



Place of Supply Rules for GST/HST

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On February 25, 2010, the Department of Finance issued a news release announcing a number of changes to the place of supply rules, as well as the self-assessment and rebate rules relating to the provincial component of the Harmonized Sales Tax (HST). The news release was immediately followed by a GST/HST Technical Information Bulletin B-103 on the Place of Supply Rules by the Canada Revenue Agency (CRA).

Meaning of Place of Supply Rules

The GST/HST place of supply rules determine whether GST registrants are required to collect Goods and Services Tax (GST) or HST on their sales made in Canada. If a sale is made in Canada in a non-HST province, the GST registrant supplier is required to collect only the GST. If a sale is regarded as being made in an HST province, the supplier is required to collect HST at the rate in that province. If the supplier collects only GST, the purchaser may be required to self-assess the provincial component of the HST if the good or service is later imported into an HST province.

The Quebec Sales Tax (QST) uses place of supply rules that are similar to the current HST rules. Quebec has not yet indicated whether it will harmonize its rules with the proposed HST place of supply rules. The HST provinces are Nova Scotia, New Brunswick, Newfoundland and, as of July 1, 2010, Ontario and British Columbia.

Application

The new place of supply rules will generally apply to taxable supplies made on or after May 1, 2010. This will also apply to supplies made after February 25, 2010 and before May 1, 2010, if the consideration for the supply has not become due and has not been paid before May 1, 2010.

Proposed Changes to Place of Supply Rules

The following is a summary of some of the Department of Finance's proposed changes to the GST/HST place of supply rules. These rules are generally based on the different types of supplies, such as tangible personal property (e.g., goods), intangible personal property (e.g., copyrights, tickets, memberships, royalties) and services.

A) Tangible Personal Property — Place of Supply Rules

No changes are proposed to the place of supply rules for tangible personal property supplied. As such, a sale of tangible personal property (e.g. goods) will generally continue to be regarded as being made in the province:

- in which the good is delivered or made available to the recipient;
- in which the goods are shipped pursuant to a contract for carriage (including where the vendor retains on behalf of the purchaser a common carrier or consignee for shipment to that province); or
- of the address to which the goods are mailed or couriered.

B) Intangible Personal Property — Place of Supply Rules

The Department of Finance proposes significant changes to the current HST place of supply rules for intangible personal property (e.g., copyrights, on-line digital music, tickets to events). The new rules will still largely depend on where the intangible personal property can be used. However, the location of the recipient will also be a factor in some cases. The proposed new rules, except where a specific exception applies, are as follows:

Property That Can be Used Primarily in HST Provinces

The place of supply of intangible personal property will be an HST province where the Canadian rights in respect of the property (i.e., the part of the property that can be used in Canada) can be used primarily in HST provinces.

If the Canadian rights can be used in more than one province, the following rules will apply to determine in which HST provinces the supply will be regarded as having been made:

Rule 1 — If, under the agreement, the greatest proportion of use of the Canadian rights that are restricted to HST provinces would have to occur in a particular HST province, if all such rights were used, the supply of the intangible personal property will be regarded as having been made in that particular HST province (e.g., Nova Scotia would be the place of supply of a hockey ticket package for 40 home games in Nova Scotia and 10 away games in New Brunswick).

Rule 2 — If Rule 1 does not apply, and the value of the consideration for the supply is \$300 or less and the supply is either made in the physical presence of the purchaser (or someone who acts on his or her behalf) at a permanent establishment of the supplier located in an HST province, the supply will be regarded as having been made in that province.

For example, an individual in New Brunswick purchases a movie pass that provides 10 admissions to cinemas located in New Brunswick and Nova Scotia. The supply will be subject to 13% HST (5% federal component and 8% New Brunswick component).



Rule 3 — Where Rule 1 and Rule 2 do not apply, and the supplier, in the normal course of business, obtains one of the following particular addresses of the purchaser that is located in an HST province, the supply will be regarded as having been made in that HST province:

- a. a home or business address in Canada of the recipient;
- b. where the supplier obtains more than one home or business address in Canada of the recipient, the address that is most closely connected with the supply; or
- c. where the supplier does not obtain such an address, another address in Canada that is most closely connected with the supply.

