

DRAFT REGULATIONS IN RESPECT OF THE PLACE OF SUPPLY OF PROPERTY  
AND SERVICES

PART 1

INTERPRETATION

Definitions	<b>1.</b> The definitions in this section apply in these Regulations.
“Act” « Loi »	“Act” means the <i>Excise Tax Act</i> .
“Canadian element” « élément canadien »	“Canadian element” of a service means the portion of the service that is performed in Canada.
“Canadian rights” « droits canadiens »	“Canadian rights”, in respect of intangible personal property, means that part of the property that can be used in Canada.
“computer-related service” « service informatique »	“computer-related service” means  (a) a technical support service that is provided by means of telecommunications and relates to the operation or use of computer hardware or software; or  (b) a service involving the electronic storage of information and computer-to-computer transfer of information.
“final recipient” « dernier acquéreur »	“final recipient”, in respect of a computer-related service or access to the Internet, means a person that is the recipient of a supply of the service or access and that acquires it otherwise than for the purpose of supplying it to another person.
“RDSP” « REEI »	“RDSP” means a registered disability savings plan as defined in subsection 248(1) of the <i>Income Tax Act</i> .
“RESP” « REEE »	“RESP” means a registered education savings plan as defined in subsection 248(1) of the <i>Income Tax Act</i> .
“RRIF” « FERR »	“RRIF” means a registered retirement income fund as defined in subsection 248(1) of the <i>Income Tax Act</i> .
“RRSP” « REER »	“RRSP” means a registered retirement savings plan as defined in subsection 248(1) of the <i>Income Tax Act</i> .
“specified location” « emplacement déterminé »	“specified location” of a supplier means  (a) a permanent establishment of the supplier; or  (b) a vending machine.
“TFSA” « CÉLI »	“TFSA” has the same meaning as in subsection 248(1) of the <i>Income Tax Act</i> .

Deemed delivery     **2.** For the purposes of these Regulations, property is deemed to be delivered in a particular province by a supplier and is deemed not to be delivered in any other province by the supplier if the supplier

(a) ships the property to a destination in the particular province that is specified in the contract for carriage of the property or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination; or

(b) sends the property by mail or courier to an address in the particular province.

Application     **3.** These Regulations apply for the purposes of section 3 of Part IX of Schedule IX to the Act.

## PART 2

### INTANGIBLE PERSONAL PROPERTY

Application     **4.** This Part does not apply to intangible personal property to which Part VII or VIII of Schedule IX to the Act applies.

Canadian rights primarily in participating provinces     **5.** (1) A supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can only be used primarily in participating provinces is made in a participating province if an equal or greater proportion of those Canadian rights cannot be used in another participating province.

Canadian rights primarily in participating provinces     (2) Subject to subsection (1), a supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can only be used primarily in participating provinces is made in a particular participating province if,

(a) in the case of a supply for which the value of the consideration is \$300 or less that is made through a specified location of the supplier in the particular participating province and in the presence of an individual who is, or who acts on behalf of, the recipient, the intangible personal property can be used in the particular participating province;

(b) in the case of a supply that is not determined under paragraph (a) to be made in a participating province, the following conditions are satisfied:

(i) in the ordinary course of business of the supplier, the supplier obtains an address (in this paragraph referred to as the “particular address”) that is

(A) if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier,

(B) if the supplier obtains more than one address described in clause (A), the address described in that clause that is most closely connected with the supply, or

(C) in any other case, the address in Canada of the recipient that is most closely connected with the supply,

(ii) the particular address is in the particular participating province, and

(iii) the intangible personal property can be used in the particular participating province; and

(c) in the case of a supply that is not determined under paragraph (a) or (b) to be made in a participating province, the tax rate for the particular participating province is the highest among the tax rates for the participating provinces in which the intangible personal property can be used.

Canadian rights primarily in non-participating provinces

**6.** A supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can only be used primarily in non-participating provinces is made in a non-participating province.

