



GST/HST Memoranda Series

3.4 Residence

April 2000

Overview

This memorandum provides detailed information on determining the residence status of persons for purposes of the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST) provisions of the *Excise Tax Act* (the Act). It also examines the meaning of permanent establishment as it relates to both the GST and the HST.

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

While this memorandum provides information on determining the residence status of persons for purposes of the GST/HST, other chapters in the GST/HST Memoranda Series also provide information on the residence status of persons for specific provisions of the Act. For example, information on the criteria for determining the non-residence status of persons to whom supplies are made in order to determine whether a supply may be zero-rated to that person is provided in GST/HST Memorandum 4.5.1, *Exports - Determining Residence Status*, of Chapter 4, *Zero-Rated Supplies*.

Note - HST

Reference in this publication is made to supplies taxable at 7% or 15% (the rate of the HST). The 15% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the “participating provinces”). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, *Place of Supply Rules under the HST*, available from any Canada Customs and Revenue Agency (CCRA) tax services office.

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General

1. The residence status of a person is an important factor for a number of provisions of the Act relating to the GST. Registrants making supplies in Canada that are zero-rated on condition that the recipients are non-residents must verify and obtain evidence that the recipients are non-residents for purposes of the Act.

Under the HST

2. The residence status of a person is also relevant with respect to a number of provisions of the Act relating to the HST. For example, the self-assessment rules for services and intangible personal property acquired in a non-participating province for consumption or use primarily in a participating province require a determination of residence status of the recipient of such supplies. Paragraphs 44 to 49 provide information to be used to determine in which province a person resides.

3.4 Residence (continued)

- Non-resident/deemed non-resident ss 123(1) and s 132 3. Subsection 123(1) defines “non-resident” as not resident in Canada; however, section 132 may, in some circumstances, deem a person who would otherwise be a non-resident to be resident in Canada. This publication explains the criteria that must be used to determine if a person is a non-resident for purposes of the GST/HST.
- Additional information 4. Information on what constitutes a person for GST/HST purposes is available in GST/HST Memorandum 2.1, *Required Registration*, of Chapter 2, *Registration*. Furthermore, GST/HST Memorandum 3.1.1, *Partnerships*, will provide detailed information on what constitutes a partnership for GST/HST purposes.

Residence status of individuals

- Determining residence Policy statement P-086 and Interpretation Bulletin IT-221 5. Whether an individual is a resident or non-resident of Canada is important for purposes of determining the individual’s obligations and entitlements under the Act. In general, the residence status of an individual is to be determined according to general legal principles, and is subject to the deeming rules described below in paragraph 6.
- Individual deemed resident para 132(1)(d) 6. Effective April 24, 1996, if an individual is deemed under any of paragraphs 250(1)(b) to (f) of the *Income Tax Act* to be resident in Canada, the individual is deemed to be resident in Canada for GST/HST purposes. As a result of this new provision, individuals such as members of the Canadian Armed Forces, government employees, and employees of Crown corporations are deemed to be resident in Canada for GST/HST purposes even if they live outside Canada and do not keep residential ties (as discussed in paragraphs 16 to 26) within Canada.
- Example A Canadian 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 250(1)(b) of the *Income Tax Act* to be resident in Canada, the member is also deemed to be resident in Canada for purposes of the GST/HST. Accordingly, the visiting member is not eligible to claim the non-resident rebate under subsection 252(1) of the *Excise Tax Act* of any GST/HST paid on these purchases. This ensures that government personnel living abroad are treated as residents of Canada for GST/HST purposes.
- Exclusion 7. Persons who sojourned in Canada in the year for a period of, or periods the total of which are, 183 days or more are deemed resident in Canada pursuant to paragraph 250(1)(a) of the *Income Tax Act*. However, such persons are not deemed resident in Canada for purposes of the GST/HST.

Determining the residence status of individuals

- Determining residence of individual 8. Where an individual is not a deemed resident of Canada under paragraph 132(1)(d) or subsection 132(2), the determination of the residence status of the individual is made according to general legal principles.
9. There is no single rule to determine whether an individual is resident in Canada. There are many factors to be considered, none of which is in itself determinative. Whether an individual is resident in a particular place is a question of fact that can be decided only after all factors are considered and each is given its proper weight.

