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 POLICY STATEMENT

P-125 Importer and ITC entitlement

DATE OF ISSUE:
March 17, 1994

SUBJECT:
Importer and ITC entitlement.

LEGISLATIVE REFERENCE:
Subsection 169(1) and section 212 of the Excise Tax Act. Section 4 and subsection 17(3) of the Customs Act.

NATIONAL CODING:
11645-3, 11650-1

EFFECTIVE DATE:
January 1, 1991

TEXT:

This policy statement will discuss who is eligible to claim the input tax credit (ITC) for tax paid or payable at time of importation.

Issue and Decision:

The issue is to determine the identity of the person who is entitled to claim an input tax credit for tax payable on imported goods under the general rules.

The Department's position is that the person entitled to claim the input tax credit is the de facto importer of the goods, where the de facto importer could also be considered as liable to pay duties under the Customs Act. The entitlement on importation does not extend to subsequent purchasers, unless the purchaser could be held liable as the "importer" under the Customs Act and unless specific flow-through provisions apply (such as in section 180 of the Act).

Generally, the de facto importer is the person in Canada who ordered the goods from a supplier and to whom the goods were sent. Where the importer of record (i.e., the person named on the Customs accounting documents) is an agent of another person, only the person for whom the agent acted is considered as having imported the goods.

Where the importer of record is acting on his/her own behalf and is not acting as anyone's agent, the Department considers that person to be the de facto importer of the goods for the purposes of claiming the ITC.

Where the imported goods are for use in the course of the commercial activities of the de facto importer, who is not the importer of record, the de facto importer is entitled to claim the input tax credit provided that person has obtained evidence that the importer of record acted as the de facto importer's agent for GST purposes.

SAMPLE RULING

Example #1

STATEMENT OF FACTS

1. A retailer is in the business of supplying jewelry to customers.

2. The retailer imports jewelry for inventory for sale to customers.

3. The retailer acts as the importer of record in respect of the importation.

4. The retailer is a registrant at the time of importation.

RULING REQUESTED

Can the retailer claim an input tax credit for tax payable under Division III of the ETA in these circumstances?

RULING GIVEN

Yes. The jewelry was imported by the retailer in the course of the retailer's commercial activities, i.e. selling jewelry to customers. The retailer paid tax as the "importer of record". The retailer was a registrant at the time of importation. Therefore, the retailer would be considered to have met all the conditions for claiming the ITCs in respect of Division III tax.

SAMPLE RULING

Example #2

STATEMENT OF FACTS

1. A wholesaler is in the business of supplying jewelry to retailers.

2. The wholesaler and a retailer make an agreement for jewelry to be sold to the retailer.

3. The wholesaler does not have the necessary inventory in stock in order to fill the contract with the retailer.

4. The wholesaler orders the goods from a non-resident on an FOB basis and acts as the "importer of record".

5. The agreement with the retailer provides that the title to the jewelry passes directly to the retailer as soon as the wholesaler acquires title.

6. The title on the jewelry was transferred to the wholesaler, and therefore to the retailer, prior to importation.

7. The relation between the wholesaler and the retailer is not an agency relationship.

RULING REQUESTED

Who is entitled to claim the input tax credit for tax payable under Division III of the ETA in these circumstances?

RULING GIVEN

The wholesaler. The jewelry was imported by the wholesaler in the course of the wholesaler's commercial activities, i.e. selling jewelry to retailers, and the wholesaler paid tax as the importer of record. Notwithstanding that the contract provided that title would pass from the wholesaler to the retailer before the goods were imported, paragraph 142(1)(a) intervenes to deem the wholesaler to have made the supply in Canada. Tax under Division II would therefore apply. Given that tax paid is recoverable by the wholesaler as an ITC, the retailer cannot claim the ITC for the Division III tax , even though the jewelry is also for use in the course of the retailer's commercial activities and the retailer could be considered the de facto importer. The wholesaler is considered to have paid tax, as the wholesaler did not act as an agent of the retailer. The retailer, however, may be entitled to claim an ITC to recover the tax under Division II.

SAMPLE RULING

Example #3

STATEMENT OF FACTS

1. A small supplier making sales of goods in Canada arranges for the goods to be imported once he has a firm sale and acts as the importer of record for those goods.

2. The small supplier has not elected to register and is considered to be a resident in Canada.

3. The small supplier enters into a sale contract to provide goods in Canada to a resident registrant (Company A).

4. The small supplier orders the goods from outside Canada and arranges for the importation of the goods that are to be sold to Company A. The small supplier acts as the importer of record in respect of the imported goods.

5. Company A is acquiring the goods for resale to customers in the course of its commercial activities.

RULING REQUESTED

Is Company A entitled to claim the input tax credit for tax payable under Division III of the ETA in these circumstances?

RULING GIVEN

No. The small supplier was not acting as Company A's agent and is both the de facto importer and importer of record. Accordingly, Company A would not be entitled to claim the ITCs for Division III tax in this scenario. The small supplier is unable to recover the tax because of not being registered.

Finally, Company A acquired the goods from the small supplier in a domestic transaction and the transaction would not be subject to tax under Division II.

The result is the same as if a small supplier who is not registered acquires taxable goods domestically for resupply to a registrant company, the small supplier is unable to flow through the tax paid to the subsequent registrant.

SAMPLE RULING

Example #4

STATEMENT OF FACTS

1. A retailer (Company A) is in the business of supplying machinery to customers and is registered.

2. The retailer imports machinery as inventory for sale to customers and acts as the importer of record in respect of the importation.

3. When the customs accounting documents were being prepared by a customs broker, an error was made in the name of the retailer. Instead of inserting Company A as the name on the document, the broker inserted the name of another company, Company B, the next name on the broker's computerized list of clients.

4. The error could not be corrected as it was not detected until after payment was made to Customs by Company A.

RULING REQUESTED

Can the retailer, Company A, claim an input tax credit for tax payable under Division III of the ETA in these circumstances?

RULING GIVEN
Yes. The machinery was imported by Company A in the course of its commercial activities, i.e., selling machinery to customers. Tax under Division III was payable by Company A.

In order to claim the ITC, Company A must retain evidence acceptable to the Department to substantiate that the name indicated on the customs accounting documents constituted a clerical error.