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- [News Release 2010-014](#) -

## PLACE OF SUPPLY, SELF-ASSESSMENT AND REBATE RULES FOR THE HARMONIZED SALES TAX (HST)

This document provides details of proposed amendments to the Harmonized Sales Tax (HST) place of supply rules, the self-assessment and rebate rules and the imported taxable supply rules, related to the provincial component of the HST, contained in regulations made pursuant to the *Excise Tax Act* (ETA). These proposed amendments will help to ensure that the legislation functions properly in the context of the modernized HST framework, which gives additional flexibility to HST provinces (participating provinces).

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## OVERVIEW

The HST generally applies to property or a service that is acquired for consumption, use or subsequent re-supply in a participating province.

All Goods and Services Tax/Harmonized Sales Tax (GST/HST) registrants are generally required to collect the HST on supplies of property or services made in a participating province except where a supply is zero-rated or exempt. The HST place of supply rules<sup>1</sup> determine whether a supply made in Canada is made in a participating province, with specific rules applying depending on the nature of the supply. If a supply made in Canada is not deemed under the place of supply rules to be made in a participating province, the supply is regarded as made in a non-participating province and the supplier will not be required to collect the provincial component of the HST, but rather will only collect GST. Suppliers will also not be required to collect the provincial component of the HST if the supply is eligible for a provincial point of sale rebate in the province in which the supply is made.

The place of supply rules are complemented by rules that generally require self-assessment of the provincial component of the HST where the provincial component has not been charged in respect of property and services “brought into” the participating provinces for consumption, use or supply otherwise than exclusively in the course of commercial activities. Likewise, rules generally provide for rebates of the provincial component of the HST where the provincial component has been charged on property and services “removed from” the participating provinces.

With the addition of Ontario and British Columbia to the HST system, a number of changes are proposed to the place of supply rules and the related self-assessment and rebate provisions. These changes will help ensure that the HST legislation functions properly with various provincial rates. The place of supply rules also need to be modernized to provide for proper tax treatment of inter-provincial transactions involving services and intangible personal property.

In addition, consequential changes are proposed to the imported taxable supply rules to ensure that the provincial component of the HST applies consistently irrespective of whether a supply is made in Canada or outside Canada. These changes will help to ensure that businesses in Canada are not placed at a disadvantage compared to their competitors outside Canada.

This document provides a brief description of the current place of supply rules, self-assessment and rebate rules and imported taxable supply rules. It also provides details of the proposed changes to these rules. This information is supplemented by examples of how the rules would apply to a variety of transactions.

The proposed changes to the place of supply rules described in this document would generally apply to taxable (other than zero-rated) supplies made in Canada on or after May 1, 2010. The proposed rules may also apply to supplies made before May 1, 2010 if certain circumstances exist. For information concerning the application of the proposed changes, see the sections of this document entitled “Application”.

For further details on the place of supply rules, also see GST/HST Technical Information Bulletin B-103, [Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province](#), which is to be released by the Canada Revenue Agency following the release of this document.

## PLACE OF SUPPLY RULES

### SUPPLIES OF REAL PROPERTY

No changes are proposed to the current place of supply rule for supplies of real property. A supply of real property will continue to be regarded as made in the province in which the real property is situated.

**Example 1:** A sale of a warehouse situated in Sarnia, Ontario will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

### SUPPLIES OF TANGIBLE PERSONAL PROPERTY

#### Tangible personal property by way of sale

No changes are proposed to the current place of supply rules for supplies of tangible personal property by way of sale. A supply of tangible personal property by way of sale will continue to be regarded as made in the province in which the tangible personal property is delivered or made available to the recipient of the supply.

**Example 2:** A retailer with a store in Kamloops, British Columbia sells a GPS receiver to a customer that receives the unit at the retailer's store. British Columbia will be considered the place of supply and the retailer will be required to collect HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).

A supply by way of sale of tangible personal property will also continue to be considered to be made in a province if the vendor ships the tangible personal property to the province pursuant to a contract for carriage or transfers possession of the tangible personal property to a common carrier or consignee retained by the vendor on behalf of the purchaser for shipment to that province.

**Example 3:** A parts manufacturer in Saskatchewan sells components to an assembler in Halifax and uses its own truck or hires a common carrier or retains a common carrier on behalf of the purchaser to deliver the components to the assembler in Halifax. In each case, the parts will be treated as supplied in Nova Scotia, even if the terms of delivery under the agreement for the sale provide that the legal delivery of the property occurs at the supplier's place of business in Saskatchewan. Therefore, the parts will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component).

A supply by way of sale of tangible personal property will also continue to be considered to be made in a province if the vendor sends the tangible personal property by mail or courier to an address in that province.

**Example 4:** A mail order company located in Charlottetown, Prince Edward Island, sells greeting cards to customers across Canada. The company places the packages of greeting cards in the mail for delivery to its customers in Ontario and British Columbia. These supplies will be regarded as made in Ontario (subject to HST at a rate of 13 per cent) and British Columbia (subject to HST at a rate of 12 per cent) respectively.

### **Tangible personal property otherwise than by way of sale**

No changes are proposed to the current place of supply rules for supplies of tangible personal property otherwise than by way of sale.

If a recipient of a supply of tangible personal property is provided with continuous possession or use of the tangible personal property for a period of no more than three months, the supply will continue to be regarded as made in the province in which the tangible personal property is delivered or made available by the supplier to the recipient.

**Example 5:** An individual rents and takes possession of a kayak in Prince Rupert, British Columbia to use while travelling through several provinces. The rental agreement is for a three-week period. British Columbia will be considered the place of supply and the rental will be subject to HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).

If continuous possession or use of tangible personal property, other than a specified motor vehicle, is given for more than three months, the supply will be regarded as made in the province that is the ordinary location of the tangible personal property as determined at the time of the supply. If continuous possession or use of a specified motor vehicle is given for more than three months, the supply will be regarded as made in the province in which the vehicle is required to be registered at the time of the supply.

**Example 6:** A salesperson working out of an office in Moncton, New Brunswick, leases a laptop computer for a two year period. The computer is used in a variety of places both within and outside New Brunswick. The leased computer will be regarded as supplied in New Brunswick, the province in which it is ordinarily located. Accordingly, the lease payments will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent New Brunswick component).

### **Tangible personal property supplied on board conveyances**

Changes are proposed to the current place of supply rule for tangible personal property supplied on board a conveyance.

Tangible personal property that is supplied on board a conveyance will be regarded as supplied in a province if the supply is made by a person in the course of a business of supplying passenger transportation services and physical possession of the tangible personal property is transferred to the individual on board the conveyance during a leg of a journey that begins in the province and ends anywhere in Canada.

**Example 7:** An alcoholic beverage sold on a flight from London, Ontario to Winnipeg, Manitoba will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component) as the supply will be regarded as having been made in Ontario. However, an alcoholic beverage sold on the return flight (from Winnipeg to London), will only be subject to GST at a rate of 5 per cent as the supply will be regarded as having been made outside participating provinces.

## Railway rolling stock

The general rules described above for supplies of tangible personal property do not apply to supplies of railway rolling stock otherwise than by way of sale. The special rule for supplies of railway rolling stock otherwise than by way of sale is based on where the rolling stock is delivered or made available to the recipient of the supply. If continuous possession or use of railway rolling stock is given by the supplier to a recipient throughout a period under more than one successive agreement, the supply under each of the agreements is regarded as made where the rolling stock was delivered or made available under the first of those agreements. Furthermore, where the railway rolling stock is supplied by way of lease, licence or similar arrangement covering more than one lease interval, the place of supply for the first lease interval is the place of supply for all subsequent lease intervals under the arrangement. While these rules will continue to apply, a special transitional rule for railway rolling stock is proposed to be added to address a transitional issue that applies in relation to Ontario and British Columbia.

If a supply of railway rolling stock is made under a lease, license or similar arrangement in effect on July 1, 2010, the provincial component of the HST will not apply to the extent that the rolling stock is delivered or made available in Ontario or British Columbia before July 1, 2010. The supplier will be required to keep track of where the rolling stock is delivered or made available to the recipient under the next renewal agreement with the same recipient. If that delivery occurs in Ontario, Nova Scotia, New Brunswick, British Columbia or Newfoundland and Labrador, the supply under that renewal agreement will become subject to the HST.

