



Harmonized Sales Tax

Place of supply rules for determining whether a supply is made in a province

Note: This Technical Information Bulletin supersedes the version dated February 2010.

The 2009 Ontario Budget proposed a harmonized sales tax (HST) for Ontario, which would come into effect on July 1, 2010. In addition, on July 23, 2009, the British Columbia (B.C.) Ministry of Finance issued a News Release proposing an HST for British Columbia which would also come into effect on July 1, 2010. The HST for Ontario and B.C. will be administered by the Canada Revenue Agency (CRA).

This publication replaces GST/HST Technical Information Bulletin B-078 *Place of Supply Rules under the HST*. This publication explains the place of supply rules (including new place of supply rules announced in the Backgrounder released by the Department of Finance on February 25, 2010, entitled *Place of Supply, Self-Assessment and Rebate Rules for the Harmonized Sales Tax (HST)* and set out in draft regulations released by the Department of Finance on April 30, 2010) that determine whether a supply is made in a province for purposes of determining whether the supply is made in a participating province and consequently subject to the provincial component of the HST in addition to the federal component of the HST.

Any commentary in this publication should not be taken as a statement by the CRA that these proposed amendments will be enacted in their current form.

All legislative references in this bulletin refer to the *Excise Tax Act* (the Act) and its regulations unless otherwise indicated.

Unless otherwise indicated, all references to supplies in this publication are to taxable (other than zero-rated) supplies made in Canada.

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1. INTRODUCTION

Currently, taxable supplies that are made in Canada are subject to the Goods and Services Tax (GST) at a rate of 5% (the federal component of the HST), and taxable supplies that are made in the participating provinces of Nova Scotia, New Brunswick and Newfoundland and Labrador are subject to the Harmonized Sales Tax (HST) at a harmonized rate of 13% (consisting of the 5% federal component and an 8% provincial component). As announced in the Nova Scotia Budget 2010-2011 released on April 6, 2010, the rate of the provincial component of the HST for Nova Scotia is proposed to increase to 10% effective July 1, 2010, resulting in a harmonized rate of 15%. It is proposed that HST also apply to taxable supplies made in the participating province of Ontario at a harmonized rate of 13% (consisting of the 5% federal component and the 8% provincial component for Ontario) and to taxable supplies made in the participating province of British Columbia at a harmonized rate of 12% (consisting of the 5% federal component and the 7% provincial component for British Columbia).

Under section 144.1, a supply that is made in Canada is also considered to be made in a particular province if it is determined to be made in the province under the place of supply rules in Schedule IX. If the place of supply rules in Schedule IX do not apply to deem the supply to be made in a particular province, the supply is deemed to be made in a non-participating province. Pursuant to section 3 of Part IX of Schedule IX, notwithstanding the place of supply rules in Schedule IX, a supply of property or a service is made in a province if the supply is prescribed by regulation to be made in the province.

Generally, as announced by the Department of Finance on February 25, 2010, in a Backgrounder entitled *Place of Supply, Self-Assessment and Rebate Rules for the Harmonized Sales Tax (HST)*, the determination of whether a supply will be considered made in a province is proposed to be based on current place of supply rules that are set out in Schedule IX to the Act and the *Place of Supply (GST/HST) Regulations* and new place of supply rules that were set out in the Backgrounder. The proposed place of supply rules are further set out in draft regulations in respect of the supply of property and services that were released by the Department of Finance on April 30, 2010. Although no changes are proposed to the current place of supply rules for supplies of tangible personal property and real property, significant changes are proposed to the current place of supply rules for supplies of intangible personal property and services. The current *Place of Supply (GST/HST) Regulations* are proposed to be repealed and replaced with the draft regulations. However, some of the place of supply rules in the current regulations will remain the same and are included in the draft regulations. Both the current and new place of supply rules are explained in this publication.

The place of supply rules set out in the draft regulations and explained in this publication are proposed to apply to any supply made on or after May 1, 2010, and any supply made after February 25, 2010 and before May 1, 2010, unless any part of the consideration for the supply becomes due or is paid, before May 1, 2010. Unless otherwise indicated, the examples in this publication are based on the assumption that, in addition to the current

participating provinces, Ontario and British Columbia are participating provinces at the times relevant to the examples. The examples are also based on the assumption that the harmonized rate for Nova Scotia is 15%.

The GST (or federal component of the HST) is imposed under subsection 165(1) in respect of taxable supplies that are made in Canada. The provincial component of the HST is imposed under subsection 165(2) in respect of taxable supplies that are made in a participating province. To determine whether the provincial component of the HST applies to a taxable supply and whether the supply is consequently subject to HST at the harmonized rate, it must first be determined whether the supply is made in Canada and then determined whether the supply is made in a participating province.

The place of supply rules explained in this publication only determine whether a supply is made in a province for purposes of determining whether the supply is made in a participating province and is consequently subject to the provincial component of the HST in addition to the federal component of the HST. These rules do not determine whether a supply is made in Canada for purposes of determining whether the GST or the federal component of the HST applies to the supply. There are different place of supply rules that determine whether a supply is made in Canada and these rules are explained in Chapter 3.3 *Place of Supply* of the GST/HST Memoranda Series (available on the CRA Web site at: <http://www.cra-arc.gc.ca/E/pub/gm/3-3/README.html>). Unless otherwise indicated, all references to supplies in this publication are to taxable (other than zero-rated) supplies made in Canada.

The provincial component of the HST will not always apply at the same rate to supplies made in the participating provinces, nor is it proposed to apply to supplies made outside the participating provinces. As further announced by the Department of Finance, the proposed place of supply rules are therefore proposed to be complemented by new rules requiring self-assessment of the provincial component of the HST in certain circumstances where property and services are brought into a participating province from a non-participating province, or another participating province or from outside Canada for consumption, use or supply in the participating provinces. Rebates of the provincial component of the HST paid on supplies of property or services made in the participating provinces are also proposed to be available in certain circumstances where the property or services are removed from a participating province for consumption, use or supply outside the participating province. In addition, 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. The proposed rules relating to these issues will be addressed in three separate publications to be released entitled *Harmonized Sales Tax - Self-Assessment of the Provincial component of the HST*, *Harmonized Sales Tax - Rebates of the Provincial component of the HST*, and *Harmonized Sales Tax - Imported Taxable Supplies*.

2. TANGIBLE PERSONAL PROPERTY

Floating homes and mobile homes

For purposes of the place of supply rules that determine whether a supply is made in a province, a floating home and a mobile home that is not affixed to land are each deemed to be tangible personal property and not real property.

Deemed delivery of tangible personal property

For purposes of the place of supply rules that apply to supplies of tangible personal property, where an agreement for a supply of tangible personal property is entered into but the property is never delivered to the recipient, the property is deemed to have been delivered where the property was to be delivered, as the case may be, under the terms of the agreement.

I. Tangible personal property supplied 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 by way of sale of tangible personal property is deemed to be made in a province if the supplier delivers the property or makes it available in the province to the recipient of the supply.

The application of this place of supply rule is generally based on the province in which legal delivery of the goods to the recipient occurs. However, for purposes of the rule, tangible personal property is also deemed to be delivered in a particular province, and not in any other province, if the supplier either

- ships the property to a destination in the particular province that is specified in the contract for carriage of the property or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination; or
- sends the property by mail or courier (the common meaning of “courier” applies for purposes of this rule) to an address in the particular province.

Delivery of tangible personal property on exercise of option

For GST/HST purposes, a recipient of a supply by way of lease, licence or similar arrangement of tangible personal property that exercises an option to purchase the property under the arrangement is for greater certainty deemed to take delivery of the property supplied by way of sale at the place and time at which the recipient ceases to have possession of the property as a lessee and begins to have possession of the property as a purchaser. The application of the place of supply rules to the supply of the tangible personal property by way of sale in this case will therefore be based on the place at which the recipient begins to have possession of the property as a purchaser rather than the place where the recipient first obtained possession of the property as a lessee.

Example 1

A supplier in Ontario agrees to sell goods to a purchaser in British Columbia. Based on the terms of delivery in the agreement for the supply of the goods, legal delivery of the goods to the purchaser occurs in British Columbia.

Because legal delivery of the goods to the purchaser occurs in British Columbia, the supply of the goods is made in British Columbia and is proposed to be subject to HST at a rate of 12%.

Example 2

A supplier in Alberta agrees to sell goods to a purchaser in Ontario. Based on the terms of delivery in the agreement for the supply of the goods, legal delivery of the goods to the purchaser occurs in Alberta. However, the supplier agrees to also have the goods shipped to the purchaser in Ontario.

Although legal delivery of the goods to the purchaser occurs in Alberta, delivery of the goods to the purchaser is deemed to occur in Ontario because the supplier ships the goods to Ontario. The supply of the goods is therefore made in Ontario and is proposed to be subject to HST at a rate of 13%.

Example 3

A retailer in Ontario sells goods to a purchaser that is a resident of British Columbia and is visiting Ontario. The purchaser picks up the goods at the retailer's premises in Ontario and then transports them by car to British Columbia.

The goods are delivered to the purchaser in Ontario. The supply of the goods is therefore made in Ontario and is proposed to be subject to HST at a rate of 13%.

Example 4

A mail-order company located in Nova Scotia 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.

The supply of the greeting cards mailed to Ontario is made in Ontario and is proposed to be subject to HST at a rate of 13%. The supply of the greeting cards mailed to British Columbia is made in British Columbia and is proposed to be subject to HST at a rate of 12%.

Example 5

A supplier in British Columbia makes a supply by way of sale of a good to an Ontario company. Based on the terms of the delivery for the supply of the good, legal delivery of the good to the purchaser occurs in British Columbia. The supplier sends the good by courier to an address outside Canada.

Although the supply of the good is made in British Columbia, the supply of the good is zero-rated as an export (under section 12 of Part V of Schedule VI to the Act) because the supplier sends the good by courier to an address outside Canada.

II. Tangible personal property supplied 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.

Period of more than three months - Specified motor vehicle

A supply of a specified motor vehicle otherwise than by way of sale under an arrangement under which continuous possession or use of the property is provided for more than three months is deemed to be made in a province if the vehicle is required to be registered under the laws of the province relating to the registration of motor vehicles at the time the supply is made. A specified motor vehicle is defined to mean a vehicle that is, or that would be, if it were imported, classified under several tariff items in Schedule I to the *Customs Tariff*. Generally, this includes almost all motor vehicles, other than racing cars classified under heading number 87.03, and any prescribed motor vehicles.

For GST/HST purposes, where a supply of property is made by way of lease, licence or similar arrangement for consideration that is attributable to a period (referred to as a "lease interval") that is the whole or a part of the period during which possession or use of the property is provided under the arrangement, a separate supply of the property for separate consideration is deemed to be made by the supplier and received by the recipient for each lease interval. Furthermore, the supply for each lease interval is deemed to be made on the earliest of the first day of the lease interval, the day on which the lease payment attributable to that interval becomes due and the day that payment is made. Subject to the exception explained below for lease periods of three months or less, the separate supplies of tangible personal property that are deemed to be made for each lease interval can be subject to HST at a different rate to the extent that those supplies can be deemed to be made in a different province based on the application of the place of supply rules for tangible personal property supplied otherwise than by way of sale. Therefore, the province in which a supply of a specified motor vehicle for each lease interval is made and the applicable rate of tax can vary based on the province in which the vehicle is required to be registered at a particular time.

Period of more than three months - Other than a specified motor vehicle

A supply of tangible personal property (other than a specified motor vehicle) by way of lease, licence or similar arrangement for more than three months is deemed to be made in a province if the ordinary location of the property, as determined at the time the supply is made is in the province. Again, a separate supply of the property is deemed to be made for each lease interval on the earliest of the first day of the lease interval, the day on which the lease payment attributable to that interval becomes due and the day that payment is made.

For purposes of the place of supply rules, the ordinary location of property is deemed to be the location where the supplier and the recipient mutually agree that the ordinary location of the property is to be at a particular point in time. In other words, the mutual agreement of the supplier and recipient will be determinative even where the property is actually located at a different place at the relevant time than what had been agreed upon. The mutual agreement of the parties may change from time to time. Therefore, even if the original written agreement for a supply of property specified that the property would be located in a particular province, the parties may mutually agree subsequent to the signing of the contract that the property is to be moved at a particular time to a location in another province in which case the latter location would be the ordinary location of the property at that particular time.

Period of three months or less

A supply of tangible personal property otherwise than by way of sale under an arrangement under which continuous possession or use of the property is provided for a period of no more than three months is deemed to be made in the province in which the supplier delivers the property or makes it available to the recipient of the supply.

The application of this place of supply rule is generally based on the province in which legal delivery of the goods to the recipient occurs. However, for purposes of this rule, tangible personal property is also deemed to be delivered in a particular province, and not in any other province, if the supplier either:

- ships the property to a destination in the particular province that is specified in the contract for carriage of the property or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination; or
- sends the property by mail or courier to an address in the particular province.

The previously explained rule that deems supplies of the leased tangible personal property to be made for each lease interval does not affect the place of supply of property that is leased for three months or less. Specifically, the province in which the supply of tangible personal property is made in the case of a lease, licence or similar arrangement of three months or less is determined only once based on the initial delivery of the property and does not change for subsequent lease intervals, if any, under the arrangement.

Example 6

A national leasing company based in Quebec leases equipment to a construction company operating in Ontario pursuant to a five-year lease. The monthly lease payments are due and paid at the beginning of each month. The construction company takes delivery of the equipment in Ontario. The equipment is usually stored and maintained at the construction company's facilities in Ontario. However, at the end of the last month of the third year of the lease, the construction company expands its operations to Quebec and, with the agreement of the Quebec company, the equipment is relocated to the company's new facilities in Quebec.

The supply of the leased equipment is made in Canada since the construction company is given possession of the equipment in Ontario. A supply of the equipment is deemed to be made for each lease interval. In this case, the supplies of the equipment to which the lease payments for the first three years relate are made in Ontario and are proposed to be subject to HST at a rate of 13% since the equipment is ordinarily located in Ontario during that time. The supplies of the equipment to which the lease payments relate for the remaining two years are made in Quebec and subject to GST at a rate of 5% since the equipment is ordinarily located in Quebec during that time.

Example 7

A consumer rents and takes possession of a motor vehicle in British Columbia to use while travelling on a trip throughout Canada. The rental agreement is for a one-month period.

The supply of the motor vehicle by way of lease to the consumer is made in British Columbia and is proposed to be subject to HST at a rate of 12% because the consumer that is leasing the good for a period that does not exceed three months takes delivery of the good in British Columbia.

Example 8

A car leasing company located in Ontario leases a car to a person pursuant to a two-year lease requiring monthly lease payments. The lessee picks up the vehicle at the supplier's premises in Ontario and the vehicle is required to be registered in Ontario throughout the lease.

The supplies of the vehicle that relate to each of the lease payments are made in Ontario and are proposed to be subject to HST at a rate of 13% because the vehicle is required to be registered in Ontario throughout the lease.

Example 9

A car leasing company located in British Columbia leases a vehicle to a person pursuant to a four-year lease requiring monthly lease payments. The lessee picks the vehicle up at the car dealer's location in British Columbia and is required to register the vehicle in the province of British Columbia at that time. At the end of the fourth month, the lessee accepts permanent employment in Ontario, moves to Ontario, and is required to register the vehicle in Ontario.