Individuals leaving Canada

Policy statement
P-086

10. When the deeming rules do not apply, the factors described below in paragraphs 11 to 29 should be taken into account when determining the residence status of individuals leaving Canada.

- **Permanence and purpose of stay abroad**

Absent from Canada
for less than two years

11. For a resident of Canada to become a non-resident of Canada, there must be a degree of permanence to an individual's stay abroad. Where Canadian residents are absent from Canada (for whatever reason) for less than two years, they will be presumed to have retained their residence status while abroad, unless they can clearly establish that they severed all residential ties on leaving Canada. If there is evidence that their return to Canada was foreseen at the time of their departure (e.g., the individual is studying abroad for a limited time, visits a foreign country as a tourist with the intention of returning to Canada, spends the winter months outside Canada, or has a job available upon return to Canada), the CCRA will presume that they did not sever all residential ties on leaving Canada.

Absent from Canada
for two years or longer

12. Where there is an absence from Canada for a lengthy period of time (i.e., two years or longer), an individual will be presumed to have become a non-resident of Canada, provided the individual satisfies the other requirements for non-resident status outlined under the heading, "*Residential ties*".

Commuters

13. Canadian residents who leave Canada on a daily basis to work or study in another country (usually the United States) are considered to be commuters who do not sever residential ties with Canada and continue, therefore, to be residents of Canada. Similarly, individuals who commute to Canada on a daily basis from other countries do not usually establish residential ties with Canada and are not considered to be residents of Canada.

Tax avoidance

14. The comments in this memorandum are intended only for the guidance of persons leaving Canada under ordinary circumstances. In cases where one of the main purposes of a person's absence from Canada is to avoid Canadian taxes, which would otherwise be payable, consideration may be given to other factors in determining the person's residence status.

World income

15. When an individual files a Canadian income tax return reporting his/her world income from all sources, both Canadian and foreign, for each year spent abroad, the individual may be considered to be resident in Canada.

- **Residential ties**

All residential ties must
be examined

16. Residence is a question of fact and requests for a determination of residence status must be reviewed on a case by case basis. The CCRA will examine all residential ties of an individual to determine whether the individual is resident in Canada.

3.4 Residence (continued)

Residential ties of individual with Canada

17. The residential ties of an individual include:

- dwelling place (or places);
- spouse and dependants (including children, grandchildren, step-children, parents, foster children, and other relatives who live with the individual, but not including a foster child who does not live with the individual but whom the individual supports through a charitable organization); and
- personal property and social ties.

Dwelling place kept in Canada

18. An individual who leaves Canada, but ensures that a dwelling place suitable for year-round occupancy is kept available in Canada for his/her occupation by:

- maintaining it (vacant or otherwise such as with the help of housekeeping staff who may live in the dwelling);
- leasing it on a non-arm's length basis (e.g., to members of the immediate family); or
- leasing it on an arm's length basis with the right to terminate the lease on short notice (less than 3 months)

will generally be considered not to have severed residential ties within Canada.

Exclusive use of parent's home or boarding house

19. A room in a parent's home or a boarding house that is kept available for the individual's return to Canada and exclusive use may be considered a residential tie within Canada.

No dwelling place in Canada

20. An individual may be considered resident in Canada even if the individual does not have a dwelling place in Canada.

Examples

A transient who has no settled place of abode but who travels from place to place may be held to be resident in Canada if the travelling is done entirely within Canada or if the person visits Canada at various intervals, particularly where such visits occur on a regular basis, and establishes or maintains other ties with Canada. Another example is that of an individual who is present in Canada throughout a relevant period and does not have a home in any other country. This stems from the fact that everyone must be a resident somewhere.

Spouse or dependents remain in Canada

21. If a married individual leaves Canada, but the individual's spouse or dependents remain in Canada, the individual will generally be considered to remain a resident of Canada during the absence. An exception to this may occur where an individual and the individual's spouse are legally separated and the individual has permanently severed all other residential ties within Canada.

3.4 Residence (continued)

Supporting parent with dependent children in Canada

22. Generally speaking, an individual who leaves Canada but continues to support dependent children in Canada, other than because of a maintenance agreement or divorce decree, will not be considered to have severed residential ties within Canada. Leaving a child or grandchild in Canada who is dependent upon an individual for support, even if that child is attending a boarding school or living in someone else's home, may be regarded as a residential tie for the individual in question. However, in determining the supporting parent's residence status, all the facts must be examined and considered.

