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# GST/HST Policy Statement P-169: MEANING OF "IN RESPECT OF" FOR PURPOSES OF SECTIONS 7 AND 23 OF PART V OF SCH. VI

Obsolete: This policy statement is revised and superseded by current policy statement P-169R, May 25, 1999.

## Date of Issue:

January 25, 1995

## Subject:

Meaning of "in respect of real property situated in Canada" and "in respect of tangible personal property that is situated in Canada at the time the service is performed", for purposes of Part V of Schedule VI to the Act

## Legislative Reference(s):

Paragraphs 7(b) and (c) of Part V of Schedule VI to the ETA, applicable to supplies of services the performance of which began prior to June 10, 1993 (i.e., prior to the amendment to Part V of Schedule VI by S.C. 1993, c. 27).

Subsection 123(1) of the ETA: definitions of "property", "personal property" and "real property".

## National Coding System File Number(s):

11640-3

## Effective Date:

January 1, 1991

## Issue:

The purpose of this policy statement is to expand on the guidelines contained in GST Memorandum 300-3-5, "**Exports**", concerning the meaning of the phrase "in respect of".

The memorandum mentions the need to determine whether the direct object of the service is the property. This policy statement sets out more detailed guidelines which may be applied by the Department to specific fact situations in determining whether a service and property are "in respect of" each other for purposes of paragraphs 7(b) and (c) of Part V of Schedule VI to the Act as they applied prior to June 10, 1993 and, paragraphs 7(d) and (e) and 23(b) and (c) of Part V of Schedule VI, as they apply since June 10, 1993.

These paragraphs all provide that services "in respect of" personal or real property, are excluded from zero-rating.

## Decision:

For purposes of paragraphs 7(d) and (e) and paragraphs 23(b) and (c) of Part V of Schedule VI to the Act, The Department's administrative position is that there must be more than a mere indirect or incidental nexus or connection between a service and the underlying real or tangible personal property, before the supply of the service will be excluded from zero-rating.

Whether the relationship between the service and the property is sufficiently direct for the service to be considered by the Department to be "in respect of" the property will depend on the particular circumstances of each case.

The following guidelines will be applied by the Department to aid in the determination of whether the connection between the service and the real or tangible personal property is sufficiently direct for the service to be "in respect of" the property for purposes of paragraphs 7(d) and (e) and paragraphs 23(b) and (c) of Part V of Schedule VI:

a) Was the service designed, developed or undertaken to fulfil or serve a particular need or requirement arising from or relating to the property? This guideline involves determining the purpose or objective of the service. The purpose or objective of the service may often be determined by examining a written contractual agreement for the supply between the supplier and the recipient of the service, in order to ascertain whether the supply is a zero-rated supply under the Act.

If there is no formal written agreement, other documentation, such as purchase orders, correspondence between the parties or invoices or receipts may be useful in establishing the purpose or objective of the service.

It is important that the supplier's understanding of the purpose or objective of the service, as reflected in the contractual agreement with the non-resident customer, be taken into consideration. The supplier's perspective is important because it is the supplier who must determine whether the supply is zero-rated and whether to collect the GST on the supply.

b) Is the relationship between the purpose or objective of the service and the property reasonably direct? The relationship between the service and the real or tangible personal property must be more direct than indirect in order for the service and the property to be considered by the Department to be "in respect of" each other. If some object comes between the service and the property, the connection becomes increasingly remote.

Consistent with the information contained in GST Memorandum 300-3-5, a service and property would generally be regarded as being "in respect of" each other pursuant to the above guidelines if the purpose of a service is to:

- a) physically count the property;
- b) appraise or value the property;
- c) physically protect or secure the property; or
- d) enhance the value of the property.

Similarly, if the service is aimed at effecting or dealing with the transfer of ownership of, claims on or rights to the property, or determining title to the property, the service will generally be regarded as "in respect of" the property.

