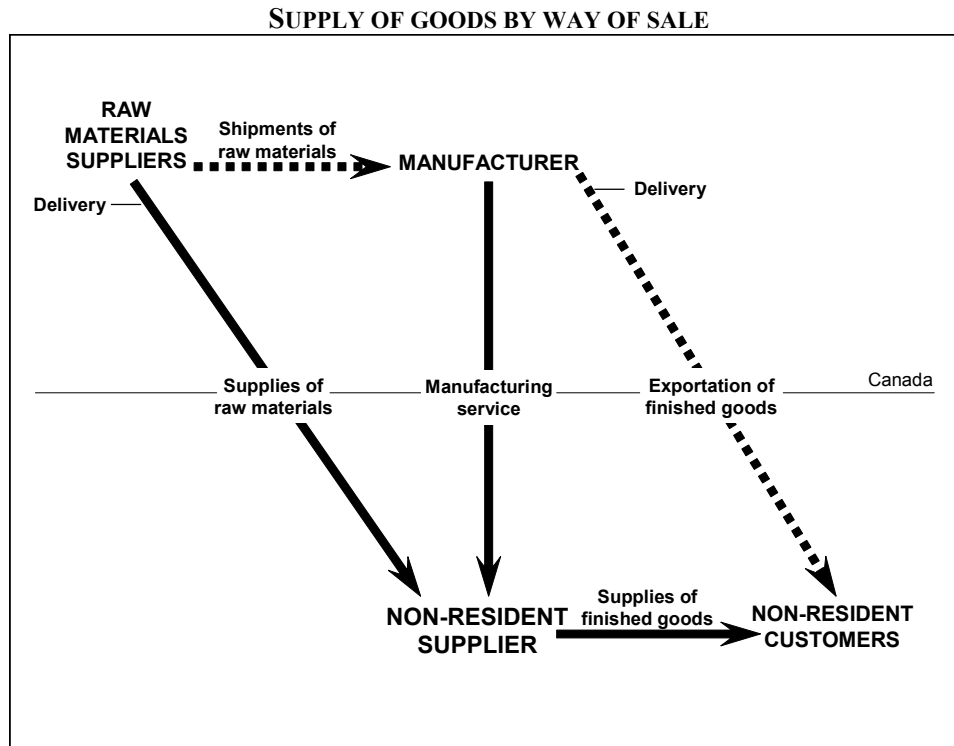
The non-resident supplier is carrying on business in Canada based on the fact that the non-resident supplier purchases the raw materials in Canada, has the goods manufactured in Canada, has an inventory of the goods in Canada for sale, delivers some goods in Canada, and solicits orders for the goods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

EXAMPLE NO. 13 – SUPPLY OF GOODS BY WAY OF SALE

Facts

1. A non-resident person supplies goods by way of sale on a worldwide basis.
2. The non-resident supplier acquires the services of a manufacturer in Canada to manufacture the goods.
3. The non-resident supplier purchases in Canada from various registrants the raw materials necessary to make the goods and has the raw materials suppliers ship the materials to the manufacturer for use in the manufacturing process.
4. The goods are manufactured in Canada for the non-resident supplier to satisfy existing orders received by the non-resident supplier from its non-resident customers.

5. Although the goods may be delivered in Canada to some of the non-resident supplier's customers, in all cases the goods are exported.
6. The contract for the supply of goods is concluded outside Canada.
7. Payment for the goods is made outside Canada.
8. The non-resident supplier has no bank account in Canada.
9. The non-resident supplier has no agents or employees in Canada.
10. The non-resident supplier does not solicit orders for the supply of the goods in Canada.