The supplies of the vehicle that relate to each of the lease payments for the first four months of the lease are made in British Columbia and are proposed to be subject to HST at a rate of 12% because the vehicle is required to be registered in British Columbia at the beginning of those lease intervals. The supplies of the vehicle that relate to each of the lease payments for the remaining months of the lease are made in Ontario and are proposed to be subject to HST at a rate of 13% because the vehicle is required to be registered in Ontario at the beginning of those lease intervals.

III. Railway rolling stock supplied otherwise than by way of sale

No change is proposed to the specific place of supply rule that currently applies to a supply of railway rolling stock otherwise than by way of sale. A supply of railway rolling stock otherwise than by way of sale is made in a province if the supplier delivers the rolling stock or makes it available to the recipient of the supply in that province. This place of supply rule overrides the previously explained place of supply rule that applies to supplies of tangible personal property other than by way of sale for a period of more than three months which is based on the ordinary location of the property.

The application of this place of supply rule is generally based on the province in which legal delivery of the rolling stock to the recipient occurs. However, for purposes of the rule, the rolling stock is also deemed to be delivered in a particular province, and not in any other province, if the supplier ships the rolling stock to a destination in the province that is specified in the contract for carriage of the rolling stock or transfers possession of the rolling stock to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the rolling stock to such a destination.

The province in which the supply of the rolling stock is determined to be made for the first lease interval is the province in which all supplies of the rolling stock for subsequent lease intervals are deemed to be made.

If continuous possession or use of railway rolling stock is given by a supplier to a recipient throughout a period under two or more successive leases, licenses or similar arrangements entered into between the supplier and the recipient (i.e. where the arrangement is renewed), the rolling stock is deemed to have been delivered or made available to the recipient under each of those arrangements at the location at which it is delivered or made available to the recipient under the first of those arrangements.

Although the place of supply rule for a supply of railway rolling stock as explained above will remain the same, a special transitional rule is proposed to be added to address a transitional issue that applies in relation to Ontario or British Columbia. If a supply of railway rolling stock is made under a lease 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. The supplier will be required to keep track of whether 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 be subject to the HST.

Example 10

A company in Ontario enters into a lease agreement to supply a railway car to a company in Quebec. The Quebec company takes delivery of the railway car in Ontario.

The supply of the railway car throughout the period covered by the lease is made in Ontario because the railway car is delivered to the recipient in Ontario. As a result, the lease payments for the railway car are proposed to be subject to HST at a rate of 13%.

3. REAL PROPERTY

No changes are proposed to the current place of supply rule for supplies of real property. A supply of real property is deemed to be made in a province if the property is situated in the province.

Supply of real property partly in a province

For purposes of determining whether HST applies based on the application of the above place of supply rule to a taxable supply of real property and the amount of the provincial component of the HST payable in respect of that supply, if any, a deeming rule applies where the real property is situated in a particular province and in another province or outside Canada. In this case, the provision of the part of the real property that is situated in the particular province and the provision of the part of the real property that is situated in the other province or outside Canada are each deemed to be a separate taxable supply made for separate consideration equal to the portion of the total consideration for all the property that is reasonably attributable to each part of the real property. As a result, it is only the provision of the part of the real property that is situated in the participating provinces that will be subject to HST.

Deemed supplies of real property

For GST/HST purposes, where a supply of property is made by way of lease, licence or similar arrangement for consideration that is attributable to a period (referred to as a "lease interval") that is the whole or a part of the period during which possession or use of the property is provided under the arrangement, a separate supply of the property for separate consideration is deemed to be made by the supplier and received by the recipient for each lease interval. Furthermore, the supply for each lease interval is deemed to be made on the earliest of the first day of the lease interval, the day on which the lease payment attributable to that interval becomes due and the day that payment is made.

Example 11

A company based in Ontario sells one of its warehouses that is situated in Ontario to a company in British Columbia.

The supply of the warehouse is made in Ontario and is proposed to be subject to HST at a rate of 13%.

Example 12

Pursuant to a lease agreement, a company in British Columbia leases a commercial office building situated in British Columbia to a company in Ontario for a period of ten years.

The supply of the real property is deemed made in Canada since the real property is situated in Canada. The deemed supplies of the building by way of lease for each lease interval made by the British Columbia company during the ten-year lease are made in British Columbia since the building is situated in that province. Each supply is therefore proposed to be subject to HST at a rate of 12%.

Example 13

A company in Quebec makes a taxable supply of commercial real property by way of sale to an Ontario company. The real property is situated in Ontario and Quebec.

The provision of the part of the real property that is situated in Ontario and Quebec are each deemed to be a separate taxable supply of real property for consideration equal to the portion of the total consideration for all the property that is reasonably attributable to the part that is situated in each province. The supply of the part of the real property that is situated in Ontario is therefore made in Ontario and is proposed to be subject to HST at a rate of 13%. The supply of the part of the real property that is situated in Quebec is therefore made in Quebec and subject to GST at a rate of 5%.

4. INTANGIBLE PERSONAL PROPERTY

Significant changes are proposed to the current place of supply rules for supplies of intangible personal property. Although the general rules will generally continue to be based in large part on where the intangible personal property can be used, the place of negotiation under the current rules will no longer be a factor and greater emphasis will be placed on the location of the recipient of the supply of the intangible personal property. As is the case under the current place of supply rules, there will be specific place of supply rules that apply with respect to specific types of supplies of intangible personal property such as intangible personal property that relates to tangible personal property or to real property. Furthermore, depending on the circumstances, different place of supply rules can apply to a supply of intangible personal property that is, or is similar to, a passenger transportation pass entitling an individual to passenger transportation. The supply of intangible personal property in this case will be determined under the specific place of supply rules for passenger transportation passes explained in Part IV of this section where those rules apply and, if the place of supply cannot be determined under those rules, the place of supply will be determined under the general place of supply rules for intangible personal property explained in Part I of this section.

Canadian rights

The **Canadian rights** in respect of intangible personal property means that part of the property that can be used in Canada.

Deemed supplies of intangible personal property

For GST/HST purposes, where a supply of property is made by way of lease, licence or similar arrangement for consideration that is attributable to a period (referred to as a "lease interval") that is the whole or a part of the period during which possession or use of the property is provided under the arrangement, a separate supply of the property for separate consideration is deemed to be made by the supplier and received by the recipient for each lease interval. Furthermore, the supply for each lease interval is deemed to be made on the earliest of the first day of the lease interval, the day on which the lease payment attributable to that interval becomes due and the day that payment is made. The separate supplies of the intangible personal property that are deemed to be made for each lease interval can be subject to HST at a different rate to the extent that those supplies can be deemed made in a different province based on the application of the place of supply rules for intangible personal property.

I. General Rules

Generally, as explained in detail in this section, under the proposed place of supply rules for supplies of intangible personal property:

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- Supplies of intangible personal property that can be used in Canada that can only be used primarily (more than 50%) in the participating provinces will be deemed to be made in a participating province and subject to HST.
 - Supplies of intangible personal property that can be used in Canada that can only be used primarily (more than 50%) outside the participating provinces will be deemed to be made in a non-participating province and subject to GST.
 - The place of supply for supplies of intangible personal property that can be used in Canada that can be used other than only primarily in the participating provinces and other than only primarily outside the participating provinces will depend on a number of additional factors.

The proposed place of supply rules explained in this section can require a determination of the extent, if any, to which the use of the Canadian rights is limited to one or more provinces. As is the case for purposes of the current place of supply rules, the extent, if any, to which the rights can be used in one or more provinces will generally be determined based on the terms of the agreement for the supply governing the use of the rights. As is also currently the case, if there are no limitations with respect to the province in which the rights can be used and it is possible for those rights to be used in a province, it is considered to be the case that the rights can be, but are not limited to being, used in that province for purposes of the proposed place of supply rules.

Intangible personal property that can only be used primarily in participating provinces - Participating province of greatest proportion of use can be determined

If the Canadian rights in respect of a supply of intangible personal property (other than a supply of intangible personal property that relates to real property or tangible personal property or a supply of intangible personal property that relates to services that is deemed to be made in a province based on the place of supply rule that is explained in Part IV of this section), can only be used primarily (more than 50%) in the participating provinces, the supply is proposed to be made in a participating province if an equal or greater proportion of the Canadian rights cannot be used in another participating province.

This proposed rule is intended to apply where the Canadian rights can only be used primarily (more than 50%) in the participating provinces and the province in which the greatest proportion of those rights can be used can be determined because the use of at least some of those rights is specifically limited to one or more of those provinces. This rule therefore does not apply if the use of the rights is not specifically limited to one or more of the participating provinces, which would be the case, for example, if the rights can be used on an unlimited basis in more than one of those provinces.

Example 14

A supplier in Ontario supplies software by way of licence to a company in Ontario for use by its employees at its head office in Ontario. The software is downloaded electronically over the Internet. The licence provides that the software may only be used from the head office of the Ontario company.

The Canadian rights in respect of the software can only be used primarily in participating provinces and an equal or greater proportion of the Canadian rights cannot be used in a participating province other than Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 15

A franchise company in British Columbia supplies a franchise to a British Columbia company that provides the right to operate a franchise retail business in Ontario.

The Canadian rights in respect of the franchise can only be used primarily in participating provinces and an equal or greater proportion of the Canadian rights cannot be used in a participating province other than Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 16

An individual purchases a pass in Ontario that entitles the individual to admission to three plays at a theatre in Ontario.

The Canadian rights in respect of the pass can only be used primarily in participating provinces and an equal or greater proportion of the Canadian rights cannot be used in a participating province other than Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 17

An individual purchases a pass in Ontario that entitles the individual to admission to two plays at two theatres in Ontario and to admission to one play at a theatre in British Columbia.

The Canadian rights in respect of the pass can only be used primarily in participating provinces and an equal or greater proportion of the Canadian rights cannot be used in a participating province other than Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Intangible personal property that can only be used primarily in participating provinces - Participating province of greatest proportion of use cannot be determined

Generally, three general place of supply rules are proposed to apply where the Canadian rights in respect of a supply of intangible personal property can only be used primarily (more than 50%) in participating provinces, but it is not possible, as it is in the situation addressed by the previously explained rule, to determine the participating province in which the greatest proportion of those rights can be used. This would be the case where there are no limitations with respect to the extent to which the rights can be used in any of those provinces.

These rules do not apply to a supply of intangible personal property that relates to real property or tangible personal property or to a supply of intangible personal property that relates to services that is deemed to be made in a province based on the place of supply rule that is explained in Part IV of this section.

Rule 1

If the value of the consideration for the supply of the intangible personal property is \$300 or less, the supply is proposed to be made in a participating province if the supply is made through a permanent establishment of the supplier located in the province in the presence of an individual who is, or who acts on behalf of, the recipient, or through a vending machine situated in the province, and the intangible personal property can be used in the participating province.

Example 18

A regional fitness club with facilities situated throughout the provinces of New Brunswick and Nova Scotia supplies fitness memberships to individuals for a single fee of less than \$300 for a six-month membership to the club. The membership entitles members to: unlimited access to all club facilities, exercise classes, access to nutritional and fitness seminars, a towel service and a one-time fitness evaluation. A student from New Brunswick attending university in Halifax, Nova Scotia acquires a six-month membership to the fitness club at the membership desk at the club's facility that is closest to the university in Halifax. The student provides his permanent address in New Brunswick as his home address.

The Canadian rights in respect of the membership can only be used primarily in the participating provinces. Also, the supply is made through a permanent establishment of the supplier in Nova Scotia in the presence of the recipient and the intangible personal property can be used in Nova Scotia. The supply of the intangible personal property is therefore proposed to be made in Nova Scotia and subject to HST at a rate of 15%.

Example 19

An individual purchases a movie pass that provides ten adult admissions to any of a popular movie chain's five cinemas situated in Nova Scotia and New Brunswick. The individual purchases the pass for consideration of less than \$300 at one of the chain's New Brunswick locations.

The Canadian rights in respect of the movie pass can only be used primarily in the participating provinces. Also, the supply is made through a permanent establishment of the supplier in New Brunswick in the presence of the recipient and the intangible personal property can be used in New Brunswick. The supply of the intangible personal property is therefore proposed to be made in New Brunswick and subject to HST at a rate of 13%.

Rule 2

If Rule 1 does not deem the supply to be made in a participating province (i.e. where either the value of the consideration for the supply is more than \$300 or the supply is not made through a permanent establishment or vending machine as described in the above proposed rule), the supply may be deemed to be made in a participating province if the supplier obtains an address of the recipient in the province in the ordinary course of business. Specifically, the supply of the intangible personal property is proposed to be made in a participating province if:

- in the ordinary course of business the supplier obtains an address that is
 - a home or a business address in Canada of the recipient, or
 - if more than one such address is obtained, the home or business address in Canada of the recipient that is most closely connected with the supply, or
 - if the supplier does not obtain a home or business address in Canada of the recipient, any other address in Canada of the recipient that is most closely connected with the supply, and
- the address is in the province, and
- the intangible personal property can be used in the province.

For an explanation of how to determine the relevant address of the recipient for purposes of this rule, see the explanation on page 26 for Rule 1 of the general place of supply rule for services.

Example 20

A supplier in Ontario supplies software by way of licence to a company in Newfoundland and Labrador for use by its employees at its offices in Newfoundland and Labrador and New Brunswick. The software is downloaded electronically over the Internet. The licence provides that the software may only be used from the offices of the recipient in Newfoundland and Labrador and New Brunswick. In the ordinary course of business, the supplier obtains a business address of the recipient that is in Newfoundland and Labrador and that is also the billing address for the supply.

The Canadian rights in respect of the software can only be used primarily in the participating provinces. Also, in the ordinary course of business, the supplier obtains a business address of the recipient that is in Newfoundland and Labrador. The supply is therefore proposed to be made in Newfoundland and Labrador and subject to HST at a rate of 13%.

Example 21

An individual purchases an air transportation pass over the Internet that provides the individual with unlimited travel between Nova Scotia and Ontario. The home address of the individual obtained by the supplier in the ordinary course of business is in Nova Scotia.

The Canadian rights in respect of the pass can only be used primarily in the participating provinces and in the ordinary course of business, the supplier obtains a home address of the recipient that is in Nova Scotia. The supply is therefore proposed to be made in Nova Scotia and subject to HST at a rate of 15%.

Example 22

Assume that the facts in this example are the same as in Example 18. The memberships to the fitness club are subject to an automatic six-month renewal upon expiration of the original membership. The renewal fee for consideration of less than \$300 for

the supply of an additional six-month membership is automatically billed to the student's credit card with confirmation sent by mail to the home address on file in New Brunswick.

The Canadian rights in respect of the membership can only be used primarily in the participating provinces. Also, in the ordinary course of business, the supplier obtains a home address of the recipient that is in New Brunswick. The supply is therefore proposed to be made in New Brunswick and subject to HST at a rate of 13%.

Rule 3

If the supply is not deemed to be made in a participating province under Rule 1 or Rule 2 the supply of the intangible personal property is proposed to be made in the participating province for which the tax rate is the highest among the participating provinces in which the property can be used. If two or more of the participating provinces in this case have the same rate for the provincial component, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

Example 23

A company in British Columbia makes a supply of intellectual property rights to a Quebec company that can only be used in British Columbia and Ontario. The business address in Canada of the recipient obtained by the British Columbia company in the ordinary course of business is in Quebec.

