

**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-167R            Meaning of the First Part of the Definition of Business

#### **Date of Issue**

Issued: January 16, 1995

Revised: March 29, 2000

#### **Subject**

MEANING OF THE FIRST PART OF THE DEFINITION OF BUSINESS

#### **Legislative Reference(s)**

Subsection 123(1), definitions of “business” and “commercial activity”; subparagraphs 141.01(2)(b)(ii) and 141.01(3)(b)(ii); and sections 169 and 240 of the *Excise Tax Act*

#### **National Coding System File Number(s)**

11635-3

#### **Effective Date**

January 1, 1991 for GST

April 1, 1997 for HST

#### **Issue and Decision**

This policy statement provides a conceptual framework and general guidelines to be used in determining whether a person is carrying on a business for GST/HST purposes. This determination can impact upon a number of issues such as a person’s requirement/eligibility to register, their entitlement to input tax credits (ITCs), the application of certain exempting provisions and the tax status of business reorganizations. In addition, this policy statement discusses the extent to which the activities of a person should be examined separately in applying the definition of “business”. Given the broad scope of the definition of “business” and the variety of activities that could constitute a business, each situation must be looked at on an individual basis.

#### **Definition of Business**

The definition of “business” in subsection 123(1) of the *Excise Tax Act* (the Act) consists of two parts. The first part states that it includes “... a profession, calling, trade, manufacture or undertaking of any kind whatever ...”. The second part refers to “... any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement ...”. The definition also includes the qualifier that it is not dependent upon “... whether the activity or undertaking is engaged in for profit ...”. This policy statement is concerned with the first part of the definition. The second part of the definition is the subject of Policy Statement P-205R entitled “*Meaning of the Second Part of the Definition of Business and Whether it Applies to Activities Regardless of Whether there is an Expectation of Profit*” which should be referred to in appropriate cases.

It should also be noted that the definition of “commercial activity” in subsection 123(1) of the Act distinguishes between a “business” and “an adventure or concern in the nature of trade”. Unlike the definition of “business” under the *Income Tax Act*, the definition of “business” for GST/HST purposes does not include an adventure or concern in the nature of trade. This policy statement does not address the distinction between these two concepts. With respect to sales of real property, reference should be made to Policy Statement P-059 entitled “*Business vs. Adventure or Concern in the Nature of Trade Relating to Sales of Real Property*”.

#### Expectation of Profit

Generally, an activity carried on for profit will constitute a business for GST/HST purposes. However, unlike the *Income Tax Act*, the definition of “business” in subsection 123(1) of the Act includes the phrase “... whether the activity or undertaking is engaged in for profit ...”. A person is not required to be engaged in an activity or undertaking with an expectation of profit to be considered to be in business for GST/HST purposes. The definition of “business” (and by extension, commercial activity) was structured to include not only those activities that are considered to be a business for income tax purposes, but also those activities undertaken without a profit motive that would stand in direct competition with activities of profit motivated enterprises. The exclusion of the profit test provides for a level playing field between profit and non-profit organizations that are essentially making the same type of supplies.

In addition, there is no statutory distinction in the definition of “business” between public sector bodies (PSBs), such as governments, non-profit organizations and charities, and other persons who are not PSBs. As such, this policy statement applies to all persons who are engaged in activities that may constitute a business, regardless of whether they are motivated by profit or some other goal. Generally, the difficulty arises in determining the extent to which a PSB can be considered to be carrying on a business for the purpose of determining whether it is engaged in a commercial activity and, therefore, eligible or required to register for the GST/HST.

It should be noted that the definition of “commercial activity” in subsection 123(1) of the Act excludes a business carried on, or an adventure or concern in the nature of trade engaged in, without a reasonable expectation of profit by an individual, a personal trust

or a partnership where all the members of the partnership are individuals. This profit test does not apply to the making of a supply of real property (other than an exempt supply), including anything done in the course of or in connection with the making of the supply, which is a commercial activity by virtue of paragraph (c) of the definition. For further information, reference should be made to Policy Statement P-176R entitled “*Application of Profit Test to Carrying on a Business*”.

### Activities

Before determining whether a person is engaged in a business, one must first decide whether all of what that person does will be subjected to the business test or whether that person’s activities should be divided into separate parts and each part subjected to the business test. Put differently, does a person have one single or primary goal that characterizes the full extent to which the person is engaged in a business, or should the person’s activities be viewed separately when considering whether those activities are part of, or separate from, the person’s business(es).

Generally, the activities a person undertakes should not be isolated from each other, but rather, all of the activities should be viewed as being undertaken to achieve a single or primary goal. This is particularly true where the person in question is not an individual. The primary goal may be achieved through a variety of different activities and may be defined in terms of related subordinate goals, but ultimately, everything the person does (e.g., make supplies and acquire property or services) is directed at achieving that primary goal.