Decision

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

Rationale

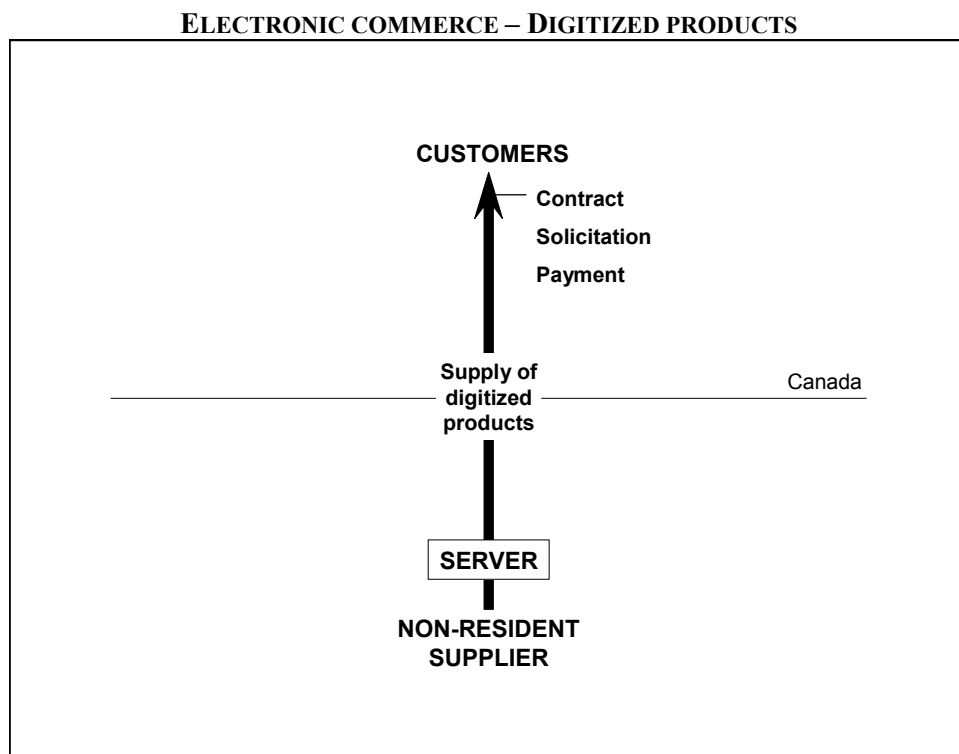
The only factors present in Canada in this case are the place of purchase of the raw materials, the place of manufacture of the goods, and, in some circumstances, the place of delivery of the goods (albeit for export). These factors are insufficient to support a conclusion that the non-resident supplier is carrying on business in Canada.

EXAMPLE NO. 14 – ELECTRONIC COMMERCE – DIGITIZED PRODUCTS

Facts

1. A non-resident person supplies downloadable audio files through its Web site.
2. The non-resident supplier's Web site is hosted on its own server at its main office located outside Canada.
3. The Web site is advertised on the Internet. The advertisements are directed at 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 copies of the selected audio files without any contact with the non-resident supplier's personnel.
5. The contract is concluded in Canada.
6. The customer pays by credit card and an independent service provider located in Canada processes payments for the non-resident supplier.
7. Once the audio files are received by the customer, they may be used in Canada.
8. All customer service and technical support is provided by means of telephone or e-mail communication by the non-resident supplier's personnel located in its main office outside Canada.
9. The non-resident supplier has no agents or employees in Canada.
10. The non-resident supplier has no premises or equipment in Canada.
11. The non-resident supplier has no bank account in Canada and is not listed in any business directory in Canada.