Canadian rights — no primary location of use

**7.** A supply of intangible personal property (other than intangible personal property that relates to real property or to tangible personal property) in respect of which the Canadian rights can be used otherwise than only primarily in participating provinces and otherwise than only primarily outside participating provinces is made in a particular province if,

(a) in the case of a supply for which the value of the consideration is \$300 or less that is made through a specified location of the supplier in the particular province and in the presence of an individual who is, or who acts on behalf of, the recipient, the intangible personal property can be used in the particular province;

(b) in the case of a supply that is not determined under paragraph (a) to be made in a province, the following conditions are satisfied:

(i) in the ordinary course of business of the supplier, the supplier obtains an address (in this paragraph referred to as the “particular address”) that is

(A) if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier,

(B) if the supplier obtains more than one address described in clause (A), the address described in that clause that is most closely connected with the supply, or

(C) in any other case, the address in Canada of the recipient that is most closely connected with the supply,

(ii) the particular address is in the particular province, and

(iii) the intangible personal property can be used in the particular province; and

(c) in the case of a supply that is not determined under paragraph (a) or (b) to be made in a province, the tax rate for the particular province is the highest among the tax rates for the provinces in which the intangible personal property can be used.

Intangible personal property that relates to real property

**8.** A supply of intangible personal property that relates to real property is made

(a) in a participating province if the real property that is situated in Canada is situated primarily in participating provinces and

(i) an equal or greater proportion of the real property is not situated in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the real property is situated in another participating province; and

(b) in a non-participating province if the real property that is situated in Canada is not situated primarily in participating provinces.

Intangible personal property that relates to tangible personal property

**9.** A supply of intangible personal property that relates to tangible personal property is made

(a) in a participating province if the tangible personal property that is ordinarily located in Canada is ordinarily located primarily in participating provinces and

(i) an equal or greater proportion of the tangible personal property is not ordinarily located in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the tangible personal property is ordinarily located in another participating province; and

(b) in a non-participating province if the tangible personal property that is ordinarily located in Canada is not ordinarily located primarily in participating provinces.

Same highest rate

**10.** If a supply of intangible personal property cannot be determined under paragraph 5(2)(c) or 7(c) or subparagraph 8(a)(ii) or 9(a)(ii) to be made in a single participating province because the tax rates for two or more participating provinces (each of which is referred to in this section as a “specified province”) are the same, the supply is made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

### PART 3

#### SERVICES

Application

**11.** This Part does not apply to a service to which any of sections 4 to 5 of Part VI or Part VII or VIII of Schedule IX to the Act applies.

General rule for services — address obtained

**12.** (1) Subject to sections 13 to 15, a supply of a service is made in a province if, in the ordinary course of business of the supplier, the supplier obtains an address (in this subsection referred to as the “particular address”) in the province that is

(a) if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier;

(b) if the supplier obtains more than one address described in paragraph (a), the address described in that paragraph that is most closely connected with the supply; or

(c) in any other case, the address in Canada of the recipient that is most closely connected with the supply.

General rule for services — no address obtained

(2) Subject to subsection (1) and sections 13 to 15, a supply of a service is made

(a) in a participating province if the Canadian element of the service is performed primarily in participating provinces and

(i) an equal or greater proportion of the Canadian element of the service is not performed in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the service is performed in another participating province; and

(b) in a non-participating province if the Canadian element of the service is not performed primarily in participating provinces.

Services in relation to real property

**13.** A supply of a service in relation to real property is made

(a) in a participating province if the real property that is situated in Canada is situated primarily in participating provinces and

(i) an equal or greater proportion of the real property is not situated in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the real property is situated in another participating province; and

(b) in a non-participating province if the real property that is situated in Canada is not situated primarily in participating provinces.

Services in relation to tangible personal property

**14.** If a person makes a supply of a service in relation to tangible personal property that is situated in one or more provinces at the particular time when the Canadian element of the service begins to be performed and, at all times when the Canadian element of the service is performed, the tangible personal property remains in the province in which it was situated at the particular time, the supply is made

(a) in a participating province if the tangible personal property is situated primarily in participating provinces at the particular time and

(i) an equal or greater proportion of the tangible personal property is not situated in another participating province at the particular time, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the tangible personal property is situated in another participating province at the particular time; and

(b) in a non-participating province if the tangible personal property is not situated primarily in participating provinces at the particular time.