## SUPPLIES OF SERVICES

A number of significant changes are proposed to the current place of supply rules for supplies of services. The current rules, as well as any proposed changes to these rules, for determining in which province supplies of various types of services are made are described below.

### General rules

Under the current general place of supply rules for services that are not subject to a more specific rule, a supply of a service is regarded as made in a province if:

- all or substantially all (generally, 90 per cent or more) of the part of the service that is performed in Canada is performed in that province, or
- the place of negotiation of the supply is in the province and it is not the case that all or substantially all of the service is performed outside the province.

If neither of these rules apply and the part of the service that is performed in Canada is performed primarily (more than 50 per cent) in the participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the service is performed (unless the place of negotiation for the supply is outside Canada and it is not the case that all or substantially all of the service is performed in Canada).

Under the proposed general rules for supplies of services, greater emphasis will be placed on the location of the recipient of the supply and the place of negotiation will be eliminated as a criterion for determining where a supply of a service is made. These proposed general rules for services would apply to supplies of services except where a specific exception applies.

**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 that is (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 home or business address that is most closely connected with the supply, or (c) where 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, the supply will be regarded as made in the province in which the particular address is situated.

**Example 8:** An accounting firm in Calgary, Alberta is hired to conduct a financial audit of a company with a business address in Kelowna, British Columbia. In the course of the audit, 60 per cent of the work is performed in Calgary and the remaining 40 per cent is performed at the company's Kelowna address. Because the supplier obtains the recipient's British Columbia business address, the service will be subject to HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).

**Rule 2:** If, in the normal course of business, an address in Canada of the recipient is not obtained by the supplier of a service, the supply will be regarded as having been made in a participating province if the part of the service that is performed in Canada is performed primarily in the participating provinces. In such instances, the supply will be regarded as made in the participating province in which the greatest proportion of the service is performed.

**Example 9:** A human resources consulting firm with offices in a number of provinces is hired to conduct an executive search in British Columbia and Alberta for a US-based company. The consulting firm does not obtain a Canadian business address or any other address in Canada that is used by the supplier in connection with the supply. Seventy per cent of the services performed in Canada are performed in British Columbia. The service will be subject to HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).

**Rule 3:** If Rule 2 applies (i.e., no address in Canada of the recipient is obtained and the service that is performed in Canada is performed primarily in the participating provinces), but a single participating province cannot be determined as being the participating province in which the greatest proportion of the service is performed because the service is performed equally in two or more particular participating provinces, the supply will be regarded as made in the particular participating province for which the rate of the provincial component of HST is highest.

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

Note that if, in the normal course of business, an address in Canada of the recipient is not obtained by the supplier of a service, the supply will be regarded as having been made in a non-participating province if the services performed in Canada are not performed primarily in the participating provinces (i.e., performed primarily in non-participating provinces, or performed equally in participating and non-participating provinces).

As previously mentioned, the general rules for supplies of services described above will not apply if one of the exceptions to the general rules applies. The proposed exceptions to the general rules are outlined below.

## Personal services

The general rules for services will not apply to supplies of personal services.

A personal service will generally be viewed as a service that is all or substantially all (generally, 90 per cent or more) performed in the physical presence of the individual to whom it is rendered (e.g., a haircut or a massage). The rules for personal services will not apply to an advisory, consulting or professional service as these services will generally be subject to the general rules for services, except where another specific rule applies to them.

**Rule 1:** If the part of a personal service that is performed in Canada is performed primarily in participating provinces, the supply of the service will be regarded as made in the participating province in which the greatest proportion of the service is performed.

**Example 10:** A service of cutting an individual's hair at a salon in Sudbury, Ontario will be regarded as supplied in Ontario and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component). However, a service of cutting an individual's hair at a salon in Regina, Saskatchewan, will only be subject to GST at a rate of 5 per cent as the supply will be regarded as having been made outside participating provinces.

**Example 11:** A service of providing an interpretative tour of the Canadian Shield, 80 per cent of which will be performed in Ontario and 20 per cent of which will be performed in Manitoba, will be regarded as supplied in Ontario because the service is performed primarily in participating provinces and the greatest proportion of the service performed in participating provinces is performed in Ontario. The supplier will charge tax at the rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component) on the entire consideration for the supply.

**Rule 2:** If Rule 1 applies (i.e., the part of the personal service that is performed in Canada is performed primarily in the participating provinces), but a single participating province cannot be determined as being the participating province in which the greatest proportion of the personal service is performed because the personal service is performed equally in two or more particular participating provinces, the supply of the personal service will be regarded as made in the particular participating province for which the rate of the provincial component of HST is highest.

**Rule 3:** If Rule 2 applies, but a single participating province still cannot be determined to be the place of supply because the particular rate of the provincial component of the HST in two or more of the particular participating province is the same, the supplier will be required to charge HST by applying that particular rate.

Note that a supply of a personal service will be regarded as made in a non-participating province if the part of a personal service that is performed in Canada is performed otherwise than primarily in participating provinces (e.g., primarily in non-participating provinces or equally in participating and non-participating provinces).

## Services in relation to real property

The general rules for services will not apply to supplies of services in relation to real property.

Under the current place of supply rules, a supply of a service in relation to real property is regarded as made in a province if:

- all or substantially all (generally, 90 per cent or more) of the real property that is situated in Canada is situated in that province, or
- the place of negotiation of the supply is in the province and it is not the case that all or substantially all of the real property is situated outside the province.

If neither of these rules apply and the real property, to which the service relates, that is situated in Canada is situated primarily (more than 50 per cent) in the participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the real property is situated (unless the place of negotiation for the supply is outside Canada and it is not the case that all or substantially all of the real property is situated in Canada).

The following rules are proposed to replace the current rules for services in relation to real property:

**Rule 1:** A supply of a service in relation to real property will be regarded as having been made in a participating province if the real property in Canada to which the service relates is situated primarily in the participating provinces. The supply will be regarded as having been made in the participating province in which the greatest proportion of the real property is situated.

***Example 12:** An engineering firm is hired to supervise the repair of a bridge over Victoria Harbour in Victoria, British Columbia. The service will be subject to HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).*

**Rule 2:** If Rule 1 applies (i.e., the real property in Canada is situated primarily in participating provinces), but a single participating province cannot be determined as being the participating province in which the greatest proportion of the real property is situated because equal proportions of the real property are situated in two or more particular participating provinces, the supply is made in the particular participating province for which the rate of the provincial component of HST is highest.

***Example 13:** A property management company is hired to provide property management for real property situated in three provinces. Forty per cent of the real property is situated in Ontario, 40 per cent of the real property is situated in British Columbia and 20 per cent of the real property is situated in Alberta. The real property in Canada is therefore situated primarily in participating provinces and the greatest proportions of the real property are situated in Ontario and British Columbia. Comparing Ontario and British Columbia, the tax rate for Ontario is highest. As a result, the supplier will charge HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).*

**Rule 3:** If Rule 2 applies, but a single participating province still cannot be determined to be the place of supply because the particular rate of the provincial component of the HST in two or more of the particular participating provinces is the same, the supplier will be required to charge HST by applying that particular rate.

Note that a supply of a service in relation to real property will be considered to be made in a non-participating province if the real property in Canada to which the service relates is not situated primarily in participating provinces.

## Services in relation to tangible personal property

The general rules for services will not apply to supplies of services in relation to tangible personal property that is situated in Canada at all times when the Canadian element<sup>2</sup> of the service is performed.

*Tangible personal property remaining in same provinces while service is performed*

**Rule 1:** A supply of a service in relation to tangible personal property that is situated in one or more provinces at the time the Canadian element of the service begins to be performed and that remains situated in that province or those provinces, as the case may be, while the Canadian element of the service is performed will be regarded as having been made in a participating province if the tangible personal property is situated primarily in participating provinces when the Canadian element of the service is performed. The supply will be deemed to be made in the participating province in which the greatest proportion of the tangible personal property, which is situated in the participating provinces, is situated.

**Example 14:** An individual hires a repair person to fix a washing machine at the individual's home in Cornwall, Ontario. The service will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Rule 2:** If Rule 1 applies (i.e., the tangible personal property is situated primarily in participating provinces when the Canadian element of the service is performed), but a single participating province cannot be determined as being the participating province in which the greatest proportion of the tangible personal property is situated because the tangible personal property is situated equally in two or more particular participating provinces, the supply is made in the particular participating province for which the rate of the provincial component of HST is highest.