Decision

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

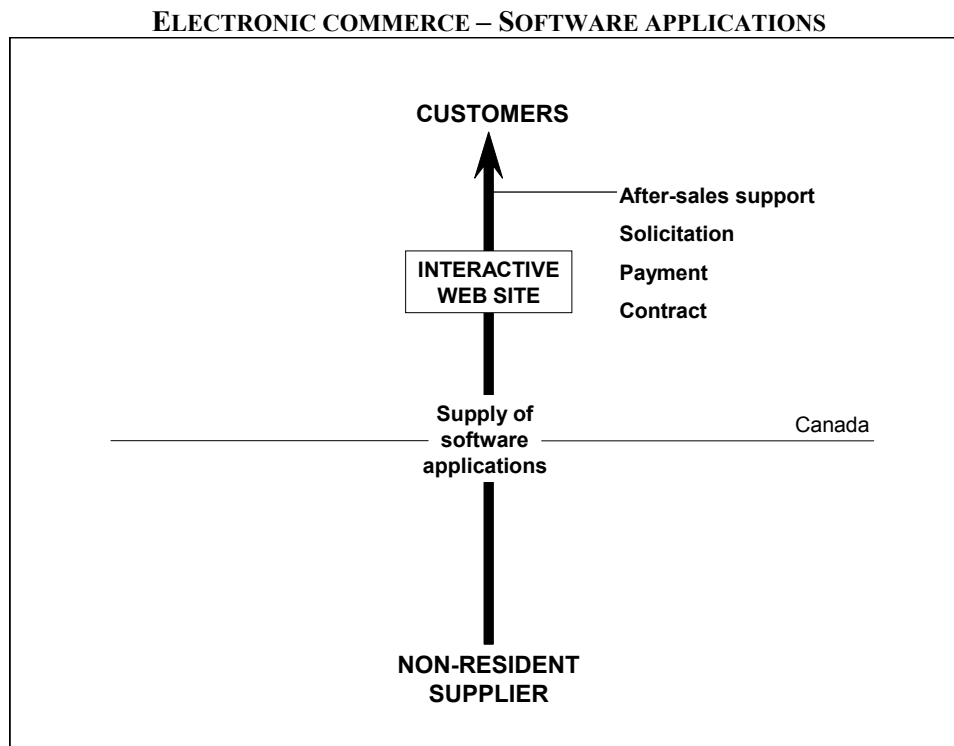
Rationale

The only factors present in Canada in this case are the place of contract, solicitation and payment. These factors are insufficient to support a conclusion that the non-resident supplier is carrying on business in Canada.

EXAMPLE NO. 15 – ELECTRONIC COMMERCE – SOFTWARE APPLICATIONS

Facts

1. A non-resident person supplies the right to use various software applications to customers in Canada.
2. The non-resident supplier 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 supplier's disposal.
4. The non-resident supplier advertises its software applications on its Web site, directed at 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. The contract is concluded in Canada.
10. An independent service provider located in Canada processes payment for the non-resident supplier.
11. An independent contractor located in Canada provides after-sales customer support on behalf of the non-resident supplier.



Decision

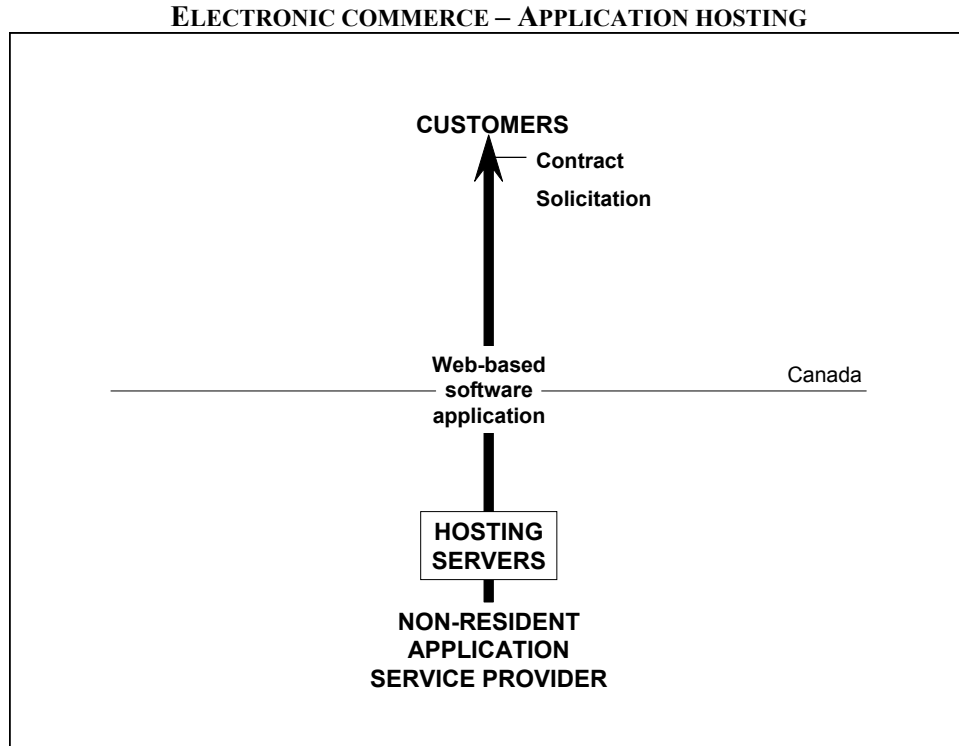
The non-resident supplier is carrying on business in Canada.

