

## GST/HST Policy Statement

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.

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<b>P-110R</b>	Amounts paid for supplies of minerals, peat, or forestry, water, or fishery products
<b>Date of Issue</b>	September 7, 2004. This policy statement replaces P-110, dated October 27, 1993.
<b>Subject</b>	Amounts paid for supplies of minerals, peat, or forestry, water, or fishery products
<b>Legislative Reference</b>	Subsections 162(2) and 162(3) of the <i>Excise Tax Act</i> (ETA).
<b>National Coding System File Number</b>	11667-5
<b>Effective Date</b>	January 1, 1991 for GST and April 1, 1997 for HST

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### ***Issue***

This policy statement explains the tax status of an amount paid for a mineral, peat, or any forestry, water, or fishery product where the purchaser has acquired the right to explore for or exploit the same natural resource.

### ***Decision***

Where a person pays an amount for a mineral, peat, or any forestry, water or fishery product (hereinafter referred to as a “natural resource”) that is based on the units of production of the natural resource from a certain property, and that same person has acquired the right to explore for and exploit the natural resource on that same property, the amount paid is considered to be “any fee or royalty charged or reserved” in respect of the right. Therefore, pursuant to subsection 162(2) of the ETA, the payment would be deemed not to be consideration for the supply of the right.

### ***Discussion***

Pursuant to subsection 162(2) of the ETA, a supply of a right to explore for or exploit a mineral deposit, a peat bog or deposit of peat, or a forestry, water or fishery resource is deemed not to be a supply and any consideration paid or due, or any fee or royalty charged or reserved, in respect of the right shall be deemed not to be consideration for the right.

Subsection 162(3) of the ETA outlines the exceptions to this provision. Subsection 162(2) does not apply to a supply of a right to take or remove forestry products, products that grow in water, fishery products, minerals or peat, where the supply is made to a consumer, or to a person who is not a registrant and who

acquires the right in the course of a business of supplying the products, minerals or peat to consumers. The exceptions do not apply to a supply of a right to take or remove water.

This policy applies where, for example, a person (other than a consumer or a non-registrant person as outlined above) enters into an agreement with an owner of a deposit, bog or resource that grants the person the right to enter onto the specified lands to explore for, extract and remove the natural resource from the reserves on the said lands. The person agrees to pay a specified per unit amount to “purchase”, and the owner of the natural resource agrees to “sell” at that specified per unit amount, a minimum quantity of the natural resource from the said lands, notwithstanding the fact that the person may not have removed the said minimum quantity of the natural resource.

## ***Examples***

### **EXAMPLE NO. 1**

#### **Statement of facts**

1. ABC supplies to DEF the exclusive right to enter ABC’s land for the purpose of developing and excavating gravel deposits on the lands, and mining and removing the gravel.
2. Payment for this right is a fee of \$100
3. During the calendar year and during each calendar year of the agreement, ABC agrees to sell and DEF agrees to purchase a minimum quantity of 10,000 cubic meters of the gravel.
4. DEF will pay a royalty rate of \$2 per cubic meter, measured in-situ, to ABC for the purchase of the gravel.
5. DEF is not a consumer or a non-registrant who acquires the right in the course of a business of supplying the gravel to consumers.

#### ***Payment for licence***

#### **Decision**

The fee of \$100 is not subject to tax.

#### **Rationale**

The right to enter the lands for the purpose of developing and excavating gravel deposits on the lands, and mining and removing the gravel is considered a supply of a right to explore for or exploit a mineral deposit. The fee of \$100 is consideration for this right. Pursuant to subsection 162(2) of the ETA, the supply of the right is deemed not to be a supply and the consideration paid in respect of such a right is deemed not to be consideration for the right

#### ***Royalty Payment***

#### **Decision**

The amount of \$2 per cubic meter of gravel removed is not subject to tax.

**Rationale**

Since DEF has acquired the right to explore for or exploit a mineral deposit, the royalty payment that DEF makes to ABC for the purchase of the gravel is considered to be a fee or royalty charged or reserved in respect of the right to explore for or exploit a natural resource. The royalty payment would therefore be deemed not to be consideration for the right pursuant to subsection 162(2) of the ETA

**EXAMPLE NO. 2****Statement of facts**

1. ABC supplies to DEF the exclusive right to enter ABC's land for the purpose of accessing standing timber reserves on the lands, and cutting and removing the timber
2. DEF will pay a royalty rate of \$30 per cubic metre of cut timber to ABC under the agreement
3. DEF is not a consumer or a non-registrant who acquires the right in the course of a business of supplying the timber to consumers.

**Decision**

The amount of \$30 per cubic metre of timber removed is not subject to tax.

**Rationale**

DEF has acquired the right to explore for or exploit a forestry resource, and the royalty payment that DEF makes to ABC for the timber is considered to be a fee or royalty charged or reserved in respect of the right to explore for or exploit a natural resource. The royalty payment would therefore be deemed not to be consideration for the right pursuant to subsection 162(2) of the ETA.