

## Place of Supply Rules

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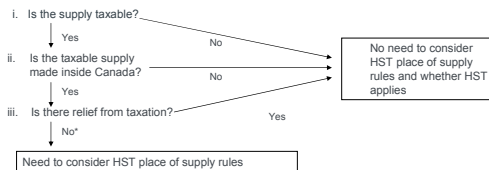
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## Harmonizing GST & PST

### III. Place of Supply Rules

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

Preliminary Analysis/Decision Tree



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

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

##### i. Is it a taxable supply?

- Under ss. 123(1) of the ETA
  - A "taxable supply" is a supply of property or services "made in the course of a commercial activity".
  - A "commercial activity" includes a business or an adventure or concern in the nature of trade, or the supply of real property, except to the extent that any of them involves the making of exempt supplies.
  - An "exempt supply" is "a supply included in Schedule V" to the ETA.
- Certain provisions in the ETA can deem a supply to be made otherwise than in the course of a commercial activity. See, for example, ss. 141.1(1)(b) and (2)(b), and 200(3) and (4).

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

##### iii. Is there relief from taxation? (continued)

- Schedule VI Zero-rated supplies under:
  - Part I – Prescription Drugs
  - Part II – Medical and Assistive Devices
  - Part III – Basic Groceries
  - Part IV – Agriculture and Fishing
  - Part V – Exports (other than Financial Services)
  - Parts VI and VII – International Travel and Transportation
  - Part VIII - International Organizations and Officials
  - Part IX – Exported Financial Services

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

- GST/HST amendments to ETA passed into law on December 15, 2009:
- ETA, ss. 123(1):

“participating province” means:

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

HST provincial “tax rate” means:

  - (a) a prescribed rate; or
  - (b) as identified in Schedule VIII.
- Amends Schedule VIII by adding Ontario and BC with 8% and 7% provincial tax rate, respectively. All other participating provinces (Nfld/Labrador, NB and NS) will continue to be 8%.

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services?

##### 1. Goods

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services?

##### 1. Goods

###### Selling Goods (continued)

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

Example derived from TIB-078 – "Place of Supply Rules under the HST":

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property and services?

##### 1. Goods

###### Selling Goods (continued)

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services?

##### 1. Goods (continued)

###### Supplying Goods otherwise than by way of sale (lease, license, etc.)

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services?

##### 1. Goods

###### Supplying Goods otherwise than by way of sale (lease, license, etc.) (continued)

Ss.136.1(1):

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

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

Where lease of goods for greater than 3 months, place of supply for HST purposes (the "ordinary location" of the goods) has to be determined separately for each supply (lease interval) at the time each supply is made.

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services? (continued)

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

- s.1 – "lease interval" incorporates meaning in section 136.1 of the ETA, essentially corresponds with the period covered by a lease payment.
- s.2 – "place of negotiation" – supplier's PE at which the principal negotiator of the supply agreement works, or to which that individual ordinarily reports in relation to his activities relating to the supply. The term "negotiating" for this purpose includes making or accepting the offer.
- s.3 – Property deemed delivered or service deemed performed according to the terms of the supply agreement if the agreement is not fulfilled.
- s.4 – Parties can mutually agree as to the "ordinary location" of goods from time to time.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services? (continued)

#### 2. Part III, Schedule IX to the ETA, intangible personal property (These rules will change effective May 1, 2010.)

Relating to real property

• Ss. 2(a)

- (i) all of substantially all (i.e., 90% or more) of the Canadian real property is in the province; or
- (ii) the "place of negotiation" of the supply of the intangible personal property is in the province and > 10% of the real property is in the province.

Relating to goods

• Ss. 2(b)

- (i)  $\geq 90\%$  of the goods ordinarily located in Canada is ordinarily located in the province; or
- (ii) the "place of negotiation" of the supply of the intangible personal property is in the province and >10% of the goods are ordinarily located in the province.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services? (continued)

#### 2. Part III, Schedule IX to the ETA, intangible personal property (continued) (These rules will change effective May 1, 2010.)

Relating to services to be performed

• Ss. 2(c)

- (i)  $\geq 90\%$  of the services performed in Canada is in the province; or
- (ii) the "place of negotiation" of the supply of the intangible personal property is in the province and >10% of the services are performed in the province.

