



## Place of Supply Rules

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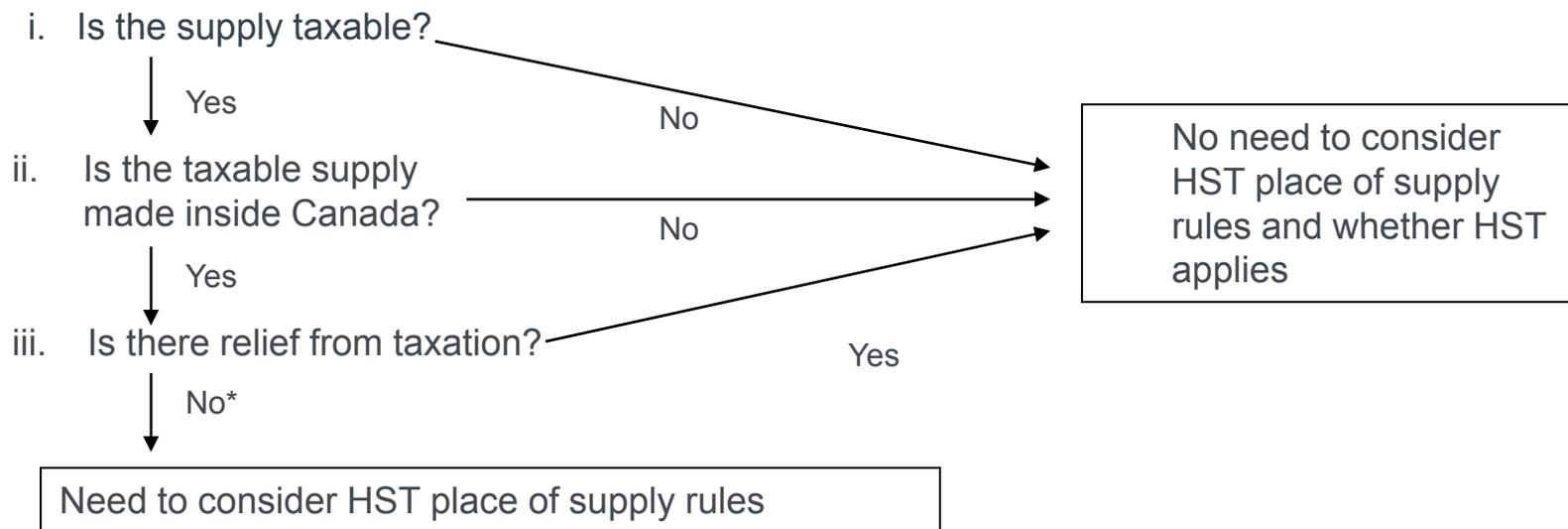
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# HST

## II. Place of Supply Rules

### A. What tax, if any, should be charged and collected by the supplier?

#### Preliminary Analysis/Decision Tree



\*Or if relief limited to provincial component of HST in particular province(s).

# HST

## II. Place of Supply Rules

**A. What tax, if any, should be charged and collected by the supplier? (continued)**

**ii. Is it a taxable supply made inside or outside Canada?**

- Ss. 165(1) of the ETA imposes 5% federal GST rate on the consideration payable for a taxable supply made in Canada.
- Ss. 165(2) of the ETA imposes 7% / 8%/10% provincial component of HST on the consideration for a taxable supply made in a participating province.

# HST

## II. Place of Supply Rules

### A. What tax, if any, should be charged and collected by the supplier?

#### ii. Is it a taxable supply made inside or outside Canada? (continued)

- In most situations, a registered supplier collects any GST or HST payable (notable exception for a taxable sale of real property where the purchaser is registered for the GST/HST).
- Rules for determining whether the place of supply is inside or outside Canada are found in sections 142, 142.1 (telecommunication services), 143 (supply of personal property and services, other than the supply of an admission to a place of amusement, deemed to be outside Canada where supplied by a non-registrant, non-resident person), 143.1 (prescribed publications sent by mail or courier to the purchaser at an address in Canada) and 144 (delivery deemed to occur outside Canada if delivery occurs at a time when goods not released from Canadian customs control).

# HST

## II. Place of Supply Rules

### A. What tax, if any, should be charged and collected by the supplier? (continued)

#### iii. Is there relief from taxation?

- Examples include:
  - Zero-rated taxable supplies in Schedule VI to the ETA are taxed at a 0% rate (GST/HST-free) pursuant to ss. 165(3) of the ETA.
  - Sales to diplomats.
  - Sales to Indians situated on a reserve.
  - Point-of-sale relief from 8% provincial component of HST for certain categories of goods (e.g., books, children's clothing). The categories depend on the particular province.

