

GST/HST Policy Statement

Please note that the following policy statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.

P-131R	Remittance of tax collected by a person other than the supplier in limited circumstances
Date of Issue	September 15, 2004. This policy statement replaces Policy Statement P-131 dated April 7, 1994.
Legislative References	Subsections 221(1), 222(1), 225(1), 225.1(2) and sections 177, 222.1, 228 and 229 of the <i>Excise Tax Act</i> (ETA); sections 17 and 21 of the <i>Streamlined Accounting (GST/HST) Regulations</i>
National Coding System File Number(s)	11695-4-1
Effective Date	January 1, 1991 for GST and April 1, 1997 for HST; upon Royal Assent, for supplies made after December 20, 2002, in the case of billing agents

Issue

This policy statement discusses the remittance of GST/HST collected by a person other than the supplier in limited circumstances.

Decision

Subsection 221(1) of the ETA imposes an obligation on a supplier to collect the GST/HST. The provisions of the ETA governing the calculation of net tax require the supplier to include tax under Division II that became collectible in a particular reporting period, when determining its net tax for that reporting period. The supplier is required to account for the tax even if the tax is actually collected by another person.

Where a person other than the supplier collects an amount as or on account of tax under Division II, the provisions of the ETA for the calculation of net tax require that person to include the amount collected in its own net tax calculation.

As a result, both the supplier and the person who collected the amount as or on account of tax are required, under the ETA, to account for the GST/HST in their net tax calculations.

It is not the intention of the Canada Revenue Agency (CRA) to collect tax twice on the same supply. Accordingly, where the supplier and another person are both required to account for the amount as or on account of tax, the accounting of the amount and the remittance of any resulting positive amount of net

tax by one of the parties will discharge the liability of both parties. As such, where the person who collected an amount as or on account of the tax, accounts for that amount in its net tax calculation and remits any resulting positive amount of net tax, the liability of the supplier to account for the tax will be discharged. Similarly, if the supplier accounts for the tax in its net tax calculation and remits any resulting positive amount of net tax, the liability of the person who collected the amount as or on account of tax to account for the amount will be discharged.

Discussion

This policy statement does not apply in the following circumstances:

- where an amount is collected by a person in respect of an account receivable acquired by the person by way of sale or assignment, as those situations are addressed by section 222.1 of the ETA;
- where a person acts as agent in making a supply on behalf of a principal. Generally, in these situations, the principal is considered to have charged and collected the tax and is required to account for that tax in its net tax calculation;
- where a registrant acts as agent of a supplier in charging and collecting the consideration and GST/HST payable in respect of a supply made by the supplier (i.e., a billing agent) and has made an election under subsection 177(1.1) of the ETA. The provisions of section 177 of the ETA address certain situations where the agent is required to account for the tax in its net tax calculation as opposed to the principal, e.g., where a billing agent and supplier jointly elect to have the billing agent account for the GST/HST. The deeming provisions of section 177 of the ETA that deal with agents and billing agents address most situations where a person other than the supplier collects the GST/HST.

Generally, a person will be considered to have collected an amount as or on account of tax where the person issues an invoice for the supply to the customer indicating the amount of GST/HST payable and subsequently collects the amount. Where the person who has not issued an invoice for the supply but does issue a receipt or similar document to the customer indicating the amount of GST/HST received upon collecting an amount, that person will be also considered to have collected an amount as or on account of tax.

Under the above circumstances, where the GST/HST collected is not accounted for in the net tax of either party or where a resulting positive amount of net tax has not been remitted, each party will be liable for the GST/HST. If a situation arises where both parties have collected an amount as or on account of tax, both parties will be required to account for the GST/HST collected in their net tax calculation for their particular reporting periods.

Examples

Example No. 1

Facts

1. A commercial landlord, registered for the GST/HST, obtained a mortgage from a financial institution to finance the acquisition of an office building.
2. The landlord later defaults on the mortgage payments and, as a result, the financial institution attorns the rents of the landlord's commercial leases (i.e., all rents including GST/HST are being paid directly

to the financial institution). There is no sale of the underlying property and the financial institution is not collecting the amounts as the agent of the landlord. The tenants are directed to pay the rent and applicable tax to the financial institution.