Services in relation to tangible personal property

**15.** If a person makes a supply of a service in relation to tangible personal property that is situated in one or more provinces at the particular time when the Canadian element of the service begins to be performed and, at any time during the period when the Canadian element

of the service is performed, the tangible personal property does not remain in the province in which it was situated at the particular time, the supply is made

(a) in a participating province if the tangible personal property is situated primarily in participating provinces at any time when the service is performed, the Canadian element of the service is performed primarily in participating provinces and

(i) an equal or greater proportion of the service is not performed in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the service is performed in another participating province; and

(b) in a non-participating province if the tangible personal property is not situated primarily in participating provinces at all times when the service is performed or the Canadian element of the service is not performed primarily in participating provinces.

Personal services

**16.** A supply of a service (other than an advisory, consulting or professional service) all or substantially all of which is performed in the presence of the individual to whom it is rendered is made

(a) in a participating province if the Canadian element of the service is performed primarily in participating provinces and

(i) an equal or greater proportion of the service is not performed in another participating province, or

(ii) if subparagraph (i) does not apply, the tax rate for the participating province is the highest among the participating provinces for which no greater proportion of the service is performed in another participating province; and

(b) in a non-participating province if the Canadian element of the service is not performed primarily in participating provinces.

Same highest rate

**17.** If a supply of a service cannot be determined under any of subparagraphs 12(2)(a)(ii), 13(a)(ii), 14(a)(ii), 15(a)(ii) and 16(a)(ii) to be made in a single participating province because the tax rates for two or more participating provinces (each of which is referred to in this section as a “specified province”) are the same, the supply is made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

## PART 4

### TRANSPORTATION SERVICES

Application

**18.** This Part applies despite Parts 2 and 3.

Definitions

**19.** The definitions in this section apply in this Part.

“continuous journey”  
« voyage continu »

“continuous journey” has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act.

“leg”  
« étape »

“leg” of a journey on a conveyance means a part of the journey that begins where passengers embark or disembark the conveyance or where it is stopped to allow for its servicing or refuelling and ends where it is next stopped for any of those purposes.

“origin”  
« point d’origine »

“origin” of a continuous journey has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act.

“stopover”  
« escale »

“stopover”, in respect of a continuous journey, has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act except that it does not include, in the case of a continuous journey of an individual or group of individuals that does not include transportation by air and the origin and termination of which are in Canada, any place outside Canada where, at the time the journey begins, the individual or group is not scheduled to be outside Canada for an uninterrupted period of at least 24 hours during the course of the journey.

“termination”  
« destination finale »

“termination” of a continuous journey has the same meaning as in subsection 1(1) of Part VII of Schedule VI to the Act.

Passenger transportation services

**20.** A supply of a passenger transportation service is made

(a) in a participating province if the passenger transportation service

(i) is part of a continuous journey in respect of which there is a ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

(A) the origin is a place in the participating province, and

(B) the termination and all stopovers in respect of the continuous journey are in Canada,

(ii) is part of a continuous journey in respect of which there is no ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

(A) the passenger transportation service included in the continuous journey that is provided first cannot begin otherwise than in the participating province, and

(B) the termination and all stopovers in respect of the continuous journey are in Canada, or

(iii) is not part of a continuous journey and

(A) the passenger transportation service begins in the participating province, and

(B) the passenger transportation service ends in Canada; and

(b) in a non-participating province if the passenger transportation service

(i) is part of a continuous journey in respect of which there is a ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

- (A) the origin is a place outside the participating provinces, or
- (B) the termination or a stopover in respect of the continuous journey is outside Canada,

(ii) is part of a continuous journey in respect of which there is no ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and

- (A) the passenger transportation service included in the continuous journey that is provided first cannot begin in a participating province, or
- (B) the termination or a stopover in respect of the continuous journey is outside Canada, or

(iii) is not part of a continuous journey and

- (A) the passenger transportation service begins outside the participating provinces, or
- (B) the passenger transportation service ends outside Canada.

Passenger transportation pass — special case

**21.** (1) If, at the time when a supply of intangible personal property that is, or is similar to, a passenger transportation pass entitling an individual to one or more passenger transportation services is made, the supplier can determine that each passenger transportation service could not begin otherwise than in the same participating province and would terminate in Canada, the supply of the intangible personal property is made in that participating province.