Rationale

In addition to the fact that independent contractors located in Canada are used for after-sales support, the non-resident supplier is carrying on business in Canada based on the fact that the non-resident supplier solicits orders in Canada, payments are processed in Canada, the place of contract is in Canada, and activities are carried out by means of the automated, interactive Web site stored on a server in Canada.

EXAMPLE NO. 16 – ELECTRONIC COMMERCE – APPLICATION HOSTING**Facts**

1. For a single annual fee, a non-resident application service provider (the “ASP”) 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 ASP provides its customers with technical support that allows them to interact by telephone or e-mail with the non-resident ASP's technicians located outside Canada.
3. The non-resident ASP has business customers in various countries including Canada.
4. Each of the non-resident ASP's customers can access and use the software application remotely over the Internet with a unique user ID and password.
5. The non-resident ASP'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 ASP has no agents or employees in Canada
9. The non-resident ASP has no premises or equipment in Canada.
10. The non-resident ASP has no bank account in Canada and is not listed in any business directory in Canada.



Decision

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

Rationale

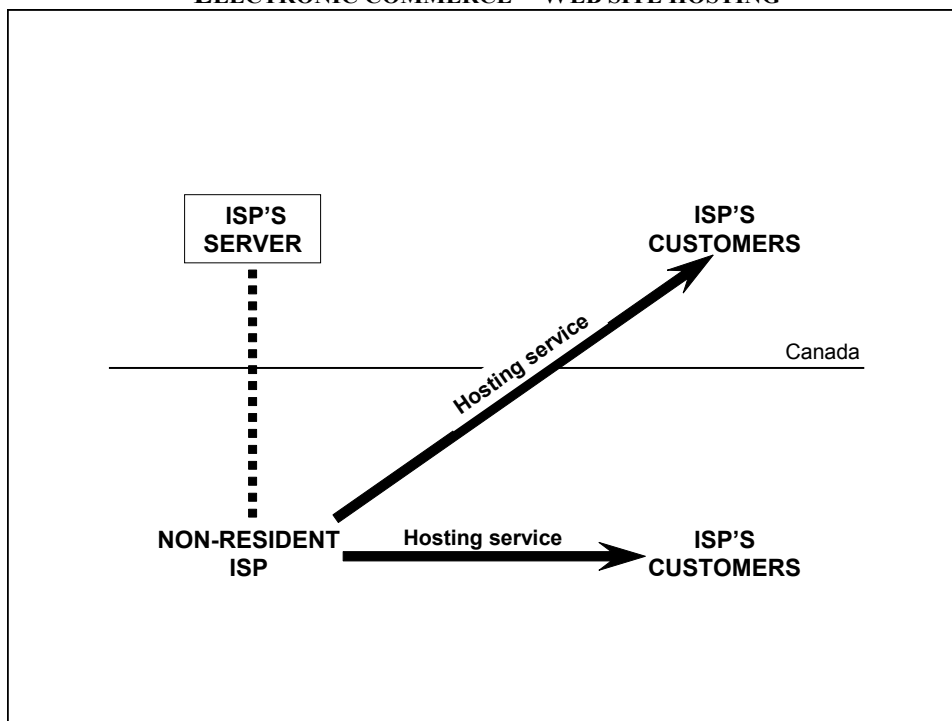
The only factors present in Canada in this case are the place of solicitation and the place of contract. These factors are insufficient to support a conclusion that the non-resident ASP is carrying on business in Canada.