3. All rents received by the financial institution (net of GST/HST) are applied to reduce the indebtedness of the landlord.
4. The financial institution is a GST/HST registrant and accounts for the GST/HST collected on the rents in its net tax calculation for the respective reporting periods.
5. The financial institution maintains proper documentation in its accounting records to support the actions taken above and issues a receipt for the rent and the applicable GST/HST it collects from each lessee.

Issue

Whether or not the financial institution should account for the GST/HST in its net tax calculation.

Comments

Where a creditor, in this case the financial institution, attorns the rents of a debtor's property, the debtor (i.e., the landlord) is still the supplier of the property. Although the landlord, as the supplier of the property, is required to include in its net tax calculation the GST/HST collectible in respect of the commercial lease even though the financial institution is collecting the rent and applicable tax, accounting for it and remitting it.

It is not the CRA's intention to collect tax twice on the same supply. Accordingly, the landlord may exclude the tax from its net tax calculation since the tax is accounted for and remitted by the financial institution.

Example No. 2

Facts

1. An automobile dealer who is a GST/HST registrant enters into an agreement to supply an automobile by way of lease.
2. The dealer subsequently assigns the stream of lease payments to a financial institution that is also a GST/HST registrant. Pursuant to the assignment agreement, the financial institution agrees to account for any amounts it collects as or on account of tax.
3. Although the dealer continues to provide repair and maintenance services to the lessee of the automobile, the lessee is directed to make the required lease payments, including the GST/HST, to the financial institution as the payments become due.
4. The financial institution is not the supplier of the leased automobile and is not collecting the lease payments, including the GST/HST, as the agent of the dealer.
5. The financial institution accounts for the GST/HST collected in its net tax calculation and remits the resulting positive amount of net tax for the respective reporting periods.
6. The financial institution maintains proper documentation in its accounting records to support the actions taken above and issues a receipt for the lease amount and applicable GST/HST it receives from the lessee.

Issue

Whether or not the financial institution should account for the GST/HST in its net tax calculation.

Comments

The assignment of the lease stream by the lessor (automobile dealer) to a third party (financial institution) is characterized as the supply of a “debt security” for the purposes of the ETA.

The dealer, as the supplier of the leased automobile, is required pursuant to subsection 221(1) of the ETA to include in its net tax calculation the GST/HST collectible in respect of the automobile lease even though the financial institution has actually collected the tax. However, if the tax is actually collected and accounted for by the financial institution that remits its net tax, it is not the CRA's intention to collect tax twice on the same supply.

Accordingly, in this circumstance, the dealer may exclude the tax from its net tax calculation since the financial institution accounts for the tax.

Example No. 3**Facts**

1. A franchisor and a franchisee jointly provide taxable services.
2. Both the franchisor and the franchisee are GST/HST registrants and both have reporting periods that are calendar quarters.
3. Revenues from the supplies made on a joint basis as well as all the inputs incurred by both registrants and the resulting profit are shared equally.
4. The franchisor invoices for and collects the total consideration and GST/HST payable by the recipient of the taxable services.
5. The franchisor includes the GST/HST collectible by the franchisee and the franchisor in respect of the taxable services in its net tax calculation and remits the positive amount of net tax for each reporting period.
6. The franchisor maintains proper documentation in its accounting records to support the actions taken above.
7. No election under subsection 177(1.1) of the ETA has been filed by the parties.

Issue

Whether or not the franchisor should account for the GST/HST in its net tax calculation.

Comments

The franchisor and the franchisee, as joint providers of a taxable supply, are required to collect the GST/HST payable in respect of the supply. Both parties are required to account for their portion of the tax (i.e., 50%) in their respective net tax calculations.

Given that the franchisor actually collects the total amount of GST/HST payable in respect of the supply, the franchisor is liable to account for the portion of the GST/HST that is collectible by the franchisee in its net calculation.

Although the franchisee, as a supplier of the taxable supply, is liable to include in its net tax calculation the GST/HST collected and remitted by the franchisor, it is not the CRA's intention to collect tax twice on the same supply.

Accordingly, in this circumstance, the franchisee may exclude from its net tax calculation the tax that was properly accounted for and remitted by the franchisor.