



First Nations Goods and Services Tax – Place of Supply

The information in this bulletin 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 *Excise Tax Act* or its Regulations, 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](#). A ruling should be requested for certainty in respect of any particular GST/HST matter.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec by calling 1-800-567-4692, or visit their Web site at www.revenu.gouv.qc.ca.

Reference in this publication is made to supplies taxable at 5% (the rate of the GST) or 13% (the rate of the HST). The HST applies to supplies made in Nova Scotia, New Brunswick, and Newfoundland and Labrador (the “participating provinces”). If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-078, [Place of Supply Rules Under the HST](#).

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Introduction

This bulletin explains the place of supply rules that determine how the First Nations Goods and Services Tax (FNGST) applies to supplies where a First Nation has imposed this tax. For the most part, as long as GST or FNGST is collectible it is not necessary to apply the place of supply rules. However, under certain situations where an Indian or a Band acquires property or services it will be necessary to know where the supply is considered to take place. GST or FNGST may apply, or the supply may be relieved of tax under section 87 of the *Indian Act*.

The list of First Nations that have imposed a FNGST can be found at www.cra-arc.gc.ca/tax/business/topics/gst/indian/fngstapp-e.html. Detailed information on the place of supply rules for First Nations can be found in subsections 4(2) to (6) of the *First Nations Goods and Services Tax Act* (FNGST Act).



The FNGST Act provides authority to First Nations that have entered into an agreement with the Government of Canada to impose a First Nations tax on:

- supplies of goods and services that are made on the lands of the First Nation;
- goods that are brought onto the lands of the First Nation from a place in Canada; and
- imported taxable supplies made on the lands of the First Nation.

A FNGST can be imposed only on goods and services taxable for GST purposes under the *Excise Tax Act* (the Act). The CRA administers the FNGST on behalf of First Nations.

The rate of the FNGST imposed by a First Nation is the same as the rate of tax imposed under subsection 165(1) of the Act (i.e., the 5% GST), and replaces the GST. As such, when the FNGST applies to a supply, the GST does not.

For more information on the FNGST, see booklet RC4365, [First Nations Goods and Services Tax \(FNGST\)](#).

Place of supply rules

Suppliers do not collect the GST/HST or the FNGST on taxable supplies made outside Canada. Generally, supplies of personal property and services made in Canada by a non-resident are deemed to be made outside Canada unless the supply is made by the non-resident in the course of a business carried on in Canada, or the non-resident is registered for GST/HST purposes.

To determine whether a supply is subject to the FNGST, a person must first establish where the supply is made. If it is determined that the supply is made in Canada, the place of supply rules under the Act that determine whether a supply is made in a participating province are then used to determine if the supply is made on lands where the FNGST applies.

For more detailed information on the place of supply rules in a participating province, see Technical Information Bulletin B-078, [Place of Supply Rules under the HST](#). Generally, when applying the provisions of the Act or the place of supply rules under the HST to a FNGST situation, a person replaces the term “participating province” with the name of the First Nation, and then applies the rule.

Supplies made on lands where a FNGST applies

Where taxable supplies of goods and services are made on the lands of a First Nation that has imposed a FNGST, the tax is calculated by multiplying the consideration for the supply by 5%.

Supplies of services

A supply of a service is considered to be made on the lands of a First Nation where all or substantially all (90% or more) of the service is performed on the lands.

Example

A registered service company sends a mechanic onto the lands of a First Nation that has imposed a FNGST in order to repair a tractor owned by a landscaping company. The repair service is subject to the FNGST because it takes place on lands where a FNGST has been imposed.

A supply of a service that does not meet the above requirement may still be considered to be made on the lands of the First Nation if the place of negotiation was on the lands, unless all or substantially all of the service was performed off the lands.

Sales of goods

Generally, a sale of goods is considered to be made on the lands of a First Nation that has imposed a FNGST if the goods are delivered to, or made available on, the lands.

To determine whether a sale of goods is made on lands where a FNGST applies, the following rules apply to deem the place where the delivery occurs.

Where a supplier ships the goods to a destination on the lands where a FNGST applies that is specified in the contract for carriage of the goods, or transfers possession of the goods to a common carrier that the supplier has retained on the recipient's behalf in order to ship the property to that destination, the goods are deemed to be delivered on lands where a FNGST applies. Goods are also deemed to be delivered on lands where a FNGST applies if the supplier sends the goods by mail or courier to an address on these lands.

Example

An Indian who resides on lands where a FNGST applies buys furniture from a registered dealer that is not located on lands where a FNGST applies. The sales invoice indicates that the dealer will deliver the furniture to the Indian's residence. The FNGST applies to the sale.