**Example 15:** A national appliance repair company is hired to provide appliance repair services for a flat fee in respect of tangible personal property situated in three provinces. Forty per cent of the tangible personal property is situated in Ontario, 40 per cent of the tangible personal property is situated in British Columbia and 20 per cent of the tangible personal property is situated in Alberta. The tangible personal property in Canada is therefore situated primarily in participating provinces and the greatest proportions of that tangible personal property are situated in Ontario and British Columbia. As between Ontario and British Columbia, the tax rate for Ontario is highest. As a result, the supplier will charge HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Rule 3:** If Rule 2 applies, but a single participating province still cannot be determined to be the place of supply because the particular rate of the provincial component of the HST in two or more of the particular participating provinces is the same, the supplier will be required to charge HST by applying that particular rate.

Note that a supply of a service in relation to tangible personal property that is situated in one or more provinces at the time the Canadian element of the service begins to be performed and that remains situated in that province or those provinces, as the case may be, while the Canadian element of the service is performed will be regarded as having been made in a non-participating province if the tangible personal property is not situated primarily in participating provinces (e.g., situated primarily in non-participating provinces or situated equally in participating and non-participating provinces) when the Canadian element of the service is performed.

*Tangible personal property not remaining in same provinces while service is performed*

**Rule 1:** A supply of a service in relation to tangible personal property that is situated in one or more provinces at the time the Canadian element of the service begins to be performed and that does not remain situated in that province or those provinces, as the case may be, while the Canadian element of the service is performed will be regarded as having been made in a participating province if (a) the property is situated primarily in participating provinces at any time the Canadian element of the service is performed, (b) the service is performed primarily in participating provinces, and (c) the greatest proportion of the performance of the service, which is performed in the participating provinces, is performed in that participating province.

**Example 16:** A company is hired by another company to conduct tests on a vehicle. Sixty per cent of the service is performed in Ontario and 40 per cent of the service is performed in Manitoba. The vehicle is situated in Ontario when the Ontario portion of the service is performed and in Manitoba when the Manitoba portion of the service is performed. The tangible personal property is moved from Ontario to Manitoba after the Ontario portion of the service is performed. The tangible personal property is situated primarily in the participating provinces when the Ontario portion of the service is performed and the service as a whole is performed primarily in participating provinces, the greatest proportion of which is performed in Ontario. As a result, the supplier will charge HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Rule 2:** If Rule 1 applies (i.e., the property is situated primarily in participating provinces at any time the Canadian element of the service is performed and the service is performed primarily in participating provinces), but a single participating province cannot be determined as being the participating province in which the greatest proportion of the service is performed because the service is performed equally in two or more particular participating provinces, the supply is made in the particular participating province for which the rate of the provincial component of HST is highest.

**Rule 3:** If Rule 2 applies, but a single participating province still cannot be determined as the place of supply because the particular rate of the provincial component of the HST in two or more of the particular participating provinces is the same, the supplier will be required to charge HST by applying that particular rate.

Note that a supply of a service in relation to tangible personal property that is situated in one or more provinces at the time the Canadian element of the service begins to be performed and that does not remain situated in that province or those provinces, as the case may be, while the Canadian element of the service is performed will be regarded as having been made in a non-participating province if either:

- the tangible personal property is not situated primarily in participating provinces (e.g., situated primarily in non-participating provinces or situated equally in participating and non-participating provinces) at any time the Canadian element of the service is performed, or
- the service is performed otherwise than primarily in participating provinces.

**Example 17:** A company is hired by another company to conduct tests on a vehicle. Sixty per cent of the service is performed in Manitoba and 40 per cent of the service is performed in Ontario. The vehicle is in Manitoba when the Manitoba portion of the service is performed and in Ontario when the Ontario portion of the service is performed. The tangible personal property is moved from Manitoba to Ontario after the Manitoba portion of the service is performed. While the tangible personal property is situated primarily in the participating provinces when the Ontario portion of the service is performed, the service as a whole is not performed primarily in participating provinces. As a result, the supplier will only charge GST at a rate of 5 per cent.

### Services in relation to a location-specific event

The general rules for services will not apply to a supply of a service that relates to a location-specific event (e.g., a performance, festival, ceremony, convention, conference, symposium, or other similar event) if the service will be performed primarily at a location of the event in a province. A supply of such a service will be treated as having been made in the province in which the service is primarily performed.

**Example 18:** A person hires a Montreal-based audio-visual company to provide lighting and other special effects at a gala event the person is organizing. The service will be performed at the convention centre in Kingston, Ontario where the gala will take place. The supply of the service will be regarded as having been made in Ontario. Accordingly, the audio-visual firm will charge HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

### Services rendered in connection with litigation

The general rules for services will not apply to a supply of a service rendered in connection with criminal, civil or administrative litigation in a province (other than a service rendered before the commencement of such litigation). A supply of a service rendered in connection with criminal, civil or administrative litigation in a particular province will be regarded as being made in that particular province.

**Example 19:** An individual from Brandon, Manitoba receives a speeding ticket in Kenora, Ontario. The individual hires a lawyer from Kenora to contest the ticket. The supply of the service will be regarded as having been made in Ontario because it is rendered in connection with litigation in Ontario. Accordingly, the lawyer will charge HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Example 20:** An individual from Cold Lake, Alberta is injured during a fishing trip in Newfoundland. After returning to Alberta, the individual phones a lawyer to determine whether the individual has a cause of action against the Newfoundland charter company that organized the trip. The lawyer advises the individual that he does have a cause of action and the lawyer is advised to file a statement of claim against the charter company. The statement of claim is filed in Newfoundland. The lawyer will charge HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Newfoundland component) on the services supplied after the filing of the statement of claim, however the services supplied before the filing of the statement of claim will be subject to the general rules for services.

### Passenger transportation services

No changes are proposed to the current place of supply rule for passenger transportation services that are part of a continuous journey in respect of which:

- the ticket or voucher, issued in respect of the passenger transportation service included in the continuous journey that is provided first, specifies the origin of the continuous journey, and
- the termination, and all stopovers, are in Canada.

All passenger transportation services that are part of such a continuous journey will continue to be regarded as supplied in the province in which the continuous journey originates.



**Example 21:** A person purchases a return air ticket with a routing Halifax-Calgary-Halifax. The person will be charged HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component) because the continuous journey originates in Nova Scotia and there is no termination or stopover outside of Canada.

Under the proposed rules, a supply of a passenger transportation service that is not part of a continuous journey will be regarded as having been made in the province in which the passenger transportation service originates.

**Example 22:** An individual takes a taxi from Ottawa, Ontario to Gatineau, Quebec. The individual will be charged HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component) because the service begins in Ontario.

Generally, the place of supply for supplies of rights that relate to passenger transportation services will be determined under the rules for intangible personal property.

### Services supplied on board conveyances

Changes are proposed to the current place of supply rule for services supplied on board a conveyance.

A service (other than a passenger transportation service) that is supplied on board a conveyance to an individual will be regarded as supplied in a participating province if the supply is made by a person in the course of a business of supplying passenger transportation services and the service is wholly performed on board the conveyance during a leg of a journey that begins in the participating province and ends anywhere in Canada.

**Example 23:** A supply of a service of providing a massage on board a train during a leg beginning in Halifax, Nova Scotia and ending in Montreal, Quebec will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component) as the supply will be regarded as having been made in Nova Scotia. However, a service of providing a massage on board a train during a second leg of the same journey, beginning in Montreal and ending in Toronto, will only be subject to GST at a rate of 5 per cent as the supply will be regarded as having been made outside participating provinces.

### Baggage charges and child supervision

No changes are proposed to the current place of supply rule that applies to a supply, made by the supplier of a passenger transportation service, of a service of transporting an individual's baggage in connection with the passenger transportation service. A supply of such a service will continue to be regarded as having been made in the same province in which the supply of the passenger transportation service is made.

**Example 24:** In connection with supplying a domestic passenger transportation service that is made in British Columbia, an airline charges an additional excess baggage fee to an individual who has exceeded the checked baggage allowance for the particular flight. The supply of the service of transporting the excess baggage is considered to be made in the province that the passenger transportation service is considered to be made, which in this case is British Columbia. The supply of the service will therefore be subject to HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).