Distinct activities (i.e., activities that are not undertaken to achieve a single or primary goal and that have nothing in common with each other, except that they are carried on by the same person) should be subjected to the business test separately. Individually distinct activities will not generally be grouped and viewed as being undertaken to achieve a single or primary goal and, therefore, subject to the business test.

In some cases, it will be necessary to look at various groups of activities of a person separately. For example, consider an accountant who is registered as a sole proprietor in respect of his accounting practice and who also operates a hobby farm. While the accounting practice is financially successful, the hobby farm shows no reasonable expectation of profit. The activities relating to the accounting practice are distinct from those relating to the hobby farm (i.e., both groups of activities are not undertaken to achieve a single or primary goal). As such, the hobby farm is viewed as a separate group of activities (and possibly a business). However, given that the hobby farm has no reasonable expectation of profit, it would not be included in this individual’s commercial activities, even though, it could be argued that overall (based on the accounting practice and the hobby farm) the individual has a reasonable expectation of profit.

The grouping of a person’s activities is dependent upon the degree of interconnection, interlacing or interdependence embracing the various activities. The fact that the activities may differ in nature does not preclude them from being undertaken to achieve a

single or primary goal if there is a sufficient interconnection, interlacing or interdependence between them.

When determining whether the activities of a person are undertaken to achieve a primary goal, factors to be considered include, but are not limited to:

1. the extent to which the activities have common factors (such as the same location, procedures, products, customers or clients, employees, equipment, etc.);
2. whether one activity exists primarily to support another;
3. whether the activities are accounted for and recorded in a single set of records throughout the year; and
4. whether the operations are treated as a whole for purposes other than the GST/HST (e.g., income tax purposes).

### The Meaning of Business

Having established the manner in which the activities a person undertakes will be grouped for purposes of being subjected to the business test, the next step is to determine whether the activity or group of activities fall within the meaning of “business”.

The CCRA has generally taken a broad view of the meaning of “business” in a number of instances dealing with the making of supplies and whether certain supplies were taxable. However, the making of supplies cannot be considered as the sole measure of whether a business is being carried on given the absence of the profit test from the definition of “business”. As such, the issue is not so much determining if an activity that comprises or directly involves the making of supplies is a business, but rather to what extent an activity that does not directly involve the making of supplies is a business.

In some cases, a person may undertake activities that are themselves commercial in nature and business oriented (within the ordinary meaning of those terms), but which constitute neither a trade nor a manufacture (i.e., activities which involve the making of, or the intent to make, supplies), nor could they aptly be described as a profession or calling. Nevertheless, the inclusion of the phrase “... undertaking of any kind whatever ...” in the definition of “business” allows activities that are not strictly speaking a “... profession, calling, trade, manufacture ...”, within the ordinary meaning of those words, to be included within the meaning of “business”. The activities of a trade association would be an example of this type of activity. A trade association generally promotes the well-being of a particular industry and the business interests of its members through various activities. These activities could include meeting with government officials, preparing reports and other publications and promoting the industry or its products. Other than supplies of memberships, a trade association would, generally, make few, if any, supplies.

Although an undertaking that is carried on in an organized, structured fashion may constitute a business, not every conceivable undertaking should be treated as a business. Given the reference to whether an undertaking is engaged in for profit, it is the CCRA's position that "undertaking" is restricted to those activities that have some connection or similarity to an undertaking that would be carried out with profit as its objective.

For example, organizations established for the interest or amusement of a limited group of individuals (such as a group of flying enthusiasts who acquire an airplane for their common use) would likely not be considered as being engaged in an undertaking having some connection or similarity to an undertaking that would be carried out with profit as its objective. Thus, as a general rule, a hobby or recreational activity would likely not be a business. This is not to say that, in some cases, an organization formed for the purpose of providing, for example, recreational services, could not be a business. However, such an undertaking would have to be carried on in a "business-like" manner, having some connection or similarity to an undertaking that would be carried out with profit as its objective.

In establishing that an activity is sufficiently "business-like" to qualify as an "undertaking", a number of factors should be considered, including:

1. whether the activity is serious and earnestly pursued;
2. whether the activity is actively pursued with reasonable and recognizable continuity;
3. whether the activity is conducted in a sound manner using recognized business principles and records are maintained to that effect;
4. whether the supplies, if any, are of a kind which, subject to differences of detail, are commonly made by those who seek to profit from them;
5. whether the activity facilitates or promotes the making of supplies (whether by the person itself or by other persons); and
6. whether the activity supports other activities which are directed towards earning revenue.

While no one factor is itself more definitive than another, the circumstances surrounding a particular activity may suggest the need to provide more weight to a specific factor or factors. In addition, given that a particular factor may be weighted more heavily than another, it is not sufficient simply to total the number of factors that favour the existence of a business against the total number of factors that favour the opposite conclusion. For example, it may be possible, in the appropriate circumstances, to conclude that a business exists even if only two of the six factors are met.