EXAMPLE NO. 17 – ELECTRONIC COMMERCE – WEB SITE HOSTING

Facts

1. A non-resident Internet Service Provider (the “ISP”) is in the business of hosting the Web sites of its customers located in various countries including Canada.
2. The server on which the Web sites are hosted is permanently located at a particular place in Canada.
3. The server is owned by the non-resident ISP.
4. Personnel of the non-resident ISP entered Canada to set up the server at its particular location.
5. Personnel are not required at the location of the server for its ongoing operation.
6. Payment for the supply is made outside Canada.
7. The non-resident ISP has no agents or employees in Canada, other than those who set up the server.
8. The non-resident ISP has no bank account in Canada and is not listed in any business directory in Canada.
9. The place of contract is outside Canada.
10. The non-resident ISP has customers in various countries, including Canada.

ELECTRONIC COMMERCE – WEB SITE HOSTING



Decision

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

Rationale

The service that is to be supplied is to be performed in Canada. For GST/HST purposes, a supply of a service will be considered to be performed in Canada if the service includes operations performed by a supplier's equipment and the equipment is located in Canada. In this case, the Web site hosting service is being performed through the operation of the non-resident ISP's server located in Canada. The server is automated equipment that operates on its own and does not require personnel at its location for its ongoing operation. The service is also significant in relation to the non-resident ISP's overall business activity of hosting Web sites.

It is important to note that the non-resident ISP's server that is located in Canada constitutes a permanent establishment of the ISP in Canada¹⁹. Furthermore, the non-resident ISP would be considered to be resident in Canada in respect of the non-resident ISP's Web site hosting activities carried on through that establishment²⁰. The non-resident ISP would therefore be required to register for GST/HST as a resident person as a result of the taxable supplies of Web site hosting services that the non-resident ISP makes through the permanent establishment, unless the non-resident ISP is a small supplier²¹.

¹⁹ For further information, refer to Example No. 6 of GST/HST Policy Statement P-208R, *Meaning of Permanent Establishment in Subsection 123(1) of the Excise Tax Act (the Act)*.