Rule 4 — Where Rules 1, 2, and 3 do not apply, the supply of intangible personal property will be regarded as made in the HST province, among the HST provinces in which the Canadian rights can be used, for which the provincial component of the HST is the highest.

Rule 5 — Where a single HST province cannot be determined under Rule 4 because the rate of the provincial component of the HST in two or more of the HST provinces in which the Canadian rights can be used is the same, the supplier will be required to charge HST by applying that particular rate.

Property That Can be Used Primarily Outside HST Provinces

Generally, if the Canadian rights of an intangible personal property can be used primarily outside HST provinces only, the supply of such property will be regarded as having been made in a non-HST province and GST will apply (not HST).

Specific place of supply rules will apply to supplies of intangible personal property that cannot be used primarily in HST provinces only or primarily in non-HST provinces only (the agreement does not specify whether the use of the Canadian rights can only occur in HST provinces or non-HST provinces). For example, a movie pass for 10 admissions to movie locations across Canada would be taxed in the province of sale.

Other specific place of supply rules apply to intangible personal property that relates to real property, to tangible personal property, or to **services to be performed**.

C) Services — Place of Supply Rules

The Department of Finance proposes to replace the current HST place of supply rules for some services with the following general rules:

Rule 1 — If a supply of a service is made and, in the normal course of business, the supplier obtains a particular address of the recipient, the service will be regarded as having been made in the province of the following address:

- a home or business address in Canada of the recipient
- if the supplier obtains more than one home or business address in Canada of the recipient, the home or business address that is most closely connected with the supply
- if the supplier does not obtain a home or business address in Canada of the recipient, another Canadian address that is most closely connected with the supply.

Rule 2 — If the supplier does not obtain an address, as per Rule 1 (e.g., a non-resident purchaser), the service will be regarded as having been made in an HST province, if the part of the service that is performed in Canada is performed primarily (more than 50%) in the HST province. As such, the service will be regarded as made in the HST province in which the greatest proportion of the service is performed.

Rule 3 — If Rule 2 applies, but the supplier cannot determine one single HST province in which the greatest proportion of the service is performed because the service is performed equally in two or more HST provinces, the supply will be regarded as made in the province with the highest rate of the provincial component of the HST.

Rule 4 — If Rule 3 applies but a single participating province still cannot be determined to be the place of supply because the HST rate for the provincial component of the HST in two or more of the HST provinces is the same, the supplier will be required to charge HST by applying that particular rate.

The Department of Finance notes that, if in the normal course of business, the supplier does not obtain an address in Canada of the recipient, the service will be regarded as made in a non-HST province if the service performed in Canada is not performed primarily (more than 50%) in the HST provinces.

Special Rules for Certain Services

Personal Services

A supply of a service that is all or substantially all (90% or more) performed in the presence of the individual to whom it is rendered, and the Canadian element of which is performed primarily (more than 50%) in the HST provinces, will be considered to be made in the HST province in which the greatest proportion of the service is performed.

If the service is performed equally in two or more HST provinces, the supply will be considered to be made in the HST province with the highest rate of the provincial component of the HST.

However, if the Canadian element of the service is performed, other than primarily in the HST provinces, the supply will be considered to be made in a non-HST province. A few examples of specific services are:

- Hairdressing services
- Massage therapist services
- Fitness Trainer services

Example: The personal service is supplied in Ontario, but the recipient lives in Quebec, the service is still taxed in Ontario and subject to 13% HST.



Service in Relation to Tangible Personal Property

A supply of a service in relation to tangible personal property that is situated in one or more provinces, and that remains situated in that province while the service is performed, will be considered to be made in a that province provided the tangible personal property is situated primarily (more than 50%) in that province.

Example: A consumer in Ontario hires an auto repair shop in Ontario to repair the consumer's vehicle at the repair shop. The vehicle is situated in Ontario when the service begins to be performed and remains in Ontario while the service is performed. The supply is subject to 13% HST.



However, if the tangible personal property does not remain situated in a particular province while the Canadian element of the service is performed, the service will be considered to be made in that HST province if:

- the property is situated primarily (more than 50%) in that HST province at any time the Canadian element of the service is performed;
- the service is performed primarily (more than 50%) in HST provinces; and
- the greatest proportion of the performance of the service that is performed in the HST provinces is performed in that particular HST province.