# HST

## II. Place of Supply Rules

### B. **Should HST apply at the 12% BC rate, 15% NS rate or 13% rate of other HST provinces? Or should the 5% GST rate apply?**

- ETA, s. 144.1 – A supply made in Canada is considered made in a particular province under the rules set out in Schedule IX to the ETA. A supply made in Canada that is not considered made in a HST province in Schedule IX is deemed to be made in a GST province.

# HST

## II. Place of Supply Rules

### B. Should HST apply at the 12% BC rate, 15% NS rate or 13% rate of other HST provinces? Or should the 5% GST rate apply? (continued)

- ETA, ss. 123(1):

HST “participating province” means:

- (a) a province or area referred to in Schedule VIII to the ETA, and
- (b) a prescribed province if there is a HST agreement with that province.

HST provincial “tax rate” means:

- (a) a prescribed rate; or
- (b) as identified in Schedule VIII.

- Schedule VIII identifies provincial tax rate of 7% for BC and 8% for Ontario, Nfld/Labrador and NB. The 10% provincial tax rate for NS is prescribed under section 2 of the *Nova Scotia HST Regulations, 2010*.

# HST

## II. Place of Supply Rules

### B. **Should HST apply at the 12% BC rate, 15% NS rate or 13% rate of other HST provinces? Or should the 5% GST rate apply?** (continued)

- HST is national, not provincial or regional, in scope in many respects.
  - A single, combined GST and HST registration;
  - No requirement of “carrying on business” in, or “nexus” to, a participating HST province.
  - No zero-rated exported supplies from a participating province into another province or territory (outside the HST region).
  - A registered supplier is responsible for charging and collecting GST or HST, as applicable, on a taxable supply made in Canada.
  - A combined GST/HST return.
  - ITC claims to recover GST and HST paid. Available to all GST/HST registrants.

# HST

## II. Place of Supply Rules

**B. Should HST apply at the 12% BC rate, 15% NS rate or 13% rate of other HST provinces? Or should the 5% GST rate apply?**  
(continued)

- Where no tax relief is available, a registered supplier charges and collects:
  - 12% HST for a taxable supply made in BC;
  - 15% HST for a taxable supply made in NS;
  - 13% HST for a taxable supply made in any other HST province; or
  - 5% GST for a taxable supply made in Canada outside the HST provinces.

# HST

## II. Place of Supply Rules

### B. Should HST apply at the 12% BC rate, 15% NS rate or 13% rate of other HST provinces? Or should the 5% GST rate apply? (continued)

- What are the objectives of the HST place of supply rules for transactions affecting multiple jurisdictions (inter-provincial transactions) within Canada?
  - Ease administrative compliance.
  - Level the playing field.
  - Avoid double tax.
  - Avoid transactions unfairly escaping HST.

# HST

## II. Place of Supply Rules

### C. Selling Goods

#### Sections 1 and 3, Part II, Schedule IX to the ETA:

- Section 1: Depends on the province in which the goods are delivered or made available to the “recipient” of the taxable supply.
- Section 3: Regardless of the delivery terms, delivery considered to occur in the destination province, not the origin province, where either:
  - The supplier ships the goods to the destination specified in the carriage contract, or
  - Transfers possession to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the goods to the destination, or
  - Sends the goods by mail or courier to the destination.

# HST

## II. Place of Supply Rules

### C. Selling Goods (continued)

- Destination rather than origin test demonstrates the national character of HST.
- Registered supplier may not be carrying on business in, have a PE in, or nexus with, a HST province, but still could be obligated to charge and collect HST in respect of goods sold and delivered into the province.

#### **Case Study:**

A registered parts manufacturer in Alberta sells components to a registered parts assembler in New Brunswick. The delivery terms are f.o.b. the manufacturer's Alberta plant. Despite the delivery terms indicating delivery in Alberta, s. 3 overrides the delivery terms to deem delivery to occur in NB because the manufacturer retains a common carrier on behalf of the assembler to ship the goods to the assembler in NB. The supplier charges and collects the 13% HST. Assembler claims an ITC to recover the HST paid.

# HST

## II. Place of Supply Rules

### C. Selling Goods (continued)

- Simplifies compliance for customers who are ineligible to claim ITCs to fully recover HST paid by not imposing on them obligations to report, self-assess and remit to CRA provincial component of HST.
- Simplifies CRA's enforcement. Much more administratively difficult to audit and assess multiple unregistered customers than to hold a single registered supplier accountable.
- Would inevitably be tax leakage because of non-compliant consumers and other purchasers.
- Puts suppliers outside a HST province (such as mail-order and internet-order businesses) on an equal competitive footing with suppliers within the province.