No changes are proposed to the current place of supply rule that applies to a supply, made by the supplier of a passenger transportation service, of a service of supervising an unaccompanied child in connection with the passenger transportation service. A supply of such a service will continue to be regarded as having been made in the same province in which the supply of the passenger transportation service is made.

**Example 25:** In connection with supplying a domestic passenger transportation service made in Ontario for an unaccompanied child, an airline supplies the service of supervising the unaccompanied child. The supply of the service of supervising the unaccompanied child is considered to be made in the province in which the passenger transportation service is considered to be made, which in this case is Ontario. The supply of the service will therefore be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

### Services related to a ticket, voucher or reservation

No changes are proposed to the current place of supply rule that applies to a supply, made by a supplier of a passenger transportation service, of a service of issuing, delivering, amending, replacing or cancelling a ticket, voucher or reservation for the passenger transportation service. Such a supply will continue to be treated as having been made in the same province in which the supply of the passenger transportation service would, if it were completed in accordance with the agreement for that supply, be made.

**Example 26:** *An individual cancels a ticket for a return flight from Ottawa, Ontario to Abbotsford, British Columbia that specifies Ottawa as the origin of the continuous journey. The supply of the service of cancelling the ticket is made in Ontario because the supply of the passenger transportation service for which the ticket would have applied is made in Ontario. As a result, the supply of the service of cancelling the ticket will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).*

## Freight transportation services

No changes are proposed to the current place of supply rule for supplies of freight transportation services. Subject to the place of supply rules for postage and mail delivery services described below, a supply of a freight transportation service will continue to be regarded as having been made in a province if the destination of the service is in the province.

**Example 27:** *An individual hires a moving company to pick up the individual's personal effects at a residence in Whitehorse, Yukon and to deliver the effects to a residence in Coquitlam, British Columbia. Because the destination of the freight transportation service is in British Columbia, the individual will be charged HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).*

## Postage and mail delivery services

No changes are proposed to the current place of supply rule relating to mail. The place of supply rules will continue to be based on the form of the evidence of payment that is used. If a postage stamp or a postage-paid card, package or similar item is used, then the supply is made in a province if the postage stamp, card, package or item is delivered to the recipient in the province. If a postage meter impression is used, then the supply is made in a province if the ordinary location of the meter is in the province (determined at the time an amount is paid to the Canada Post Corporation for the postage). If a permit imprint is used, then the supply is made in a province if the recipient deposits the mail with the Canada Post Corporation in the province (in accordance with the agreement authorizing use of the permit imprint). The current rule does not generally apply to mail delivery where the mail is sent to an address outside the participating provinces and the consideration for the supply is five dollars or more or to supplies of mail delivery made pursuant to a bill of lading or business reply indicia (see the place of supply rules for freight transportation services).

## Telecommunications services

No changes are proposed to the current place of supply rules for supplies of telecommunications services.

A supply of a telecommunication service of making telecommunications facilities available (other than a service of granting sole access to a telecommunications channel) will continue to be made in a province if all of the facilities are ordinarily located in that province or, in the case that not all of the facilities are ordinarily located in the province, if the invoice for the supply is sent to an address in that province.

A supply of a telecommunication service (other than a telecommunication service of making telecommunications facilities available) will continue to be considered to be made in a particular province if one of the following three tests is met:

- *The telecommunication is emitted and received in the particular province.*

**Example 28:** *An individual makes a telephone call from one location in Nova Scotia to another location in Nova Scotia. The call will be regarded as supplied in Nova Scotia and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component) even if the telecommunications facility used to make the call is normally located outside Nova Scotia (such as a cellular phone with a billing location outside the province).*

- *The telecommunication is either emitted or received in the particular province, and the billing location for the service is in the particular province.*

The “billing location” for a telecommunication service is considered to be in a province if the fee for the service is charged to an account with the telecommunications carrier that relates to telecommunication facilities that are all ordinarily located in the province, or in any other case, the telecommunications facility used to initiate the service is located in the province.

**Example 29:** An individual makes a telephone call from a location in Nova Scotia to a location in British Columbia. If the billing location for the service is in British Columbia, the call will be regarded as supplied in British Columbia and subject to HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component). If the billing location for the service is in Nova Scotia, the call will be regarded as supplied in Nova Scotia and subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component).

- If the telecommunication service is deemed to be supplied in Canada but does not meet the above tests because it originates and terminates in two different jurisdictions and the billing location is in a third jurisdiction, the supply of the telecommunication service will continue to be considered to be made in the particular province in which the telecommunication service originates.

**Example 30:** An individual makes a telephone call from a location in Ontario to a location in British Columbia. The billing location for the service is in Manitoba. The call will be regarded as supplied in Ontario and subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

A supply of a telecommunication service of granting sole access to a telecommunications channel<sup>3</sup> will continue to be made in a province if it is deemed under section 136.4 to be made in the province. A supply of granting sole access to a particular telecommunications channel is divided into separate supplies if telecommunications are to be transmitted between two provinces via the channel. The supplier is deemed to have made a separate supply of the service in each of those provinces as well as in any other provinces in between. The consideration for the deemed supply in each province is calculated based on the distance over which the telecommunication would be transmitted in the province if the telecommunication were transmitted, relative to the total distance over which the telecommunication is transmitted.

### **Customs brokerage services**

Under the current rules, the place of supply of a service of arranging for the release of imported goods, or fulfilling, in respect of the importation, (whether before, at the time of or after the release) any accounting, reporting or information requirements imposed under the *Customs Act* or the *Customs Tariff Act* or any requirements under either of those Acts to remit any amount is in a province if the goods are situated in that province at the time of their release.

It is proposed that this rule continue to apply in respect of commercial goods. However, in the case of non-commercial goods, generally if the provincial component of HST for a participating province is imposed<sup>4</sup> in respect of the importation of the goods, the supply of the customs brokerage service will be regarded as made in that participating province.

The above rules will not apply to the supply of any service provided in relation to an objection, appeal, re-determination, re-appraisal, review, refund, abatement, remission or drawback, or in relation to a request for any of the foregoing. These types of services will continue to be subject to the place of supply rules for services described in other parts of this document.

### **Repairs, maintenance, cleaning, alterations and other services relating to goods**

There is currently a special place of supply rule for repair and other services in respect of tangible personal property.

If a supplier receives tangible personal property of another person for the purpose of repairing, maintaining, cleaning, adjusting or altering the tangible personal property, the supply of the service (and of any property supplied in conjunction with the service) is made in the province in which the tangible personal property is delivered by the supplier to the recipient after the service is performed. Also, where a supplier receives tangible personal property, such as exposed film, of another person for the purpose of producing a negative, transparency, photographic print or other photographic-related good, the supply of the photographic-related good is made in the province in which the photographic-related good is delivered by the supplier to the recipient. This rule will continue to apply, despite the proposed rule for services in relation to tangible personal property.

**Example 31:** A consumer in Edmundston, New Brunswick sends a stereo requiring repair to an electronics repair shop in Ontario. The electronics repair shop performs the repair service then ships the stereo back to the consumer in Edmundston, New Brunswick. Accordingly, the electronics repair shop will charge HST to the consumer on the repair service at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent New Brunswick component)

## Services of a trustee in respect of a trust governed by an RRSP, RRIF or RESP

Currently, the place of supply for services supplied by a trustee in respect of a trust governed by a Registered Retirement Savings Plan, Registered Retirement Income Fund or Registered Education Savings Plan is determined based on the annuitant's mailing address or, in the case of a Registered Education Savings Plan, the subscriber's mailing address, regardless of whether the services are supplied to the trust, to the annuitant or to the subscriber. This rule is proposed to be extended to services of a trustee in respect of trusts governed by similar plans including Tax Free Savings Accounts and Registered Disability Savings Plans.

## Premium rate telephone services

A supply of a service provided by telephone and accessed by calling a number beginning with the digits 1-900 or 976 is proposed to be made in the province in which the telephone call originates. This represents a clarifying amendment to the current rule.

## Computer-related services and Internet access

There are currently rules to determine the place of supply for supplies of access to the Internet, technical support services provided by means of telecommunications that relate to the operation or use of computer hardware or software, and services involving electronic storage of information and computer-to-computer transfer of information.

In general, these supplies are regarded as made where the end-user (i.e., the person that acquires the service or access otherwise than for re-supply) is ordinarily located when accessing the Internet or receiving the service. If the service or Internet access is made available to more than one end-user, the service will be regarded as performed, or the right of access will be regarded as exercisable, in part where each of the end-users is ordinarily located when receiving the service or accessing the Internet. Where this results in the service being considered to be performed, or the right being considered to be exercisable, in more than one province, the place of supply rules for services and intangible personal property apply for the purpose of determining in which province the supply is made.