Passenger transportation pass — special case

(2) If, at the time when a supply of intangible personal property that is, or is similar to, a passenger transportation pass entitling an individual to one or more passenger transportation services is made, the supplier can determine that each passenger transportation service could not begin otherwise than in a non-participating province or would terminate outside Canada, the supply of the intangible personal property is made in a non-participating province.

Property or services supplied on board a conveyance

**22.** If a supply of property or a service (other than a passenger transportation service) is made to an individual on board a conveyance in the course of a business of supplying passenger transportation services and the property or service is delivered, performed or made available on board the conveyance during any leg of the journey that begins in any province and ends in any province, the supply is made in the province in which that leg of the journey begins.

## PART 5

### SPECIAL CASES

Application

**23.** This Part applies despite Parts 2 and 3.

Customs brokerage services

**24.** (1) Where a supply of a service is made in respect of the importation of goods and the service is the arranging for their release (as defined in subsection 2(1) of the *Customs Act*) or the fulfilling, in respect of the importation, of any requirement under that Act or the *Customs Tariff* to account for the goods, to report, to provide information or to remit any amount,



(a) if the goods are accounted for as commercial goods (as defined in subsection 212.1(1) of the Act) under section 32 of the *Customs Act*, the supply is made in the province in which the goods are situated at the time of their release;

(b) if paragraph (a) does not apply and tax, calculated at the tax rate for a participating province, is imposed under subsection 212.1(2) of the Act, or would be so imposed if subsections 212.1(3) and (4) and section 213 of the Act did not apply, in respect of the importation, the supply is made in that participating province; and

(c) in any other case, the supply is made in a non-participating province.

Exception

(2) Subsection (1) does not apply to the supply of any service provided in relation to an objection, appeal, redetermination, re-appraisal, review, refund, abatement, remission or drawback, or in relation to a request for any of the foregoing.

Railway rolling stock

**25.** (1) A supply of railway rolling stock otherwise than by way of sale is made in a particular province if the supplier delivers the rolling stock or makes it available to the recipient of the supply in that province.

Place of supply for lease interval

(2) If a supply of railway rolling stock is made in a particular province by way of lease, licence or similar arrangement for the first lease interval (within the meaning of subsection 136.1(1) of the Act) in the period during which possession or use of the rolling stock is provided under the arrangement, the supply of the rolling stock for each of the other lease intervals in that period is, despite subsection (1), made in that province.

Renewal of agreement

(3) Subject to subsections (4) and (5), for the purposes of this section, if continuous possession or use of railway rolling stock is given by a supplier to a recipient throughout a period under two or more successive leases, licenses or similar arrangements entered into between the supplier and the recipient, the rolling stock is deemed to have been delivered or made available to the recipient under each of those arrangements at the location at which it is delivered or made available to the recipient under the first of those arrangements.

Agreements entered into before April 1, 1997

(4) If a supply of railway rolling stock otherwise than by way of sale is made under a particular agreement that is in effect on April 1, 1997 and, under the particular agreement, the rolling stock was delivered or made available to the recipient before that day,

(a) the rolling stock is deemed to have been delivered or made available to the recipient under the particular agreement outside the participating provinces; and

(b) if the recipient retains continuous possession or use of the rolling stock under an agreement (in this paragraph referred to as the “renewal agreement”) with the supplier that immediately succeeds the particular agreement, subsection (3) applies as if the renewal agreement were the first arrangement between the supplier and the recipient for the supply of the rolling stock.

Agreements entered into before July 1, 2010

(5) If a supply of railway rolling stock otherwise than by way of sale is made under a particular agreement that is in effect on July 1, 2010 and, under the particular agreement, the rolling stock was delivered or made available to the recipient in Ontario or British Columbia before that day,

(a) the rolling stock is deemed to have been delivered or made available to the recipient under the particular agreement outside the participating provinces; and

(b) if the recipient retains continuous possession or use of the rolling stock under an agreement (in this paragraph referred to as the “renewal agreement”) with the supplier that immediately succeeds the particular agreement, subsection (3) applies as if the renewal agreement were the first arrangement between the supplier and the recipient for the supply of the rolling stock.