# HST

## II. Place of Supply Rules

### D. Leasing or Licensing Goods

Sections 2, 3 and 4, Part II, Schedule IX and ss. 136.1(1) of the ETA:

- Ss.2(a) – **Where continuous possession or use of the good does not exceed 3 months**, the province in which the supplier delivers or makes available the good to the recipient.
- S.3 – The “destination” override for place of delivery can apply to ss. 2(a).
- Ss.2(b) – **Where continuous possession or use of the good exceeds 3 months,**
  - (i) **in the case of a specified motor vehicle**, the province in which the vehicle is required to be registered at the time the supply is made, and
  - (ii) **in any of other case**, the province in which the “ordinary location” of the good is situated at the time of the supply.

# HST

## II. Place of Supply Rules

### D. Leasing or Licensing Goods (continued)

#### Ss.136.1(1):

Each “lease interval” there is a separate supply of the good. The supply for a particular lease interval is deemed to be made on the earliest of:

- (i) the first day of the lease interval,
- (ii) the due date for payment for the lease interval; and
- (iii) the date on which the payment is made.\*

Where leasing or licensing goods for greater than 3 months, the province of supply (based on the “ordinary location” of the goods if not a specified motor vehicle) has to be determined separately for each supply (lease interval) at the time each supply is made.

However, pursuant to ss.136.1(1)(d), whether each supply is made inside or outside Canada is determined as if there were not separate supplies (a once-and-for-all test at the outset for determining whether supplies are made inside or outside Canada).

\* The rules in ss.136.1(1) are also applicable to the licensing of intangible personal property.

# HST

## II. Place of Supply Rules

### D. Leasing or Licensing of Goods (continued)

#### Related Part I, Schedule IX definitions:

- s.1 – “lease interval” incorporates meaning in section 136.1 of the ETA, essentially corresponds with the period covered by a lease payment.
- s.4 – Parties can mutually agree as to the “ordinary location” of goods from time to time.

# HST

## II. Place of Supply Rules

### D. Case Study for Leasing of Goods

A supplier in Alberta (“Alberta Co”) leases office equipment throughout Canada. In August 2010, Alberta Co enters into an agreement to lease computers for 1 year to a company with offices in Vancouver and Calgary (“Office Co”). The lease payments are due monthly on the 1<sup>st</sup> day of each month. Office Co asks Alberta Co to send the computers to its Calgary office where it intends to use them. Unknown to Alberta Co, Office Co moves the computers to its Vancouver office in the middle of the fourth month of the lease for the remainder of the 1-year lease term. Supplier Co and Alberta Co are both registered for the GST/HST.

# HST

## II. Place of Supply Rules

### D. Case Study for Leasing of Goods, Analysis:

- For the purpose of determining whether the lease of the computers is supplied inside or outside Canada, there is considered to be one supply pursuant to ss.136.1(1)(d) of the ETA. Made inside Canada pursuant to ss.142(1)(b) of the ETA because of delivery within Canada.
- For the purpose of determining in which province the lease of the computers occurs, the lease of the computers each month is treated as a separate supply made on the 1<sup>st</sup> day of the month pursuant to ss.136.1(1)(a) to (c).

# HST

## II. Place of Supply Rules

### D. Case Study for Leasing of Goods, Analysis: (continued)

- GST applies to the lease payments made for the 1<sup>st</sup> to 4<sup>th</sup> months inclusive. “Ordinary location” of the computers is in Alberta when the separate supplies are made on the 1<sup>st</sup> day of each of these 4 months. See ss. 2(b)(ii), Part II, Schedule IX.
- 12% HST applies to the last 8 monthly lease payments because the “ordinary location” of the computers is in BC on the 1<sup>st</sup> day of each of the last 8 months. See ss. 2(b)(ii), Part II, Schedule IX.

#### Issues to Consider:

- 1) How could the lessor protect itself from being unaware that it needs to charge and collect 12% HST on the last 8 months rent? The parties could agree to the “ordinary location” of the computers being in Calgary when each monthly supply is made throughout the lease term (as permitted by Section 4, Part I, Schedule IX).
- 2) What if the first 6 months rent are due and prepaid under the lease at the beginning of the lease term and the last 6 months rent are due and prepaid at the beginning of the 7<sup>th</sup> month?
- 3) What if the lessor is registered for the GST/HST but is situated outside Canada and arranges on behalf of Office Co with a common carrier to ship the computers to Calgary on an F.O.B. U.S.–origin basis and Office Co is responsible as the declared importer for importing the computers into Canada?

# HST

## II. Place of Supply Rules

### E. Services

#### **Ss. 136.1(2) of the ETA:**

Each “billing period” there is a separate supply of services. The supply for a particular billing period is deemed to be made on the earliest of:

- (i) the first day of the billing period;
- (ii) the due date of payment for the billing period; and
- (iii) the date on which the payment is made.

Province of supply has to be determined separately for each supply (billing period) at the time each supply is made.