If, however, the supplier does not maintain sufficient information to determine the location of the end-user or users and it is not the normal business practice of the supplier to obtain information sufficient to determine that location (e.g., where the supplier sells the service to a person that resells it to end-users unknown to the first supplier), the place of supply is based on the mailing address of the recipient of the supply (e.g., the mailing address of the re-seller in the foregoing Example 32:).

While no changes are proposed to these rules, the proposed changes to the rules for services and intangible personal property may impact the place of supply of computer-related services or Internet access where services are considered to be performed, or the rights are considered to be exercisable, in more than one province.

## Air navigation services

Supplies of air navigation services (as defined in the *Civil Air Navigation Services Commercialization Act*) are proposed to be made in a province if the leg of the flight in respect of which the services are performed originates in the province. This represents a clarifying amendment to the current rule.

## SUPPLIES OF INTANGIBLE PERSONAL PROPERTY

Significant changes are proposed to the current place of supply rules for supplies of intangible personal property. The proposed rules for determining whether a supply of intangible personal property is made in a province are described in detail below.

### General rules

Under the current general place of supply rules for intangible personal property, a supply of intangible personal property is regarded as made in a province if:

- all or substantially all of the Canadian rights<sup>5</sup> in respect of the intangible personal property can be used only in the province, or
- the place of negotiation of the supply is in the province and the intangible personal property can be used otherwise than exclusively outside the province.

If neither of these rules apply and the Canadian rights cannot be used otherwise than primarily (more than 50 per cent) in participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the rights, which can be used only in participating provinces, can be used (unless it is the case that the place of negotiation for the supply is outside Canada and the property can be used otherwise than exclusively in Canada).

The proposed rules for supplies of intangible personal property will continue to be largely dependant on where the intangible personal property can be used. The significant difference between the current rules and the proposed rules is the elimination of the place of negotiation as a criterion and the greater emphasis on the location of the recipient of the supply. The following general rules for intangible personal property are proposed to apply to supplies of intangible personal property except where a specific exception applies.

*Intangible personal property that can be used only primarily in participating provinces*

Generally, if a supply of intangible personal property is made and the Canadian rights in respect of that property can be used only primarily in participating provinces, the place of supply will be in a participating province pursuant to the rules described below.

If the Canadian rights in respect of the intangible personal property can only be used in a single participating province, that participating province will be the place of supply.

**Example 32:** *An individual purchases a fitness club pass that provides the individual with the right to an unlimited number of uses during a one-month period of club facilities that are only in Newfoundland and Labrador, including access to a fitness seminar, a towel service and a fitness evaluation. The supply of the pass will be regarded as made in Newfoundland and Labrador as it can be used only there and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Newfoundland and Labrador component).*

If the Canadian rights in respect of the intangible personal property can be used in more than one province, the following rules will apply to determine in which participating province the supply will be regarded as having been made:

**Rule 1:** If under the agreement for the supply, the greatest proportion of use of the Canadian rights that are restricted to participating provinces would have to occur in a particular participating province if all such rights were used, the supply of the intangible personal property will be regarded as having been made in that particular participating province.

**Example 33:** *A person purchases a hockey ticket package. The package includes tickets to a Halifax, Nova Scotia hockey team's 40 home games, as well as eight away games in New Brunswick. The supply of the ticket package will be regarded as made in Nova Scotia as the intangible personal property can be used only primarily in participating provinces and the greatest proportion of the intangible personal property can be used only in Nova Scotia (40 of 48 games or 83 per cent). The supply will therefore be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component).*

- *Even if the ticket package holder actually attended only the New Brunswick games, the place of supply would still be in Nova Scotia because the place where each of the tickets granted under the agreement can be used must be included in making the determination, not just the place of use of only those tickets that are used.*
- *If the person in the above Example purchased a different ticket package composed of eight tickets, each of which could be used either for admission to a Nova Scotia or a New Brunswick game, Rule 1 would not apply because for this package there is no province in which the greatest proportion of the tickets have to be used.*

**Rule 2:** If (a) Rule 1 does not apply to a particular supply of intangible personal property, (b) the value of the consideration for the supply is \$300 or less, and (c) the supply is either made in the physical presence of an individual who is, or who acts on behalf of, the recipient at a permanent establishment of the supplier through which the supply is made in a participating province where the intangible personal property can be used, or made through a vending machine situated in a participating province where the intangible personal property can be used, the supply of the intangible personal property will be regarded as having been made in that province.

**Example 34:** *An individual purchases a movie pass that provides 10 adult admissions to any of a popular movie chain's five cinemas situated in Nova Scotia and New Brunswick. The individual purchases and obtains the pass at a cost of \$80 at the chain's Sydney, Nova Scotia location. The supply will be regarded as having been made in Nova Scotia and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component).*

**Rule 3:** If neither *Rule 1* nor *Rule 2* apply to a particular supply of intangible personal property and if, in the normal course of business, the supplier obtains a particular address of the recipient that is (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 home or business address of the recipient in Canada that is most closely connected with the supply, or (c) where the supplier does not obtain a home or business address of the recipient in Canada, another address in Canada that is most closely connected with the supply, and the particular address is in a participating province in which the Canadian rights in respect of the intangible personal property can be used, the supply is made in that participating province.

**Example 35:** An individual purchases an air transportation pass for \$800 that provides the individual with unlimited travel between Nova Scotia and Ontario. The individual's home address is in Antigonish, Nova Scotia. The supply will be regarded as having been made in Nova Scotia and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Nova Scotia component).

**Rule 4:** If none of *Rule 1*, *Rule 2* or *Rule 3* apply to a particular supply of intangible personal property, the supply will be regarded as made in the participating province, among the participating provinces in which the Canadian rights in respect of the intangible personal property can be used, for which the provincial component of the HST is the highest at the time the supply is made.

**Rule 5:** If a single participating province cannot be determined as the place of supply under *Rule 4* because the particular rate of the provincial component of the HST in two or more of the participating provinces in which the Canadian rights in respect of the intangible personal property can be used is the same, the supplier will be required to charge HST by applying that particular rate.

**Example 36:** An individual purchases an air transportation pass for \$800 that provides the individual with unlimited travel between Nova Scotia and Ontario. The individual's home address is in Sackville, New Brunswick. The supply will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent provincial component that applies in Nova Scotia and Ontario).

#### *Intangible personal property that can be used only primarily outside participating provinces*

Generally, if a supply of intangible personal property is made and the Canadian rights in respect of that intangible personal property can be used only primarily outside participating provinces, the supply will be regarded as having been made in a non-participating province.

**Example 37:** A theatre pass that provides admissions to seven plays in Alberta and three plays in British Columbia will be viewed as a supply of intangible personal property with Canadian rights that can be used only primarily in non-participating provinces since the rights that can be used in Alberta are more than 50 per cent of the Canadian rights supplied under the agreement and can be used only in a non-participating province. Therefore, it will only be subject to GST at a rate of 5 per cent.

#### *Intangible personal property that can be used otherwise than only primarily in participating provinces and otherwise than only primarily in non-participating provinces*

The following rules will generally apply if a supply of intangible personal property is made and the Canadian rights in respect of that property can be used otherwise than only primarily in participating provinces and otherwise than only primarily in non-participating provinces. In other words, these rules apply when an agreement for a supply of intangible personal property does not specify whether the use of the Canadian rights granted under the agreement can only occur in participating or non-participating provinces. It would also apply when the Canadian rights can be used only equally in participating and non-participating provinces.

**Rule 1:** If (a) the value of the consideration for a supply of intangible personal property is \$300 or less, and (b) the supply is either made in the physical presence of an individual who is, or who acts on behalf of, the recipient at a permanent establishment of the supplier through which the supply is made in a province where the intangible personal property can be used or made through a vending machine situated in a province in which the intangible personal property can be used, the supply of the intangible personal property will be regarded as having been made in that province.

