



GST/HST Policy Statement

P-251

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Eating Establishments

Legislative references	Paragraph 1(q) of Part III of Schedule VI to the <i>Excise Tax Act</i> (the Act)
National coding system file number	11601-2
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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.

Issue

This policy statement explains the meaning of “establishment”, where an establishment supplying substantially all taxable foods or beverages is required to charge tax on all of its supplies of food and beverages.

Pursuant to paragraph 1(q) of Part III of Schedule VI to the Act, a supplier at an establishment is required to collect GST/HST on **all** of its sales of food and beverages (with certain exceptions) when substantially all of its sales of foods and beverages are otherwise taxable at 5% or 13% (hereinafter referred to as taxable) pursuant to paragraphs 1(a) to (p) of Part III of Schedule VI to the Act. That is, 100% of its supplies of food and beverages (with certain exceptions) will be taxable if 90% or more of its supplies of food and beverages are otherwise taxable. For example, a usually zero-rated supply of a 500 mL carton of unflavoured milk would be subject to GST/HST if sold in such an establishment.

The Act does not define the term “establishment”. This policy statement sets out guidelines the Canada Revenue Agency (CRA) uses to interpret the word establishment, especially in those situations where a particular location may contain more than one establishment.

Decision

The following facilities are all establishments that commonly come within the application of paragraph 1(q):

- restaurants and drive-in restaurants
- fast food outlets or “quick service” outlets
- takeout and home delivery outlets
- pubs, taverns, bars and lounges
- cafeterias and dining rooms
- lunch counters, coffee shops and snack bars
- mobile canteens
- catering services
- hotels, motels and lodging houses
- private or social clubs, and similar places or establishments where prepared food products are provided
- convention centres

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- sports arenas and stadiums
 - meeting halls and union halls
 - passenger transportation vehicles of any type wherein food and/or beverages are provided for a separate consideration
 - any eating facility within a business entity, for example, a lunch counter within a retail department store

Under the last example, where an eating facility within a larger entity makes substantially all taxable sales, this eating facility is considered to be a separate entity, and is considered to be an establishment for purposes of paragraph 1(q) of Part III of Schedule VI to the Act. Only sales made by the separate eating facility would be subject to paragraph 1(q). Sales made by the rest of the larger entity would not be caught by this paragraph.

Where an eating facility supplying food and/or beverages is located within a larger entity, and the remainder of the larger entity does not make supplies of food or beverages, it is not necessary to determine whether the eating facility is a separate establishment. Paragraph 1(q) is only concerned with establishments that make supplies described in paragraphs 1(a) to (p). For example, whether a motel with a restaurant or a car dealership with a snack counter is one establishment or two establishments will not affect the application of paragraph 1(q).

However, it may be necessary at times to determine whether a facility within a business entity should be considered a separate establishment when calculating whether the establishment makes substantially all taxable supplies. This can be difficult to do in some cases.

The approach taken in this policy statement is that similar types of facilities should be subject to the same tax treatment of their supplies. Those locations that are an alternative to other types of establishments clearly within paragraph 1(q) should be treated the same as those other establishments. A location within a larger location should be considered a separate establishment where it has strong similarities to other single purpose locations that are clearly establishments. This can be judged by the degree of “separateness” of the smaller location from the larger location. The following criteria are used in making this determination:

- whether the two locations are operated by separate registrants;
- the extent to which the one location is distinguishable from the rest of the larger location;
- whether nearby seating is available;
- whether there is a separate cash register;
- whether there are dedicated staff for that location; and
- whether the items sold from that location are stored at that location;

No single criterion is conclusive. Rather, each factor must be considered in light of the overall circumstances. For example, the lack of seating would not be conclusive, given that take-out establishments come within paragraph 1(q).

Generally, an establishment is a self-contained location that is physically separated from any other location at which food or beverages are sold. A restaurant, pub, fast food outlet, etc. located in a building containing no other business is an establishment. A restaurant, etc. that is located in a building such as a mall but physically separated from the common areas (other than at the entrance to the restaurant) and from other businesses is an establishment. Fast food outlets in a food court are separate establishments because they are usually operated by separate registrants. A grocery store with an area set aside to sit down and eat items purchased from a counter and paid for at a separate cash register consists of two establishments, the ready-to-eat counter and the rest of the grocery store.