However, pursuant to ss. 136.1(2)(d), whether each supply is made inside or outside Canada is determined as if there were not separate supplies (a once-and-for-all test at the outset).

# HST

## II. Place of Supply Rules

### E. Services (continued)

#### **General Rules in Section 13 of the *New Harmonized Value – added Tax System Regulations* (the “Regulations”) effective May 1, 2010**

##### Rule 1:

Subject to the more specific rules, the supply of a service is made in a province if in the normal course of business the supplier obtains an address in the province that is:

- the recipient’s home or business address in Canada; or
- if more than one such address obtained, **the one most closely connected with the supply;**

OR if no such address obtained, where a recipient address that is **most closely connected with the supply** is in a province, then the supply is made in that province.

Issue: What if the recipient has multiple business addresses in Canada?  
Which address is most closely connected with the supply?

# HST

## II. Place of Supply Rules

### E. Services, General Rules (continued)

If Rule 1 is not determinative, then either Rule 2 (possibly with Rule 3) or Rule 4 applies.

#### Rule 2:

Where the Canadian element of the service is performed **primarily** (>50%? or first in importance?) in the HST provinces, the supply is made in the participating province in which the greatest proportion is performed.

What if the services are equally divided between or among two or more HST provinces with the greatest proportion?

#### Rule 3 Tie-breaker:

Supplied in the HST province with the highest rate; or if equal (8%), charge that rate.

#### or Rule 4:

Where the Canadian element of the service is performed otherwise than **primarily** (>50%? or first in importance?) in the HST provinces, the supply is deemed to be made in a GST province.

# HST

## II. Place of Supply Rules

### E. Case Study for Services, General Rules:

Two lawyers at a law firm's Quebec office negotiate a retainer agreement with a Canadian client in the trucking business to advise on national competition law issues. The client has offices and truck depots in all provinces. In the ordinary course of its business, the law firm obtains the business addresses of the client's offices and truck depots in all 10 provinces. The retainer agreement is signed by the lead client relationship lawyer at the firm's Nova Scotia office. The client's Toronto head office signs the retainer agreement but instructs the law firm to deal only with its BC office in providing the advice. In this regard, there are several meetings between lawyers and the client at the client's BC office. The law firm invoices its fees from its Nova Scotia office to the client's Toronto head office in four monthly accounts just after the end of each month. The law firm and its Canadian client are both registered for the GST/HST and QST.

# HST

## II. Place of Supply Rules

### E. Case Study for Services, General Rules: (continued)

Overall Services Performed:

10%	Nova Scotia
20%	Quebec
30%	BC
40%	Ontario

1. November 2010 Billing Period:

15%	Nova Scotia
40%	Quebec
10%	BC
35%	Ontario

3. January 2011 Billing Period:

5%	Nova Scotia
0%	Quebec
55%	BC
40%	Ontario

2. December 2010 Billing Period:

30%	Nova Scotia
10%	Quebec
30%	BC
30%	Ontario

4. February 2011 Billing Period:

0%	Nova Scotia
20%	Quebec
40%	BC
40%	Ontario

# HST

## II. Place of Supply Rules

### E. Case Study for Services, General Rules, Analysis:

- For the purpose of determining whether services are supplied inside or outside Canada, all the services performed are treated as one supply pursuant to ss.136.1(2)(d) of the ETA. Made inside Canada pursuant to ss.142(1)(g) of the ETA.
- For the purpose of determining in which province the services are supplied in Canada, the services performed each monthly billing period are treated as a separate supply of services made on the 1<sup>st</sup> day of the month pursuant to ss.136.1(2)(a) to (c).

# HST

## II. Place of Supply Rules

### E. **Case Study for Services, General Rules, Analysis:** (continued)

The GST/HST Technical Information Bulletin 103, HST place of supply rules for determining whether a supply is made in a province (June 2010) (the “TIB”), at page 27, states:

“The business address of the recipient from which the supplier is hired pursuant to the agreement for the supply (the ‘contracting address’) will generally be the address that is most closely connected with the supply.”

Under all 3 examples given in the TIB relating to determining the recipient’s address “most closely connected with the supply”, the one selected by CRA is the client’s premises that enters into the agreement for the supply with the supplier.

# HST

## II. Place of Supply Rules

### E. **Case Study for Services, General Rules, Analysis:** (continued)

Regardless of where the law firm performs its legal services in each billing period, the law firm would, under the CRA's administrative policies, appear to be supplying its services each billing period in Ontario and, therefore, need to charge and collect 13% HST on its fees.

**N.B. CRA's administrative policy is not binding law.**

# HST

## II. Place of Supply Rules

### E. **Services** (continued)

#### 1. **Personal Services, Preceding General Rules are Inapplicable, effective May 1, 2010**

##### **Section 17 of the Regulations:**

- 90% or more performed in the presence of the individual to whom it is rendered (but excluding an advisory, consulting or professional service). An example would be a haircut.
- The rules parallel the default Rules 2 to 4 for services generally (as explained in previous slide 22).