The Canadian rights in respect of the intellectual property rights can only be used primarily in participating provinces. Although the supplier obtains a business address of the recipient, that address is in Quebec, a province in which the intellectual property rights cannot be used. The supply of the intangible personal property is therefore proposed to be made in the participating province that has the highest rate for the provincial component of the HST among the participating provinces in which the intangible personal property can be used, which in this case is Ontario. The supply is therefore proposed to be subject to HST at a rate of 13%.

Example 24

An individual purchases an air transportation pass over the Internet that provides the individual with unlimited travel between Nova Scotia and Ontario. The individual's home address obtained by the supplier in the ordinary course of business is in New Brunswick.

The supply is proposed to be made in the participating province that has the highest rate for the provincial component of the HST among the participating provinces in which the intangible personal property can be used, which in this case is Nova Scotia. The supply is therefore subject to HST at a rate of 15%.

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

If the Canadian rights in respect of a supply of intangible personal property (other than a supply of intangible personal property that relates to real property or tangible personal property or a supply of intangible personal property that relates to services that is deemed to be made in a province based on the place of supply rule that is explained in Part IV of this section), can only be used primarily (more than 50%) outside participating provinces, the supply of the intangible personal property is proposed to be made in a non-participating province.

Example 25

An individual purchases a theatre pass that provides the right to attend seven plays in Alberta and three plays in British Columbia.

The supply is proposed to be made in a non-participating province since the intangible personal property can only be used primarily in Alberta. The supply is therefore subject to GST at a rate of 5%.

Intangible personal property that can be used other than only primarily in participating provinces and other than only primarily outside participating provinces

Generally, three general place of supply rules are proposed to apply where the Canadian rights in respect of a supply of intangible personal property (other than a supply of intangible personal property that relates to real property or tangible personal property or a supply of intangible personal property that relates to services that is deemed to be made in a province based on the place of supply rule that is explained in Part IV of this section), can be used otherwise than only primarily (50% or less) in participating provinces and otherwise than only primarily (50% or less) outside participating provinces.

Basically, these rules can apply where the Canadian rights in respect of the property are not limited to being used only primarily (more than 50%) in the participating provinces or to being used only primarily (more than 50%) outside the participating provinces. Also, unlike the previously explained place of supply rules for intangible personal property that can only be used primarily in participating provinces, these proposed rules can result in the supply of intangible personal property being deemed made in a province that is not a participating province.

Rule 1

If the value of the consideration for the supply of the intangible personal property is \$300 or less, the supply is proposed to be made in a province if the supply is made through a permanent establishment of the supplier located in the province in the presence of an individual who is, or who acts on behalf of, the recipient, or through a vending machine situated in the province, and the intangible personal property can be used in the province.

Example 26

An individual purchases a movie pass that provides ten adult admissions to any of a popular movie chain's locations. The chain has one or more locations in every Canadian province. The individual purchases the pass at a cost of \$80 at one of the chain's Ontario locations.

The Canadian rights in respect of the movie pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, the supply of the intangible personal property is made in the presence of the recipient through a permanent establishment of the supplier that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 27

An individual who lives in British Columbia is a member of a national organization. The Canadian rights in respect of the membership can be used anywhere in Canada. At a storefront location of the national organization in Ontario while on vacation, the individual renews the membership for consideration of less than \$300.

The Canadian rights in respect of the membership can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, the intangible personal property is supplied in the presence of the recipient through a permanent establishment of the supplier that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 28

An individual purchases a rail pass at a train station in Ontario for consideration of less than \$300 that entitles the individual to unlimited rail travel for 60 days anywhere in Ontario and Quebec.

The Canadian rights in respect of the rail pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, the supply of the intangible personal property is made in the presence of the recipient through a permanent establishment of the supplier that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 29

An individual purchases a rail pass at a train station in Quebec for consideration of less than \$300 that entitles the individual to unlimited rail travel for 60 days anywhere in Ontario and Quebec.

The Canadian rights in respect of the rail pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, the intangible personal property is supplied in the presence of the recipient through a permanent establishment of the supplier that is in Quebec and the intangible personal property can be used in Quebec. The supply of the intangible personal property is therefore proposed to be made in Quebec and subject to GST at a rate of 5%.

Rule 2

If Rule 1 does not deem the supply to be made in a province (i.e. where either the value of the consideration for the supply is more than \$300 or the supply is not made through a permanent establishment or vending machine as described above), the supply may be deemed made in a province if the supplier obtains an address of the recipient in the province in the ordinary course of business. Specifically, the supply of the intangible personal property is proposed to be made in a province if:

- in the ordinary course of business the supplier obtains an address that is
 - a home or a business address in Canada of the recipient, or
 - if more than one such address is obtained, the home or business address in Canada of the recipient that is most closely connected with the supply, or
 - if the supplier does not obtain a home or business address in Canada of the recipient, any other address in Canada of the recipient that is most closely connected with the supply, and
- the address is in the province, and
- the intangible personal property can be used in the province.

For an explanation of how to determine the relevant address of the recipient for purposes of this rule, see the explanation on page 26 for Rule 1 of the general place of supply rule for services.

Example 30

A supplier in British Columbia supplies software by way of licence to a company in British Columbia for use by its employees at its various offices throughout Canada. The software is downloaded electronically over the Internet. There are no restrictions with respect to where the software may be used. The business address of the recipient obtained by the supplier with respect to the supply of the software is in British Columbia.

The Canadian rights in respect of the software can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a business address of the recipient in Canada that is in British Columbia and the intangible personal property can be used in British Columbia. The supply of the intangible personal property is therefore proposed to be made in British Columbia and subject to HST at a rate of 12%.

Example 31

A supplier in Ontario supplies software by way of licence to a company in Quebec for use by its employees at its various offices throughout Canada. The software is downloaded electronically over the Internet. There are no restrictions with respect to where the software may be used. The business address of the recipient obtained by the supplier with respect to the supply of the software is in Quebec.

The Canadian rights in respect of the software can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a business address of the recipient in Canada that is in Quebec and the intangible personal property can be used in Quebec. The supply of the intangible personal property is therefore proposed to be made in Quebec and subject to GST at a rate of 5%.

Example 32

An individual who lives in Ontario acquires a membership in a professional organization. The intangible personal property can be used in any province. It is the ordinary business practice of the supplier to obtain a home address of the recipient to which the membership card and invoice can be sent.

The Canadian rights in respect of the membership can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a home address of the recipient in Canada that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 33

An individual who lives in Ontario acquires a membership that can be used in any province. It is the ordinary business practice of the supplier when supplying a membership to obtain the home address of the recipient verified with credit card authorization and a billing address to which the membership card and invoice can be sent. As part of this process the supplier obtains a home address of the recipient that is in Ontario and a billing address in Quebec.

The Canadian rights in respect of the membership can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a home address of the recipient that is in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 34

An individual purchases a digital music album from an online vendor. There are no restrictions on where the intangible personal property can be used in Canada. As part of the purchase process, the supplier obtains the individual's home address in British Columbia.

The Canadian rights in respect of the intangible personal property can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a home address of the recipient in Canada that is in British Columbia and the intangible personal property can be used in British Columbia. The supply of the intangible personal property is therefore proposed to be made in British Columbia and subject to HST at a rate of 12%.

Example 35

A registered supplier makes supplies from its business address in Ontario of monthly subscriptions to its Web site that provides subscribers who are consumers with a right to access and use digitized content on the site, including information in a database and images and the right to download a copy of the digitized content. The supplier has clients throughout the world. There are no restrictions with respect to where subscribers may use the intangible personal property. When subscribers pay for their subscription, it is the supplier's ordinary business practice to obtain a home address of the recipient.

The Canadian rights in respect of the digitized content can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a home address of the recipients. Where the supplier obtains a home address of the recipient in Canada that is in a participating province, the supply of the intangible personal property is proposed to be made in that province and subject to HST. Where the supplier obtains a home address of the recipient in Canada that is in a non-participating province, the supply of the intangible personal property is proposed to be made in that province and subject to GST at a rate of 5%. Where the home address of the recipient obtained by the supplier is outside Canada the application of tax in this example would be based on Rule 3 which is explained below and explained in Example 47.

Example 36

A non-resident GST/HST registered supplier makes supplies of monthly subscriptions to its Web site that provides subscribers with a right to access and use digitized content on the site that is intended for businesses, including information in a database and the right to download a copy of the digitized content. The supplier has clients who are resident in Canada and non-resident clients, some of which are registered for GST/HST purposes. There are no restrictions with respect to where subscribers may use the

intangible personal property. When subscribers pay for their subscription, it is the supplier's ordinary business practice to obtain a business address of the recipient

The Canadian rights in respect of the intangible personal property can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a business address of the recipients. Where the supplier obtains a business address of the recipient in Canada that is in a participating province, the supply of the intangible personal property is therefore proposed to be made in that province and subject to HST. Where the supplier obtains a business address of the recipient in Canada that is in a non-participating province, the supply of the intangible personal property is proposed to be made in that province and subject to GST at a rate of 5%. Where the business address of the recipient obtained by the supplier is outside Canada the application of tax in this example would be based on Rule 3 which is explained below and explained in Example 48.

Example 37

A lawyer who operates a law firm in Ontario and lives in Quebec purchases a subscription to an online law Web site from a content provider in Ontario. The subscription entitles the lawyer to access and use digitized content that is stored on the Web site of the content provider. It is the ordinary business practice of the content provider to obtain a business address and a billing address of the recipient. The lawyer completes the purchase and provides the business address of the law firm in Ontario as the business address and provides the home address of the individual in Quebec as the billing address.

The Canadian rights in respect of the intangible personal property can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains the business address of the recipient that is in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 38

An Ontario publishing company enters into a contract with a Canadian author to purchase the Canadian copyright to produce copies and sell the author's latest novel for consideration of more than \$300. The contract states that the publishing company's address is in Toronto, Ontario.

The Canadian rights in respect of the intangible personal property can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a business address of the recipient in Canada that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 39

A franchise company in New Brunswick supplies a franchise to a New Brunswick company that provides the right to operate a franchise retail business in New Brunswick and Quebec. The business address of the recipient obtained by the supplier in the ordinary course of business with respect to the supply is in New Brunswick.

The Canadian rights in respect of the franchise can be used less than primarily in participating provinces and less than primarily outside participating provinces. Also, in the ordinary course of business, the supplier obtains a business address of the recipient in Canada that is in New Brunswick. The supply of the intangible personal property is therefore proposed to be made in New Brunswick and subject to HST at a rate of 13%.

Example 40

An individual purchases an air transportation pass over the Internet that provides the individual with unlimited travel between Ontario, Manitoba, Saskatchewan and Alberta. The individual's home address is in Ontario.

The Canadian rights in respect of the pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a home address of the recipient in Canada that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 41

An individual who lives in Ontario purchases a rail pass at a train station in Ontario for consideration of more than \$300 that entitles the individual to unlimited rail travel for 90 days anywhere in Ontario and Quebec. It is the ordinary business practice of the supplier to obtain the recipient's home address when a pass is purchased.

The Canadian rights in respect of the rail pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces because there are no restrictions with respect to the extent to which the Canadian rights in respect of the intangible personal property can be used in Ontario and Quebec. Also, in the ordinary course of business, the supplier obtains a home address of the recipient in Canada that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 42

An individual who lives in Quebec purchases a rail pass at a train station in Quebec for consideration of more than \$300 that entitles the individual to unlimited rail travel for 90 days anywhere in Ontario and Quebec. It is the ordinary business practice of the supplier to obtain the recipient's home address when a pass is purchased.

The Canadian rights in respect of the rail pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces because there are no restrictions with respect to the extent to which the Canadian rights in respect of the intangible personal property can be used in Ontario and Quebec. Also, in the ordinary course of business, the supplier obtains a home address of the recipient in Canada that is in Quebec and the intangible personal property can be used in Quebec. The supply of the intangible personal property is therefore proposed to be made in Quebec and subject to GST at a rate of 5%.

Example 43

An individual who lives in Ontario purchases a rail pass over the Internet from a supplier's Web site for consideration of less than \$300 that entitles the individual to unlimited rail travel for 60 days anywhere in Ontario and Quebec. It is the ordinary business practice of the supplier to obtain the recipient's home address when a pass is purchased from its Web site. The pass is mailed to the recipient's address in Ontario.

The Canadian rights in respect of the rail pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Also, in the ordinary course of business, the supplier obtains a home address of the recipient in Canada that is in Ontario and the intangible personal property can be used in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Rule 3

If the supply of the intangible personal property is not deemed to be made in a province under Rule 1 or Rule 2, the supply is proposed to be made in the participating province for which the rate for the provincial component of the HST is the highest among the provinces in which the property can be used. If two or more of the participating provinces in this case have the same rate for the provincial component, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

Example 44

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 Canadian rights in respect of the air transportation pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. The supply of the intangible personal property is proposed to be made in Ontario and subject to HST at a rate of 13% because it is the province in which the intangible personal property can be used that has the highest rate for the provincial component of the HST.

Example 45

An individual purchases an air transportation pass that provides the individual with unlimited travel between Ontario, Alberta and British Columbia. No address is obtained by the supplier.

The Canadian rights in respect of the air transportation pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. The supply of the intangible personal property is proposed to be made in Ontario and subject to HST at a rate of 13% because it is the province in which the intangible personal property can be used that has the highest rate for the provincial component of the HST.

Example 46

A non-resident individual who plans on visiting Canada purchases a rail pass for consideration of more than \$300 that entitles the individual to unlimited train travel for 90 days anywhere in Ontario and Quebec. It is the ordinary business practice of the supplier to obtain the recipient's home address when a pass is purchased.

The Canadian rights in respect of the rail pass can be used less than primarily in the participating provinces and less than primarily outside the participating provinces. Although in the ordinary course of business the supplier obtains a home address of the recipient, that address is outside Canada. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13% because it is the province in which the intangible personal property can be used that has the rate for the provincial component of the HST.

Example 47

The facts of this example are the same as those in Example 35 where the registered supplier makes supplies from its business address in Ontario of monthly subscriptions to its Web site.

Where the home address of the recipient obtained by the supplier is outside Canada, Rule 2 will not apply. The intangible personal property in this case can be used in more than one participating province that has the highest rate for the provincial component of the HST. As a result, where the home address of the recipient that is obtained by the supplier is outside Canada, it is proposed that the supplier will be required to charge HST at a rate of 15% in respect of the supply unless the supply qualifies for zero-rating. Supplies made to recipients who are unregistered non-residents may qualify for zero-rating where the conditions explained in GST/HST Info Sheet G-034 *Exports of Intangible Personal Property* are met.

Example 48

The facts of this example are the same as those in Example 36 where a non-resident GST/HST registered supplier makes supplies of monthly subscriptions to its Web site.

Where the business address of the recipient obtained by the supplier is outside Canada, Rule 2 will not apply. The intangible personal property in this can be used in more than one participating province that has the highest rate for the provincial component of the HST. As a result, where the business address of the recipient that is obtained by the supplier is outside Canada, it is proposed that the supplier will be required to charge HST at a rate of 15% in respect of the supply unless the supply qualifies for zero-rating. Supplies made to recipients who are unregistered non-residents may qualify for zero-rating where the conditions explained in GST/HST Info Sheet G-034 *Exports of Intangible Personal Property* are met.

II. Intangible personal property that relates to tangible personal property

Ordinary location of tangible personal property

The ordinary location of property at a particular time is deemed to be the location where the supplier and the recipient mutually agree that the ordinary location of the property is to be at the particular point in time. In other words, the mutual agreement of the supplier and recipient will be determinative even where the property is actually located at a different place at the relevant time than what had been agreed upon. It should be noted that this rule contemplates the possibility of the mutual agreement of the parties changing from time to time.

