



GST/HST Memoranda Series

4.5.1 Exports - Determining Residence Status

Overview

This section provides information on the criteria for determining the residency of persons to whom supplies are made. Certain supplies made to non-residents may be zero-rated. As well, non-residents may be eligible for rebates of the GST/HST paid on purchases in Canada. Sections 4.5.2, *Exports - Tangible Personal Property*, and 4.5.3, *Exports - Services and Intellectual Property*, provide detailed information on supplies that are listed in Part V of Schedule VI to the *Excise Tax Act* (the Act) as zero-rated exports for purposes of the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST). Detailed information on rebates for non-residents will be available in Chapter 27, *Special Sectors: Tourism*.

Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

Note

This section of Chapter 4 of the GST/HST Memoranda Series supersedes paragraphs 1 to 32 of GST Memorandum 300-3-5, *Exports*. Due to the number of revisions, the changes have not been side-barred.

Zero-rated supplies

Supplies made/deemed to be made in Canada ss 123(1) and 142(1)

1. Supplies of tangible personal property, services and intellectual property that are made or are deemed to be made in Canada and that are for consumption outside Canada may be zero-rated if all the conditions contained in the applicable section of Part V of Schedule VI are met. Many of these sections require that the supply be made to a non-resident person.

Zero-rated supplies

2. Sections 4.5.2, *Exports - Tangible Personal Property*, and 4.5.3, *Exports - Services and Intellectual Property*, provide details on the three categories of exports (tangible personal property, services and intellectual property), and describe the conditions under which such supplies may be zero-rated.

Guidelines in respect of non-residence

Determination of non-resident status

Non-resident requirement	3. Along with ensuring that all other zero-rated requirements are met, registrants making supplies in Canada to non-resident recipients to which sections 2, 5 to 10, 13, 14, and 17 to 23 of Part V of Schedule VI apply should verify and obtain evidence that the recipients are non-residents for the purposes of the GST/HST prior to zero-rating supplies to those recipients.
Non-resident/deemed non-resident ss 123(1) and s 132	4. Subsection 123(1) defines a non-resident as "not resident in Canada"; however, section 132 provides for certain situations where a person who might otherwise be a non-resident will be deemed to be resident in Canada. Paragraphs 5 to 14 of this section outline the criteria to be used in determining if a person is a non-resident for purposes of the GST/HST.

Non-resident individuals

General legal principles for determining residence	5. In general, the residence status of an individual is to be determined according to general legal principles. Reference may be made to the Policy Statement P-086, <i>Meaning of "Non-Resident" as it Applies to Individuals</i> , and to Revenue Canada Interpretation Bulletin IT-221R2, <i>Determination of an Individual's Residence Status</i> , for guidance in determining the residence of an individual. This is subject to the deeming rules set out in paragraph 6 of this section.
Individual deemed resident para 132(1)(d)	6. Effective April 24, 1996, if an individual is deemed under any of paragraphs (b) to (f) of subsection 250(1) of the <i>Income Tax Act</i> to be resident in Canada, the individual is deemed to be resident in Canada for GST/HST purposes. This amendment confirmed existing departmental policy. As a result of this new provision, members of the Canadian Armed Forces, officers or servants of Canada (e.g., government employees and employees of Crown corporations), etc., stationed outside Canada, are deemed to be residents for GST/HST purposes.
Example	A Canadian Armed Forces member is stationed in the United States for three years. The member occasionally visits Canada, purchases goods in Canada and takes them back to the United States. As the member is deemed under paragraph (b) of subsection 250(1) of the <i>Income Tax Act</i> to be resident in Canada, the member is also deemed to be a resident in Canada for purposes of the GST/HST. Accordingly, the visiting member is not eligible for the non-resident rebate of any GST/HST paid on these purchases under subsection 252(1) of the Act.

Non-resident persons other than individuals

General legal principles for determining residence	7. As with individuals, in general, the residence status of a person that is not an individual is determined according to general legal principles, subject to the deeming rules in section 132.
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4.5.1 Exports - Determining Residence Status (continued)

Criteria - deemed to be resident in Canada ss 132(1)	<p>8. A person is deemed to be a resident in Canada at any time,</p> <p>(a) in the case of a corporation, if the corporation is incorporated in Canada or continued in Canada and not continued elsewhere,</p> <p>(b) in the case of a partnership, an unincorporated society, a club, an association or an organization, or a branch thereof, if the member, or a majority of the members, having management and control thereof, is or are resident in Canada at that time,</p> <p>(c) in the case of a labour union, if it is carrying on activities as such in Canada and has a local union or branch in Canada at that time.</p>
Corporation not incorporated in Canada	<p>9. Further, according to general legal principles, a corporation that is not incorporated in Canada may still be considered a resident of Canada, if the central management and control of the activities of the corporation is exercised in Canada. The central management and control issue is a question of fact and is the determining factor in deciding the resident status of a corporation.</p>
Trust	<p>10. In general, the residence status of a trust will be determined by reference to the residence of the majority of the trustees. Additional information on this topic is available in Revenue Canada Interpretation Bulletin IT-447, <i>Residence of a Trust or Estate</i>.</p>