Where a smaller location within a larger location is operated by a separate registrant, each registrant's business is a separate establishment. Even where there is little physical demarcation between the two business operations, they are separate establishments. For example, if ready-to-eat food was available at a counter in a grocery store but there was no seating area set aside and the counter was not separated from the grocery store in any manner but the ready-to-eat counter was operated by a separate registrant, it would be a separate establishment. This is because each registrant in this case is responsible for meeting its own obligations under the Act separate from the other registrant, based upon the nature of its own business.

Where a gas bar has a well-defined eating area, such as a restaurant, the restaurant is treated as a separate establishment. A gas bar may also have sales of food or beverages, which are minor compared to other products. Such a gas bar might have an area set aside with a small coffee machine and a microwave oven. In this case, the determination of whether the small area set aside is a separate establishment is made using the criteria listed above.

This policy applies to convenience stores. However, in many cases, their supplies of zero-rated food are sufficient to put them outside the scope of paragraph 1(q). Furthermore, even if the store falls within paragraph 1(q), certain supplies might still be zero-rated under subparagraphs 1(q)(i) or (ii) as not for immediate consumption or sweetened baked goods sold in quantities of six or more.

This policy also applies where the larger location sells substantially all taxable foods, but has a well-defined separate area that does not make substantially all taxable supplies. An example is a seafood restaurant that has a small area set aside for selling fresh or frozen seafood. If the area selling the fresh or frozen seafood meets the criteria above, then that area is a separate establishment.

Food and beverage wholesalers or manufacturers however are not establishments under paragraph 1(q). Wholesalers and manufacturers are not alternatives to other establishments. They do not serve consumers. A zero-rated supply made by a wholesaler or manufacturer does not become taxable simply because the wholesaler or manufacturer makes substantially all taxable supplies.

Those establishments where there is no demarcation dividing the establishment, or where the demarcation simply separates different areas of the same type of establishment, such as a restaurant with more than one dining room, constitute a single establishment. As well, demarcations such as between the dining room and kitchen of an otherwise single establishment are irrelevant.

Examples

Example 1

Facts

1. A motel operates a restaurant contained in the same building.
2. The restaurant is a sit-down venue, has its own entrance and is contained in a room separate from the rest of the motel.
3. The restaurant has its own staff and its own inventory of supplies.
4. The restaurant typically serves both motel guests and the general public.
5. Guests are expected to pay for their meals at the restaurant, unless they are motel guests, in which case they have the option of adding the restaurant bill to their room bill.

Decision

Although the criteria indicate that the restaurant is a separate establishment from the rest of the motel, it is not necessary to make this determination, since no supplies of food or beverages are made elsewhere in the motel.

Rationale

The restaurant is a separate establishment from the motel. It is a sit-down venue, has its own entrance and is contained in a room separate from the rest of the motel. It has its own staff and its own inventory of supplies. The restaurant typically serves both motel guests and the general public and therefore competes against other stand-alone restaurants. Guests are expected to pay for their meals at the restaurant.

However, since the motel does not make any other supplies of food or beverages outside of the restaurant, it does not change the application of paragraph 1(q) whether the restaurant is considered a separate establishment or not.

Example 2**Facts**

1. A restaurant has an area for sit-down dining and another area to sell fresh food to be taken home to be cooked, similar to the kind served in the restaurant.
2. The fresh food area is in a separate room from the restaurant.
3. The fresh food area has its own dedicated staff and food items for purchase.
4. The restaurant serves only prepared meals.
5. The fresh food area has its own cash register.

Decision

The fresh food area and the restaurant are two separate establishments.

Rationale

The fresh food area is in a separate room from the restaurant, has its own dedicated staff and food items for purchase and its own cash register. The restaurant serves only prepared meals while the fresh food area serves mostly food to be taken home to be cooked.