Therefore, even if the original written agreement for a supply of property specified that the property would be located in a non-participating province, the parties might mutually agree subsequent to the signing of the contract that the property would be moved at a particular time to a participating province in which case the latter location would be the "ordinary location" of the property at that particular time.

Intangible personal property that relates to tangible personal property

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

A supply of intangible personal property that relates to tangible personal property that is ordinarily located in Canada is proposed to be made in a participating province if the tangible personal property in Canada to which the property relates is ordinarily located primarily (more than 50%) in the participating provinces and the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located in that province. If this rule does not result in the supply being made in a province because the tangible personal property is ordinarily located equally in two or more participating provinces, the intangible personal property is proposed to be deemed to be supplied in the participating province among those provinces for which the rate for the provincial component of the HST is the highest. If two or more of the participating provinces in this case have the same rate for the provincial component, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

A supply of intangible personal property that relates to tangible personal property that is ordinarily located in Canada is proposed to be made in a non-participating province if the tangible personal property is ordinarily located otherwise than primarily (50% or less) in participating provinces.

Example 49

An Ontario company makes a supply to a Quebec company of an option to purchase a work of art that is ordinarily located in Nova Scotia.

The tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is ordinarily located primarily in the participating provinces and the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located in Nova Scotia. The supply of the intangible personal property is therefore proposed to be made in Nova Scotia and subject to HST at a rate of 15%.

Example 50

A company in Ontario makes a supply to another company in Ontario of intangible personal property that relates to tangible personal property that is located in Canada and outside Canada. The tangible personal property ordinarily located in Ontario represents 20% of the total tangible personal property and the tangible personal property ordinarily located in the United States represents 80% of the total tangible personal property.

The tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is ordinarily located primarily in the participating provinces and the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 51

A company in Quebec makes a supply to a company in Ontario of intangible personal property that relates to tangible personal property. The tangible personal property that is ordinarily located in British Columbia represents 30% of the total tangible personal property, the tangible personal property ordinarily located in Ontario represents 10% of the total tangible personal property and the tangible personal property ordinarily located in the United States represents 60% of the total tangible personal property.

The supply of the intangible personal property is deemed to be made in British Columbia because the tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is ordinarily located primarily in the participating provinces (i.e. 100% of the tangible personal property in Canada is ordinarily located in Ontario and British Columbia), and the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located in British Columbia. The supply of the intangible personal property is therefore proposed to be made in British Columbia and subject to HST at a rate of 12%.

Example 52

A company in Ontario makes a supply of intangible personal property to another Ontario company that relates to tangible personal property. The tangible personal property that is ordinarily located in Ontario represents 40% of the total tangible personal property and the tangible personal property that is ordinarily located primarily in Quebec represents 60% of the total tangible personal property.

The tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is not ordinarily located in the participating provinces. The supply of the intangible personal property is therefore not proposed to be made in a participating province and is subject to GST at a rate of 5%.

Example 53

A British Columbia company makes a supply to another British Columbia company of intangible personal property that relates to tangible personal property. The tangible personal property that is ordinarily located in British Columbia represents 5% of the total property and the tangible personal property that is ordinarily located in the United States represents 95% of the total tangible personal property.

The tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is ordinarily located primarily in the participating provinces and the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located in British Columbia. The supply of the intangible personal property is therefore proposed to be made in British Columbia and subject to HST at a rate of 12%.

Example 54

A registered non-resident company makes a supply to an Ontario company of intangible personal property that relates to tangible personal property. The tangible personal property that is ordinarily located in Ontario represents 5% of the total tangible personal property and the tangible personal property that is ordinarily located in the United States represents 95% of the total tangible personal property.

The tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is ordinarily located primarily in the participating provinces and the greatest proportion of the tangible personal property that is ordinarily located in the participating provinces is ordinarily located in Ontario. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 55

A company in Ontario makes a supply to another company in Ontario of intangible personal property that relates to tangible personal property. The tangible personal property that is ordinarily located in Ontario represents 50% of the total tangible personal property and the property that is ordinarily located in British Columbia represents 50% of the total tangible personal property.

The tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is ordinarily located primarily in the participating provinces and in equal proportions in the participating provinces of British Columbia and Ontario. The supply of the intangible personal property is therefore proposed to be made in the participating province among these two participating provinces that has the highest rate for the provincial component of the HST, which in this case is in Ontario and subject to HST at a rate of 13%.

Example 56

A company in New Brunswick makes a supply to a company in Nova Scotia of intangible personal property that relates to tangible personal property. The tangible personal property that is ordinarily located in New Brunswick represents 50% of the total property and the property that is ordinarily located in Newfoundland and Labrador represents 50% of the total property.

The tangible personal property that is ordinarily located in Canada to which the intangible personal property relates is ordinarily located primarily in the participating provinces and in equal proportions in the participating provinces of New Brunswick and Newfoundland and Labrador which both have the same rate for the provincial component of the HST. As a result, it is proposed that the supplier be required to charge HST at a rate of 13% in respect of the supply.

III. Intangible personal property that relates to real property

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

A supply of intangible personal property that relates to real property is proposed to be made in a participating province if the real property that is situated in Canada is situated primarily (more than 50%) in the participating provinces and the greatest proportion of the real property that is situated in the participating provinces is situated in that participating province. If this rule does not result in the supply being made in a province because the real property is equally situated in two or more participating provinces, the supply of the intangible personal property is proposed to be made in the participating province among those participating provinces for which the rate for the provincial component of the HST is the highest. If two or more of the participating provinces in this case have the same rate for the provincial component of the HST, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

A supply of intangible personal property that relates to real property is proposed to be made in a non-participating province if the real property that is situated in Canada is situated otherwise than primarily (50% or less) in the participating provinces.

Intangible personal property that relates to real property in Canada and outside Canada

For GST/HST purposes, under section 142 a supply of intangible personal property that relates to real property is deemed to be made in Canada if the real property is situated in Canada and is deemed to be made outside Canada if the real property is situated outside Canada. As a result of the application of section 142, where a supply of intangible personal property that relates to real property is made and the real property is both situated in Canada and outside Canada, the proportion of the supply of the intangible personal property that relates to the real property that is situated in Canada is considered to be made in Canada while the proportion of the supply of the intangible personal property that relates to the real property that is situated outside Canada is considered to be made outside Canada. As a result, it is only the provision of the proportion of the supply of the intangible personal property that relates to real property that is situated in Canada that may be deemed made in a participating province and subject to HST.

Example 57

A New Brunswick company makes a supply to a Quebec company of intangible personal property that relates to commercial real property that is situated entirely in New Brunswick.

The real property that is situated in Canada to which the intangible personal property relates is situated primarily in the participating provinces and the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated is New Brunswick. The supply of the intangible personal property is therefore proposed to be made in New Brunswick and subject to HST at a rate of 13%.

Example 58

A company in British Columbia makes a supply of intangible personal property that relates to real property. The real property in British Columbia represents 20% of the total real property and the real property in the United States represents 80% of the total real property.

The real property that is situated in Canada to which the intangible personal property relates is situated primarily in the participating provinces and the participating province in which the greatest proportion of the real property that is situated in the participating

provinces is situated in British Columbia. The proportion of the supply of the intangible personal property that relates to the real property that is situated in Canada is therefore proposed to be made in British Columbia and subject to HST at a rate of 12%. The proportion of the supply of the intangible personal property that relates to the real property that is situated outside Canada is deemed to be made outside Canada and is not subject to tax.

Example 59

A company in Ontario makes a supply of intangible personal property that relates to real property. The real property in Ontario represents 30% of the total real property, the real property in British Columbia represents 10% of the total real property and the real property in the United States represents 60% of the total real property.

The real property that is situated in Canada to which the intangible personal property relates is situated primarily in the participating provinces (i.e. 100% of the real property that is situated in Canada is situated in Ontario and British Columbia), and the greatest proportion of the real property that is situated in Ontario and British Columbia is situated in Ontario. The proportion of the supply of the intangible personal property that relates to the real property that is situated in Canada is therefore proposed to be made in Ontario and subject to HST at a rate of 13%. The proportion of the supply of the intangible personal property that relates to the real property that is situated outside Canada is deemed to be made outside Canada and is not subject to tax.

Example 60

A company in New Brunswick makes a supply of intangible personal property that relates to real property. The real property in New Brunswick represents 40% of the total real property and the real property in Quebec represents 60% of the total real property.

The real property that is situated in Canada to which the intangible personal property relates is not situated primarily in the participating provinces. The supply of the intangible personal property is therefore proposed to be made in a non-participating province and is subject to GST at a rate of 5%.

Example 61

A company in Quebec makes a supply of intangible personal property that relates to real property. The real property in Ontario represents 50% of the total real property and the real property in British Columbia represents 50% of the total real property.

The real property that is situated in Canada to which the intangible personal property relates is situated primarily in the participating provinces and in equal proportions in the participating provinces of British Columbia and Ontario. The supply of the intangible personal property is therefore proposed to be made in the participating province among these two provinces that has the highest rate for the provincial component of the HST, which in this case is Ontario. The supply of the intangible personal property that relates to the real property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 62

A company in New Brunswick makes a supply of intangible personal property that relates to real property. The real property in New Brunswick represents 5% of the total real property and the real property in the United States represents 95% of the total real property.

The real property that is situated in Canada to which the intangible personal property relates is situated primarily in the participating provinces and the greatest proportion of the real property that is situated in the participating provinces is situated in New Brunswick. The proportion of the supply of the intangible personal property that relates to the real property that is situated in Canada is therefore proposed to be made in New Brunswick and subject to HST at a rate of 13%. The proportion of the supply of the intangible personal property that relates to the real property that is situated outside Canada is deemed to be made outside Canada and is not subject to tax.

Example 63

A company in Newfoundland and Labrador makes a supply of intangible personal property that relates to real property. The real property in Newfoundland and Labrador represents 50% of the total real property and the real property in New Brunswick represents 50% of the total real property.

The real property that is situated in Canada to which the intangible personal property relates is situated primarily in the participating provinces and in equal proportions in the participating provinces of Newfoundland and Labrador and New Brunswick which both have the same rate for the provincial component of the HST. As a result, it is proposed that the supplier will be required to charge HST in respect of the supply at a rate of 13%.

IV. Intangible personal property that relates to passenger transportation services

Two specific place of supply rules are proposed to apply in certain circumstances to a supply of intangible personal property that is, or is similar to, a passenger transportation pass entitling an individual to one or more passenger transportation services.

Rule 1

If, at the time when the supply of the intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in the same participating province and would terminate in Canada, the supply of the intangible personal property is proposed to be made in that participating province.

Rule 2

If, at the time when the supply of intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in a non-participating province or would terminate outside Canada, the supply of the intangible personal property is proposed to be made in a non-participating province.

If the place of supply of the intangible personal property cannot be determined based on the above rules (for instance, where the passenger transportation services covered by the passenger transportation pass may not always begin in the same participating province), the place of supply of the intangible personal property will be determined under the proposed general place of supply rules for intangible personal property explained in Part I of this section.

Example 64

An individual who lives in Ontario purchases a rail pass at a rail station in Ontario that entitles the individual to ten one-way trips from Ottawa to Toronto. When the individual wishes to travel, the individual uses the pass to obtain a rail ticket which specifies that the origin of the particular trip is Ottawa.

When the supply of the intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in the same participating province (Ontario) and would terminate in Canada. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 65

An individual who lives in Ontario purchases a rail pass at a rail station in Ontario that entitles the individual to ten one-way trips from Ottawa to Montreal. When the individual wishes to travel, the individual uses the pass to obtain a rail ticket which specifies that the origin of the particular trip is Ottawa.

When the supply of the intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in the same participating province (Ontario) and would terminate in Canada. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 66

An individual purchases a commercial bus pass in Ontario that entitles the individual to unlimited bus travel for one month anywhere in Newfoundland and Labrador.

When the supply of the intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in the same participating province (Newfoundland and Labrador) and would terminate in Canada. The supply of the intangible personal property is therefore made in Newfoundland and Labrador and subject to HST at a rate of 13%.

Example 67

An individual who lives in Ontario purchases at a rail station in Ontario a rail pass containing vouchers that entitles the individual to five one-way trips in either direction between Ottawa and Toronto. The vouchers do not specify the origin of each trip since the trips can begin in either Ottawa or Toronto. When the individual wishes to travel, the individual uses one of the vouchers.

When the supply of the intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in the same participating province (Ontario) and would terminate in Canada. The supply of the intangible personal property is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 68

An individual who lives in Quebec purchases a rail pass at a rail station in Quebec that entitles the individual to ten one-way trips from Montreal to Ottawa. When the individual wishes to travel, the individual uses the pass to obtain a rail ticket which specifies that the origin of the particular trip is Montreal.

When the supply of the intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in a non-participating province. The supply of the intangible personal property is therefore made in a non-participating province and subject to GST at a rate of 5%.

Example 69

An individual who lives in Ontario purchases an air pass that entitles the individual to five return trips from Calgary to Montreal.

When the supply of the intangible personal property is made, the supplier can determine that each passenger transportation service covered by the passenger transportation pass could not begin otherwise than in a non-participating province. The supply of the intangible personal property is therefore made in a non-participating province and subject to GST at a rate of 5%.

5. SERVICES

Significant changes are proposed to the current place of supply rules for supplies of services. As explained in this section, the proposed place of supply rules for supplies of services are generally based on the home or business address of the recipient (or another address of the recipient) obtained by the supplier in the ordinary course of business of the supplier except for certain types of services in respect of which specific place of supply rules will apply.

The place of supply rules that are explained in this section do not apply with respect to passenger transportation services, freight transportation services, postage and mail delivery services and telecommunication services. There are specific place of supply rules that apply with respect to these types of supplies that are explained in Sections 6 to 9.

Canadian element

The **Canadian element** of a service means the portion of the service that is performed in Canada.

Deemed performance of service

For purposes of the place of supply rules that apply to services, where an agreement for a supply of a service is entered into but the service is never performed, the service is deemed to have been performed where the service was to be performed, as the case may be, under the terms of the agreement.

Deemed supplies of services

For GST/HST purposes, and in particular for purposes of the place of supply rules, where a supply of a service is made for consideration that includes a payment that is attributable to a period (referred to as a “billing period”) that is the whole or a part of the period during which the service is or is to be rendered under the arrangement, a separate supply of the service for separate consideration is deemed to be made by the supplier and received by the recipient for each billing period. Furthermore, the supply for each billing period is deemed to be made on the earliest of the first day of the billing period, the day on which the payment attributable to that period becomes due and the day that payment is made. The separate supplies of the services that are deemed made for each billing period can be subject to HST at a different rate to the extent that those supplies can be deemed made in a different province based on the application of the place of supply rules for services.

I. General Rules

Generally, there are four general place of supply rules that are proposed to apply with respect to supplies of services. These general rules do not apply to supplies of services with respect to which there are specific place of supply rules that apply in certain circumstances as explained in the following sections of this Part.

Rule 1

Subject to the proposed place of supply rules for services that are explained in Parts II to XII of this section and in Sections 6 to 9, a supply of a service is made in a province if, in the ordinary course of business of the supplier, the supplier

- (a) obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada of the recipient in the province,
- (b) obtains more than one address described in paragraph (a), the address in the province described in that paragraph that is most closely connected with the supply, or
- (c) in any other case, obtains an address in Canada of the recipient that is most closely connected with the supply.