Not related to real property, goods or services

• Ss. 2(d)

- (i)  $\geq 90\%$  of the Canadian rights can **only** be used in the province; or
- (ii) the "place of negotiation" of the supply is in the province and the property can be used >10% (or for non-FIs, to some extent) in the province.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services? (continued)

#### 3. Real property, Part IV, Schedule IX to the ETA:\*

Section 1 – Supplied in the province where situated. Remember section 136.2, ETA.

Section 2 – A service in relation to real property is supplied in a province if:

- (a)  $\geq 90\%$  of the Canadian real property is in the province; or
- (b) place of negotiation of the supply of service is in the province and >10% of the real property is in the province.

\*To change effective May 1, 2010

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services? (continued)

#### 4. Services, Part V, Schedule IX to the ETA\*

- Section 2:
  - (a)  $\geq 90\%$  of the Canadian element of the service performed in the province; or
  - (b) place of negotiation of supply and  $>10\%$  of service performed in the province.
- Section 3:

If neither the above rules apply and the Canadian element of the service is performed  $>50\%$  in the participating provinces, the supply of the service is made in the participating province in which the greatest proportion of the service is performed, unless the place of negotiation of supply is outside Canada and  $<90\%$  of the service is performed in Canada.

\* To change effective May 1, 2010

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### C. What are the HST place of supply rules for goods, intangible personal property, real property and services?

#### 4. Services (continued)

Ss. 136.1(2) of the ETA:

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

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

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies?

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

- Section 1 - A deemed supply of property under certain sections of the ETA is made in the province where the property is situated at the time the supply is made.
- Section 2 - Specific rules in Part IX of the ETA or its regulations override any other Part of Schedule IX to the ETA. They include section 136.2 (supply of real property partly inside and outside a province), section 136.3 (freight services to deliver goods to multiple provinces), section 136.4 ("telecommunication channel" transmitted through more than one province) and ss. 163(2.1) (tour package covering a participating province and outside the HST region).
- Section 3 - Specific rules prescribed in the *Place of Supply (GST/HST) Regulations* override any other Part of Schedule IX.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies? (continued)

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies? (continued)

##### Transportation Services, Part VI, Schedule IX to the ETA:

Section 2 – (1) Passenger transportation service is part of a continuous journey that originates in the province and the termination and stopovers are all within Canada, or (2) in any other case, the "place of negotiation" of the supply is in the province. Proposed amendment effective May 1, 2010 to eliminate place of negotiation of supply criterion and replace with where the passenger transport service begins.

Section 3 – During leg of passenger transportation service between participating HST provinces, for a sale of good or service performed, the supply is made in the participating province in which the leg begins. To be amended effective May 1, 2010 to extend to any leg of a journey between any two points in Canada so that the place of supply is the province where the leg begins.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies?

##### Transportation Services, Part VI, Schedule IX to the ETA (continued):

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

Section 4.1 – Issuing, amending, cancelling, etc. a ticket considered made in the same province as the related passenger transportation service (where/as if the service was performed).

Section 5 – Freight transportation service made in the destination province. Remember section 136.3 of the ETA.

(See for Postage, Part VII, Schedule IX)

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies? (continued)

##### Telecommunication Services, Part VIII, Schedule IX to the ETA:

- Ss. 2(a) Where telecommunication service of making telecommunication facilities available:
- (i) facilities ordinarily located in the province, or
  - (ii) if the facilities not all in one province, the invoice is sent to the province.
- Ss. 2(b) Where other types of telecommunication services, at least 2 out of 3 of the following are in the province:
- (i) emission (origin),
  - (ii) reception, and
  - (iii) billing location (as defined in section 1), or
- the emission is in the province, the reception is outside the province and the "billing location" (as defined in section 1) is not in a province in which emission or reception occurs.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies? (continued)

##### Section 3, Part IX, Schedule IX, *Place of Supply (GST/HST) Regulations*:

Section 4, Regs: Customs brokerage services relating to release and accounting of imports

- supplied in the province where the imported goods are released. For other services by a customs broker, refer to Part V, Schedule IX. Proposed to be amended effective May 1, 2010 for non-commercial imports only. See details on Slide 32 at \*.

Section 5, Regs: Railway rolling stock supplied otherwise than by way of sale

- supplied in the province where the rolling stock is delivered or made available (applies for all lease intervals). Also applies to any renewal period.