Residential ties of a single person

23. The residential ties of a single person are frequently of a more tenuous nature and, in the majority of cases, if such a person leaves Canada for two years or more and establishes a residence elsewhere, it is likely that the person will not be considered resident in Canada during the absence, unless other important ties within Canada indicate otherwise.

Other residential ties in Canada

24. An individual who leaves Canada and becomes a non-resident will not usually retain any residential ties in the form of personal property (furniture, clothing, automobile, bank accounts, credit cards,) or social ties (club memberships,) within Canada after his/her departure. Where such ties are retained within Canada, the CCRA may examine the reasons for their retention to determine if these ties are significant enough to conclude that the individual is a continuing resident of Canada while absent. Other ties that may also be relevant in this determination are:

- the retention of a seasonal residence in Canada;
- the retention of child tax benefits and family allowance payments;
- the retention of provincial hospitalization and medical insurance coverage (other than extended medical insurance for visitors to Canada); (Provincial medical coverage is generally extended for three months after an individual leaves Canada. However, because each province has its own guidelines and policy regarding eligibility for benefits after leaving Canada, continuing coverage under a provincial plan will not be considered to be a significant residential tie, but will be given consideration when reviewing all the facts.)
- the registration of property that is being taken outside Canada with Canada Customs;
- the rental of a safety deposit box or postal box in Canada;
- the listing of a telephone number in a telephone directory in Canada;
- the continued use of stationery and business cards with a Canadian address; and
- professional or other memberships in Canada (on a resident basis).

3.4 Residence (continued)

25. These items should be considered in conjunction with other residential ties. Although the retention of one or more of these residential ties does not conclusively determine that an individual is resident in Canada, it may be indicative that an individual has other ties to Canada. All the facts of each case must be examined before a residence determination is made.

Residential ties elsewhere

26. It is quite possible for an individual to be resident in more than one place at the same time for tax purposes. Accordingly, where a resident of Canada goes abroad, but does not establish a permanent residence elsewhere, there is a presumption that the person remains a resident of Canada. In addition, the fact that an individual establishes a permanent residence abroad does not, in and by itself, mean that the individual is not resident in Canada.

- **Regularity and length of visits to Canada**

Periods of time spent in Canada

27. The status of an individual who leaves Canada and purports no longer to be resident in Canada will not generally be affected by occasional visits to Canada, whether for personal or business reasons. However, where such visits are more than occasional, particularly where the visits occur on a regular basis, this factor together with other residential ties that exist will be examined to determine whether they are significant enough in total to conclude that the individual is a continuing resident of Canada. For example, a history of the periods of time an individual has spent in Canada would be relevant in determining whether the individual has established a pattern of regular visits to Canada.

- **Date non-resident status acquired**

28. The date on which a Canadian resident leaving Canada becomes a non-resident for purposes of the Act is generally the latest of the dates on which:

- the Canadian resident leaves Canada;
- the Canadian resident's spouse and/or dependants leave Canada (if applicable); or
- the Canadian resident becomes a resident of the country to which the person is emigrating.

Exception

29. An exception to this will occur where an individual was a resident in another country prior to entering Canada and the individual is leaving to re-establish residence in that country. In this case, the individual will generally become a non-resident on the date he/she leaves Canada even if, for example, the individual's spouse and dependants remain temporarily behind in Canada to dispose of the dwelling place in Canada. The spouse and dependants will be considered non-residents on the date they leave Canada.

Individuals entering Canada

Residential ties established within Canada

30. Where an individual enters Canada and establishes residential ties within Canada (see paragraphs 16 to 26), the individual will generally be considered to have become resident in Canada for purposes of the Act on the date he/she entered Canada.

Persons other than individuals

Determining residence of persons other than individuals

31. 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.

Criteria - deemed to be resident in Canada ss 132(1)

32. A person is deemed to be resident in Canada at any time,

- (a) in the case of a corporation, if the corporation is incorporated in Canada or continued in Canada and not continued elsewhere,
- (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 (e.g., non-profit organizations, charities, professional and trade associations), or
- (c) in the case of a labour union, if it is carrying on labour union activities in Canada and has a local union or branch in Canada at that time.