Goods provided by way of lease, licence or similar arrangement

Special rules apply to determine whether a supply of goods provided by way of lease, licence or similar arrangement (e.g., a rental) is considered to be made on the lands of a First Nation.

Period of three months or less

A supply of goods by way of lease, licence or similar arrangement for three months or less is considered to be made on the lands of a First Nation that has imposed a FNGST where the goods are delivered, or made available, to the recipient on the lands.

Example

A person rents a video camera for three weeks from a registered dealer located on the lands of a First Nation that has imposed a FNGST. The dealer charges the FNGST on the consideration for the rental of the video camera because it was made available to the person on the lands where the FNGST applies.

Period of more than three months

Where a supply of goods (excluding specified motor vehicles) is made by way of lease, licence or similar arrangement for a period of more than three months, the supply will be considered to be made on the lands of the First Nation if the ordinary location of the goods at the time the supply is made is on these lands. Under subsection 136.1(1) of the Act, a separate supply is deemed to be made for each lease interval. If the lessee changes the ordinary location of the goods during the term of the lease agreement, the place of supply rules and the tax to be charged on the subsequent lease intervals may change. Generally, the ordinary location of the property is the place that both parties mutually agree is the location of the property.

Example

A person enters into a three-year lease for a photocopier with a registrant. The photocopier will be used in an office located on the lands of a First Nation that has imposed a FNGST. The lease payments are, therefore, subject to the FNGST. Fourteen months into the lease, the office is relocated to a building off the First Nation's lands that is not a reserve. Consequently, the payments for the subsequent lease intervals are not subject to the FNGST because the ordinary location of the photocopier has changed to a location where a FNGST does not apply. However, if the ordinary location of the office is now a place where the GST/HST applies, payments for the subsequent lease intervals will be subject to the GST/HST. Technical Information Bulletin B-078 provides information on determining where the supplies for subsequent lease intervals are considered to be made.

Generally, where an Indian or a band leases property the ordinary location of which is on a reserve, the supply is relieved of tax. Technical Information Bulletin B-039, *GST/HST Administrative Policy Application of the GST/HST to Indians*, and Policy Statement P-230R, *Application of Excise Tax Act to Leases, Licenses and Similar Arrangements of Tangible Personal Property by Indians, Indian Bands and Band-Empowered Entities*, provide more information on the requirements for tax relief. However, this is not the case under a Land Claims and Self-Government Agreement or a First Nation Final Agreement, or any similar agreement, where the First Nation and its Indian members have given up the right to tax relief provided under section 87 of the *Indian Act*.

Example

An Indian residing in the Yukon will be required to pay the FNGST in respect of the leased equipment used in his business where he is a member of a Yukon First Nation that has signed an agreement giving up section 87 tax relief. If the Indian later moves to a reserve in British Columbia and takes the leased equipment with him, the payments for the subsequent lease intervals will be relieved of tax provided all the conditions in Technical Information Bulletin B-039 and Policy Statement P-230R have been met. Payments for lease intervals where the leased equipment is moved to a reserve but the Indian member continues to reside in the Yukon would not be relieved of tax because the provision in the agreement that members residing in the Yukon pay the tax would still apply.

Specified motor vehicles

Where an individual acquires a specified motor vehicle (as defined in subsection 123(1) of the Act) by way of lease, licence or similar arrangement for a period of more than three months, the supply is considered to be made on the lands of the First Nation that has imposed a FNGST if the individual ordinarily resides on these lands at the time the supply is made. If the individual relocates to a place where a FNGST does not apply, the place of supply rules will have to be reapplied to determine whether the GST/HST or section 87 of the *Indian Act* applies to the subsequent lease intervals.

Example

John ordinarily resides on lands where a FNGST applies. He leases a car for a period of three years. Six months into the lease, John temporarily moves to a university campus residence that is located on a reserve and takes the car with him. The lease payments continue to be subject to a FNGST because John ordinarily resides on lands where a FNGST applies.

Where a person other than an individual (e.g., a band or a business) acquires a specified motor vehicle by way of lease, licence or similar arrangement for a period of more than three months, the supply is made on the lands of the First Nation where the place of supply rules in Schedule IX to the Act determine the ordinary location of the vehicle to be these lands. Schedule IX contains the place of supply rules used for determining when a supply is made in a participating province. When applying these rules, the term “participating province” is replaced with name of the First Nation. The ordinary location of the vehicle may change during the term of the lease in which case the tax that applies to the subsequent lease intervals (e.g., monthly) may shift from being the FNGST to being the GST/HST.