Rule 1 is based on the location of the recipient. The rule generally accomplishes this by determining the place of supply based on a particular address in Canada of the recipient that is obtained by the supplier in the ordinary course of business.

The rule does not require a supplier to obtain an address of the recipient that the supplier does not already obtain in the ordinary course of its business. The determination of the relevant address in respect of a supply under Rule 1 is based on the facts taking into account the ordinary business practice of each supplier with respect to each supply.

It should be noted that an address of the recipient obtained by a supplier will only be relevant for purposes of this rule if it is obtained in the ordinary course of the supplier's business practices in connection with the supply. On the other hand, any address of the recipient obtained in the ordinary course of business of the supplier should be taken into consideration in applying the rule. The relevant address of the recipient also does not have to be an address obtained in respect of every supply made to the recipient for it to be considered a relevant address obtained in the ordinary course of business. An address of the recipient obtained by a supplier in the ordinary course of business could therefore include: an address of the recipient from which the supplier is hired in connection with a supply pursuant to an agreement for the supply (the “contracting address”); an address of the recipient that the supplier deals with in connection with a supply; or a billing address of the recipient in connection with a supply.

The rule is straightforward, particularly where a supplier only obtains a single address of the recipient in the ordinary course of its business. As explained below, where a supplier obtains several addresses of the recipient

that are connected to the supply, a determination must be made with respect to which of these addresses is the address that is most closely connected to the supply.

Although a supply of a service may be deemed to be made in a particular province based on Rule 1, self-assessment of the provincial component of the HST by the recipient in respect of the service may still be required in some cases where it is established that the service was acquired for consumption, use or supply in another province. Rule 1 is not intended to replace the self-assessment provisions by requiring a supplier to determine the province in respect of which the recipient has acquired the service for consumption, use or supply, which in some cases can be in multiple provinces. The self-assessment rules will continue to complement the place of supply rules and will be expanded to account for different provincial component rates.

The type of address obtained for purposes of the rule must be an address that represents a specific physical location since, in order for the rule to apply, the address must be "situated" in a province. For instance, an e-mail address obtained by a supplier that does not represent a physical location would not be considered to be relevant for purposes of the place of supply rule.

For purposes of the rule, the address obtained by the supplier in the ordinary course of business must be an address of the "recipient" of the supply who, under subsection 123(1) of the *Excise Tax Act*, is generally the person who is liable under the agreement for the supply to pay the consideration payable for the supply.

A. Single business address or home address obtained

Paragraph (a) of Rule 1 provides that a supply of a service is made in a province if, in the ordinary course of business of the supplier, the supplier obtains an address in the province, that is, if the supplier obtains only one address that is, if the supplier obtains only one address that is a home or business address in Canada of the recipient, the home or business address in Canada obtained by the supplier..

This part of rule will apply where a single business address or home address of the recipient is obtained by the supplier in the ordinary course of its particular business. The business address or home address of the recipient is considered to be the type of address that provides the closest approximation of the location of the recipient.

Generally, a business address is considered to be an address at which a business is located. A business address can therefore include, among other things, the address of an office, a branch, a factory or a workshop of the recipient. A Post Office Box, also known as a PO Box, that is a locked compartment within a Post Office, is not considered to be a business address. A PO Box address can, however, be considered to be another address of the recipient for purposes of the third part of the rule as explained below.

Generally, a home address means the address at which the primary residence of an individual is located.

As previously indicated, the rule does not require a supplier to obtain an address of the recipient that the supplier does not already obtain in the ordinary course of its business. The rule is straightforward to the extent that it is based on information that is already obtained by the supplier in the ordinary course of business. For purposes of parts (a) and (b) of the rule which are based on a specific type of address, it must be reasonable for the supplier to be able to conclude that the type of address obtained is a business address of the recipient based on information that is available to the supplier. For example, if an online supplier asks its customers to provide what it identifies on its website as a "business address" (for example, for billing purposes) and this is the only address of the recipient that the supplier obtains in the ordinary course of business, the supplier is not required to verify whether the address provided by the recipient is actually a business address of the recipient. This part of the rule will also apply if the supplier obtains a "business address" that the supplier knows is a business address based on

the supplier's knowledge of the recipient (for instance, based on interactions that the supplier has with the recipient).

The rule does not provide the option of selecting a particular address of the recipient among several addresses obtained in the ordinary course of business of the supplier. Rather, as explained below, the rule requires a determination of the address of the recipient that is most closely connected with the supply where multiple addresses are obtained.

B. Multiple business or home addresses obtained

Paragraph (b) of Rule 1 provides that if in the ordinary course of business of the supplier, the supplier obtains more than one business or home address in Canada of the recipient described in paragraph (a), the supply of the service is made in the province in which the home or business address that is most closely connected with the supply is located.

A supplier can obtain multiple business addresses of the recipient in the ordinary course of its business. To the extent that the obtained addresses of the recipient do not vary (as is typically the case for online suppliers), the relevant address of the recipient for purposes of the place of supply rule should also not vary. However, if the addresses of the recipient vary from supply to supply, so too can the relevant address for purposes of the place of supply rule. Since the business or home addresses obtained by each supplier can vary, the address that is most closely connected with the supply will not necessarily be the same for all suppliers, or the same for all suppliers in a given industry, or even the same with respect to all supplies made by the same supplier. The determination of the relevant address in respect of a supply under the proposed place of supply rule will be made according to the ordinary business practice of each supplier with respect to each supply.

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. This address will therefore determine the province in which the supply of the service is made where it is in Canada and is obtained by the supplier in the ordinary course of business. The determination of the place of supply can therefore be made with certainty at the time the supply is first made where the contracting address is identified in the agreement for the supply. Where the recipient is a corporation, the contracting address could be the corporation's head office.

If the contracting business address of the recipient is not obtained, the address most closely connected with the supply would be the business address of the recipient that the supplier has the most contact with and that is most used by the supplier in connection with the supply.

Example A

A supplier based in Ontario provides written advice in the form of a written legal opinion to a national corporation that has its head office in Ontario and offices across Canada. The supplier is contracted by the head office of the corporation in Ontario and only has contact with employees from that office. The written advice is sent to the head office of the recipient in Ontario. In keeping with its business practice, the corporation requests that the invoice for the service be sent to a business address of the corporation in Alberta where its accounts payable department is located.

The supplier has obtained two business addresses of the recipient in Canada in the ordinary course of its business: a business address in Ontario and a business address in Alberta. The business address of the recipient that is most closely connected with the supply is the business address in Ontario. .

Example B

The facts in this example are the same as in Example A except that the supplier that is contracted by the head office of the corporation in Ontario with respect to the supply is instructed by the head office to deal with the British Columbia office of the corporation to provide that office with advice. As a result, the supplier then only deals with the British Columbia office with respect to the supply and this involves attending several meetings at the location of the British Columbia office of the recipient.

The supplier has obtained three business addresses of the recipient in Canada in the ordinary course of its business: a business address in Ontario, in Alberta and in British Columbia. The business address of the recipient that is most closely connected with the supply is the business address in Ontario.

Example C

The facts in this example are the same as in Example A except that the supplier who ordinarily deals with the head office of the corporation in Ontario is instead contracted by the Quebec office of the corporation to provide it with advice and so the supplier then only deals with the Quebec office in connection with the supply.

The supplier has obtained three business addresses of the recipient in Canada in the ordinary course of its business: a business address in Ontario, in Alberta and in Quebec. The business address of the recipient that is most closely connected with the supply is the business address in Quebec .

C. Address other than a business address or home address obtained

Paragraph (c) of Rule 1 further provides that if in the ordinary course of business the supplier does not obtain a home or business address in Canada of the recipient, but in the ordinary course of business of the supplier, the supplier obtains an address in Canada of the recipient that is most closely connected with the supply, the supply is made in the province in which that address is located .

There is no requirement for the address of the recipient for purposes of this part of the rule to be an address at which the recipient is located.

The types of addresses that could fall under this part of the rule could include an address of the recipient such as a billing address. The address must be obtained by the supplier for a legitimate underlying business reason. This address may correspond to an address that is in fact a business address or home address of the recipient but that the supplier does not know is a business or home address because it is not the supplier's ordinary business practice to obtain this type of address. For instance, this could be the case where the supplier does not require recipients to identify the address as being a business address or a home address.

Example 70

A supplier in Quebec agrees to design the Web site of a company in Ontario. The service is performed entirely in Quebec. The only business address of the recipient obtained by the supplier in the ordinary course of its business is in Ontario.

Since the only business address of the recipient in Canada that is obtained by the supplier in the ordinary course of its business is in Ontario, the supply of the service is proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 71

A wedding planning company located in Ontario makes a supply of a service of planning a wedding to be held in Quebec. Approximately 40% of the service is to be performed in Quebec at the wedding location and 60% of the service is to be performed in Ontario. In the ordinary course of its business, the supplier only obtains a home address of the recipient that is in Ontario.

Since the only home address of the recipient in Canada that is obtained by the supplier in the ordinary course of its business is in Ontario, the supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 72

A wedding planning company located in Ontario makes a supply of a service of planning a wedding to be held in Quebec. Approximately 40% of the service is to be performed in Quebec at the wedding location and 60% of the service is to be performed in Ontario. The only home address of the recipient of the supply obtained by the supplier in the ordinary course of its business is in Manitoba.

Because the only home address of the recipient in Canada that is obtained by the supplier in the ordinary course of its business is in Manitoba, the supply of the service is proposed to be made in Manitoba and is subject to GST at a rate of 5%.

Rule 2

If Rule 1 does not deem the supply of the service to be made in a province and the Canadian element of the service is performed primarily (more than 50%) in the participating provinces, the supply is proposed to be deemed made in the participating province in which the greatest proportion of the Canadian element of the service that is performed in the participating provinces is performed.

Example 73

An online service provider located in Ontario that specializes in the provision of document editing and translation services, provides these services to clients electronically over the Internet. The clients send electronic versions of documents by e-mail to the e-mail address of the service provider to be edited or translated with the resulting edited or translated documents returned to the clients by sending the documents to the e-mail addresses of the clients. The services are performed by employees of the service provider from its business address in Ontario. The service provider does not obtain an address of its clients.

The Canadian element of the service is performed primarily in the participating provinces and the participating province in which the greatest proportion of the Canadian element of the service is performed is Ontario. The supply is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Rule 3

If Rule 2 does not deem the supply of a service to be made in a participating province because the service is performed equally in two or more participating provinces, the service is proposed to be deemed to be supplied in the participating province among those provinces that has the highest rate for the provincial component of the HST. If two or more of the participating provinces in this case have the same rate for the provincial component, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

Rule 4

If Rule 1 does not deem the supply of the service to be made in a province and the Canadian element of the service is performed otherwise than primarily (50% or less) in the participating provinces, the supply is proposed to be made in a non-participating province.

II. Personal services

The general place of supply rules for services will not apply to supplies of personal services. Furthermore, the place of supply rule for personal services explained below will not apply to the supply of an advisory, consulting or professional service. These services will generally be subject to the general place of supply rules for services, unless another specific rule applies to them.

A supply of a service (other than an advisory, consulting or professional service) that is all or substantially all (90% or more) performed in the presence of the individual to whom it is rendered (referred to as a “personal service”) and the Canadian element of which is performed primarily (more than 50%) in the participating provinces, is proposed to be made in the participating province in which the greatest proportion of the service that is performed in the participating provinces is performed.

If this rule does not result in the supply of the personal service being made in a participating province because the personal service is equally performed in two or more participating provinces, the supply of the service is proposed to be made in the participating province among those provinces that has the highest rate for the provincial component of the HST. If two or more of the participating provinces in this case have the same rate for the provincial component of the HST, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

If all or substantially all (90% or more) of a personal service is performed in the presence of the individual to whom it is rendered and the Canadian element of the service is performed otherwise than primarily (50% or less) in the participating provinces, the supply is proposed to be made in a non-participating province.

Example 74

An individual in Newfoundland and Labrador receives a hairdressing service at a hair salon in Newfoundland and Labrador.

The service is performed entirely in Newfoundland and Labrador in the presence of the individual to whom the service is rendered. The supply of the service is therefore proposed to be made in Newfoundland and Labrador and subject to HST at a rate of 13%.

Example 75

An individual who is resident in Ontario gets a massage in Quebec. In the ordinary course of business, the supplier obtains the home address of its clients.

The service that is performed entirely in the presence of the individual in Quebec, is performed otherwise than primarily in the participating provinces. The supply is therefore proposed to be made in a non-participating province and is subject to GST at a rate of 5%.

Example 76

An individual in New Brunswick hires a personal fitness trainer in Quebec to provide overall fitness training to the individual in New Brunswick. Approximately 95% of the service requires the trainer to be in the presence of the recipient while the recipient is performing physical exercises. The other 5% of the service which is not performed in the presence of the individual requires the trainer to prepare and provide to the individual a summary sheet of the weekly progress of the individual.

All or substantially all (90% or more) of the service is performed in New Brunswick in the presence of the individual to whom the service is rendered. The supply of the service is therefore proposed to be made in New Brunswick and subject to HST at a rate of 13%.

Example 77

A company in Ontario provides a guided tour of the National Capital Region, 80% of which will be performed in Ontario and 20% of which will be performed in Quebec. The recipient is accompanied by the supplier throughout the tour.

The service that is performed all or substantially all in the presence of the recipient is performed primarily in participating provinces and the greatest proportion of the service performed in participating provinces is performed in Ontario. The supply is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

III. Services in relation to tangible personal property

The general place of supply rules for supplies of services will not apply to supplies of services in relation to tangible personal property that is situated in Canada when the Canadian element of the service is performed. New place of supply rules are proposed to apply with respect to supplies of services in relation to tangible personal property. The new place of supply rules explained in this Part may be overridden by the place of supply rule explained in Part VIII that applies in certain circumstances with respect to specific types of services including repair and maintenance services.

Tangible personal property remaining in same provinces while service is performed

A supply of a service in relation to tangible personal property that is situated in one or more provinces when the Canadian element of the service begins to be performed and that remains situated in that province or provinces, as the case may be, while the Canadian element of the service is performed is proposed to be made in a participating province if the tangible personal property is situated primarily (more than 50%) in the participating provinces when the Canadian element of the service is performed. The supply of the service is proposed to be made in the participating province in which the greatest proportion of the tangible personal property that is situated in the participating provinces is situated.

Example 78

A veterinary hospital in Ontario conducts a regular check-up of a household pet at the hospital.

The pet is in Ontario when the veterinarian service begins to be performed and remains in Ontario while the service is performed. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 79

A consumer in Ontario hires an auto repair shop in Ontario to repair the consumer's vehicle at the repair shop.

The vehicle is situated in Ontario when the service begins to be performed and remains in Ontario while the service is performed. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 80

For a single storage fee, a national company headquartered in Ontario is hired by a Quebec company to store its art collection in a specialized manner for a year. The part of the collection that is situated in Quebec when the service begins to be performed and remains stored in Quebec throughout the year is equal to 40% of the total collection. The part of the collection that is situated in Ontario when the service begins to be performed and remains stored in Ontario throughout the year is equal to 60% of the total collection.