Example: A consumer in Ontario hires an auto repair shop in Ontario to repair the consumer's vehicle at their repair shop. There are some specific repairs that can only be done from a Quebec location. The car is situated 40% in Ontario and 60% in Quebec. The vehicle is situated in Ontario when the service begins to be performed and later moved to Quebec for specific repairs. The supply of service is considered to be made in Quebec and is subject to a GST rate of 5%.

Service in Relation to Real Property

A supply of services in relation to real property will be considered as having been made in a participating province if the greatest proportion of the real property is situated primarily (more than 50%) in that province. If a single participating province cannot be determined, the supply will be considered to be made in the province with the highest rate of the provincial component of the HST.

Example: An Ontario company hires a Quebec company to paint its warehouse in Ontario. The real property is situated in a participating province, so the supply is, therefore, made in Ontario and subject to a HST at a rate of 13%, which the Quebec company remits with its GST.

Here are a few examples of specific services explained in detail in the CRA's GST/HST Technical Information Bulletin B-103:

- Services in relation to real property
- Services in relation to tangible personal property
- Services in relation to a location-specific event
- Services rendered in connection with litigation
- Passenger transportation services
- Services supplied on board conveyances (e.g., planes, trains)
- Baggage charges and child supervision
- Services related to a ticket, voucher or reservation
- Freight transportation services
- Postage and mail delivery services
- Telecommunication services
- Customs brokerage services
- Repairs, maintenance, cleaning, alterations and other services relating to goods
- Services of a trustee in respect of a trust governed by an RRSP, RRIF or RESP
- Premium rate telephone services
- Computer-related services and Internet access
- Air navigation services

The specific HST place of supply rules for some of these services may change while the current rules will continue to apply to others. The Department of Finance also provided a few clarifying amendments to the current place of supply rules for some services.

Suppliers of services should review the proposed HST place of supply rules carefully to determine whether the current rules they use will change.

Changes in the place of supply rules may require system changes.

Rebates

Special rebate mechanisms have been provided for situations where property or services acquired in a participating province are moved to a non-participating province. A non-registrant may apply for a rebate of all or part of the provincial component of the HST, or for the difference in the rate, when moving tangible personal property from a participating province to a non-participating province or from a participating province with a higher HST rate to a participating province with a lower HST rate. Similarly, a non-registrant may apply for a rebate of all or part of the provincial component of the HST for services and intangible personal property made in a participating province where the property or services were acquired for use or supply significantly (generally, 10% or more) in a non-participating province or a participating province with a lower HST rate.

Self-assessment Rules

Self-assessment of the provincial component of the HST may be required in some cases where property or a service is supplied in a non-HST province but will be consumed or used in an HST province. Similarly, self-assessment of the provincial component of the HST may also be required for some supplies imported for use in Canada, such as some services acquired from non-residents.



Coming Into Force

The new self-assessment rules and rebates for the provincial component of the HST will generally apply to:

- any tangible personal property brought into or removed from an HST province on or after July 1, 2010; or
- any supply of intangible personal property or service, if all or part of the consideration for the supply becomes due or is paid after June 30, 2010.

Quebec Sales Tax

At present, there are no specific self assessment rules for QST as a result of new place of supply rules. Revenue Quebec may come up with some additional rules regarding the self-assessment requirement of Quebec residents receiving services from outside of Quebec.

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Place of Supply Rules for GST/HST

The following is a brief summary. For more information, refer to our HST memo – “Place of Supply Rules for GST/HST.”

Supply	Method of Charging
Property	
Property delivered to a recipient	Charge based on the location of the recipient
Property provided at the vendor's location	Charge based on the location of the vendor
Services	
Services supplied with person present	Charge based on the location of where the service is provided
Service provided to property	Charge based on the location of the property when the service is provided
Service provided related to real property	Charge based on the location of the real property
Other services	Charge based on the location of the recipient based on their address
Intangible Personal Property	
Property that can be used primarily in an HST province	Charge HST based on where the greatest portion of use is
Property that can be used primarily in a non-HST province, or can be used in any province	Charge only GST