Where the lease of a specified motor vehicle is for a period of three months or less, the general place of supply rules apply.

Intangible personal property

The place of supply rules with respect to supplies of intangible personal property vary depending on the type of intangible personal property being supplied. For example, in the case of a ticket purchased for a sporting event, a FNGST applies where the ticket gives the ticket holder the right to attend the event on lands where a FNGST has been imposed. For details on how to determine whether a supply of intangible personal property is made on the lands of a First Nation that has imposed a FNGST, see Technical Information Bulletin B-078.

Bringing goods onto lands where a FNGST applies

Generally, where a person has purchased goods relieved of the GST under section 87 of the *Indian Act* or some other Act of Parliament and the goods would ordinarily have been taxable at a rate other than zero per cent, the person will be required to self-assess the FNGST on the goods brought onto the lands of a First Nation that had a FNGST in place at the time the person initially purchased the goods.

A person does not have to self-assess the FNGST where the GST was payable on the goods at the time the goods were acquired. As well, the person is not required to self-assess where the GST was payable upon importation of the goods into Canada, or where the FNGST was previously payable under a First Nation's law.

The requirements to self-assess the FNGST when bringing purchased goods onto the lands where a FNGST applies generally parallel the requirements to self-assess the HST. A registrant is not required to self-assess the HST on most goods brought into a participating province for use exclusively (generally 90% or more) in the registrant's commercial activities. Therefore, a registrant is not required to self-assess the FNGST where the goods are brought onto lands where a FNGST applies under the same circumstances.

Filing requirements

Non-registrants are required to self-assess the FNGST using form GST531, *Return of Self-Assessment of First Nations Goods and Services Tax (FNGST)*.

Registrants required to self-assess the FNGST must do so on their GST/HST returns. Registrants must follow the remitting procedures for non-registrants where the consumption, use or supply of goods is 50% or less in commercial activities.

Where tax is payable on goods brought from a place in Canada onto the lands of a First Nation that has imposed a FNGST, the formula found in subsection 4(8) of the FNGST Act should be applied to determine the amount of tax payable.

Example

An Indian registrant purchased equipment that cost \$10,000, relieved of tax under section 87 of the *Indian Act*, for use 70% in his business at a time when the business was located on a reserve. Six months later, the registrant decides to relocate his business onto the lands of a First Nation that has imposed a FNGST that was effective before the date that the registrant purchased the equipment. The fair market value of the equipment at the time of the move was \$8,000. At the time of relocating the business, the registrant is required to self assess the FNGST by applying the formula in subsection 4(8) of the FNGST Act as follows:

$$A \times B$$

where

A is the rate of tax, which is 5%.

B is the lesser of the fair market value of the property at the time of relocating to the lands of the First Nation that has imposed a FNGST and the original cost of \$10,000.

$$A \times B = 5\% \times \$8,000$$

The amount of the FNGST to be self-assessed and remitted on the registrant's GST/HST return is \$400.00.

It is to be noted that a mobile home is deemed to be tangible personal property (goods) for purposes of the provision dealing with the bringing of goods onto the lands of a First Nation.

Imported taxable supplies made on lands where a FNGST applies

The FNGST applies on imported taxable supplies. In general, an imported taxable supply means a supply of a service or intangible personal property that is made outside Canada and is imported by a person in Canada and is not for use exclusively in the course of commercial activities of the person.

The rules as to whether an imported taxable supply is made on lands where a FNGST applies parallel, for the most part, the rules that determine whether an imported taxable supply is made in a participating province. Technical Information Bulletin B-081, *Application of the HST to Imports*, provides more information on these rules. The recipient of an imported taxable supply will be required to self-assess the FNGST.

Registrants are required to report the FNGST on imported taxable supplies on their GST/HST return. Non-registrants are required to use form GST59, *GST/HST Return for Imported Taxable Supplies*.

Disclosure of tax

As with GST/HST, sales invoices for the FNGST must indicate the amount of tax payable or paid, or indicate that the tax is included in the price. As the FNGST is seamless with the GST/HST, there is no requirement to specify that it is a FNGST and not the GST that is being charged.

Enquiries by telephone

Technical enquiries on the GST/HST: 1-800-959-8287.

General enquiries on the GST/HST: 1-800-959-5525 (Business Enquiries)

If you are located in the province of Quebec: 1-800-567-4692 (Revenu Québec)

All technical publications related to the GST/HST published to date are available on the CRA Web site at www.cra.gc.ca/gsthstech.