**Example 38:** An individual purchases a movie pass that provides 10 adult admissions that can be used at any of a popular movie chain's 92 locations. The chain has one or more locations in every Canadian province. The individual purchases the pass at a cost of \$80 at the chain's Windsor, Ontario location. The supply will be regarded as having been made in Ontario and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Rule 2:** If *Rule 1* does not apply to a particular supply of intangible personal property and if in the normal course of business, the supplier obtains a particular address of the recipient that is (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 home or business address of the recipient in Canada that is most closely connected with the supply, or (c) where the supplier does not obtain a home or business address of the recipient in Canada, another address in Canada that is most closely connected with the supply, and the particular address is in a province in which the Canadian rights in respect of the intangible personal property can be used, the supply is made in that province.

**Example 39:** An individual purchases a digital music album from an online vendor at a cost of \$12.99. There are no restrictions on where the music can be listened to in Canada. As part of the purchase process, the supplier obtains the individual's home address in Cranbrook, British Columbia. The supply will be regarded as having been made in British Columbia and will be subject to HST at a rate of 12 per cent (a 5 per cent federal component and a 7 per cent British Columbia component).

**Example 40:** An Ontario publishing company enters into a \$60,000 contract with an author to purchase the Canadian copyright to produce copies of and sell the author's latest novel. The contract states that the publishing company's address is in Toronto, Ontario. The supply of the right to produce copies of and sell the novel will be regarded as having been made in Ontario and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Example 41:** An individual purchases an air transportation pass that provides the individual with unlimited travel between Ontario, Manitoba, Saskatchewan and Alberta. The individual's home address is in Ottawa, Ontario. The supply of the pass will be regarded as having been made in Ontario and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Rule 3:** If neither *Rule 1* nor *Rule 2* applies to a supply of intangible personal property, the supply will be regarded as made in the participating province, among the participating provinces in which the Canadian rights can be used, for which the provincial component of the HST is the highest at the time the supply is made.

**Example 42:** An individual purchases an air transportation pass that provides the individual with unlimited travel between Ontario, Manitoba, Saskatchewan and Alberta. No address is obtained by the supplier. The supply of the pass will be regarded as made in Ontario and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).

**Rule 4:** If a single participating province cannot be determined as the place of supply under *Rule 3* because the particular rate of the provincial component of the HST in two or more of the participating provinces in which the Canadian rights in respect of the intangible personal property can be used is the same, the supplier will be required to charge HST by applying that particular rate.

**Example 43:** A person purchases the right to view material on a website with no restrictions on where the material can be viewed in Canada. The supplier does not obtain any Canadian address from the purchaser. Because no single participating province in which the rights can be used qualifies as the participating province in which the provincial component of HST is highest, the supplier will be required to charge HST by applying the highest provincial component of the HST (i.e., the 8 per cent rate that applies in Ontario, Nova Scotia, New Brunswick and Newfoundland and Labrador).

As previously mentioned, the general rules for supplies of intangible personal property described above will not apply if one of the exceptions to the general rules applies. The proposed exceptions are outlined below.

### **Intangible personal property that relates to real property**

The general rules for intangible personal property will not apply to supplies of intangible personal property that relates to real property.

Under the current place of supply rules, a supply of intangible personal property that relates to real property is regarded as made in a province if:

- all or substantially all (generally, 90 per cent or more) of the real property that is situated in Canada is situated in that province, or

- the place of negotiation of the supply is in the province and it is not the case that all or substantially all of the real property is situated outside the province.

If neither of these rules apply and the real property, to which the intangible personal property relates, that is situated in Canada is situated primarily (more than 50 per cent) in the participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the real property is situated (unless the place of negotiation for the supply is outside Canada and it is not the case that all or substantially all of the real property is situated in Canada).

The following rules are proposed to replace the current rules for supplies of intangible personal property that relates to real property:

**Rule 1:** A supply of intangible personal property that relates to real property will be regarded as having been made in a participating province if the real property in Canada to which the intangible personal property relates is situated primarily in the participating provinces. The supply will be regarded as having been made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

**Example 44:** A supply of a single option to purchase commercial property situated in New Brunswick (60 per cent) and Nova Scotia (40 per cent) will be regarded as made in New Brunswick because the real property in Canada is situated primarily in participating provinces and the greatest proportion of the real property in Canada is in New Brunswick. The supply will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent New Brunswick component).

**Rule 2:** If Rule 1 applies (i.e., the real property in Canada is situated primarily in participating provinces), but a single participating province cannot be determined as being the participating province in which the greatest proportion of the real property is situated because equal proportions are situated in two or more particular participating provinces, the supply is made in the particular participating province for which the rate of the provincial component of HST is highest.

**Example 45:** A single option to purchase commercial property situated in Nova Scotia (40 per cent), British Columbia (40 per cent) and Ontario (20 per cent) is regarded, under the current rules, as supplied in Canada. The real property in Canada is therefore situated primarily in participating provinces and the greatest proportions of the real property are situated in Nova Scotia and British Columbia. As between Nova Scotia and British Columbia, the tax rate for Nova Scotia is highest. As a result the supplier will charge HST at a rate of 13 (a 5 per cent federal component and an 8 per cent Nova Scotia component).

**Rule 3:** If Rule 2 applies, but a single participating province can still not be determined as the place of supply because the particular rate of the provincial component of the HST in two or more of the particular participating provinces is the same, the supplier will be required to charge HST by applying that particular rate.

Note that a supply of intangible personal property that relates to real property will be regarded as having been made in a non-participating province if the real property in Canada relating to the supply is situated primarily in non-participating provinces or situated equally in participating and non-participating provinces.

### **Intangible personal property that relates to tangible personal property**

The general rules for intangible personal property will not apply to supplies of intangible personal property that relates to tangible personal property.

Under the current place of supply rules, a supply of intangible personal property that relates to tangible personal property is regarded as made in a province if:

- all or substantially all (generally, 90 per cent or more) of the tangible personal property that is ordinarily located in Canada is ordinarily located in that province, or
- the place of negotiation of the supply is in the province and it is not the case that all or substantially all of the tangible personal property is ordinarily located outside the province.

If neither of these rules apply and the tangible personal property that is ordinarily located in Canada is ordinarily located primarily (more than 50 per cent) in the participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the tangible personal property is ordinarily located (unless the place of negotiation for the supply is outside Canada and it is not the case that all or substantially all of the tangible personal property is ordinarily located in Canada).

The following rules are proposed to replace the current rules for supplies of intangible personal property that relates to tangible personal property:

**Rule 1:** The supply of intangible personal property that relates to tangible personal property will be considered to be made in a participating province if the tangible personal property in Canada to which the intangible personal property



relates is ordinarily located primarily in the participating provinces. The supply will be considered to have been made in the participating province in which the greatest proportion of the tangible personal property, which is ordinarily located in participating provinces, is ordinarily located.

**Example 46:** *An individual purchases an option to purchase a famous work of art. The art is ordinarily located in Ontario. The supply of the option will be regarded as made in Ontario and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).*

**Rule 2:** If Rule 1 applies (i.e., the tangible personal property ordinarily located in Canada is ordinarily located primarily in participating province), but a single participating province cannot be determined as being the participating province in which the greatest proportion of the tangible personal property is ordinarily located because equal proportions are ordinarily located in two or more particular participating provinces, the supply is made in the particular participating province for which the rate of the provincial component of HST is highest.

**Example 47:** *A company purchases a single option to purchase 20 identical pieces of machinery from a trustee in bankruptcy. Forty per cent of the tangible personal property is ordinarily located in Ontario, 40 per cent of the tangible personal property is ordinarily located in British Columbia and 20 per cent of the tangible personal property is ordinarily located in Alberta. The tangible personal property in Canada is therefore ordinarily located primarily in participating provinces and the greatest proportions of that tangible personal property are situated in Ontario and British Columbia. As between Ontario and British Columbia, the tax rate for Ontario is highest. As a result, the supplier will charge HST at a rate of 13 (a 5 per cent federal component and an 8 per cent Ontario component).*

**Rule 3:** If Rule 2 applies, but a single participating province can still not be determined as the place of supply because the particular rate of the provincial component of the HST in two or more of the particular participating provinces is the same, the supplier will be required to charge HST by applying that particular rate.

Note that a supply of intangible personal property that relates to tangible personal property will be regarded as having been made in a non-participating province if the tangible personal property in Canada relating to the supply is ordinarily located primarily in non-participating provinces or ordinarily located equally in participating and non-participating provinces.

### **Intangible personal property that relates to services to be performed**

The general rules for intangible personal property will not apply to certain supplies of intangible personal property that relates to services to be performed.