## **SAMPLE RULINGS**

### **A. SUPPLY OF A SERVICE RELATING TO AN INSURANCE POLICY**

#### ***1. Interpretation of a clause in an insurance policy***

##### **Statement of Facts**

1. A Canadian company acquires an insurance policy issued by a non-resident insurance company on tangible personal property that is situated in Canada.
2. The property is damaged but the non-resident insurance company refuses to pay the claim because, in its view, the event that gave rise to the damages was not a risk covered by the policy.
3. The Canadian company sues the non-resident insurance company for refusal to abide by the contract of insurance.
4. The non-resident insurance company retains, on June 10, 1993, a GST-registered Canadian lawyer to represent its case.
5. The legal services range from providing a legal opinion, as to whether the risk was covered by the policy, to conducting the insurer's defence in the litigation.

##### **Ruling Requested**

The service is zero-rated pursuant to section 23 of Part V of Schedule VI to the Act.

##### **Ruling Given**

The legal service is zero-rated pursuant to section 23 of Part V of Schedule VI to the Act.

##### **Rationale**

The non-resident insurance company acquired the services of legal counsel to establish that it did not have to pay the claim. In addition, the claim would not have arisen had property not been damaged. Also, the circumstances in which the property was damaged may be subject to dispute. Consequently, it could be argued that the service was undertaken as a result of a need or requirement of the insurance company arising from and relating to the property.

However, the service of providing a legal opinion or of litigating the issue arises because of a dispute surrounding the interpretation of the insurance policy and the question of the insurance company's liability to pay the claim under the terms of the policy. The purpose of the service is more closely related to the insurer's objective of not being liable to pay a claim under the policy than to a need or requirement relating to the property. The service is not directly connected to the property. Consequently, although there is a connection between the service and the property, the relationship is not direct in the circumstances.

#### ***2. Appraisal services***

##### **Statement of Facts**

1. A non-resident insurance company received a claim on June 1, 1993, for damages to tangible personal property. The claim was made by an insured individual who ordinarily resides in Canada.
2. The damages were caused as a result of an accident which occurred in Canada.
3. The non-resident insurance company hires, on June 2, 1993, a GST-registered Canadian independent appraisal company, to investigate and recommend the appropriate amount of compensation in satisfaction of the claim arising under the insurance policy.
4. The tangible personal property is situated in Canada throughout the time the service is performed.

##### **Ruling Requested**

The service is zero-rated under section 7 of Part V of Schedule VI to the Act.

##### **Ruling Given**

The service is not zero-rated under section 7 of Part V of Schedule VI to the Act. It is excluded from relief pursuant to paragraph 7(e) of Part V of Schedule VI.

However, the appraisal service is considered a financial service pursuant to paragraph 123(1)(j) of the definition of a "financial service", and is exempt from the GST pursuant to section 1 of Part VII of Schedule V to the Act.

#### **Rationale**

The purpose of the service is to examine the property and establish an estimate of the cost of repairing the property, in order that the insurer can pay the appropriate compensation to the insured. The service is designed, developed and undertaken to meet a particular need or requirement arising from and relating to the damaged property. Also, the connection between the service and the property is direct rather than indirect.

### **B. SUPPLY OF A COLLECTION SERVICE**

#### ***1. Collection of a debt - General***

##### **Statement of Facts**

1. A non-resident retains a Canadian GST-registered lawyer on June 11, 1993, to recover payment for a debt incurred by a Canadian resident in 1992.
2. The debt arose as a result of the sale of tangible personal property situated in Canada.
3. The debt was not secured by either the property that was sold or any other property.
4. The debt is recovered as a result of a series of telephone calls and demand letters sent by the lawyer to the debtor.

##### **Ruling Requested**

The legal collection service is zero-rated pursuant to section 23 of Part V of Schedule VI to the Act.

##### **Ruling Given**

The legal collection service is zero-rated pursuant to section 23 of Part V of Schedule VI to the Act.

