

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-219 Place Of Supply (HST) For National Equipment Maintenance Contracts

DATE OF ISSUE

August 2, 2000

SUBJECT

PLACE OF SUPPLY (HST) FOR NATIONAL EQUIPMENT MAINTENANCE CONTRACTS

Place Of Supply (HST) For National Equipment Maintenance Contracts

LEGISLATIVE REFERENCE(S)

Section 144.1, Part V of Schedule IX to the Excise Tax Act (ETA)

NATIONAL CODING SYSTEM FILE NUMBER(S)

11680-1

EFFECTIVE DATE

April 1, 1997

Issue and Decision:

Suppliers of equipment maintenance services will sometimes enter into national equipment maintenance contracts or agreements where a fee is charged at the beginning of the contract to service a fleet of equipment across the country. The service is performed on an "as needed" basis, with no further charges levied. In other words, the actual service to be performed will not be ascertained until the contract is fulfilled, and therefore is not directly related to the charges. To determine whether these contracts are subject to HST, it is necessary to determine the place of supply of the maintenance service.

An equipment maintenance service contract, by itself, is usually considered to be a single supply of a service (with the parts considered to be an incidental supply to the supply of the service). Where the service contract is contingent upon the lease of equipment, the supply is usually considered to be a single supply of tangible personal property. This policy addresses those contracts that can be characterized as supplies of services, where the supply is a single supply.

Where a supply is made in Canada, section 144.1 and sections 2 and 3 of Part V of Schedule IX to the *Excise Tax Act* (the “Act”) set out the rules for determining the province in which a supply of a service is made. Section 144.1 sets out two major principles regarding the place of supply:

- A supply is deemed to be made in a province if it is made in Canada and in that province under the rules set out in Schedule IX to the Act. In all other cases, the supply is deemed to be made outside that province; and
- A supply made in Canada that is not made in a participating province is deemed to be made in a non-participating province.

Sections 2 and 3 of Part V of Schedule IX to the Act deal with the place of supply of a service. Note that section 2 must be considered first. Section 3 can be considered only if section 2 does not apply. Paragraph 2(a) provides that the supply is made in a province if all or substantially all of the Canadian element of the service is performed in that province.

In cases not covered by the preceding rule, paragraph 2(b) of Part V of Schedule IX to the Act provides that the supply is considered to be made in the province in which the place of negotiation of the supply is located, provided that all or substantially all of the service is not performed outside that province.

When it is not possible to determine the place of supply using the rules set out in section 2 of Part V of Schedule IX to the Act, section 3 must then be considered. Section 3 applies when the Canadian element of the service is performed primarily in the participating provinces. Under these circumstances, the supply of the service is regarded as having been made in the participating province in which the greatest proportion of the Canadian element is performed. However, this rule does not apply when the place of negotiation of the supply is outside Canada and all or substantially all of the service is not performed in Canada.

The “place of negotiation” of a supply is defined in Part I of Schedule IX to mean the location of the supplier's permanent establishment at which the individual principally involved in negotiating for the supplier the agreement for the supply ordinarily works, or to which that individual ordinarily reports, in the performance of the individual's duties in relation to the activities of the supplier in the course of which the supply is made and, for the purposes of this definition, “negotiating” includes the making or acceptance of an offer.

In applying these rules to a supply of an equipment maintenance service, it is important to know where the service is performed. The place where the service is performed will be considered to be based upon the actual location of the equipment at the time of the entering into of the equipment maintenance service contract. Once this has been determined, then the HST place of supply rules in section 144.1 and Part V of Schedule IX to the Act are applied to determine the place of supply.

The policy only applies to the extent that the supply in question is a single supply. Where the agreement(s) for a maintenance contract can be considered to be in respect of more than a single supply of service (i.e. if separate supplies are considered to be made in respect of separate pieces

of equipment), then the HST place of supply rules must be applied to each supply under the agreement(s). For example, if there is one supply for maintenance services for facsimile equipment located exclusively outside the participating provinces and a second supply for photocopying equipment located both in and outside the participating provinces, this policy would apply to both of the supplies with the second supply requiring a more thorough analysis.