Under the current place of supply rules, a supply of intangible personal property that relates to services to be performed is regarded as made in a province if:

- all or substantially all (generally, 90 per cent or more) of the services that are to be performed in Canada are to be performed in that province, or
- the place of negotiation of the supply is in the province and it is not the case that all or substantially all of the services are to be performed outside the province.

If neither of these rules apply and the services to be performed in Canada are to be performed primarily (more than 50 per cent) in the participating provinces, the supply is regarded as made in the participating province in which the greatest proportion of the services are to be performed (unless the place of negotiation for the supply is outside Canada and it is not the case that all or substantially all of the services are to be performed in Canada).

The following rule is proposed to replace the current rules for supplies of intangible personal property that relates to services to be performed:

In the case of a supply of intangible personal property that relates to services to be performed, if the supplier can determine that those services would all be supplied in a single province if supplies of all of those services were made, the supply of intangible personal property will be regarded as having been made in the same province as that in which the supplies of those services would be made.

**Example 48:** *An individual purchases a train pass that may be used for 10 round-trip train trips from Ottawa, Ontario to Montreal, Quebec. Because the supplier can determine that the place of supply for each supply of a passenger transportation service would be Ontario if supplies of those services were made, the supply of the intangible personal property will be regarded as having been made in Ontario and will be subject to HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component).*

Note that, where a supplier of intangible personal property that relates to services to be performed cannot determine that the services to which the intangible personal property relates would all be supplied in a single province if supplies of all of those services were made, the general rules for intangible personal property would apply to the supply of intangible personal property.

## Memberships

Currently, if a supply of a membership is made to an individual and the Canadian rights in respect of the membership can be exercised otherwise than exclusively in one province, the supply is made in a province if the mailing address of the individual is in the province. It is proposed that this rule be repealed as a result of the proposed changes above.

## APPLICATION

The proposed changes to the place of supply rules described in this document would apply to any supply made on or after May 1, 2010, and any supply made after ANNOUNCEMENT DATE and before May 1, 2010 if the consideration for the supply has not become due, and has not been paid, before May 1, 2010.

## SELF-ASSESSMENT OF THE PROVINCIAL COMPONENT OF THE HST

Self-assessment of the provincial component of the HST may be required in circumstances where a supply of property or a service is made in a non-participating province, but consumption, use or a subsequent supply of that property or service will occur in a participating province. To accommodate an HST system under which the provincial component of the HST may differ between the participating provinces, it is proposed that these rules be expanded.

## TANGIBLE PERSONAL PROPERTY BROUGHT INTO A PARTICIPATING PROVINCE

Under the current self-assessment rules, if tangible personal property is brought into a particular participating province from a non-participating province by a person, the person is generally required to self-assess the provincial component of the HST for the particular participating province. In general, the value on which tax is required to be self-assessed is the lesser of the consideration paid for the tangible personal property and the fair-market value of the tangible personal property.

The expanded self-assessment rule for tangible personal property would also apply when tangible personal property is brought into a particular participating province from another participating province for which the provincial component of the HST is lower. If a person is required to self-assess under this proposed rule, the amount of tax would be determined by multiplying the difference between the provincial component of the HST for the destination participating province and the provincial component of the HST for the origin province by the lesser of the consideration paid for the property or the fair-market value of the property at the time of bringing in.

***Example 49:** While travelling, an Ontario resident purchases a wedding dress in British Columbia for \$3,000. In addition to the federal component of the HST (5 per cent), the individual pays the provincial component of the HST at a rate of 7 per cent (\$210). Upon returning to Ontario, the Ontario resident would be required to self-assess tax on the \$3,000 at a rate of 1 per cent (the 8 per cent Ontario provincial component of HST less the 7 per cent British Columbia provincial component of HST).*

Generally, the existing exemptions from the requirement to self-assess would continue to apply under the proposed rules. In addition, under the new rules, it is proposed that a person be relieved from the requirement to self-assess if the amount of tax that is payable by the person under Division IV.1<sup>6</sup> of the ETA in a calendar month is less than \$25.

## SERVICES AND INTANGIBLE PERSONAL PROPERTY SUPPLIED IN A PROVINCE FOR CONSUMPTION, USE OR SUPPLY IN A PARTICIPATING PROVINCE

Under the current self-assessment rules, if a person resident in a participating province acquires intangible personal property or a service in a non-participating province for consumption, use or supply primarily in the participating provinces, the person is generally required to self-assess the provincial component of the HST. In general, the tax is payable each time an amount of consideration for the supply is paid or becomes due, and is calculated on the value of that consideration multiplied by the extent to which the person acquired the property or service for consumption, use or supply in participating provinces.

The expanded self-assessment rule for services and intangible personal property would also apply when intangible personal property or a service is acquired in a province for consumption, use or supply "significantly" (generally, 10 per cent or more) in participating provinces for which the provincial component of the HST is higher than the provincial component of the HST for the province of acquisition. For the purpose of this determination (and the other determinations described in this section and the section of the document in respect of rebates of the provincial component of the HST), the provincial component of the HST for a non-participating province will be regarded as being zero per cent.

If a person is required to self-assess under this proposed rule, an amount would be determined in respect of each particular participating province in which the intangible personal property or service will be consumed, used or supplied for which the provincial component of the HST is higher than the provincial component of the HST for the participating province in which the intangible personal property or service was acquired. The person would be required to self-assess tax equal to the total of all of these amounts, each of which is determined in respect of a particular participating province by multiplying the difference between the provincial component of the HST for the particular participating province and the provincial component of the HST for the province of acquisition by the consideration paid for the intangible personal property or service by the extent to which the intangible personal property or service was acquired for consumption, use or supply in the particular participating province.

**Example 50:** A person that resides in British Columbia (B.C.) operates retail outlets both in B.C. and Ontario. The retail outlets make both exempt and taxable supplies. The person acquires the service of an accounting firm located in B.C. for a yearly fee of \$6,500. The accounting firm has determined that the place of supply of the service is B.C. Sixty per cent of the service relates to the person's retail outlets in Ontario and the remainder of the service relates to the person's retail outlets in B.C. The person would be required to self-assess tax in the amount of \$39 (i.e.,  $(8 \text{ per cent} - 7 \text{ per cent}) \times \$6,500 \times 60 \text{ per cent}$ ) for the service.

Generally, the existing exemptions from the requirement to self-assess would continue under the proposed rules. As previously mentioned, under the new rules it is proposed that a person be relieved from the requirement to self-assess if the amount of tax that is payable by the person under Division IV.1 of the ETA in a calendar month is less than \$25.

## IMPORTED TAXABLE SUPPLIES

Division IV of Part IX of the ETA requires tax to be self-assessed by residents of Canada and registrants in respect of certain supplies made outside Canada of property or services that are for use in Canada (otherwise than exclusively in the course of commercial activities of the recipient). This tax may include a provincial component of the HST.

Under the current rules, a person resident in a participating province that is the recipient of an imported taxable supply of intangible personal property or a service is liable for the provincial component of the HST if the property or service is acquired by the person for consumption, use or supply primarily in the participating provinces.

Similar to the proposed changes to the rules for self-assessment in respect of intangible personal property and services supplied in a province for consumption, use or supply "significantly" (generally, 10 per cent or more) in a participating province, the imported taxable supply rules would be expanded to require self-assessment when intangible personal property or a service is acquired outside Canada for consumption, use or supply "significantly" (generally, 10 per cent or more) in participating provinces.

If a person is required to self-assess under the proposed rule, an amount of tax would be calculated with regard to the extent to which the intangible personal property or the service will be consumed, used or supplied in each participating province.

## APPLICATION

The proposed changes to the self-assessment and imported taxable supply rules described above would apply to:

- any tangible personal property brought into a participating province on or after July 1, 2010; and
- any supply of intangible personal property or a service if all or part of the consideration for the supply becomes due or is paid on or after July 1, 2010.

## REBATES OF THE PROVINCIAL COMPONENT OF THE HST

Special rebate mechanisms apply where property or services are acquired in participating provinces, and the property is removed, or the services are for use, outside these provinces by certain persons that are not able to claim input tax credits. To accommodate an HST system under which the provincial component of the HST may differ between the participating provinces, it is proposed that these rules be expanded. The expansion of these rules would help to ensure that businesses located in one province are not at a disadvantage relative to their competitors in other provinces when selling property and services to purchasers that are not entitled to full input tax credits.