##### **Rationale**

The debt would not have arisen and the lawyer's services would not have been undertaken, had the property not been sold to the Canadian resident. Accordingly, there is a connection between the service and the property because the service was undertaken to meet a particular need arising from or relating to the sale of the property.

However, the more direct connection is between the service and the debt. The connection between the service and the property is only indirect.

#### ***2. Collection of a debt - Litigation services***

##### **Statement of Facts**

1. A non-resident company sold tangible personal property to a Canadian company on June 10, 1993.
2. The Canadian company defaults on the payment for the property.
3. The non-resident company hires, on July 10, 1993, a lawyer in Canada whom it instructs to commence a civil suit to establish the liability of the Canadian company and to recover the amount of the debt through the courts.
4. The property is currently situated in Canada.

##### **Ruling Requested**

The service is zero-rated under section 23 of Part V of Schedule VI to the Act.

##### **Ruling Given**

The legal service is zero-rated pursuant to section 23 of Part V of Schedule VI to the Act.

##### **Rationale**

The debt would not have arisen and the lawyer's services would not have been undertaken, had the property not been sold to the Canadian resident. There is a relationship between the service and the property because the service was undertaken to meet a particular need arising from the sale of property.

However, the service was undertaken to collect a debt. Consequently, the connection between the service and the property is not direct.

It is not the property but the debt and the issue of liability at law which are the focus of the legal service.

#### ***3. Collection of a debt - Garnishment of the debtor's salary***

##### **Statement of Facts**

1. A non-resident company sold tangible personal property to a Canadian resident individual on June 1, 1992, who imported the property into Canada on June 9, 1992.

2. The individual defaults on the payment for the property.
3. A court rules on January 10, 1993, that the individual was liable for the debt and ordered him to pay the amount due.
4. Six months after the court judgement has been issued, the non-resident has still not received any portion of the amount due.
5. The non-resident company engages a lawyer in Canada on June 10, 1993, to recover the debt. The lawyer files an Affidavit of Garnishee with the court so the court may issue a garnishee on the salary of the debtor and/or other monetary assets belonging to the debtor.

**Ruling Requested**

The service is zero-rated under section 23 of Part V of Schedule VI to the Act.

**Ruling Given**

The service is zero-rated pursuant to section 23 of Part V of Schedule VI.

**Rationale**

The service of undertaking garnishment proceedings to recover a debt arose because the debtor defaulted on his loan and because a court judgement has been rendered against the debtor ordering him to pay the debt.

The relationship between the service of obtaining garnishment and the property that the individual purchased is remote rather than direct — the service was undertaken to meet a need arising from the failure of the individual to pay the debt and abide by the court's judgment.

**4. Collection of a debt - Seizure of property****Statement of Facts**

1. A non-resident company sold a printing machine to a Canadian company on June 10, 1993.
2. The Canadian company defaults on the payment for the property.
3. The non-resident company retains a lawyer in Canada to undertake legal action to seize specifically identified assets of the debtor. The assets are in the form of tangible personal property and are situated in Canada, but do not include the printing machine sold.

**Ruling Requested**

The service is zero-rated under section 23 of Part V of Schedule VI to the Act.

**Ruling Given**

The service is not zero-rated under section 23 of Part V of Schedule VI to the Act. It is excluded from relief pursuant to paragraph 23(c) of Part V of Schedule VI.

**Rationale**

There is a connection between the service and the assets to be seized because the service is designed, developed and undertaken specifically in respect of identified property.

Also, the connection between the service and the property is direct — to arrange for the legal seizure of specifically identified property.

**C. SUPPLY OF AUDITING SERVICES****1(A) Attest to financial statements of Canadian subsidiary of non-resident parent****Statement of Facts**

1. A Canadian GST-registered public accounting firm is retained on June 10, 1993, by a non-resident company that is a parent of a Canadian subsidiary.  
  