Services rendered in connection with litigation

**26.** A supply of a service rendered in connection with criminal, civil or administrative litigation (other than a service rendered before the commencement of such litigation) that is under the jurisdiction of a court or other tribunal established under the laws of a province, or in the nature of an appeal from a decision of a court or other tribunal established under the laws of a province, is made in that province.

Services in relation to a location-specific event

**27.** A supply of a service in relation to a performance, athletic or competitive event, festival, ceremony, conference or similar event is made in a province if the service is to be performed primarily at a location of the event in the province.

Photographic-related good, repair service, etc.

**28.** If a supplier receives particular tangible personal property of another person for the purpose of supplying a service of repairing, maintaining, cleaning, adjusting or altering the property or of producing a negative, transparency, photographic print or other photographic-related good, the supply of the service (and of any property supplied in connection with it) or of the photographic-related good is made in a particular province if the supplier delivers the particular tangible personal property or the photographic-related good, as the case may be, in that province to the recipient of the supply after the service or production of the photographic-related good is completed.

Service of trustee of RRSP, RRIF, RESP, RDSP or TFSA

**29.** A supply of a service in respect of a trust governed by an RRSP, an RRIF, an RESP, an RDSP or a TFSA provided by a trustee of the trust is made in a particular province if the mailing address of the annuitant of the RRSP or RRIF, of the subscriber of the RESP or of the holder of the RDSP or TFSA is in that province.

1-900 or 976 service

**30.** A supply of a service provided by telephone and accessed by calling a number beginning with the digits 1-900 or containing the local telephone prefix 976 is made in a particular province if the telephone call originates in that province.

Single final recipient of computer-related service or Internet access

**31.** (1) When a particular supplier makes a particular supply of a computer-related service or access to the Internet and there is to be only one final recipient of the service or access, as the case may be, that acquires it under an agreement either with the particular supplier or another supplier,

(a) if there is a single ordinary location at which the final recipient avails themselves of the service or access, that location is in a particular province and either the particular supplier maintains information sufficient to determine that location or it is the normal business practice of the particular supplier to obtain information sufficient to determine that location, the particular supply is made in that province; and

(b) in any other case, the particular supply is made in a particular province if the mailing address of the recipient of the particular supply is in that province.

Multiple final recipients of computer-related service or Internet access

(2) When a particular supplier makes a particular supply of a computer-related service or access to the Internet and there are to be multiple final recipients of the service or access, each of which acquires it under an agreement with the particular supplier or another supplier,

(a) if, in the case of each of those final recipients, there is a single ordinary location at which the final recipient avails themselves of the service or access and either the particular supplier maintains information sufficient to determine that location or it is the normal business practice of the particular supplier to obtain information sufficient to determine that location, the particular supply is made in the province, if any, that would be determined under Part 2 or 3 to be the province in which the particular supply is made if the service were performed, or the access were attainable, as the case may be, in each province in which, and to the same extent to which, the final recipients avail themselves of the service or access; and

(b) if a province in which the particular supply is made is not determined under paragraph (a), the particular supply is made in a particular province if the mailing address of the recipient of the particular supply is in that province.

Definition of  
"leg"

**32.** (1) In this section, "leg" of a flight of an aircraft means a part of the flight that begins where passengers embark or disembark the aircraft, where freight is loaded on the aircraft or unloaded from it or where the aircraft is stopped to allow for its servicing or refuelling, and that ends where it is next stopped for any of those purposes.

Air navigation  
services

(2) A supply of air navigation services (as defined in subsection 2(1) of the *Civil Air Navigation Services Commercialization Act*) is made in a particular province if the leg of the flight in respect of which the services are performed originates in the province.

#### **REPEAL**

**33. The *Place of Supply (GST/HST) Regulations*<sup>1</sup> are repealed.**

#### **APPLICATION**

**34. These Regulations apply to any supply made**

**(a) on or after May 1, 2010; and**

**(b) after February 25, 2010 and before May 1, 2010 unless any part of the consideration for the supply becomes due or is paid before May 1, 2010.**

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<sup>1</sup> SOR/2001-170