## TANGIBLE PERSONAL PROPERTY REMOVED FROM A PARTICIPATING PROVINCE

Under the current rules, a rebate will, in certain circumstances, provide for the recovery of the provincial component of the HST paid in respect of tangible personal property that is supplied in a participating province but is subsequently removed from the participating province to a non-participating province. To qualify for the rebate, the tangible personal property that was acquired must be for consumption, use or supply exclusively outside the participating provinces. The tangible personal property must also be removed from the participating province to a non-participating province within 30 days after the tangible personal property is delivered to the person, and the person must provide proof that applicable provincial retail sales tax, in the province to which the tangible personal property were taken, has

been paid.

The expanded rebate rule for tangible personal property would provide for the recovery of all or a portion of the provincial component of the HST in respect of tangible personal property that is supplied in a participating province but that is subsequently removed from the participating province to a non-participating province or to another participating province for which the provincial component of the HST is lower. If a person is eligible for a rebate under the proposed rule, the amount of the rebate would be the difference between the provincial component of the HST paid for the tangible personal property and the provincial component of the HST that would have been payable had the supply been made in the province to which the tangible personal property is moved.

**Example 51:** *A non-GST/HST registrant dentist in Vancouver, British Columbia (B.C.) purchases some supplies from a manufacturer in Markham, Ontario, for use in the dentist's practice in Vancouver. While in Ontario attending a conference, the dentist picks up the supplies and returns with them to Vancouver. Since the dentist is not entitled to input tax credits, the dentist may be eligible to claim a rebate of the difference between the provincial component of the HST paid for the supplies (the 8 per cent Ontario component of the HST) and the provincial component of HST that would have been payable had the supply been made in the destination province (the 7 per cent B.C. component of the HST).*

Generally, the requirements and restrictions under the current rebate rules will continue to apply under the expanded rule. For example, in order to qualify for a rebate, the application will be required to be filed within one year after the day that the person removes the property from the participating province, the tangible personal property will be required to be removed from the participating province to the other province within 30 days after the tangible personal property is delivered to the person and, in the case of a removal to a non-participating province, the person must provide proof that applicable provincial retail sales tax, in the province to which the tangible personal property was taken, has been paid.

A rebate claimant must be resident in Canada. Also, for a person who is a consumer to qualify for a rebate in respect of tangible personal property, the person must be resident in the province to which the property is moved, except where the property is a "specified motor vehicle" (as defined in subsection 123(1) of the ETA). A consumer that moves a specified motor vehicle to a province where they are not resident may still qualify, under the proposed rules, for a rebate in respect of that vehicle.

In addition, it is proposed that to qualify for a rebate in respect of a movement of tangible personal property, the amount of the rebate would have to be at least \$5. Also, the total amount of tax for which a single application for rebates in respect of the movement of property between provinces is made must be \$25 or more.

## **SERVICES AND INTANGIBLE PERSONAL PROPERTY SUPPLIED IN A PARTICIPATING PROVINCE FOR CONSUMPTION, USE OR SUPPLY ELSEWHERE**

Currently, a rebate is provided to residents of Canada for the recovery of the provincial component of the HST paid that is not otherwise recoverable through the input tax credit mechanism and that has been paid in respect of supplies of intangible personal property and services made in a participating province, but that are acquired primarily for consumption, use or supply in non-participating provinces. The amount of the rebate is based on the consideration for the supply prorated to the extent of consumption, use or supply in non-participating provinces. The rebate is available to persons regardless of whether they are resident in participating or non-participating provinces.

The expanded rebate rule for services and intangible personal property would provide for the recovery of all or a portion of the provincial component of the HST paid in respect of a supply made in a participating province where the intangible personal property or service was acquired for consumption, use or supply "significantly" (generally, 10 per cent or more) in provinces for which the provincial component of the HST is lower than the provincial component of the HST for the province in which the intangible personal property or service was acquired.

If a person is eligible for a rebate under this proposed rule, an amount would be determined in respect of each particular participating province in which the intangible personal property or service will be consumed, used or supplied, for which the provincial component of the HST is lower than the provincial component of the HST for the participating province in which the intangible personal property or service was acquired. The person would be eligible for a rebate equal to the total of all of these amounts, each of which is determined in respect of a particular participating province by multiplying the difference between the provincial component of the HST paid for the intangible personal property or service and the provincial component of the HST that would have been payable had the supply been made in the particular participating province by the extent to which the intangible personal property or service was acquired for consumption, use or supply in the particular participating province.

**Example 52:** *A non-GST/HST registrant association engages a professional hockey player to speak to minor hockey players and their parents in three cities: Toronto, Ontario, Calgary, Alberta and Vancouver, British Columbia. The hockey player is a registrant and determines that the place of supply of the supply of the service is Ontario and charges HST at a rate of 13 per cent (a 5 per cent federal component and an 8 per cent Ontario component) for his service. The association may apply for a rebate of the provincial component of the HST paid (8 per cent) to the extent that the service of the hockey player is consumed, used or*

*supplied in non-participating provinces (i.e., Alberta) and a rebate of the difference (1 per cent) between the provincial component of the HST paid in respect of the consideration for the supply and the provincial component that would have been payable had the supply been made in British Columbia to the extent that the service of the hockey player is consumed, used or supplied in British Columbia.*

Generally, the requirements and restrictions under the current rebate rules would continue to apply under the expanded rule. In addition, it is proposed that to qualify for a rebate in respect of a supply of intangible personal property or a service, the amount of the rebate would have to be at least \$5. Also, the total amount of tax for which a single application for rebates in respect of supplies of intangible personal property or services is made must be \$25 or more.

## IMPORTATIONS OF NON-COMMERCIAL GOODS

Currently, a rebate is provided to residents of participating provinces for the recovery of the provincial component of the HST paid in respect of importations of non-commercial goods that are imported at a place in a non-participating province, but that are imported for consumption or supply in non-participating provinces.

The expanded rebate rule for imported non-commercial goods would provide for the recovery of all or a portion of the provincial component of the HST on goods that are imported by a resident of a participating province at a place outside the participating province but that are for consumption or use exclusively in another province for which the provincial component of the HST is lower than the provincial component of the HST that was paid.

If a person is eligible for a rebate under the proposed rule, the amount of the rebate would be the difference between the provincial component of the HST paid for the goods and the provincial component of the HST that would have been payable had the goods been supplied in the province where the goods are to be consumed or used.

**Example 53:** *A non-GST/HST registrant traveller that is resident in Toronto, Ontario purchases some goods from a store in Seattle, Washington as gifts for his family in Vancouver, British Columbia (B.C.). The traveller pays the Ontario component of the HST in respect of the goods when the traveller imports the goods into B.C. The traveller may be eligible to claim a rebate of the difference between the component of the HST paid in respect of the importation of the goods into Canada (the 8 per cent Ontario component of the HST) and the provincial component of the HST that would have been payable had the goods been purchased in the province where they are going to be consumed or used (the 7 per cent B.C. component of the HST).*

Generally, the requirements and restrictions under the current rebate rules will continue to apply under the expanded rule. In addition, it is proposed the total amount of tax for which a single application for rebates in respect of imported non-commercial goods is made must be \$25 or more.

## APPLICATION

The proposed changes to the rebate provisions described above would apply to:

- any tangible personal property removed from a participating province on or after July 1, 2010;
- any supply of intangible personal property or a service if all or part of the consideration for the supply becomes due or is paid on or after July 1, 2010; and
- any importation on or after July 1, 2010.

<sup>1</sup> The HST place of supply rules are contained in Schedule IX to the *Excise Tax Act* and in the *Place of Supply (GST/HST) Regulations*.

<sup>2</sup> The “Canadian element” of a service means the part of the service that is performed in Canada.

<sup>3</sup> Defined in subsection 136.4(1) of the ETA to mean a telecommunications circuit, line, frequency, channel, partial channel or other means of sending or receiving a telecommunication but does not include a satellite channel.

<sup>4</sup> Tax imposed under subsection 212.1(2) of the ETA, or tax that would be imposed under that subsection if subsections 212.1(3) and (4) and section 213 of the ETA did not apply.

<sup>5</sup> “Canadian rights” means the part of intangible personal property that can be used in Canada.

<sup>6</sup> The self-assessment rules described in this section of the document form part of Division IV.1 of the ETA.



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