# HST

## II. Place of Supply Rules

### E. Services (continued)

#### 2. Services in relation to Goods, Preceding General Rules are Inapplicable, effective May 1, 2010

Section 15 of the Regulations:

##### A. Goods Remaining in the Same Province(s) While Services Performed

1. **Made in a HST province if >50% of goods in Canada (how determined?) in the HST provinces.** Made in the HST province in which the greatest proportion of the goods is situated.

What if the goods are split equally between or among two or more participating provinces each having the highest proportion?

Tie-breaker:

Supplied in HST province with the highest tax rate; or if equal (8%), charge that rate.

OR

2. **Made in a GST province if goods in Canada are otherwise than >50% (how determined?) in the HST provinces.**

# HST

## II. Place of Supply Rules

### E. Services (continued)

#### 2. Services in relation to Goods, Preceding General Rules are Inapplicable (continued)

##### Section 16 of the Regulations:

#### B. Goods Not Remaining in the Same Province(s) While Services Performed

##### 1. Made in a HST province if

- (a) goods in Canada are *primarily* in the HST provinces at any time (all times) the service is performed;
- (b) the Canadian element of the service is performed *primarily* (>50%?, if so, by time or value?, or does it mean first in importance?) in the HST provinces, and
- (c) the greatest proportion of the services in the HST provinces is performed in that province.

What if the goods are split equally between or among two or more participating provinces each having the highest proportion?

##### Tie-breaker:

Supplied in HST province with the highest tax rate; or if equal (8%), charge that rate.

##### OR 2. Made in a GST province if

- (a) goods are otherwise than *primarily* in the HST provinces at any time (all times) the service is performed; or
- (b) the Canadian element of the service is performed otherwise than *primarily* in the HST provinces.

# HST

## II. Place of Supply Rules

### E. Services (continued)

#### 3. Services in relation to Real Property, Preceding General Rules are Inapplicable, effective May 1, 2010

##### Section 14 of the Regulations:

- a. Where >50% (how measured?) of the real property situated in Canada is in the HST provinces, the HST province in which the greatest proportion of the real property is situated.

What if the real properties are equally split between or among two or more HST provinces each having the highest proportion?

##### Tie-Breaker:

Supplied in HST province with the highest tax rate; or if equal (8%), charge that rate.

- OR b. Where otherwise than >50% (how measured?) of the real property situated in Canada is in the HST provinces, made in a GST province.

# HST

## II. Place of Supply Rules

### E. Services (continued)

#### 3. Services in relation to Real Property, Case Study:

A Canadian exploration company registered for the GST/HST holds exploration rights relating to 10,000 acres of real property situated in BC, 10,000 acres in Northern Ontario, 50,000 acres in Alberta and 100,000 acres in Wyoming, USA. A Saskatchewan geologist registered for the GST/HST is hired in 2011 to perform services relating to the feasibility of obtaining oil and natural gas from these properties.

Where are the geologist's taxable supplies of services made? What are his obligations regarding charging and collecting GST or HST?

# HST

## II. Place of Supply Rules

### E. **Services** (continued)

#### 3. **Services in relation to Real Property, Case Study, Analysis:**

The proportion of the services in relation to the real property situated in Canada and the portion of the services relating to the real property situated outside Canada are each deemed to be separate supplies of services. Under ss. 142(1)(d) of the ETA, the supply of geological services relating to Canadian real property is made in Canada. Under ss. 142(2)(d) of the ETA, the supply of geological services relating to the U.S. real property is made outside Canada. See also s. 136.2 of the ETA.

# HST

## II. Place of Supply Rules

### E. Services (continued)

#### 3. Services in relation to Real Property, Case Study, Analysis: (continued)

No GST or HST should be charged and collected on the portion of the fees relating to the U.S. real property. The Canadian real property is otherwise than primarily in the HST provinces so the geology services are deemed to be supplied in a GST province. GST, therefore, applies to the proportion of the fees relating to the Canadian real property.

# HST

## II. Place of Supply Rules

### E. Services (continued)

#### 3. Services in relation to Real Property, Case Study: (continued)

What if during one particular billing period the services performed relate only to real property in Ontario? or in BC and Wyoming? or in Northern Ontario and BC?

Consider the application of ss.136.1(2) of the ETA. The provincial place of supply (“PPOS”) of the geology services may vary by billing period.

Which PPOS rule applies if a Canadian law firm is hired by a lender to act on its behalf in making a loan secured by goods and real property in multiple provinces in Canada? In the absence of a tie-breaking rule in the Regulations, does one of the PPOS rules in relation to goods apply, or a PPOS rule in relation to real property, or a general PPOS rule for services?