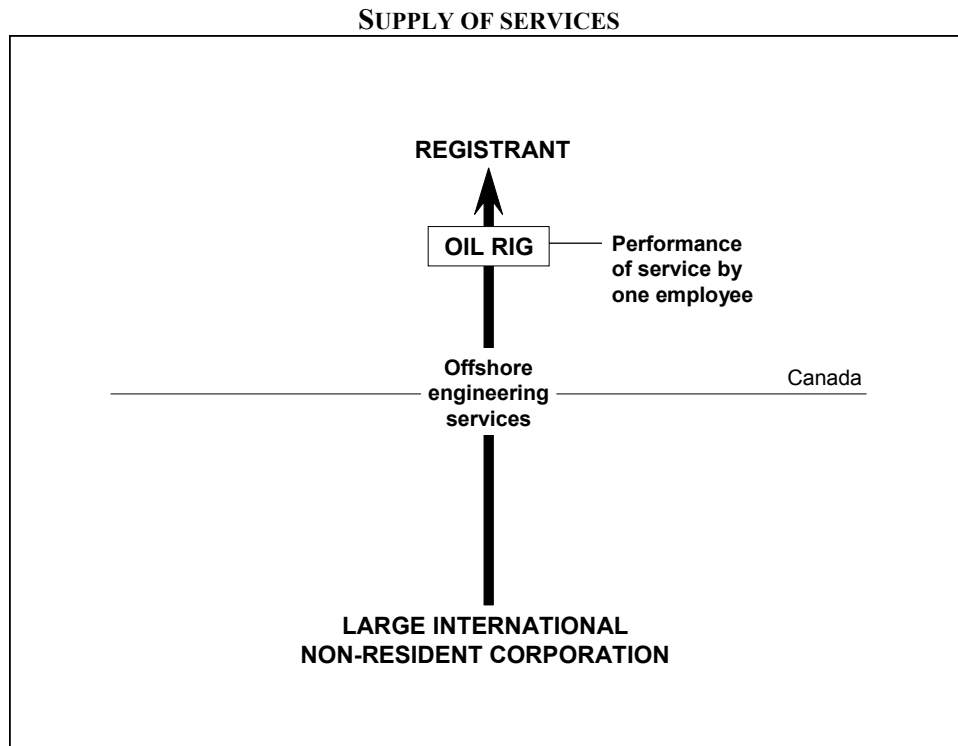
²⁰ Subsection 132(2) of the Act

²¹ Section 148 of the Act

EXAMPLE NO. 18 – SUPPLY OF SERVICES

Facts

1. A large international non-resident corporation specializing in the provision of offshore engineering services has contracted with a Canadian registrant to perform services on an oil rig stationed at a Canadian port. The contract is the non-resident corporation's only contract in Canada.
2. The contract calls for an employee of the non-resident corporation to enter Canada and to perform services for a period of one week on board the rig.
3. The non-resident corporation 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 corporation 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 corporation has no agents or employees in Canada.



Decision

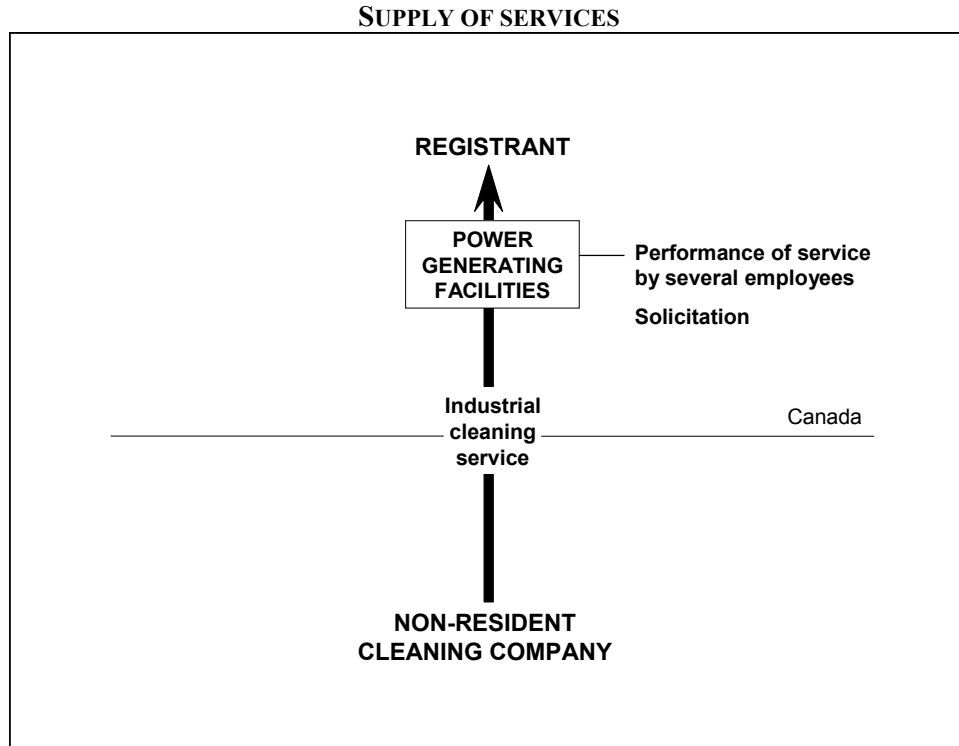
The non-resident corporation is not carrying on business in Canada for GST/HST purposes.