The tangible personal property is situated in Quebec and Ontario when the service begins to be performed and remains situated in those provinces while the service is performed. Furthermore, the tangible personal property is situated primarily in the participating provinces when the storage service is performed and the participating province in which the greatest proportion of the property is situated at that time is Ontario. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

If the rule described above does not result in the determination of a single participating province because the greatest proportions of the tangible personal property are equally situated in two or more participating provinces,

the service is proposed to be deemed supplied in the participating province among those provinces for which the rate of the provincial component of the HST is the highest. If two or more of the participating provinces in this case have the same rate for the provincial component of the HST, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

Example 81

A national appliance repair company is hired to provide appliance repair services for a flat fee in respect of tangible personal property that is situated in three provinces when the service begins to be performed and remains situated in those provinces when the service is performed. The part of the tangible personal property that is situated in Ontario is equal to 40%, the part of the tangible personal property that is situated in British Columbia is equal to 40% and the part of the tangible personal property that is situated in Alberta is equal to 20%.

The tangible personal property is situated in Ontario, British Columbia and Alberta when the service begins to be performed and remains situated in those provinces while the service is performed. Furthermore, the tangible personal property in Canada is situated primarily in participating provinces and the greatest proportions of that tangible personal property are situated in Ontario and British Columbia. The rate of the provincial component of the HST for Ontario is higher than the rate for British Columbia. As a result, the supply of the service is proposed to be made in Ontario and subject to HST at a rate of 13%.

If the tangible personal property is situated otherwise than primarily (50% or less) 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, the supply of the service in relation to the tangible personal property is proposed to be made in a non-participating province.

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

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 is proposed to be made in a participating province if:

- the property is situated primarily (more than 50%) in participating provinces at any time the Canadian element of the service is performed,
- the service is performed primarily (more than 50%) in participating provinces, and
- the greatest proportion of the performance of the service, which is performed in the participating provinces, is performed in that participating province.

Example 82

A company in Ontario is hired by another company in Ontario to conduct tests on a vehicle. The proportion of the service that is performed in Ontario is equal to 60% and the proportion of the service that is performed in Quebec is equal to 40%. The vehicle is situated in Ontario when the Ontario proportion of the service is performed and is situated in Quebec when the Quebec proportion of the service is performed. The tangible personal property is moved from Ontario to Quebec after the Ontario proportion of the service is performed.

The tangible personal property does not remain in the same province while the service is performed. Furthermore, the tangible personal property is situated primarily in the participating provinces when the Ontario proportion of the service is performed, the service is performed primarily in participating provinces, and the greatest proportion of the service that is performed in the participating provinces is performed in Ontario. As a result, the supply of the service is proposed to be made in Ontario and subject to HST at a rate of 13%.

If the greatest proportions of the service are performed in two or more participating provinces, the supply is proposed to be made in the participating province, among those in which the greatest proportions of the services

are performed, for which the rate of the provincial component of HST is highest. If two or more of the participating provinces in this case have the same rate for the provincial component of the HST, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

The supply of the service is proposed to be made in a non-participating province if the tangible personal property is situated otherwise than primarily (50% or less) 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 (50% or less) in participating provinces.

Example 83

A company in Ontario is hired by another company in Ontario to conduct tests on a vehicle. The proportion of the service that is performed in Quebec is equal to 60% and the proportion of the service that is performed in Ontario is equal to 40%. The vehicle is situated in Quebec when the Quebec proportion of the service is performed and is situated in Ontario when the Ontario proportion of the service is performed. The tangible personal property is moved from Quebec to Ontario after the Quebec proportion of the service is performed.

The tangible personal property does not remain in the same province while the service is performed. Furthermore, although the tangible personal property is situated primarily in the participating provinces when the Ontario proportion of the service is performed, the service as a whole is not performed primarily in the participating provinces. As a result, the supply of the service is proposed to be made in a non-participating province and is subject to GST at a rate of 5%.

IV. Services in relation to real property

The general place of supply rules for supplies of services will not apply to supplies of services in relation to real property. New place of supply rules are proposed to apply with respect to supplies of services in relation to real property.

A supply of a service in relation to real property that is situated in Canada that is situated primarily (more than 50%) in the participating provinces is proposed to be made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated. If this rule does not result in the determination of a single participating province because the real property is equally situated in two or more participating provinces, the supply of the service is proposed to be made in the participating province among those provinces that has the highest rate for the provincial component of the HST. If two or more of the participating provinces in this case have the same rate for the provincial component of the HST, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

A supply of a service in relation to real property that is situated in Canada and otherwise than primarily (50% or less) in participating provinces is proposed to be made in a non-participating province.

Services in relation to real property in Canada and outside Canada

For GST/HST purposes, under section 142 a supply of a service that relates to real property is deemed to be made in Canada if the real property is situated in Canada and is deemed to be made outside Canada if the real property is situated outside Canada. As a result of the application of section 142, where a supply of a service that relates to real property is made and the real property is both situated in Canada and outside of Canada, the proportion of the service that relates to the real property that is situated in Canada is considered to be made in Canada and the proportion of the service that relates to the real property that is situated outside Canada is considered to be made outside Canada. As a result, it is only the provision of the proportion of the service that relates to real property that is situated in Canada that may be deemed to be made in a participating province and subject to HST.

Example 84

An Ontario company hires a Quebec company to paint its warehouse in Ontario.

The real property that is situated in Canada to which the service relates is situated primarily in the participating provinces and the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated in Ontario. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 85

A New Brunswick company hires another New Brunswick company to provide maintenance services with respect to two of its buildings in New Brunswick and one of its buildings in Quebec, all of which are of equal size.

The real property that is situated in Canada to which the service relates is situated primarily in the participating provinces and the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated in New Brunswick. The supply of the service is therefore proposed to be made in New Brunswick and subject to HST at a rate of 13%.

Example 86

A farmer in Ontario owns land that borders Ontario and the United States. The land in Ontario represents 5% of the total land and the land in the United States represents 95% of the total land. The Ontario farmer hires an Ontario company to install an irrigation system in the land to distribute water to areas that include land situated in the United States.

The real property that is situated in Canada to which the service relates (i.e. 5%) is situated primarily in the participating provinces and the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated in Ontario. The proportion of the supply of the service that relates to the real property that is situated in Canada is therefore proposed to be made in Ontario and subject to HST at a rate of 13%. The proportion of the supply of the service that relates to real property situated outside Canada is deemed to be made outside Canada and is not subject to tax.

Example 87

A Quebec company is hired by a company in the United States to provide landscaping services in respect of real property 95% of which is situated in the United States and 5% of which is situated in Ontario.

The real property that is situated in Canada to which the service relates (i.e. 5%) is situated primarily in the participating provinces and the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated in Ontario. The proportion of the supply of the service that relates to the real property that is situated in Canada is therefore proposed to be made in Ontario and subject to HST at a rate of 13%. The proportion of the supply of the service that relates to real property situated outside Canada is deemed to be made outside Canada and not subject to tax.

Example 88

A survey company in British Columbia is hired by another British Columbia company to survey land that borders British Columbia and the United States. The land in British Columbia represents 5% of the total land and the land in the United States represents 95% of the total land.

The real property that is situated in Canada to which the service relates (i.e. 5%) is situated primarily in the participating provinces and the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated in British Columbia. The proportion of the supply of the service that relates to the real property that is situated in Canada is therefore proposed to be made in British Columbia and subject to HST at a rate of 12%. The proportion of the supply of the service that relates to the real property situated outside Canada is deemed to be made outside Canada and not subject to tax.

Example 89

A company in Nova Scotia operates a retail store in Nova Scotia and a retail store in Quebec. The company hires a painting company in Nova Scotia to paint the interior of both stores. Both are identical.

The real property that is situated in Canada to which the service relates is not situated primarily in the participating provinces. The supply of the service is therefore proposed to be made in a non-participating province and is subject to GST at a rate of 5%.

Example 90

A company in British Columbia operates a retail store in Ontario and a retail store in British Columbia. The company hires a painting company in British Columbia to paint the interior of both stores. Both stores are identical.

In this case, the real property that is situated in Canada to which the service relates is situated primarily in the participating provinces and in equal proportions in the participating provinces of Ontario and British Columbia. The supply of the service is therefore proposed to be made in the participating province among these two provinces that has the highest rate for the provincial component of the HST, which in this case is Ontario. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

V. Services that relate to a location-specific event

Despite the general place of supply rules for services explained in Part I, a supply of a service in relation to a location-specific event such as a performance, athletic or competitive event, festival, ceremony, conference, or similar event that will be primarily (more than 50%) performed at the location of the event in a province is proposed to be made in that province.

Example 91

A music group from Quebec agrees to play music at a concert at an outdoor venue in Ontario.

The service relates to a performance and is to be performed entirely at the location of the event in Ontario. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 92

An audio-visual company in Ontario is hired to provide lighting and other special effects at a gala event in Quebec. The services will be performed at the convention centre in Quebec where the gala will take place.

The service relates to a performance and is to be performed entirely at the location of the event in Quebec. The supply of the service is therefore proposed to be made in Quebec and subject to GST at a rate of 5%.

Example 93

A wedding planning company located in Alberta makes a supply of a service of planning a wedding to be held in British Columbia. Approximately 60% of the service is to be performed in British Columbia at the wedding location and 40% of the service is to be performed in Alberta.

The service relates to a ceremony and is to be performed primarily at the location of the ceremony in British Columbia. The supply of the service is therefore proposed to be made in British Columbia and is subject to HST at a rate of 12%.

VI. Services rendered in connection with litigation

Despite the general place of supply rules for services explained in Part I, a supply of a service that is rendered in connection with criminal, civil or administrative litigation in a province (other than a service rendered before the commencement of such litigation) that is under the jurisdiction of a court or other tribunal established under the laws of a province, or in the nature of an appeal from a decision of a court or other tribunal established under the laws of a province, is proposed to be made in that province. A supply of such a service rendered before the commencement of such litigation is proposed to be subject the general place of supply rules explained in Part I.

Example 94

A law firm headquartered in British Columbia is hired by a company in Ontario to defend the company in connection with civil litigation in Ontario that is under the jurisdiction of a court established under the laws of Ontario. The service will be performed primarily in Ontario.

The service is rendered in connection with civil litigation in Ontario that is under the jurisdiction of a court established under the laws of Ontario. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 95

An individual from Manitoba receives a speeding ticket in Ontario. The individual hires a lawyer from Ontario to represent the individual in connection with the litigation of the case in Ontario that is under the jurisdiction of a court established under the laws of Ontario.

The service is rendered in connection with litigation in Ontario that is under the jurisdiction of a court established under the laws of Ontario. The supply of the service is therefore proposed to be made in Ontario and subject to HST at a rate of 13%.

Example 96

A business located in British Columbia retains the services of a law firm for guidance regarding a potential civil action against a customer that is situated in Ontario. It is the ordinary course of business of the law firm to obtain a business address of its clients. In this case, the business address of the client is in British Columbia. After having received guidance from the law firm, the business decides to proceed with the action and commences civil litigation by filing a statement of claim in the province of Ontario. The litigation is under the jurisdiction of a court established under the laws of Ontario. The business retains the same law firm to provide its services in connection with the litigation.

The supply of the services by the law firm prior to the commencement of the civil litigation is considered to be made in the province of British Columbia based on the general place of supply rule for services explained in Part I. In the ordinary course of business of the supplier, the supplier has obtained a single business address of the recipient that is in the province of British Columbia. The subsequent supply of the litigation service by the law firm is in connection with litigation in Ontario that is under the jurisdiction of a court established under the laws of Ontario. The supply of the litigation service is therefore considered to be made in Ontario and subject to HST at a rate of 13%.

VII. Customs brokerage services

Specific place of supply rules will apply with respect to supplies of customs brokerage services.

The supply of a customs brokerage service in respect of imported commercial goods will continue to be made in the province in which the goods are situated at the time of their release. A customs brokerage service means a service of arranging for the release of imported goods or of fulfilling, in respect of the importation, any requirement under the *Customs Act* or the *Customs Tariff* to account for the goods, to report, to provide information or to remit any amount.

However, the supply of a customs brokerage service in respect of imported non-commercial goods is proposed to be made in a participating province if the provincial component of the HST is imposed in respect of the importation of the goods under subsection 212.1(2) at the rate for the participating province or would be imposed if various provisions did not apply to relieve certain types of importations from the imposition of the provincial component of the HST. The first of these relieving provisions is subsection 212.1(3) which applies to imported goods accounted for as commercial goods, imported specified motor vehicles or imported mobile homes or a floating homes that have been used or occupied in Canada by any individual. The other provisions are subsection 212.1(4) which applies to certain goods imported by or on behalf of persons who are resident in the Nova Scotia offshore area or the Newfoundland offshore area and section 213 which relieves imported goods that qualify as non-taxable importations from the imposition of the GST or federal component of the HST. In any other case, the supply of the customs brokerage service is proposed to be made in a non-participating province.

The above rules do 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 be subject to the place of supply rules for services described in other parts of this Section.

Example 97

A customs broker in Quebec arranges for the release in Ontario of imported non-commercial taxable goods for a client who is a consumer that is resident in Ontario. The goods are shipped to the home address of the consumer in Ontario.

The supply of the customs brokerage service is proposed to be made in Ontario because the Ontario provincial component of the HST is imposed in respect of the importation of the goods. As a result, the supply is proposed to be subject to HST at a rate of 13%.

Example 98

A customs broker in Quebec arranges for the release in Ontario of imported commercial goods for a business that is located in Ontario. The goods are shipped to the business address of the business in Ontario.

The supply of the customs brokerage service is proposed to be made in Ontario because the goods are released in Ontario. As a result, the supply of the service is proposed to be subject to HST at a rate of 13%.

VIII. Repairs, maintenance, cleaning, adjustments, alterations and photographic-related goods

No changes are proposed to the current place of supply rule that applies where a supplier receives tangible personal property of another person for the purpose of either

- supplying a service of repairing, maintaining, cleaning, adjusting or altering the property, or
- producing a negative, transparency, photographic print or other photographic-related good.

In this case, the supply of the service (and of any property supplied in connection with it) or of the photographic-related good is made in a province if the supplier delivers the property or the photographic-related good, as the case may be, in that province to the recipient of the supply after the service or production of the photographic-related good is completed. This place of supply rule will override the place of supply rule for supplies of services in relation to tangible personal property explained in Part III of this section and the place of supply rule for supplies of tangible personal property explained in Section 2.

For purposes of this rule, tangible personal property is deemed to be delivered in a particular province, and not in any other province, if the supplier either

- ships the property to a destination in the province that is specified in the contract for carriage of the property or transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination; or
- sends the property by mail or courier (the common meaning of “courier” applies for purposes of this rule) to an address in the particular province.

Example 99

A consumer in Ontario sends a computer needing repair to a computer repair depot in Quebec. The computer is repaired in Quebec and then shipped by the computer repair depot to the consumer in Ontario.

The supply of the repair service is made in Ontario because the repaired computer is shipped to the consumer at an address in Ontario. As a result, the supply of the repair service is proposed to be subject to HST at a rate of 13%.

Example 100

A consumer in Quebec sends a musical instrument needing repair to a musical instrument repair store in Ontario. The instrument is repaired in Ontario and then shipped by the repair store to the consumer in Quebec.

The supply of the repair service is made in Quebec because the repaired instrument is shipped to the consumer at an address in Quebec. As a result, the supply of the repair service is subject to GST at a rate of 5%.