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules\*

#### Sections 6 and 7 of the Regulations:

- IPP that can be used in Canada and can **only be** used *primarily* (>50% or most important use?) in the HST provinces is supplied in a HST province.
- IPP that can be used in Canada and **only be** used *primarily* (>50% or most important use?) outside the HST provinces is supplied in a GST province.

\* effective May 1, 2010

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules (continued)

- Where the Canadian rights can only be used *primarily* in the HST provinces, the IPP is supplied in the HST province where the greatest proportion of those rights must be used. If the Canadian rights can only be used in a HST province, the supply of IPP is in that province.
- If the above rules are not determinative, then need to consider the following Rules 1, 2 and 3.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules (continued)

#### Rule 1:

If the consideration is <\$300, made in a HST province if the supply is made through a supplier's PE in the province in the presence of a representative of the recipient or through a vending machine in the province, and the IPP can be used in the HST province.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules (continued)

#### Rule 2:

If Rule 1 does not apply, and in the normal course of business the supplier obtains an address in a HST province that is:

- the recipient's home or business address in Canada; or
- if more than one such address obtained, **the one most closely connected with the supply;**

**OR** if no such address is obtained, where a recipient address that is **most closely connected with the supply** is in a HST province;

**AND** the IPP can be used in the province, the supply of IPP is made in that HST province.

Issue: If supplier obtains multiple business addresses in Canada for a particular recipient, which a address is **most closely connected with the supply**? See Slide 26.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules (continued)

#### Rule 3:

If neither Rule 1 nor 2 applies, the supply of the IPP is deemed to be made in the HST province with the highest provincial tax rate between or among the HST provinces in which the IPP can be used; if two or more such provinces have the highest rate (8%), use that rate.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules (continued)

#### Section 8 of the Regulations:

Where use of IPP in Canada is not limited *primarily* to either the HST or GST provinces, then need to consider the following rules 1, 2 and 3.

#### Rule 1:

Where consideration <\$300, parallels Rule 1 previously recited in Slide 38. Could, however, be either a HST or GST province.

#### Rule 2:

If Rule 1 does not apply, parallels Rule 2 previously recited in Slide 39. Could, however, be either a HST or a GST province.

#### Rule 3:

If neither Rule 1 nor 2 applies, parallels Rule 3 previously recited in Slide 40. Note, by default, supply of IPP considered made in a HST province.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property (continued)

#### 1. Relating to Goods, Preceding General Rules are Inapplicable

##### Section 10 of the Regulations:

- IPP relating to goods ordinarily located in Canada supplied in a HST province if the goods ordinarily located *primarily* in the HST provinces. In the HST province where the greatest proportion ordinarily located. If not decisive because two or more HST provinces each equally have the greatest proportion, use the highest provincial rate or, if all rates equal (8%), use that rate.
- IPP relating to goods ordinarily located in Canada supplied in a GST province if the goods ordinarily located *primarily* in GST provinces.

# HST

## II. Place of Supply Rule

### F. Intangible Personal Property (continued)

#### 2. Relating to Real Property, Preceding General Rules are Inapplicable, effective May 1, 2010

##### Section 9 of the Regulations:

- IPP relating to real property supplied in a HST province if the real property that is in Canada is >50% (how measured?) in the HST provinces. In the HST province where the greatest proportion of the real property is situated. If not decisive because two or more HST provinces each equally have the greatest proportion, use the highest provincial rate, or, if all the rates equal (8%), use that rate.
- If the real property in Canada is otherwise than >50% (how measured?) in the HST provinces, then the IPP is supplied in a GST province.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property (continued)

#### 3. Relating to Passes for Passenger Transportation Services, otherwise Preceding General Rules for IPP *would be Applicable*, effective May 1, 2010

##### Section 22 of the Regulations:

- If the supplier can determine at the time the supply of a passenger transportation pass (IPP) is made that each passenger transportation service provided under the pass would:
  - (1) begin in a particular HST province and would terminate in Canada, then the supply of the IPP would be made in that HST province; or
  - (2) begin in a GST province (does not have to be the same province each time) or terminate outside Canada, then the supply of the IPP would be considered made in a GST province.
- If the above rules are not determinative, then the preceding general place of supply rules for IPP apply. See Slides 36 to 41.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules, Case Study:

While on vacation in Banff, Alberta, a student normally residing in London, Ontario purchases a rail pass for \$250 at a Via Rail outlet. The pass entitles the student to unlimited rail travel anywhere in Canada for 60 days. Via Rail is registered for the GST/HST and the student is not registered.

Does Via Rail charge and collect GST or HST?