Example 3**Facts**

1. A grocery store has an area set aside to sell a small selection of hot or cold prepared ready-to-eat food and beverages.
2. The area is not physically separated from the rest of the store by walls or other barriers, but has its own unique décor. The counter area is separated from the nearby deli counter by a space that allows staff access to behind the counter.
3. The area has a small number of tables and chairs for seating.
4. The area has its own dedicated staff, although if necessary staff from the nearby deli counter will assist.
5. The items available for purchase in this area are stored in the area.
6. The items are served either on trays for immediate consumption or packaged for take-out.
7. The area has its own cash register.
8. Items served on trays must be paid for at the cash register for that area; items prepared for take-out may be paid for in that area or at the main check-out aisles along with other groceries.

Decision

The seating area serving hot or cold prepared ready-to-eat food and beverages is a separate establishment.

Rationale

Although not physically separated from the rest of the store by walls or other barriers, the seating area has its own unique decor. There is some separation of the counter from the nearby deli counter. It has a small number of tables and chairs for seating. Most of the time, the area is served by its own dedicated staff. The items available for purchase in this area are stored in the area. The area has its own cash register at which items served on trays must be paid for.

Example 4**Facts**

1. A small delicatessen type store serves hot sandwiches such as sausages in a bun along with prepared salads such as potato salad and coleslaw.
2. The counter at which the sandwiches and salads are sold is a continuation of the cold cuts deli counter, although it has a section with warming trays where the sausages and other hot meats are kept.
3. There is no seating inside the store, although two tables with chairs are situated outside the store.
4. The store has only one cash register.
5. The same staff serves both the cold cuts counter and the hot food counter.
6. The sausages and hot meats are kept in the warming trays at the end of the counter. The salads are kept next to the warming trays. When more sausages or meats are required to be heated, they are taken from the cold cuts counter or sometimes from the storeroom. Customers wishing to purchase a beverage take one from the cooler where all beverages are kept.

Decision

The entire store is one establishment.

Rationale

There is no separation between the area serving the hot food and the rest of the store. The presence of a section of the counter with warming trays is not sufficient to separate one section of the store from another. The store has only one cash register, and the same staff serves both the cold cuts counter and the hot food counter. Although the sausages and hot meats are kept on hand in the warming trays and the salads are kept next to the warming trays, there is no separate storage area for that food until it is actually heated. No beverages are kept on hand in that area. The presence of two tables with chairs situated outside the store is not sufficient to create two establishments.

Example 5**Facts**

1. A convenience store sells various food and non-food items.
2. A section of the store has a coffee machine and microwave oven to heat containers of food specially packaged by manufacturers for microwave heating.
3. The section of the store is not separated by any walls or other barriers.
4. No seating is available.
5. There is only one cash register.
6. The section of the store is strictly self-serve.
7. The food for heating in the microwave is kept next to the microwave oven.

Decision

The convenience store is one establishment.

Rationale

There is no separation of the area with the coffee machine and microwave oven and the rest of the store. No seating is available, there is only one cash register and no staff is assigned to that area. The fact that the food for heating in the microwave is kept next to the microwave oven is not sufficient to create a separate establishment.

Example 6**Facts**

1. A food court in a shopping mall contains a number of take-away outlets serving heated food.
2. Each outlet is operated by a separate registrant.
3. Seating is available nearby.
4. Each outlet has its own cash register and staff.
5. Each outlet keeps its own supplies of food and beverages on hand.

Decision

Each outlet is a separate establishment.

Rationale

All of the factors are present that indicate separate establishments. However, even if the other factors were not present, the fact that each outlet is operated by a separate registrant is sufficient to make each outlet a separate establishment.

Example 7**Facts**

1. A food manufacturer operates a facility that produces, packages and sells food to wholesalers or large retailers.
2. Ninety-one percent of the products manufactured at the facility are snack type foods taxable under paragraph 1(f) of Part III of Schedule VI to the Act.
3. Nine percent of the products manufactured at the facility are cracker type products that are not within paragraph 1(f) or any other paragraph in section 1 of Part III of Schedule VI to the Act and therefore are normally zero-rated.

Decision

The manufacturer's facility is not an establishment.

Rationale

Food manufacturers are not covered by this policy. Therefore, supplies of zero-rated products remain zero-rated even if substantially all of the products supplied at a particular facility are taxable.