The supply made by the accounting firm is to perform an external audit, commonly known as a financial audit, of the financial statements of the subsidiary.
2. The financial audit procedure includes an inventory count, as well as an examination of company assets, liabilities, revenues and expenses. The count and the examination procedures require a tailored audit programme to meet the requirements of the auditors (i.e., to comply with generally accepted auditing standards when examining financial statements).
3. Auditors will sign-off on the audited financial statements when they have been assured through the examination that the financial statements represent fairly the position of the company. As part of the sign-off, there must be assurance that the physical inventory exists, and that it has been properly valued in accordance with generally accepted accounting principles.

**Ruling Requested**

The service is zero-rated under section 23 of Part V of Schedule VI to the *Excise Tax Act*.

**Ruling Given**

The financial audit service is zero-rated pursuant to section 23 of Part V of Schedule VI to the Act.

## **Rationale**

The public accountant's responsibility is to attest to the fairness, objectivity and comparability of the financial statements and their conformity with generally accepted accounting principles for the benefit of the owners, creditors and investors of the company. The purpose of the financial audit is to express an opinion respecting amounts which appear on the financial statements of the company, including the inventory.

A component of the financial audit consists of counting and examining inventory. Consequently, the service is undertaken, at least in part, to fulfil a need or requirement relating to property. Therefore, a connection exists between the service and the property.

However, although an important part of the audit program, the examination of inventory is just a part of the process. Also, the purpose of the service is to express an opinion on the company's financial statements, based on generally accepted accounting principles. Therefore, the relationship between the service and the property in inventory is not direct.

### ***1(B) Single supply of inventory count services***

#### **Statement of Facts**

1. A Canadian GST-registered public accounting firm is retained on June 10, 1993, by a non-resident public accounting firm to perform a count of inventory of a non-resident firm. The non-resident public accounting firm is conducting a financial audit of the non-resident company. The inventory is located in Canada.
2. The results of the inventory count conducted in Canada will be considered by the non-resident public accounting firm in reaching its opinion relating to the audited financial statements of the non-resident company.
3. The inventory count will consist of physically counting the inventory and valuing the inventory, or observing the count performed by warehouse staff. In the latter case, a test count and valuation will be performed.
4. The results of the inventory count conducted in Canada will be considered by the non-resident public accounting firm in reaching its opinion relating to the audited financial statements of the non-resident company.

#### **Ruling Requested**

The service is zero-rated under section 23 of Part V of Schedule VI to the *Excise Tax Act*.

#### **Ruling Given**

The inventory count service is not zero-rated under section 23 of Part V of Schedule VI to the Act. It is excluded from relief pursuant to paragraph 23(c) of Part V of Schedule VI.

#### **Rationale**

The service was designed and undertaken to deal with a particular need or requirement directly relating to the inventory. The audit of inventory was specifically designed and undertaken to express an opinion on the value of the inventory for the non-resident public accountant. The auditor's task in Canada is to count — or at least observe a count — and value inventory.

The focus of the service is the inventory, consisting of tangible personal property. The relationship between the service and the property is reasonably direct.

### ***2. Performance of an operational audit of a Canadian subsidiary of non-resident parent***

#### **Statement of Facts**

1. A Canadian GST-registered public accounting firm is retained on June 10, 1993, by the non-resident parent of a Canadian subsidiary to perform a managerial audit, also known as an operational audit, of the resident subsidiary.
2. The audit consists of a review of the operating procedures and methods to evaluate the efficiency and effectiveness of the organisation's policies and procedures, and to determine if controls are operating as intended.
3. The audit will include an examination of the company's controls and procedures relating to inventory management.

#### **Ruling Requested**

The operational audit service is zero-rated pursuant to section 23 of Part V of Schedule VI to the *Excise Tax Act*.

#### **Ruling Given**

The operational audit service is zero-rated pursuant to section 23 of Part V of Schedule VI to the Act.