Rationale

Although an employee of the non-resident corporation 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 corporation, this is insufficient to support a conclusion that the non-resident corporation is carrying on business in Canada for GST/HST purposes.

EXAMPLE NO. 19 – SUPPLY OF SERVICES**Facts**

1. A non-resident company specializing in the cleaning of power generating facilities has entered into a contract with a registrant to clean the registrant's 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 company will enter Canada to perform the service.
5. The non-resident company will import the equipment necessary to perform the service.
6. The contract is concluded outside Canada.
7. The non-resident company solicits business in Canada through advertising directed at the Canadian market.
8. Payment for the supply is made outside Canada.
9. The non-resident company has no agents or employees in Canada other than those performing the cleaning service.
10. The non-resident company has no premises in Canada, and, other than the equipment temporarily imported to perform the service, the non-resident company does not have equipment in Canada.
11. The non-resident company has no bank account in Canada and is not listed in any business directory in Canada.



Decision

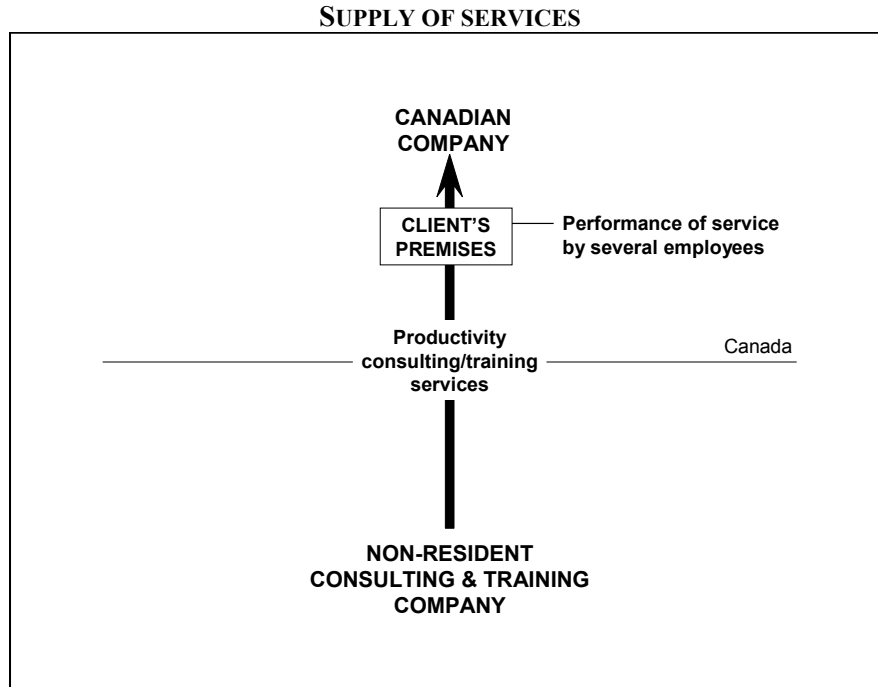
The non-resident company is carrying on business in Canada.

Rationale

The service that is to be supplied is to be performed in Canada and several employees of the non-resident company are entering Canada to perform that service. The non-resident company is carrying on business in Canada based on these facts, the significance of the service to the overall business activity of the non-resident company and also because the non-resident company is soliciting business in Canada.

EXAMPLE NO. 20 – 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 company typically involves employees of the non-resident company first visiting a client's business premises to analyze its existing production operations. The non-resident company 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 company'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 non-resident company can typically undertake only one contract at a time.
4. The non-resident company obtains a contract to supply its service to a Canadian company. This is the non-resident company's only contract in Canada.
5. The contract requires five employees of the non-resident company 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 company'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 company does not solicit business in Canada.
8. Payment for the supply is made outside Canada.
9. The non-resident company has no premises in Canada.
10. The non-resident company has no bank account in Canada and is not listed in any business directory in Canada.



Decision

The non-resident company 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 company are entering Canada to perform that service. The non-resident company is carrying on business in Canada based on these facts and the significance of the service to the overall business activity of the non-resident company.