Section 6, Regs: Membership supplied to an individual

- where membership rights can be exercised otherwise than exclusively in one province, supplied in the province where the mailing address of the individual is situated. Proposed to be repeated effective May 1, 2010. Place of supply rules for IPP will apply.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies?

##### Section 3, Part IX, Schedule IX, *Place of Supply (GST/HST) Regulations* (continued):

Section 7, Regs: Photographic service or repair service

- supplied in the province where photographic item or repaired good delivered (or sent) under the definition of "delivery" in section 2 of the Regs.

Section 8, Regs: Service of trustee of RRSP, RRIF or RESP

- supplied to annuitant or subscriber in the province where the mailing address of the annuitant/subscriber is located. Proposed amendment effective May 1, 2010 to extend the existing rules to TFSA and DSB.

Section 9, Regs: 1-800 or 1-976 service

- supplied in a province if the call originates in the province. Clarifying amendment proposed.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies?

##### Section 3, Part IX, Schedule IX, *Place of Supply (GST/HST) Regulations* (continued):

Ss. 10(1), Regs: Single "final recipient" (end-user) of "computer-related service" (as defined in section 1 of the Regs) or Internet access

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

Ss. 10(2), Regs: Multiple "final recipients" of "computer-related service" or Internet access

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### D. What are the special rules for specific types of taxable supplies?

##### Section 3, Part IX, Schedule IX, *Place of Supply (GST/HST) Regulations* (continued):

Section 11, Regs: Air Navigation Services

- supplied in a province if the flight or leg of the flight, in respect of which the services are performed, originates in the province. Proposed clarifying amendment to refer only to the leg of the flight.

\*Section 4, Regs: Customs Broker Services (continued from Slide 29)

- Effective May 1, 2010, if the provincial component of HST for a participating province is payable at the border on the non-commercial import into Canada of a good under section 212.1(2) of the ETA (or would be payable if certain special relieving provisions did not apply), then the customs brokerage service is supplied in that participating province; otherwise the service is supplied in a non-participating province.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. Once the HST is implemented in BC and Ontario effective July 1, 2010, what rules will change? \*

February 25, 2010 release by the Department of Finance without draft regulations:

- Significant changes proposed to be made to the place of supply rules for intangible personal property and services.
- "Place of negotiation of supply" eliminated as a criterion.
- More reliance on where the "recipient" of the taxable supply is located.

\*To take effect for taxable (other than zero-rated) supplies made in Canada on or after May 1, 2010. In certain specified circumstances, may apply to such taxable supplies made before May 1, 2010.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

##### I. Intangible Personal Property, General Rules

- IPP that can be used in Canada and can **only be** used >50% in the participating provinces is supplied in a participating province.
- IPP that can be used in Canada and **only be** used >50% outside the participating provinces is supplied in a non-participating province.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010?

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

- Where the Canadian rights can only be used >50% in the participating provinces, the participating province which has the greatest proportion of those rights, if any, that can be specifically limited to, or only used in, one or more provinces. If the Canadian rights can only be used in a participating province, the supply of IPP is in that province.
- If the above rules are not determinative, then need to consider the following Rules 1, 2 and 3.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010?

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

###### Rule 1:

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010?

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

###### Rule 2:

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

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

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

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010?

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

###### Rule 3:

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010?

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

Where IPP is not limited to >50% use in either the participating or non-participating provinces, then need to consider the following rules 1, 2 and 3.

###### Rule 1:

Where consideration <\$300, parallels Rule 1 previously recited. Could, however, be either a participating or non-participating province.

###### Rule 2:

If Rule 1 does not apply, parallels Rule 2 previously recited. Could, however, be either a participating or a non-participating province.

###### Rule 3:

If neither Rule 1 nor 2 applies, parallels Rule 3 previously cited. Note, by default, supply of IPP considered made in a participating province.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

##### II. Intangible Personal Property Relating to Goods, General Rules in Preceding Section I are Not Applicable

- IPP relating to goods ordinarily located in Canada supplied in a participating province if the goods ordinarily located >50% in the participating provinces. In the participating province where the greatest proportion ordinarily located. If not decisive because two or more participating provinces each equally have the greatest proportion, use the highest provincial rate or, if all rates equal (8%), use that rate.
- IPP relating to goods ordinarily located in Canada supplied in a non-participating province if the goods ordinarily located >50% in non-participating provinces.