Corporation not incorporated in Canada

33. 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 are 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. Factors that determine whether a corporation is centrally managed or controlled include the place where:

- its directors live and hold their meetings;
- its managers live and hold their meetings; and
- the organization performs its principal business and operations and where it keeps its books and records.

Trust

34. 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 the residence of a trust is available in Interpretation Bulletin IT-447, *Residence of a Trust or Estate*. Information on what constitutes a trust for GST/HST purposes will be available in GST/HST Memorandum 3.1.3, *Trustees and Receivers*.

Permanent establishment

Meaning of permanent establishment ss 123(1)

35. A permanent establishment of a particular person means:

- (a) a person's fixed place of business, including
 - (i) a place of management, a branch, an office, a factory or a workshop, and
 - (ii) a mine, an oil or gas well, a quarry, timberland or any other place of extraction of natural resources,

3.4 Residence (continued)

through which the person makes supplies; or

- (b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business) who is acting in Canada on behalf of the particular person and through whom the particular person makes supplies in the ordinary course of business.

Permanent establishment in Canada ss 132(2)

36. 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.¹

Permanent establishment outside Canada ss 132(3)

37. 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.

38. It should be noted that a non-resident person with a permanent establishment in Canada for income tax purposes does not necessarily have a permanent establishment in Canada for GST/HST purposes.

Exception - real property ss 221(2)

39. Even if non-residents are regarded as residents by virtue of having a permanent establishment in Canada, they are still treated the same way as non-residents for purposes of supplies of real property by way of sale.

Guidelines to determine a permanent establishment

P-208R

40. Please refer to GST/HST Policy Statement P-208R, *Meaning of “permanent establishment” in subsection 123(1) of the Excise Tax Act*. for guidelines to determine the existence of a place of business and a detailed discussion on the meaning of the term “permanent establishment”.

Supplies to and between permanent establishments

Permanent establishment in/outside Canada ss 132(4)

41. 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, for the purpose of the GST, any transfer of personal property or rendering of a service from the establishment in Canada to the establishment outside Canada to be a supply and to be made by separate persons dealing with each other at arm’s length. In addition, section 220 provides that, for the purpose of Division IV tax (tax on imported taxable supplies), any transfer of personal property or rendering of a service between such establishments is treated as a supply. The value of consideration for these supplies is deemed to be the fair market value of the supply at the time the property is transferred or the service is rendered.

Residence status of international shipping corporations

Footnote¹

Pursuant to paragraph (a) of the definition of “closely related group” in subsection 123(1), where a corporation is a non-resident insurer which has a permanent establishment in Canada, the corporation is also deemed to be resident in Canada for the purpose of determining whether it is closely related to another corporation.

3.4 Residence (continued)

International shipping corporations ss 132(5)

42. Where, under subsection 250(6) of the *Income Tax Act*, a corporation (i.e., a person engaged in international shipping) is deemed for the purposes of the *Income Tax 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.

ss 250(6) of the *Income Tax Act*

43. Subsection 250(6) of the *Income Tax Act* treats a corporation formed outside Canada as being resident in its country of incorporation throughout a taxation year, and not resident in Canada at any time in the year, provided certain criteria are met. One requirement in paragraph 250(6)(a) of the *Income Tax Act* is that the corporation's principal business in the year be the operation of ships in international traffic. A second requirement in paragraph 250(6)(b) of that Act is that all or substantially all of the corporation's gross revenue for the year be from such operations.

Person resident in a province

Person resident in a province s 132.1

44. The residence status of a person is relevant to a number of provisions of the Act relating to the HST. Section 132.1 provides special rules relating to the determination of residence status of a person in a province (participating province and non-participating province) and defines the meaning of permanent establishment for purposes of the HST.

Special rules for certain categories of persons ss 132.1(1)

45. Subsection 132.1(1) sets out rules to determine, for purposes of Part IX of the Act, the residence status of certain categories of persons. However, this subsection does not apply for the purposes of determining the residence status of an individual in the individual's capacity as a consumer. For example, it does not apply for the purposes of determining the individual's eligibility for the rebate of the provincial component of the HST on personal goods removed from a participating province.