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules, Case Study, Analysis:

The provision of the Via Rail pass could be considered a taxable supply of IPP relating to services (granting rights to utilize rail passenger transportation services). Since at the time of supply of the Via Rail pass, the supplier cannot determine the PPOS under section 22 of the Regulations, Via Rail should revert to the general IPP place of supply rules. Since the supply of the Via Rail pass is made in the presence of the student recipient at Via Rail's PE in Banff, Alberta, the place of supply is in Alberta. Via Rail should charge and collect the 5% GST.

# HST

## II. Place of Supply Rules

### F. Intangible Personal Property, General Rules, Case Study, Analysis: (continued)

1. What if Via Rail sells the pass for \$350?
2. What if the pass sold for \$150 and is limited to travel in BC?
3. What if the pass sold for \$400 and is limited to travel within Manitoba and Ontario? It can be used for travel in and between both provinces, or exclusively in either province.

# HST

## II. Place of Supply Rules

### G. Special Rules

#### Part IX, Schedule IX to the ETA:

- Section 1 - A deemed supply of property under certain sections of the ETA is made in the province where the property is situated at the time the supply is made.
- Section 2 – Specific rules in Part IX of the ETA or its Regulations override any other Part of Schedule IX to the ETA. These specific rules include section 136.2 (supply of real property partly inside and outside a province), section 136.3 (freight services to deliver goods to multiple provinces), section 136.4 (“telecommunication channel” transmitted through more than one province) and ss. 163(2.1) (tour package covering a combination of GST and HST provinces).
- Section 3 – Specific rules prescribed in the Regulations, including the previously noted rules for services and IPP, override any other Part of Schedule IX to the ETA.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### Section 2, Part IX, Schedule IX:

- Section 136.2 – Provision of real property partly in a province and partly outside the province deemed to be separate supplies.
- Section 136.3 – Freight transportation service to deliver property to destinations in a province and outside the province deemed to be separate supplies.
- Section 136.4 – Separate supplies of telecommunication services in proportion to the distance transmitted in the province (subject to certain specific rules for calculating).
- Ss. 163(2.1) – Part of a “taxable portion” of a tour package deemed to be a separate taxable supply made in a HST province where that part, if provided on its own, would be considered supplied in the HST province.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

**Section 3, Part IX, Schedule IX, Special Cases in Division 5, Part 1 of the Regulations:**

**Section 25, Regulations, effective May 1, 2010: Customs brokerage services relating to reporting, clearance, release and accounting of imports.**

- In the case of “commercial goods”, as defined in subsection 212.1(1) of the ETA, broker’s services supplied in the province where the imported goods are released.
- In the case of non-commercial goods, if HST for a particular HST province is imposed on the import or would be imposed in the absence of tax relief under the ETA, then the broker’s services is supplied in that province.
- If neither of the above rules is determinative, then the broker’s services are supplied in a GST province.

# HST

## II. Place of Supply Rules

### G. **Special Rules** (continued)

#### **Section 25 Regulations: Customs brokerage services** (continued)

Other services supplied by the broker, including “in relation to an objection, appeal, re-determination, re-appraisal, review, refund, abatement, remission or drawback” are excluded from this special rules for customs brokers and subject to the general rules for services in Slides 21 and 22.

**Note:** Zero-rating (tax free) exported services if supplying brokerage **agency** services to a non-resident “importer” supplying its goods outside Canada – pursuant to Section 5, Part V of Schedule VI to the ETA. Possibly zero-rated (tax-free) exported services if supplying **non-agency** services to a non-resident – pursuant to section 7 or 23, Part V, Schedule VI.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### **Section 26, Regulations: Railway rolling stock supplied otherwise than by way of sale**

- supplied in the province where the rolling stock is delivered or made available (applies for all lease intervals). Also applies to any renewal period. Subject to certain grandfathering relief for certain agreements entered into (1) before April 1, 1997, or (2) before July 1, 2010, where railway cars were delivered or made available in BC or Ontario before that date.

#### **Section 27, Regulations, effective May 1, 2010: Provincial Litigation Services**

Defined as litigation, once commenced, that is under the jurisdiction of a court or tribunal established under the laws of a province, and includes an appeal from a decision of such a court or tribunal

Before the commencement of such litigation, subject to the preceding general rules for services. See Slides 21 to 27.

Once the litigation is commenced, supplied in the province having jurisdiction over the court or tribunal in which the litigation is commenced.

**Note:** Possibly zero-rated (tax-free) exported litigation services if supplied to a non-resident — pursuant to 23, V, VI.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### **Section 28, Regulations, effective May 1, 2010: Services related to a Location-Specific Event**

Performance, festival, ceremony, convention, conference, symposium or similar event.

Performed *primarily* at an event location in a province considered supplied in that province. Otherwise, the preceding general rules for services apply. See Slides 21 and 22.