Supplies to and between permanent establishments

Permanent establishment in Canada ss 132(2)	<p>11. Where a non-resident person has a permanent establishment in Canada, the person is deemed to be resident in Canada in respect of, but only in respect of, the activities of the person carried on through that establishment.</p>
Permanent establishment outside Canada ss 132(3)	<p>12. Where a person who is resident in Canada has a permanent establishment outside Canada, the person is deemed to be a non-resident in respect of, but only in respect of, the activities of the person carried on through that establishment.</p>
Permanent establishment in/outside Canada ss 132(4)	<p>13. Where a person carries on a business through a permanent establishment of the person in Canada and through another permanent establishment of the person outside Canada, subsection 132(4) deems certain transactions between the two establishments to be supplies and deems the two establishments to be separate persons dealing with each other at arm's length in respect of the deemed supplies. As a result, certain supplies by the permanent establishment in Canada to the permanent establishment outside Canada are treated as if the supplies were made to a separate non-resident person.</p>
Residence of international shipping companies ss 132(5)	<p>14. Where, under subsection 250(6) of the <i>Income Tax Act</i>, a corporation (i.e., a person engaged in international shipping) is deemed for the purposes of that Act to be resident in a country other than Canada throughout a taxation year and not to be resident in Canada at any time in the year, the corporation is, subject to subsection 132(2), deemed to be resident in that other country throughout the year and not to be resident in Canada at any time in the year.</p>

Proof of residence and registration status

Zero-rating requirements	15. Certain supplies listed in Part V of Schedule VI to the Act must be made to a non-resident to qualify as zero-rated supplies for GST/HST purposes. Further, certain supplies described in Part V of Schedule VI to the Act must be made to a non-resident who is not registered for GST/HST purposes to qualify for zero-rating.
Responsibility of registrant suppliers	16. Suppliers who are registrants are responsible for determining the residence or registration status of their customers. For the supply to be zero-rated, satisfactory evidence should be retained by suppliers, indicating that their customers are non-residents and, where applicable, not registered for GST/HST purposes.
Documentation	17. Appendix A describes the documentation that the Department will generally accept as proof that the person is a non-resident. Appendix B describes the documentation that the Department will generally accept as proof that the customer is both a non-resident and is not registered. This documentation should be dated and signed by the non-resident and be effective on the date the supply is made. The Department will consider other forms of documentation as proof of non-residence and the non-registered status of the customer.
Non-resident requirement	18. To determine if a supply is made to a non-resident, the Department will look at the facts of the particular situation. This will generally involve determining the contracting parties to the supply. In other words, assuming a typical arm's-length situation, the Department will consider that a supply has been made to a non-resident if the supplier has contracted for the supply with the non-resident person.
Example	A non-resident financial institution enlists the services of a registrant to supply advice relating to the operations of the non-resident's Canadian subsidiary. The report is issued to and is intended to address the specific concerns and questions of the non-resident. The supply to the non-resident may be zero-rated under section 23 of Part V of Schedule VI if it can be established that the non-resident, and not the Canadian subsidiary, was the party to the contractual agreement with the registrant supplier.

Satisfactory evidence as proof of non-residence in Canada

The following example of written documentation, to be kept on file, will generally be considered satisfactory to the Minister of National Revenue as certification that the person to whom the supply is made is not resident in Canada:

(a) In the case of a non-resident individual:

I, _____, (name and complete address of individual) certify that I am not resident in Canada for purposes of the *Excise Tax Act*.

Where applicable, I agree to advise (name and complete address of vendor) of any change to my residence status for purposes of the *Excise Tax Act*.

Date

Signature of Individual

(b) In the case of a non-resident person, other than an individual:

I, _____, (name and title of authorized individual) of (name and complete legal address of person, other than individual), certify that (name of person, other than individual) is not resident in Canada for purposes of the *Excise Tax Act*. I have personal knowledge of such matters and am authorized to act on behalf of (name of person, other than individual).

Where applicable, I agree to advise (name and complete address of vendor) of any change to the residence status of (name of person, other than individual) for purposes of the *Excise Tax Act*.

Date

Signature of Authorized Individual

Title

Satisfactory evidence as proof of non-residence and non-registration for GST/HST purposes

The following example of written documentation, to be kept on file, will generally be acceptable to the Minister of National Revenue as certification that the person to whom the supply is made is non-resident in Canada and is not registered for GST/HST purposes:

(a) In the case of a non-resident, unregistered individual:

I, _____, (name and complete address of individual) certify that I am not resident in Canada for purposes of the *Excise Tax Act* and that I am not registered under that Act.

Where applicable, I agree to advise (name and complete address of vendor) in the event there is any change to my residence status or should I become registered for the purposes of the *Excise Tax Act*.

Date Signature of Individual

(b) In the case of a non-resident, unregistered person, other than an individual:

I, _____, (name and title of authorized individual), of (name and complete legal address of person, other than individual), certify that (name of person, other than individual) is not resident in Canada for purposes of the *Excise Tax Act* and that (name of person, other than individual) is not registered under that Act.

Where applicable, I agree to advise (name and complete address of vendor) in the event there is any change to the residence status of (name of person, other than individual) or should (name of person, other than individual) become registered for purposes of the *Excise Tax Act*.

Date Signature of Authorized Individual

Title