Person deemed resident in a province ss 132.1(1)

46. A person is deemed to be resident in a province if the person is resident in Canada and

- (a) in the case of a corporation, the corporation is incorporated or continued under the laws of that province and not continued elsewhere;
- (b) in the case of a partnership, an unincorporated society, a club, an association or an organization, or a branch thereof, the member, or a majority of the members, having management and control of the partnership is, or are, resident in that province;
- (c) in the case of a labour union, it is carrying on activities as a union in that province and has a local union or branch in that province; or
- (d) in any case, the person has a permanent establishment in that province.

Permanent establishment in a province

3.4 Residence (continued)

General
ss 132.1(2)

47. In addition to its implications for purposes of determining the residence status of a person, whether a supplier has a permanent establishment in a province could impact on where a supply is considered to be made for HST purposes. Depending on the province in which the supply is made, the supplier may be required to collect either the GST or the HST.

Meaning of permanent
establishment
ss 132.1(2)

48. Subsection 132.1(2) defines permanent establishment for purposes of section 132.1 and Schedule IX. The following explains this definition:

- (a) in the case of an individual, the estate of a deceased individual or a trust that carries on a business, a permanent establishment has the same meaning as defined for the purposes of Part XXVI of the *Income Tax Regulations*;
- (b) in the case of a corporation that carries on a business, a permanent establishment has the same meaning as that defined for purposes of Part IV of the *Income Tax Regulations* (Further information on this topic is available in Interpretation Bulletin IT-177, *Permanent Establishment of a Corporation in a Province and of a Foreign Enterprise in Canada.*);
- (c) in the case of a partnership
 - (i) a permanent establishment of a partnership includes a permanent establishment, as defined for purposes of Part XXVI of the *Income Tax Regulations*, of a member that is an individual, the estate of a deceased individual, or a trust, where the establishment relates to a business carried on through the partnership,
 - (ii) a permanent establishment of a partnership includes a permanent establishment, as defined for purposes of Part IV of the *Income Tax Regulations*, of a member that is a corporation where the establishment relates to a business carried on by the particular partnership, or
 - (iii) a permanent establishment also includes a permanent establishment, as defined in section 132.1, of a member that is itself a partnership where the establishment relates to a business carried on by the particular partnership; and
- (d) in any other case, a place that would be a permanent establishment, as defined for the purposes of Part IV of the *Income Tax Regulations*, of the person if the person were a corporation and its activities were a business for purposes of that Act.

Meaning of business
ss 132.1(2)

49. The term “business” has the meaning assigned by subsection 248(1) of the *Income Tax Act*.

Proof of residence and registration status

50. As previously mentioned, the residence of a person is an important factor for a number of provisions in the Act. For example, certain supplies listed in Part V of Schedule VI to the Act must be made to a non-resident person to qualify as zero-rated supplies for GST/HST purposes. Further, the drop-shipment rules contained in section 179 only apply to supplies made to non-residents who are not registered for GST/HST purposes.

3.4 Residence (continued)

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| Responsibility of registrant suppliers | 51. In such cases, suppliers who are registrants are responsible for confirming the residence and the registration status of their customers. For that purpose, satisfactory evidence should be retained by suppliers, indicating that their customers are non-residents and, where applicable, not registered for GST/HST purposes. |
| Non-resident requirement | 52. To determine if a supply is made to a non-resident person, the CCRA will look at the facts of the particular situation. This will generally involve determining the contracting parties to the supply. Assuming a typical arm's-length situation, the CCRA will consider that a supply has been made to a non-resident person if the supplier has contracted for the supply with the non-resident person. |
| Example | A non-resident 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 (advisory, professional or consulting services) 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. |
| Documentation | 53. Appendix A provides an example of the documentation that the CCRA will generally accept as proof that the person is a non-resident. Appendix B provides an example of the documentation that the CCRA will generally accept as proof that the customer is both a non-resident and is not registered for GST/HST purposes. This documentation should be dated and signed by the non-resident and is effective on the date the supply is made. The CCRA will consider other forms of documentation as proof of non-residence and the non-registered status of the customer. |

All GST/HST memoranda and other Canada Customs and Revenue Agency publications are available on Internet at the Canada Customs and Revenue Agency site <http://www.cca-adrc.gc.ca/> under the heading "Technical Publications" in "Tax".

Appendix B

Satisfactory evidence of 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 not 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 Individual

Title