IX. Services of a trustee in respect of a trust governed by an RRSP, RRIF, RESP, TFSA or RDSP

For purposes of this place of supply rule:

- **RRSP** means a registered retirement savings plan as defined in subsection 248(1) of the *Income Tax Act*.
- **RRIF** means a registered retirement income fund as defined in subsection 248(1) of the *Income Tax Act*.
- **RESP** means a registered education savings plan as defined in subsection 248(1) of the *Income Tax Act*.
- **TFSA** means a tax free savings account as defined in subsection 248(1) of the *Income Tax Act*.
- **RDSP** means a registered disability savings plan as defined in subsection 248(1) of the *Income Tax Act*.

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

Example 101

A trustee in Quebec makes a supply of a service in respect of a trust governed by an RRSP to an annuitant of the RRSP who has a mailing address in Ontario.

The supply of the service is made in Ontario because the mailing address of the annuitant is in Ontario. As a result, the supply of the service is proposed to be subject to HST at a rate of 13%.

X. 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.

Example 102

An individual makes a 1-900 telephone call from Ontario.

The supply of the service is made in Ontario because the call originates in Ontario. As a result, the supply of the service is proposed to be subject to HST at a rate of 13%.

XI. Computer-related services and Internet Access

Defined terms

Canadian rights in respect of intangible personal property, means that part of the property that can be used in Canada.

A **computer-related service** means

- a technical support service that is provided by means of telecommunications and relates to the operation or use of computer hardware or software; or
- a service involving the electronic storage of information and computer-to-computer transfer of information.

A **final recipient** in respect of a computer-related service or access to the Internet, means a person who is the recipient of a supply of the service or access and who acquires it otherwise than for the purpose of supplying it to another person.

Computer-related services and Internet Access

No changes are proposed to the specific place of supply rules that currently applies to supplies of computer-related services and Internet Access. The application of the place of supply rule for supply of a computer-related service and the supply of Internet access depends on whether the supply is made to a single final recipient or to multiple final recipients.

Single final recipient

If there is to be a single final recipient of a supply of a computer-related service or Internet access made by a particular supplier, and the recipient acquires the supply under an agreement with either the supplier or another supplier, the supply is made in a province if the final recipient avails itself of the service or access at a single ordinary location in that province, and either:

- the particular supplier maintains information sufficient to determine that location; or
- it is the normal business practice of the particular supplier to obtain information sufficient to determine that location.

In any other case where there is to be a single final recipient of the supply, the supply will be made in a province if the mailing address of the recipient of the supply is in that province.

Example 103

A company in Quebec provides computer and software technical support services by telephone and e-mail to a company in Ontario. The technical support services are only available to employees of the Ontario company who work at the company's business location in Ontario and call from that location.

The supply of the computer-related service is made in Ontario because the service is availed from a single ordinary location that is in Ontario and the supplier maintains sufficient information to determine that location. As a result, the supply of the computer-related service is proposed to be subject to HST at a rate of 13%.

Example 104

An internet service provider (ISP) based in Nova Scotia that supplies internet access to clients situated in the provinces of Nova Scotia and New Brunswick supplies internet access to a particular business client that is situated in Halifax, Nova Scotia. The business client enters into an agreement with the ISP for the supply of internet access and it is established pursuant to the agreement that it will access the internet from its single operation in Halifax. The business client is acquiring the internet access to be used in the course of its manufacturing business.

The supply is made in Nova Scotia because the recipient avails itself of the Internet access at a single ordinary location in Nova Scotia and the supplier maintains information sufficient to determine that location. The supply of the Internet access is therefore subject to HST at a rate of 15%.

Multiple final recipients

A different place of supply rule applies if there are to be multiple final recipients of a supply of a computer-related service or Internet access made by a particular supplier and each final recipient acquires the supply under an agreement with either the particular supplier or another supplier and, in the case of each final recipient, there is a single location at which the final recipient avails itself of the service or access and

- either the particular supplier maintains information sufficient to determine that location; or
- it is the normal business practice of the particular supplier to obtain information sufficient to determine that location.

In this case, the supply of the computer-related service is made in the province, if any, that would be determined, under the place of supply rules for services that are explained in section 5 if the service were performed in each province in which, and to the same extent to which, the final recipients avail themselves of the service. The supply of Internet access is made in the province that would be determined under the previously explained place of supply rules for intangible personal property in section 4 if the Internet access were attainable in each province in which, and to the same extent to which, the final recipients avail themselves of the Internet access. In other words, the relevant place of supply rules are to be applied to the supply of a computer-related service as a supply of a service and to the supply of Internet access as a supply of intangible personal property.

In any other case where there are to be multiple final recipients of the supply, the supply of the computer-related service or Internet access will be made in a province if the mailing address of the recipient is in that province.

Example 105

The ISP in the previous example supplies Internet access to a medium-sized business client that is engaged in the business of providing on-line services. The internet access will be used by employees of the client who work from their homes in various provinces in Canada. The agreement for the supply of the internet access is entered into between the ISP and the client with the final copy of the agreement mailed to the client at the client's business address in New Brunswick.

In this case, because there is no single ordinary location at which the final recipient avails themselves of the internet access, the supply is made in New Brunswick, the province of the mailing address of the recipient.

XII. Air navigation services

A supply of air navigation services (as defined in subsection 2(1) of the *Civil Air Navigation Services Commercialization Act*) is proposed to be made in a province if the leg of the flight in respect of which the services are performed originates in that province. This represents a clarifying amendment to the current rule.

For purposes of this place of supply rule, a **leg** of a flight of an aircraft means a part of the flight that begins where passengers embark or disembark the aircraft, where freight is loaded on the aircraft or unloaded from it or where the aircraft is stopped to allow for its servicing or refuelling, and that ends where it is next stopped for any of those purposes.

Example 106

Air navigation services are provided to an air carrier in respect of a Toronto-Montreal flight.

The supply of the air navigation services in respect of the Toronto-Montreal flight is made in Ontario because the leg of the flight in respect of which the services are performed originates in Ontario. As a result, the supply of the air navigation services is proposed to be subject to HST at a rate of 13%.

6. PASSENGER TRANSPORTATION

Defined terms

A **continuous journey** of an individual or a group of individuals means the set of all passenger transportation services provided to the individual or group for which a single ticket or voucher in respect of all the services is issued. A **continuous journey** also exists where two or more tickets or vouchers are issued in respect of two or more legs of a single journey of the individual or group on which there is no stopover between any of the legs of the journey for which separate tickets or vouchers are issued, and all the tickets or vouchers are issued by the same supplier or by two or more suppliers through one agent acting on behalf of all the suppliers. This is provided that either:

- all such tickets are supplied at the same time and evidence satisfactory to the Minister is maintained by the supplier or agent that there is no stopover between any of the legs of the journey for which separate tickets or vouchers are issued, or
- the tickets or vouchers are issued at different times and evidence satisfactory to the Minister is submitted by the supplier or agent that there is no stopover between any of the legs of the journey for which separate tickets or vouchers are issued.

The **origin** of a continuous journey means the place where the passenger transportation service that is included in the continuous journey and that is first provided begins.

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

Stopover, in respect of a continuous journey of an individual or a group of individuals, means any place at which the individual or group embarks or disembarks a conveyance used in the provision of a passenger transportation service included in the continuous journey, for any reason other than transferring to another conveyance or to allow for servicing or refueling of the conveyance. However, a stopover does not include, in the case of a continuous journey of an individual or group of individuals that does not include transportation by air and the origin and termination of which are in Canada, any place outside Canada where, at the time the journey begins, the individual or group is not scheduled to be outside Canada for an uninterrupted period of at least 24 hours during the course of the journey.

Termination of a continuous journey means the place where the passenger transportation service that is included in the continuous journey and that is last provided ends.

I. Passenger transportation services

Currently, a supply of a passenger transportation service that is part of a continuous journey is made in a province if, where 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, the origin is a place in the province and the termination, and all stopovers, in respect of the continuous journey are in Canada. No changes are proposed to this place of supply rule. Furthermore, if the origin of the continuous journey is specified in the ticket or voucher that is issued for the passenger transportation service that is provided first, but there is a termination or stopover outside Canada in respect of the continuous journey, the supply of the passenger transportation service will continue to be considered made in a non-participating province.

A supply of a passenger transportation service that is 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 does not specify the origin of the continuous journey, is currently regarded as made in a province if the place of negotiation of the supply is in the province. It is proposed that this rule be eliminated.

Under the draft regulations, a supply of a passenger transportation service will be deemed to be made in a participating province or a non-participating province based on the place of supply rules explained below.

The supply of a passenger transportation service will be deemed to be made in a participating province if the passenger transportation service:

- (i) is part of a continuous journey in respect of which there is a ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and the origin is a place in the participating province, and the termination and all stopovers in respect of the continuous journey are in Canada, or
- (ii) is part of a continuous journey in respect of which there is no ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and the passenger transportation service included in the continuous journey that is provided first cannot begin otherwise than in the participating province, and the termination and all stopovers in respect of the continuous journey are in Canada, or
- (iii) is not part of a continuous journey and the passenger transportation service begins in the participating province and ends in Canada.

The supply of a passenger transportation service will be deemed to be made in a non-participating province if the passenger transportation service:

- (i) is part of a continuous journey in respect of which there is a ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and the origin is a place outside the participating provinces, or the termination or a stopover in respect of the continuous journey is outside Canada, or
- (ii) is part of a continuous journey in respect of which there is no ticket or voucher, issued in respect of the particular passenger transportation service included in the continuous journey that is provided first, specifying the origin of the continuous journey and the passenger transportation service included in the continuous journey that is provided first cannot begin in a participating province, or the termination or a stopover in respect of the continuous journey is outside Canada, or
- (iii) is not part of a continuous journey and the passenger transportation service begins outside the participating provinces or ends outside Canada.

The place of supply of a supply of intangible personal property that is, or is similar to, a passenger transportation pass entitling an individual to passenger transportation will be determined under the specific place of supply rules explained in Part IV of Section 4 where those rules apply. If the place of supply cannot be determined under those rules, the place of supply will be determined under the general place of supply rules for intangible personal property explained in Part I of Section 4.

Example 107

An individual purchases a return flight from Ottawa, Ontario to Montreal, Quebec. The ticket issued for the flight specifies Ottawa as the origin of the continuous journey.

The supply of the passenger transportation service is made in Ontario because the ticket issued in respect of the passenger transportation service that is provided first and included in the continuous journey specifies the origin of the continuous journey as being in Ontario (i.e. Ottawa) and there is no termination or stopover outside Canada. The supply of the passenger transportation service is therefore proposed to be subject to HST at a rate of 13%.

Example 108

An individual purchases a return air ticket from Ottawa to Boston. Ottawa is specified as the origin of the continuous journey on the ticket.

The supply of the passenger transportation service is made in a non-participating province. Although the ticket issued in respect of the passenger transportation service that is provided first and included in the continuous journey specifies that the origin of the continuous journey is in Ontario (i.e. Ottawa), there is a stopover outside Canada in respect of the continuous journey (i.e. in Boston). The supply of the passenger transportation service is therefore subject to GST at a rate of 5%.

Example 109

An individual purchases a ticket for a flight from Toronto, Ontario to London, England. The ticket issued for the flight specifies Toronto as the origin of the continuous journey.

The supply of the passenger transportation service is made in a non-participating province. Although the ticket issued in respect of the passenger transportation service that is provided first and included in the continuous journey specifies that the origin of the continuous journey is in Ontario (i.e. Toronto), the termination of the continuous journey is outside Canada. The supply is zero-rated because the termination of the continuous journey is outside the taxation area (i.e. in London).

Example 110

An individual who lives in Ontario purchases a booklet of ten return train tickets from Toronto to Montreal, each of which specify Toronto as the origin of each trip.

The supplies of the passenger transportation services are made in Ontario because the tickets issued in respect of the first provided passenger transportation service included in the continuous journey specifies that the origin of the continuous journey is in Ontario. The supplies of the passenger transportation services are therefore proposed to be subject to HST at a rate of 13%.

II. Tangible personal property and services supplied during passenger transportation services

Supplies made during international flight or international voyage

If a supply of tangible personal property or a service (other than a passenger transportation service) is made to an individual on board an aircraft on an international flight or a vessel on an international voyage and physical possession of the property is transferred to the individual, or the service is wholly performed, on board the aircraft or vessel, the supply is deemed made outside Canada and is therefore not subject to tax.

An **international flight** means any flight (other than a flight originating and terminating in Canada) of an aircraft that is operated by a person in the course of a business of supplying passenger transportation services. An **international voyage** means any voyage (other than a voyage originating and terminating in Canada) of a vessel that is operated by a person in the course of a business of supplying passenger transportation services.

Tangible personal property and services supplied during passenger transportation services

Generally, under the current place of supply rule, if a supply by way of sale of tangible personal property or a service (other than a passenger transportation service) is made to an individual on board a conveyance in the course of a business of supplying passenger transportation services and physical possession of the property is transferred to the individual, or the service is wholly performed, on board the conveyance during any leg of the journey that begins in any participating province and ends in any participating province, the supply is made in the participating province in which that leg of the journey begins.

A change is proposed to the current place of supply rule. If a supply by way of sale of tangible personal property or a service (other than a passenger transportation service) is made to an individual on board a conveyance in the course of a business of supplying passenger transportation services and physical possession of the property is transferred to the individual, or the service is wholly performed, on board the conveyance during any leg of a journey that begins in any province and ends in any province, the supply of the property or service is proposed to be made in the province in which that leg of the journey begins.

Example 111

A passenger who is on a journey by air from Ottawa to Vancouver purchases a beverage during the Ottawa-Calgary leg of the journey and then purchases another beverage during the Calgary-Vancouver leg of the journey.

The supply of the first beverage is made during the Ottawa-Calgary leg of the journey that begins in Ontario. The supply of the first beverage is therefore proposed to be made in Ontario and subject to HST at a rate of 13%. The supply of the second beverage that is made during the Calgary-Vancouver leg of the journey that begins in Alberta. The supply of the second beverage is therefore proposed to be made in Alberta and subject to GST at a rate of 5%.

Example 112

An individual purchases a return flight from Ottawa to Boston. The individual purchases a sandwich during the flight from Ottawa to Boston and then purchases another sandwich during the return flight from Boston to Ottawa.

The supply of the sandwich on each flight is deemed to be made outside Canada under section 180.1 of the Act because each supply is made during an international flight. As a result, the supplies of the sandwiches are not subject to tax.

III. Services related to the supply of passenger transportation services

Baggage charges

Under the current place of supply rule, 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 is made in the same province in which the supply of the passenger transportation service is made. No changes are proposed to this place of supply rule.

Example 113

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 is therefore proposed to be subject to HST at a rate of 12%.

Child Supervision

Under the current place of supply rule, 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 is made

in the same province in which the supply of the passenger transportation service is made. No changes are proposed to this place of supply rule.

Example 114

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 is therefore proposed to be subject to HST at a rate of 13%.

Services related to a ticket, voucher or reservation

Under the current place of supply rule, 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 is 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. No changes are proposed to this place of supply rule.

Example 115

An individual cancels a ticket for a return flight from Ottawa to Toronto 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 is proposed to be subject to HST at a rate of 13%.

7. FREIGHT TRANSPORTATION SERVICES

Defined terms

A **freight transportation service** means a service of transporting tangible personal property and, for greater certainty, includes a service of delivering mail. A freight transportation service also includes any other property or service supplied to the recipient of the freight transportation service by the supplier of the freight transportation service if the other property or service is part of or incidental to the freight transportation service, whether there is a separate charge for the other property or service. However, a freight transportation service does not include a service provided by the supplier of a passenger transportation service of transporting an individual's baggage in connection with the passenger transportation service. There is a separate place of supply rule that applies to this type of service as explained in the previous section dealing with services relating to the supply of passenger transportation services.

