



GST/HST Memoranda Series

2.6 Security Requirements for Non-Residents

May 1999

Overview

This memorandum explains the conditions under which a non-resident person is required to provide and maintain security with the Department under the Goods and Services Tax (GST)/Harmonized Sales Tax (HST) provisions of the *Excise Tax Act*. It also explains the type of security acceptable to the Department and the amount of security that is required to be posted. All references to dollar values are in Canadian currency.

Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

Note

This memorandum replaces GST/HST Memorandum 2.6, *Security Requirements for Non-Residents*, dated June 1995. Due to the number of significant changes, the revisions have not been side-barred.

Note - HST

Reference in this memorandum is made to supplies taxable at 7% or 15% (the rate of the Harmonized Sales Tax (HST)). The 15% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the “participating provinces”). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, *Place of Supply Rules under the HST*, available from any Revenue Canada tax services office.

Security requirements

Security requirements ss 240(6)

1. With few exceptions, a non-resident person who does not have a permanent establishment in Canada and who is required, or who applies voluntarily, to be registered must provide and maintain security with the Department in an amount and a form satisfactory to the Minister. This security is required to ensure that the non-resident person pays or remits all amounts payable or remittable by the person under Part IX of the Act.

2.6 Security Requirements for Non-Residents (continued)

2. Non-resident persons who do have a permanent establishment in Canada, but do not make supplies through their own fixed place of business in Canada and who are required, or who apply voluntarily, to be registered for the GST/HST must provide and maintain security. In addition, if the “permanent establishment” as defined below is a fixed place of business of another person and the non-resident person makes supplies through that permanent establishment, the non-resident person is required to provide and maintain security. The exception to the requirement to provide and maintain security is explained in paragraph 12.
3. Security, as a condition of registration, will be required at the time of registration.

Meaning of “permanent establishment”

Permanent establishment

4. Although “permanent establishment” is a well-established term for income tax purposes, it does not necessarily have the same meaning for GST/HST purposes.

Definition of permanent establishment ss 123(1)

5. Under the Act, the term “permanent establishment” means
 - (a) a fixed place of business of a particular person, including
 - (i) a place of management, a branch, an office, a factory or a workshop, and
 - (ii) a mine, an oil or gas well, a quarry, timberland, or any other place of extraction of natural resources,through which the particular person makes supplies, or
 - (b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business) who is acting in Canada on behalf of the particular person and through whom the particular person makes supplies in the ordinary course of business.

Amount of security required

Minimum and maximum amounts

6. In general, the amount of security that must be posted is set at a minimum of \$5,000 and a maximum of \$1 million.

Initial amount of security

7. The initial amount of security required is based on 50% of the estimated net tax of the non-resident person, whether the net tax be a positive or negative amount, for the 12-month period following registration. After that, the security required will be equal to 50% of the net tax during the person’s previous 12-month period. The non-resident person is responsible for estimating the net tax and calculating the amount of security required. For example, if a person’s estimated net tax in a 12-month period is \$10,000, the amount of security required is \$5,000. If a person’s estimated net tax in a 12-month period is negative \$12,000 (i.e., a net refund of \$12,000 for the period), the amount of security required is \$6,000.

2.6 Security Requirements for Non-Residents (continued)

Subsequent years	8. After the initial 12-month period following registration, the amount of security required will be equal to 50% of the person's net tax, whether the net tax is a positive or negative amount, for the previous 12-month period.
Annual review	9. Generally, the amount of security provided by a non-resident person will be reviewed on an annual basis. If, at any time, a review of the person's net tax for the current or previous 12-month period shows that the amount of security provided is inadequate, the Minister may require that the amount of security be increased.
Increase in security not required	10. Adjustments may not be required for insignificant changes (amounts indicated below) to the amount of security. If the Minister has reviewed the security requirement, the non-resident person may not be asked to increase the amount of security if <ol style="list-style-type: none">the amount of security required is \$25,000 or less and the additional amount of security does not exceed \$2,500, orthe amount of security required exceeds \$25,000 and the additional amount of security does not exceed \$5,000.
Decrease of amount of security	11. If at any time a decrease in the total amount of security is warranted, the non-resident person may request in writing that the excess amount of security be returned. The excess amount of security will not be returned unless the excess amount exceeds the \$2,500 or \$5,000 threshold as stated in paragraph 10(a) or (b) above.
Exception	12. Exceptions to the requirement to provide minimum security are non-resident persons: <ul style="list-style-type: none">whose taxable supplies (including zero-rated supplies) in Canada do not exceed \$100,000 annually, andwhose annual net tax is between \$3,000 remittable and \$3,000 refundable. 13. Those persons described in paragraph 12 above, are not required to provide security. Since there is no provision to waive security, the minimum amount of security required is administratively set at a nominal figure of \$1. This amount need not be provided unless the Minister specifically requests the non-resident person to do so. Registrants who meet these requirements and have already provided security may contact their tax services office to recover their security.
Failure to comply ss 240(7)	14. Where a person fails to provide or maintain security as required, the Minister may retain any GST/HST refund or rebate to which the person is otherwise entitled. The amount retained will not exceed the difference between the amount of security required to be posted and the amount of security actually posted. The amount of the refund or rebate retained is considered to have been paid to the person. In addition, the amount retained is considered to have been given to the Minister by the person as security.