#### **Section 29, Regulations: Photographic or repair service**

- supplied in the province where photographic item or repaired good delivered (or sent) under the definition of “delivery” in section 3 of the Regulations.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

**Section 30, Regulations: Service of trustee of RRSP, RRIF, RESP, RDSP or TFSA**

- supplied to annuitant, subscriber or holder in the province where the mailing address of the annuitant/subscriber/holder is located.

**Section 31, Regulations: 1-900 or 976 service**

- supplied in a province if the call originates in the province.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### Section 32, Regulations:

#### **Single “final recipient” (end-user) of “computer-related service” (as defined in section 2 of the Regulations) or Internet access**

- Ss. 32(1)(a) supplied in the province where the end-user is ordinarily located (if there is a single ordinary location) when accessing the Internet or receiving the service, if the supplier maintains sufficient information to determine the location;
- (b) otherwise, based on the mailing address of the direct recipient of the supply, which could be a re-seller as opposed to the end user.

#### **Multiple “final recipients” of “computer-related service” or Internet access**

- Ss. 32(2)(a) Where there is a single ordinary location for each of the final recipients, and the supplier maintains sufficient information to determine those ordinary locations, then the computer-related service or access rights (IPP) are considered performed, or exercisable, as applicable, in a province in the same proportion as the final recipients' ordinary location(s) in the province. In the cases of computer-related services and Internet access, these proportions are applied for the place of supply rules for services and IPP, respectively.
- (b) If the place of supply cannot be determined under (a), then the place of supply is based on the mailing address of the direct recipient of the supply.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### **Section 33, Regulations: Air Navigation Services**

- supplied in a province if the flight or leg of the flight, in respect of which the services are performed, originates in the province.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### **Passenger Transportation Services, Sections 19 to 23 of the Regulations in Division 4, Part 1, effective May 1, 2010:**

##### **Section 21:**

(1) Passenger transportation service is part of a continuous journey that originates in the province and the termination and stopovers are all within Canada,

or if not part of a continuous journey,

(2) is in a HST province where the passenger transportation service begins in the province and ends in Canada,

or

(3) is in a GST province where the passenger transportation service begins outside the HST provinces, or the passenger transportation service ends outside Canada.

**Section 23:** Where during a leg of passenger transportation service solely within any province or between any two provinces, there is a supply of a good or service performed by the carrier, the supply is made in the province in which the leg begins.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### Transportation Services, Part VI, Schedule IX:

**Section 4:** Supply of transporting individual's baggage or supervising an unaccompanied child made by a supplier of passenger transportation services is made in a province if the related passenger transportation service is made in the province.

**Section 4.1:** Issuing, amending, cancelling, etc. a ticket considered supplied in the same province as the related passenger transportation service would be supplied, if it were performed as originally contemplated under the agreement for the supply.

**Section 5:** Freight transportation service made in the destination province, subject to the postage PPOS rules in Part VII, Schedule IX. Remember section 136.3 of the ETA.

# HST

## II. Place of Supply Rules

### G. Special Rules (continued)

#### **Telecommunication Services, Part VIII, Schedule IX:**

Ss. 2(a) Where telecommunication service of making telecommunication facilities available:

- (i) facilities ordinarily located in the province, or
- (ii) if the facilities not all in one province, the invoice is sent to the province.

Ss. 2(b) Where other types of telecommunication services, at least 2 out of 3 of the following are in the province:

- (i) emission (origin),
- (ii) reception, and
- (iii) billing location (as defined in section 1), or

the emission is in the province, the reception is outside the province and the “billing location” (as defined in section 1) is not in a province in which emission or reception occurs.

# HST

## II. Place of Supply Rules

### G. Special Rules, Case Study:

A Canadian telecommunication provider registered for the GST/HST charges internet access fees to a human resources company (“HR Company”) with offices in Toronto (Ontario), Winnipeg (Manitoba) and Edmonton (Alberta). The internet access is limited to use by HR Company at its Winnipeg and Edmonton offices. The invoices for access fees are mailed to HR Company’s Toronto head office and relate exclusively to access rights granted after September 2010.

Does GST or HST apply to the fees?

# HST

## II. Place of Supply Rules

### G. Special Rules, Case Study, Analysis:

Section 32 of the Regulations is applicable. See Slide 55. Since the HR Company ordinarily accesses the Internet from Winnipeg and Edmonton, there is no single ordinary location at which HR Company avails itself of the Internet Access. Accordingly, the place of supply rule in ss. 32(1)(a) is inapplicable and the default rule in ss. 32(1)(b) applies. Since HR Company's mailing address is at the Toronto head office, the taxable supply of internet access is made in Ontario and the fees are subject to 13% HST. Odd result because internet cannot be accessed through this telecommunication provider from Toronto. Could/should either the Winnipeg or Edmonton mailing address determine the place of supply?

# Place of Supply Rules

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