#### **Rationale**

In an operational audit, the organisation's operating procedures and methods are reviewed for the purpose of evaluating efficiency and effectiveness of the management control system of the organisation. The terms of reference include generally accepted accounting principles, standard operating procedures, company directives, etc. At the completion of the audit, a managerial audit report is prepared for management. The report may provide recommendations for improvements in operations.

The operational audit will include an inventory count. Therefore, the inventory count and examination are undertaken, at least in part, to fulfil a need or requirement relating to property. Therefore, there is a connection between the service and the property.

However, the relationship between the operational audit service and the property is not direct. The service is not directly related to the property in inventory and the other tangible assets of the company, but rather in respect of the general efficiency and effectiveness of the company's operations. The audit of inventory and asset management practices are merely one aspect of the overall objective of the service.

### **3. Inventory count services of a public warehouse**

#### **Statement of Facts**

1. A Canadian GST-registered public warehouse operator has been asked by a non-resident to perform an inventory count service on the non-resident's inventory on June 10, 1993.
2. The non-resident's inventory is stored in a warehouse of the warehouse operator located in Canada.
3. The request to count inventory is beyond the scope of the warehousing agreement. The public warehouse operator invoices the non-resident separately for the inventory count.

#### **Ruling Requested**

The service is zero-rated by virtue of section 7 of Part V of Schedule VI to the *Excise Tax Act*.

#### **Ruling Given**

The service of counting inventory is not zero-rated under section 7 of Part V of Schedule VI to the Act. It is excluded from relief pursuant to paragraph 7(e) of Part V of Schedule VI.

#### **Rationale**

Counting the inventory is a separate supply from the overall warehousing service. The purpose of the inventory count service is to provide the recipient of the service with a report on the actual quantity of goods held in inventory.

In this situation, the service of counting inventory was undertaken to fulfil a particular need of the client arising from or relating to the property (i.e., how much inventory is on hand?).

The connection between the service and the property is sufficiently direct in the circumstances.

### **4. Composite supply of services of public warehouse operator**

#### **Statement of Facts**

1. A Canadian GST-registered public warehouse operator contracts on June 10, 1993, with a non-resident to store the inventory of the non-resident in the operator's warehouse located in Canada.
2. The public warehouse performs the following warehouse services: once the goods are received in the warehouse, they are inspected, counted, secured and shipped.

#### **Ruling Requested**

The services are zero-rated under section 7 of Part V of Schedule VI to the *Excise Tax Act*.

#### **Ruling Given**

The services are not zero-rated under section 7 of Part V of Schedule VI to the Act. The services are excluded from relief pursuant to paragraph 7(e) of Part V of Schedule VI.

#### **Rationale**

The purpose of the supply is to ensure that, once the goods are received, they are inspected, counted, secured and subsequently shipped. The object of the services is to ensure that no errors or omissions occur which could result in a dispute between the person who holds title in the goods and the public warehouse operator.

The warehousing services are undertaken to meet requirements relating to the property. There is a direct connection between the services and the property.

### **5. Services rendered to a creditor**

#### **Statement of Facts**

1. A non-resident creditor retains a Canadian GST-registered public accounting firm on June 10, 1993, to establish the value of a potential debtor's inventory situated in Canada, so that the creditor can decide whether to extend credit. The non-resident intends to take security on the inventory if it advances the credit.
2. The accounting firm is required to prepare documentation stating that the value of the inventory has been verified.
3. A physical count of the inventory is undertaken by the firm or an observation is performed while the debtor's warehouse employees perform the count.

#### **Ruling Requested**


The service is zero-rated pursuant to section 23 of Part V of Schedule VI to the *Excise Tax Act*.

**Ruling Given**

The service is not zero-rated under section 23 of Part V of Schedule VI to the Act. It is excluded from relief pursuant to paragraph 23(c) of Part V of Schedule VI.

**Rationale**

The purpose of the service is to ascertain the quantity and value of the inventory for the creditor. A direct connection exists between the valuation service and the property.



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