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## Harmonizing GST & PST

### III. Place of Supply Rule

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

##### III. Intangible Personal Property Relating to Real Property, General Rules in Preceding Section I are Not Applicable

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

##### IV. Intangible Personal Property Relating to Services, General Rules in Preceding Section I *Might be* Applicable

- If the supplier can determine at the time the supply of IPP is made that the place of supply of all the services would be in particular province, then the supply of the IPP would be made in that province.
- If the above rule is not determinative, then the general place of supply rules for IPP in preceding Section I applies.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

##### I. Services, General Rules

###### Rule 1:

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

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

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010?

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

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

###### Rule 2:

Where the Canadian element of the service is performed >50% in the participating provinces, the supply is made in the participating province in which the greatest proportion is performed.

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

###### Rule 3 Tie-breaker:

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

###### or Rule 4:

Where the Canadian element of the service is performed otherwise than >50% in the participating provinces, the supply is deemed to be made in a non-participating province.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

##### II. Personal Services, General Rules in Preceding Section I are Not Applicable

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

#### III. Services in relation to Goods, General Rules in Preceding Section I are Not Applicable

May be overridden by the prescribed rule in Section 7 of the *Place of Supply Regs.*

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

1. Made in a participating province if, in relation to Canadian element of services, >50% of goods in the participating provinces. Made in the participating province in which the greatest proportion of the goods is situated.

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

Tie-breaker:

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

OR

2. Made in a non-participating province if, in relation to Canadian element of services, goods are otherwise than >50% in the participating provinces.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

#### III. Services in relation to Goods, General Rules in Preceding Section I are Not Applicable (continued)

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

1. Made in a participating province if, in relation to Canadian element of service,
  - (a) goods are >50% in the participating provinces at any time (all times) the service is performed;
  - (b) the service is performed >50% in the participating provinces, and
  - (c) the greatest proportion of the services in the participating provinces is performed in that province.

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

Tie-breaker:

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

OR 2. Made in a non-participating province if, in relation to Canadian element of service,

- (a) goods are otherwise than >50% in the participating provinces at any time the service is performed; or
- (b) the service is performed otherwise than >50% in the participating provinces.

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## Harmonizing GST & PST

### III. Place of Supply Rules

#### E. What are the proposed rules to take effect May 1, 2010? (continued)

#### IV. Services in relation to Real Property, General Rules in Preceding Section I are Not Applicable

1. Where >50% of the real property situated in Canada is in the participating provinces, the participating province in which the greatest proportion of the real property is situated.

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

Tie-Breaker:

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

OR 2. Where otherwise than >50% of the real property situated in Canada is in the participating provinces, made in a non-participating province.

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## Harmonizing GST & PST

### III. Place of Supply Rules

**E. What are the proposed rules to take effect May 1, 2010?**  
(continued)

**V. Services related to a Location-Specific Event, General Rules in Preceding Section I are Not Applicable**

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

Performed >50% at an event location in a province considered supplied in that province.

**VI. Litigation Services, General Rules in Preceding Section I *Might* be Applicable**

Before the commencement of litigation, subject to the general rules in Part I.

Once the litigation is commenced, supplied in the province in which the litigation is undertaken.

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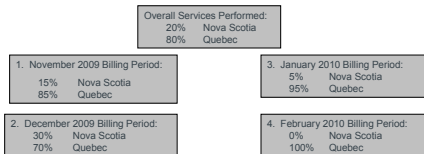
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## Harmonizing GST & PST

### III. Place of Supply Rules

First Case Study:

Two lawyers at a law firm's Quebec office negotiate a retainer agreement with a Canadian client in the trucking business to advise on national competition law issues. The client has offices and truck depots in all provinces. The retainer agreement is signed by the lead client relationship lawyer at the firm's Nova Scotia office. The law firm invoices its fees from its Nova Scotia office to the client's Toronto head office in four monthly accounts just after the end of each month. The law firm and its Canadian client are registered for both the GST/HST and QST.