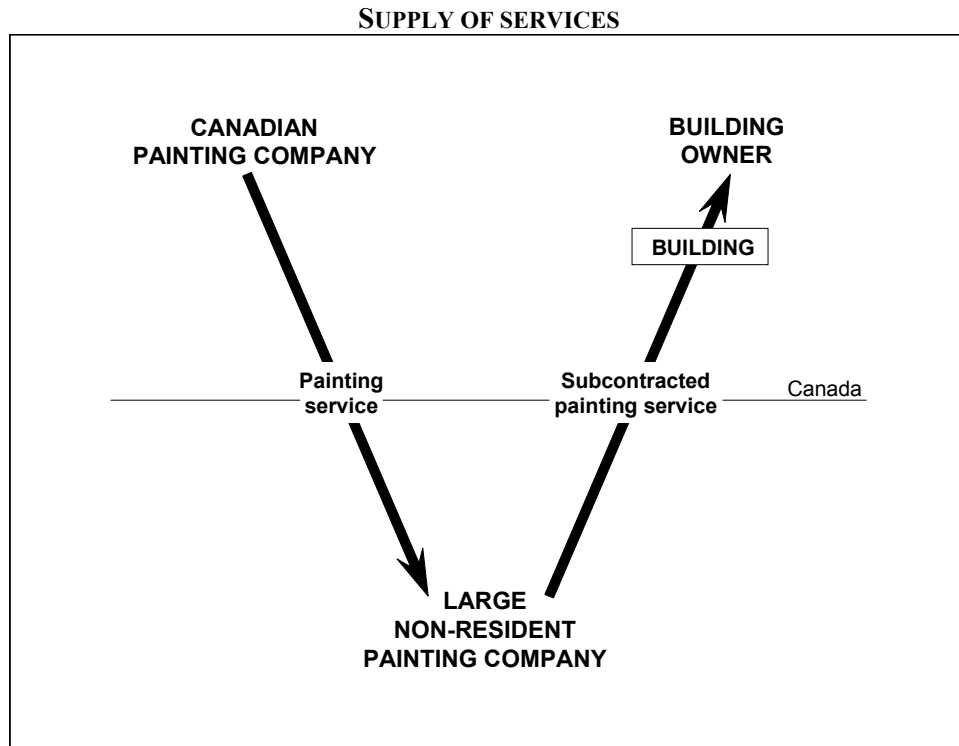
EXAMPLE NO. 21 – SUPPLY OF SERVICES

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 company 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 company fully subcontracts the job to a Canadian painting company that is a registrant.
3. The Canadian company is a contractor that carries on business in Canada. Pursuant to the terms of the subcontract with the non-resident company, the Canadian company 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 company and the Canadian building owner.
4. The non-resident company will not be in Canada supervising the work performed in Canada by the Canadian company. The non-resident company's involvement regarding the supply will be limited to

occasionally contacting the Canadian company from outside Canada to see how the work to be done is progressing.

5. The contract between the non-resident company and the Canadian building owner is concluded outside Canada.
6. The subcontract between the non-resident company and the Canadian company is concluded in Canada.
7. Payment by the building owner for the supply made by the non-resident company is made outside Canada.
8. Payment by the non-resident company for the supply made by the Canadian company is made in Canada.
9. The non-resident company has no employees or agents in Canada.
10. The non-resident company does not solicit business in Canada.
11. The non-resident company has no premises or equipment in Canada.
12. The non-resident company has no bank account in Canada and is not listed in any business directory in Canada.



Decision

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

Rationale

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

It should be noted that the Canadian painting company in this case would be required to collect GST/HST from the non-resident company in respect of the taxable supply of the painting service that is made in

Canada. If the non-resident company were to voluntarily register, the non-resident company would be entitled to an input tax credit in respect of the tax payable on the supply made by the Canadian painting company and would also be required to collect tax on its supply of the painting service made to the building owner.