2.6 Security Requirements for Non-Residents (continued)

Form of security

15. Security in Canadian funds may be in the form of cash, certified cheque, money order, or bond. Bonds must be in a form approved by the Minister. A sample of an approved surety bond, form GST 114, *Bond for Non-Resident Person Without a Permanent Establishment in Canada*, is provided in Appendix A to this section.

Acceptable bonds

16. Bonds acceptable to the Minister as security posted by non-resident persons include:

- (a) a transferable Government of Canada bond that is accompanied by a valid Government of Canada Y76 transfer form;
- (b) a bond issued by a company that holds a certificate of registry to carry on the fidelity or surety class of insurance business in Canada and that is approved by the President of the Treasury Board as a company whose bonds can be accepted by the Government of Canada;
 - The Treasury Board issues a list of approved companies on a regular basis. Information concerning this list can be obtained at tax services offices.
- (c) a bond issued by a member of the Canadian Payments Association as provided for in section 4 of the *Canadian Payments Association Act*;
- (d) a bond issued by a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the Régie de l'assurance-dépôts du Québec to the maximum permitted by the statutes under which those institutions were established;
- (e) a bond issued by a credit union as defined in subsection 137(6) of the *Income Tax Act*; and
- (f) a bond issued by a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by the Government of Canada or by a Canadian provincial government.

Government of Canada bonds

17. Government of Canada bonds will be accepted at market value or face value, whichever is the lesser, at the time of receipt when used for security purposes. Canada Savings Bonds are **not** acceptable as security because they are not transferable.

Outstanding tax

18. Where an amount payable or remittable under Part IX of the Act is outstanding, the Minister may realize on the security that was provided if, after due notification, payment or remittance is not received within a reasonable period of time. Where the outstanding debt exceeds the amount of security posted, action may be taken under the collection provisions of the Act.

Endorsements or riders

19. An endorsement or rider to a surety bond must be signed and sealed by the principal and by the duly authorized officials of the Surety, and must be in a form acceptable to the Minister. A sample of an acceptable form of endorsement to a surety bond, form GST 367, *Endorsement to Bond for Non-Resident Person Without a Permanent Establishment in Canada*, is provided in Appendix B to this section.

Cancellation of bond

20. To cancel a surety bond that has been posted with the Department, the Surety has to provide 60 days' notice in writing of the cancellation. The notice, which must be sent by certified or registered mail, must be addressed to the Director of the responsible tax services office.

Replacement security

21. A non-resident person who is required to provide and maintain security must, where necessary, provide replacement security to ensure continued and unbroken coverage.

Up to five years for notice of claim

22. A notice of any claim by the Department for a security bond can be given to the Surety for a period of up to five years following the date of termination of the bond.

All GST/HST memoranda and other Revenue Canada publications are available on Internet at the Revenue Canada site <http://www.rc.gc.ca/> under the heading "Technical Information" in "General Information".

2.6 Security Requirements for Non-Residents (continued)

Appendix A - Form GST 114, *Bond for Non-Resident Person without a Permanent Establishment in Canada*

2.6 Security Requirements for Non-Residents (continued)

Appendix B- Form GST 367 (E), *Endorsement to Bond for Non-Resident Person without a Permanent Establishment in Canada*