Note that this policy statement applies for the purpose of determining whether a supply, made in Canada, is subject to GST or HST. It does not apply to supplies determined to be made outside Canada pursuant to section 142 of the Act. Section 144.1 provides that only supplies made in Canada are considered to be made in a province, if the rules set out in Schedule IX to the Act allow for a determination that they were made in that province. Where it is determined that a supply is made outside Canada, there is no need to determine if it is made in a participating province.

This policy statement also does not apply to services for which there are special rules, such as the rules for services in relation to real property, postage, telecommunications and deemed and prescribed supplies.

SAMPLE RULING NO. 1

Our understanding of the facts and transactions is as follows:

Statement of Facts

1. A recipient enters into a single agreement with a supplier to service the recipient's photocopiers.
2. The agreement is not contingent upon the lease of the equipment.
3. The consideration is paid in full at the time the agreement is entered into.
4. The supply is made in Canada.
5. At the time of the agreement, the recipient has 3 photocopiers in New Brunswick, 3 photocopiers in Nova Scotia, 1 photocopier in Newfoundland, 10 photocopiers in Manitoba and 5 photocopiers in Ontario.
6. The place of negotiation of the agreement is Toronto, Ontario.

Ruling Requested

The supply of the maintenance service is a supply made outside the participating provinces under the provisions of Part V of Schedule IX to the *Excise Tax Act*. As a result, the payment for the contract does not attract HST but is subject to GST.

Ruling Given

The supply of the maintenance service is a supply made outside the participating provinces under the provisions of section 144.1 and Part V of Schedule IX to the *Excise Tax Act*. As a result, the payment for the contract does not attract HST but is subject to GST.

Rationale

Since in this case none of the equipment is located substantially all in any one province (no more than 10 out of 22 of the photocopiers are located in any one province) nor is the equipment located substantially outside the province in which the place of negotiation is located (5 out of 22 of the photocopiers are located in Ontario), the place of negotiation determines the place of supply pursuant to paragraph 2(b) of Part V of Schedule IX to the Act. Therefore, the supply of the service is made in a non-participating province (Ontario) under section 144.1 of the Act. The supply of the service would be subject to GST at 7% pursuant to subsection 165(1) of the Act and not HST.

SAMPLE RULING NO. 2

Our understanding of the facts and transactions is as follows:

Statement of Facts

1. A recipient enters into an agreement with a supplier to service the recipient's computers located in Prince Edward Island.
2. The recipient enters into a second, different agreement to service the recipient's computers in New Brunswick.
3. Neither agreement is contingent upon the lease of the equipment.
4. The consideration for each agreement is paid in full at the time the agreement is entered into.
5. Each supply is made in Canada.
6. The place of negotiation of each agreement is Halifax, Nova Scotia.

Ruling Requested

1. The supply of the maintenance service in respect of the computers located in Prince Edward Island is a supply made outside the participating provinces under the provisions of Part V of Schedule IX to the *Excise Tax Act*. As a result, the payment for the contract does not attract HST but is subject to GST.

2. The supply of the maintenance service in respect of the computers located in New Brunswick is a supply made inside a participating province under the provisions of Part V of Schedule IX to the *Excise Tax Act*. As a result, the payment for the contract is subject to HST.

Ruling Given

1. The supply of the maintenance service in respect of the computers located in Prince Edward Island is a supply made outside the participating provinces under the provisions of Part V of Schedule IX to the *Excise Tax Act*. As a result, the payment for the contract does not attract HST but is subject to GST.

2. The supply of the maintenance service in respect of the computers located in New Brunswick is a supply made inside a participating province under the provisions of Part V of Schedule IX to the *Excise Tax Act*. As a result, the payment for the contract is subject to HST.

Rationale

The statement of facts indicates that each agreement is entered into as a separate agreement. Therefore the place of supply rules for purposes of HST must be applied to each agreement. Pursuant to the provisions of section 144.1 and paragraph 2(a) of Part V of Schedule IX to the Act, the place of supply of the first agreement is Prince Edward Island and is subject to GST, and the place of supply of the second agreement is New Brunswick and is subject to HST.

DECISION TREE

Issue: Place of Supply (HST) for National Equipment Maintenance Contracts