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## Harmonizing GST & PST

### III. Place of Supply Rules

First Case Study, Analysis:

- For the purpose of determining whether services are supplied inside or outside Canada, all the services performed are treated as one supply pursuant to ss.136.1(2)(d) of the ETA. Made inside Canada pursuant to ss.142(1)(g) of the ETA.
- For the purpose of determining whether or not services supplied in Canada are supplied in a participating HST province, the services performed each monthly billing period are treated as a separate supply of services made on the 1<sup>st</sup> day of the month pursuant to ss.136.1(2)(a) to (c).

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## Harmonizing GST & PST

### III. Place of Supply Rules

First Case Study, Analysis (continued):  
Section 2, Part V, Schedule IX

November 2009: Where is the "place of negotiation"? Is it Nova Scotia or Quebec? If it is Nova Scotia, HST applies. If it is Quebec, GST and QST apply (subject to zero-rating export relief from QST). Quebec's place of supply rules harmonized with those for HST.

December 2009: Same analysis as above.

January 2010: GST and QST apply (subject to zero-rating export relief from QST) because  $\geq 90\%$  of service performed in Quebec.

February 2010: Same analysis as immediately above.

Another issue to consider: Is the evaluation of where the services are performed a quantitative or qualitative criterion?

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## Harmonizing GST & PST

### III. Place of Supply Rules

Second Case Study:

Exact same facts as in the First Case Study, except that the four monthly billing periods relate to services performed in July, August, September and October 2010.

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## Harmonizing GST & PST

### III. Place of Supply Rules

Second Case Study, Analysis (continued):

None of the legal services is performed by the law firm in Ontario; yet under Rule 1 of the general place of supply for services, the taxable services could be considered supplied in Ontario. The client's Toronto head office in Ontario may be the client's address most closely connected with the Canadian competition law services. Since the law firm has obtained this address in the normal course of its business (it is the billing address), the law firm could be considered to supply the services in Ontario and need to charge and collect 13% HST on its fees.

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## Harmonizing GST & PST

### III. Place of Supply Rules

Third Case Study:

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Third Case Study, Analysis:

- For the purpose of determining whether the lease of the computers is supplied inside or outside Canada, there is considered to be one supply pursuant to ss.136.1(1)(d) of the ETA. Made inside Canada pursuant to ss.142(1)(b) of the ETA because of delivery within Canada.
- For the purpose of determining whether or not the lease of the computers occurs in a participating HST province, the lease of the computers each month is treated as a separate supply made on the 1<sup>st</sup> day of the month pursuant to ss.136.1(1)(a) to (c).

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## Harmonizing GST & PST

### III. Place of Supply Rules

Third Case Study, Analysis (continued):

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

Issues to Consider:

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Fourth Case Study, Analysis:

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

Does GST or HST apply to the fees?

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## Harmonizing GST & PST

### III. Place of Supply Rules

Fourth Case Study, Analysis (continued):

Ss. 10(1) of the *Place of Supply (GST/HST) Regulations* is applicable. Since the HR Company ordinarily accesses the Internet from Winnipeg and Edmonton, there is no single ordinary location at which HR Company avails itself of the Internet Access. Accordingly, the place of supply rule in 10(1)(a) is inapplicable and the default rule in 10(1)(b) applies. Since HR Company's mailing address is at the Toronto head office, the taxable supply of internet access is made in Ontario and the fees are subject to 13% HST. Odd result because internet cannot be accessed through this telecommunication provider from Toronto. Could/should either the Winnipeg or Edmonton mailing address determine the place of supply?

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## Harmonizing GST & PST

### III. Place of Supply Rules

Fifth Case Study:

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

Does Via Rail charge and collect GST or HST?

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## Harmonizing GST & PST

### III. Place of Supply Rules

Fifth Case Study, Analysis:

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Fifth Case Study, Analysis (continued):

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Sixth Case Study:

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Sixth Case Study, Analysis:

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Sixth Case Study, Analysis (continued):

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Sixth Case Study, Analysis (continued):

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

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

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## Harmonizing GST & PST

### III. Place of Supply Rules

Resources:

- A. February 25, 2010 Finance release with proposed amendments.
- B. CRA TIB-103 released February 2010 supersedes TIB-078.

Each document contains detailed explanations of the rules with many examples.

Conflicts between Finance and CRA documents? See, for example, Rule 1 of the General Rules for Services, at page 12 of the Finance document and page 25 of the CRA document.

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## Place of Supply Rules

By **Jamie M. Wilks, Partner**  
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Presented at:  
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