The **destination** of a freight transportation service means the place specified by the shipper of the property (usually on the bill-of-lading or other shipping documents) where possession of the property is transferred to the person to whom the property is consigned or addressed by the shipper.

Freight transportation service

No changes are proposed to the place of supply rule that currently applies to supplies of freight transportation services. A supply of a freight transportation service is made in a province if the destination of the service is in the province. This rule does not apply to most supplies of mail services supplied by the Canada Post

Corporation which are subject to the place of supply rules that are explained in the following section dealing with postage and mail delivery services.

Freight transportation service with a destination in more than one province

Where a supply of a freight transportation service has destinations in more than one province, the provision of the service of transporting the goods destined for each province is deemed to be a separate supply made for separate consideration equal to the portion of the total consideration for the supply that is reasonably attributable to the transportation of the goods to that province. As a result, if a deemed separate supply of a freight transportation service has a destination in a participating province, that supply is deemed to be made in that province for consideration equal to the portion of the total consideration that is reasonably attributable to that service and subject to HST. If a deemed separate supply of a freight transportation service has a destination in a non-participating province, that supply is deemed to be made in that province for consideration equal to the portion of the total consideration that is reasonably attributable to that service and subject to GST.

Example 116

A manufacturer in Quebec hires a carrier to transport products to a wholesaler in Ontario.

The supply of the freight transportation service is made in Ontario because the destination of the freight transportation service is in Ontario. The supply of the freight transportation service is therefore proposed to be subject to HST at a rate of 13%.

Example 117

An individual hires a moving company to pick up the individual's personal effects at a residence in Whitehorse, Yukon and deliver the effects to a residence in Coquitlam, British Columbia.

The supply of the freight transportation service is made in British Columbia because the destination of the freight transportation service is in British Columbia. The supply of the freight transportation service is therefore proposed to be subject to HST at a rate of 12%.

Example 118

A manufacturer in British Columbia hires a carrier to transport products from the United States to a wholesaler in Ontario.

The supply of the freight transportation service is made in Ontario because the destination of the freight transportation service is in Ontario. However, the supply of the freight transportation service is zero-rated because it originates outside Canada.

Example 119

A manufacturer in Ontario hires a carrier to transport products to a wholesaler in Quebec.

The supply of the freight transportation service is made in Quebec because the destination of the service is in Quebec. As a result, the supply is subject to GST at a rate of 5%.

Example 120

A computer manufacturer in Ontario hires a carrier to transport a quantity of computers to two different destinations. Half of the load of computers has been sold by the manufacturer to a company located in Ontario and the other half has been sold by the manufacturer to a company in Quebec. There is a single supply of a freight transportation service and a single charge for the service. Of the total, 40% is reasonably attributable to the transportation of the computers to the Ontario destination and 60% is reasonably attributable to the transportation of the computers to the Quebec destination.

The provision of the service of transporting the computers to the Ontario destination and the provision of the service of transporting the computers to the Quebec destination are each deemed to be separate supplies made for separate consideration. The provision of the service of transporting the computers to the destination in Ontario is made in Ontario. The deemed consideration for this service is equal to 40% of the total charge and is proposed to be subject to HST at a rate of 13%. The provision of the service of transporting the computers to the destination in Quebec is made in Quebec. The deemed consideration for this service is equal to 60% of the total charge and is subject to GST at a rate of 5%.

8. POSTAGE AND MAIL DELIVERY SERVICES

No changes are proposed to the place of supply rules that currently apply with respect to postage and mail delivery services.

Defined terms

A **postage stamp** means a stamp authorized by the Canada Post Corporation for use as evidence of the payment of postage, but does not include a postage meter impression, a permit imprint or any "business reply" indicia or item bearing that indicia.

A **permit imprint** means an indicia the use of which as evidence of the payment of postage exclusively by a person is authorized under an agreement between the Canada Post Corporation and the person, but does not include a postage meter impression or any "business reply" indicia or item bearing that indicia.

Postage Stamp and Mail Delivery Service

A supply of a right to a mail delivery service as evidenced by a postage stamp or a postage-paid card, package or similar item (other than an item bearing a "business reply" indicia) that is authorized by the Canada Post Corporation is made in the province in which the supplier delivers the stamp or item to the recipient.

The supply of a mail delivery service for which the postage stamp or similar item is used as evidence of the payment of postage for the mail delivery service is made in the province in which the stamp or item is delivered. However, this rule does not apply in circumstances where:

- the supply of the service is made pursuant to a bill of lading; or
- the consideration for the supply of the service is \$5 or more and the address to which the mail is sent is not in a participating province.

In both of these circumstances, the place of supply rules that were explained in the previous section apply to determine the place of supply of the mail delivery service. As a result, the place of supply of the mail delivery service in these circumstances is based on the destination of the mail delivery service.

There is a separate place of supply rule that applies to the tangible personal property delivered to which the mail delivery service relates as explained in Section 2.

Example 121

An individual purchases several postage stamps at a retail postal outlet in Ontario to eventually be used by the individual to mail letters.

The supply of the stamps is made in Ontario because the individual takes delivery of the stamps in Ontario. As a result, the supply of the postage stamps is proposed to be subject to HST at a rate of 13%.

Example 122

An individual orders by mail-order a booklet of postage stamps. The supplier delivers the booklet by mail from Nova Scotia to the individual's address in Ontario.

The supply of the booklet of postage stamps is made in Ontario because the supplier delivered the stamps to the individual at an address in Ontario. As a result, the supply of the booklet of postage stamps is proposed to be subject to HST at a rate of 13%.

Postage Meter

If the payment of postage for a mail delivery service supplied by the Canada Post Corporation otherwise than pursuant to a bill of lading is evidenced by a postage meter impression printed by a meter, the supply of the service is made in a province if the ordinary location of the meter when the recipient of the supply pays an amount to the Corporation for the purpose of paying that postage is in the province. Based on the previously explained deeming rule that applies for purposes of the place of supply rules in Schedule IX, the ordinary location of the meter at a particular time is deemed to be the location that the supplier and the recipient mutually agree is the ordinary location of the meter at that time and this location may change from time to time.

Where the exclusion applies because the supply is made pursuant to a bill of lading, the supply is subject to the general place of supply rule for freight transportation services that was explained in the previous section. As a result, the place of supply of the mail delivery service is based on the destination of the service.

Permit Imprint

If the payment of postage for a mail delivery service supplied by the Canada Post Corporation otherwise than pursuant to a bill of lading is evidenced by a permit imprint, the supply of the service is made in the province in which the recipient of the supply deposits the mail with the Corporation in accordance with the agreement between the recipient and the Corporation authorizing the use of the permit imprint.

In the circumstance where the supply is made pursuant to a bill of lading, the general place of supply rule for freight transportation services that was explained in the previous section would apply. As a result, the place of supply of the mail delivery service is based on the destination of the service.

Business Indicia

When an item bearing a "business reply" indicia is used, the place of supply rules that are explained in the previous section apply to determine the place of supply of the mail delivery service. As a result, the place of supply of the mail delivery service is based on the destination of the mail delivery service.

9. TELECOMMUNICATION SERVICES

No changes are proposed to the place of supply rules that currently apply with respect to supplies of telecommunication services.

Telecommunication service

A **telecommunication service** means

- the service of emitting, transmitting or receiving signs, signals, writing, images or sounds or intelligence of any nature by wire, cable, radio, optical or other electromagnetic system, or by any similar technical system, or
- making available for such emission, transmission or reception telecommunications facilities of a person who carries on the business of supplying services referred to above.

Telecommunications facility

A **telecommunications facility** means any facility, apparatus or other thing (including any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, or any part thereof) that is used or is capable of being used for telecommunications.

Billing location

For purposes of the place of supply rules that determine the province in which the supply of a telecommunication service is made, the **billing location** for a telecommunication service is in a province if the fee for the service is charged or applied to an account that the recipient has with the supplier of the service and the account relates to telecommunications facilities that are used or are available for use by the recipient to obtain telecommunication services and all of those facilities are ordinarily located in the province. Based on the previously explained deeming rule that applies for purposes of the place of supply rules in Schedule IX, the ordinary location of the telecommunications facilities at a particular time is deemed to be the location that the supplier and the recipient mutually agree is the ordinary location of the telecommunications facilities at that time and this location may change from time to time.

If the fee for the service is not charged or applied to an account that the recipient has with the supplier of the telecommunication service, the **billing location** is considered to be in a province if the telecommunications facility used to initiate the service is located in that province.

Telecommunications channel

A **telecommunications channel** means a telecommunications circuit, line, frequency, channel, partial channel or other means of sending or receiving a telecommunication but does not include a satellite channel.

Telecommunication service

A supply of a telecommunication service of making telecommunications facilities available (other than a service of granting sole access to a telecommunications channel) is made in a province if:

- all of the facilities are ordinarily located in that province; or
- where not all of the facilities are ordinarily located in the province, the invoice for the supply is sent to an address in that province.

For other types of supplies of telecommunication services (other than a service of granting sole access to a telecommunications channel), the supply is made in a province if the telecommunication:

- is both emitted and received in that province;
- is either emitted or received in that province and the billing location for the service is located in that province; or

-
- is emitted in the province and received outside the province and the billing location for the service is not in a province where the telecommunication is emitted or received.

Example 123

An individual makes a long-distance telephone call from Toronto to Ottawa using a cellular phone with a billing location in Quebec.

The supply of the telecommunication service is made in Ontario because the telecommunication is emitted and received in Ontario. The supply is therefore proposed to be subject to HST at a rate of 13%.

Example 124

An individual makes a long-distance telephone call from Toronto to Montreal. The billing location for the service is in Ontario.

The supply of the telecommunication service is made in Ontario because the telecommunication is emitted in Ontario and the billing location for the service is in Ontario. The supply is therefore proposed to be subject to HST at a rate of 13%.

Example 125

An individual makes a long-distance telephone call from Toronto to Vancouver. The billing location for the service is in Quebec.

The supply of the telecommunication service is made in Ontario because the telecommunication is emitted in Ontario and the billing location is not in a province in which the telecommunication is emitted or received. The supply is therefore proposed to be subject to HST at a rate of 13%.

Dedicated telecommunications channel

A supply of a telecommunication service of granting sole access to a telecommunications channel is made in a province if it is deemed to be made in the province based on the application of a specific place of supply rule that deems there to be separate supplies of the service. Specifically, a supply of a service of granting sole access to a telecommunications channel for transmitting telecommunications between two provinces is deemed to be a separate supply of the service made in each of those provinces as well as a separate supply in any province between them. The consideration for the deemed supply in each province is calculated based on the part of the overall distance over which the telecommunication would be transmitted that would occur in the particular province if the telecommunication were transmitted solely by means of cable and related facilities located in Canada that connected, in a direct line, the transmitters for emitting and receiving the telecommunications.

Example 126

A Canadian telecommunication carrier supplies the sole use of a telecommunications line between a place in Ontario and a place in Quebec by way of lease to a corporation based in Ontario. The telecommunications line is used by the corporation to transfer secure data between its office in Ontario and its office in Quebec. The direct line distance in kilometres of the part of the telecommunications line that is located in Ontario represents 80% of the total direct line distance of the line between the transmitters in Ontario and Quebec. The direct line distance in kilometres of the part of the telecommunications line that is located in Quebec represents 20% of the total direct line distance of the line between the transmitters in Ontario and Quebec.

The supply of the telecommunication service of granting sole access to the telecommunications channel between Ontario and Quebec is deemed to be a separate supply of a telecommunication service made in each of those two provinces. The deemed supply of the telecommunication service made in Ontario is proposed to be subject to HST at a rate of 13%. The consideration for this supply is equal to 80% of the total consideration for the sole access to the telecommunications channel. The deemed supply of the telecommunication service made in Quebec is subject to GST at a rate of 5%. The consideration for this supply is equal to 20% of the total consideration for the sole access to the telecommunications channel.

10. DEEMED SUPPLIES

Part IX of Schedule IX sets out a number of rules that override the place of supply rules in Schedule IX explained in previous sections of this publication in circumstances where supplies are deemed to be made pursuant to various provisions of the Act.

Deemed supplies of property

Notwithstanding the place of supply rules explained in previous sections of this publication, a supply of property that is deemed under any of various provisions of the Act (specifically, sections 129, 129.1, 171, 171.1 and 172, subsections 183(1) and (4) and 184(1) and (3) and sections 196.1 and 268 of the Act) to have been made or received at any time is made where the property is situated at that time.

Supplies deemed made in a province

Notwithstanding the place of supply rules in Schedule IX that are explained in previous sections of this publication, a supply of property or a service is made in a province if the supply is deemed under Part IX of the Act or regulations made under that Part to be made in the province. In addition to the drop-shipment provisions explained in Example 128 below, an example would be subsection 163(2.1) that deems the provincially taxable portion of a tour package in respect of a participating province to be a supply made in that province. Another example would be subsection 178.8(4) that applies where a specified supply of imported goods is made outside Canada. In this case, the goods are deemed to be supplied in Canada and more specifically, in the province in which the goods are released, where the supplier and recipient of the goods enter into an agreement to have the supplier, rather than the recipient, be the person entitled to an input tax credit for the tax on the importation of the goods (for additional information regarding this provision see GST/HST Policy Statement P-125 *Input Tax Credit Entitlement For Tax On Imported Goods* available on the CRA Web site at: www.cra-arc.gc.ca/E/pub/gl/p-125/README.html).

Example 127

An unregistered non-resident agrees to sell goods to a registered customer in Ontario for their fair market value of \$100,000. The customer will resell the goods in the course of its business. Pursuant to the agreement, delivery of the goods to the customer is to occur at the customer's premises in Ontario. The registered manufacturer of the goods who is located in Ontario agrees to sell the goods to the non-resident for \$90,000 and to deliver them to the customer's premises in Ontario.

The manufacturer has made a taxable supply of the goods to the non-resident and caused physical possession of the goods to be transferred to the customer in Ontario. Based on the application of the drop-shipment rules in section 179 of the Act, the Ontario manufacturer is therefore deemed to have made a taxable supply of the goods in Ontario to the non-resident for consideration equal to their fair market value of \$100,000. The Ontario manufacturer is therefore proposed to be required to collect HST at a rate of 13% from the non-resident in respect of the supply of the goods that is equal to \$13,000 (HST at a rate of 13% × the fair market value of the goods of \$100,000).

This example is similar to Examples 2 and 8 of GST/HST Memorandum 3.3.1 *Drop-Shipments* which is available on the CRA Web site at: www.cra-arc.gc.ca/E/pub/gm/3-3-1/README.html. As explained in Example 2 of the memorandum, based on an input tax credit flow-through mechanism available under section 180 of the Act, the amount of \$13,000 in HST that the non-resident pays to the manufacturer may be recovered by the registered customer in the form of an ITC in certain circumstances. As also explained in Example 8 of the memorandum, it would have been possible in the above example to have avoided the application of HST to the supply made to the non-resident had the registered customer issued a drop-shipment certificate to the manufacturer with respect to the goods. The conditions for issuing a drop-shipment certificate and their effect are explained in detail in the memorandum.

Enquiries by telephone

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

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

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

All technical publications on GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthsttech.

