

HST on Imported Goods/Broker's Services

June 25th, 2010

The following is excerpted from a broadcast email of the Canadian Society of Customs Brokers (CSCB).

The Canadian Society of Customs Brokers (CSCB) has prepared a chart that indicates the application of HST in participating provinces, as well as the tax applicable on customs brokerage services.

Importers are asked to note that "customs brokerage services" are services, made in respect of the importation of goods, of arranging for the release of goods, or the fulfilling of any requirement to account for the goods, to report, or provide information, or remit any amount.

Other services not included in the term "customs brokerage services" that may be provided by a customs broker include filing objections, appeals, redeterminations, reappraises, reviews, refunds, abatements, remissions, drawbacks or anything in relation to the foregoing.

These two types of service are treated differently for tax purposes and are listed separately on the chart.

Information on the tax applicable on customs brokerage services provided to non-resident importers will also be available at a later date.

The chart is available here: http://cscb.ca/listinfo/HST_Chart-for-CSCB-Members-June-21.pdf

as well as on the pages immediately following.



GST/HST APPLICABLE ON IMPORTED GOODS

Non-commercial (Casual) Goods

HST or GST?	Exceptions	Applicable Tax at Importation (As of July 1, 2010)
<p>HST generally applies to <u>non-commercial (casual) goods imported by a resident of a participating province</u>, regardless of the point of entry into Canada or where customs clearance occurs.</p> <p>GST generally applies to <u>non-commercial (casual) goods imported by a resident of a non-participating province</u>, regardless of the point of entry into Canada or where customs clearance occurs.</p> <p>This generally includes goods that are sent by mail or courier, unless valued at \$20 or less.</p> <p>The GST or HST is collected by the CBSA at the time of importation and is payable by the person who is liable under the <i>Customs Act</i> to pay customs duties or who would be liable to pay duties if the goods were dutiable.</p>	<p>Exceptions to HST at time of Importation</p> <p>Motor vehicles required to be registered in a participating province are subject only to GST at time of importation. The provincial tax is payable on the earlier of:</p> <ul style="list-style-type: none"> • the day you register the vehicle in the participating province; or • the day on or before which you have to register the vehicle. <p>Exceptions to HST</p> <p>Mobile or floating homes that have previously been used in Canada by an individual are subject only to GST, payable at time of importation.</p> <p>Exceptions to GST and HST</p> <p>Goods that qualify as non-taxable importations under Schedule VII of the Excise Tax Act (ETA), which will be fully relieved of GST/HST.</p>	<p>Residence of importer is a participating province / applicable tax</p> <p>NS 15% HST NB 13% HST NL 13% HST ON 13% HST BC 12% HST</p> <p>Residence of importer is a non-participating province / applicable tax</p> <p>5% GST</p>

Commercial Goods

HST or GST?	Exceptions	Applicable Tax at Importation
<p>HST</p> <p>HST is not payable on commercial goods at time of importation.</p> <p>However, persons who bring commercial goods into a participating province and who are liable, or would be liable, for the payment of duties under the Customs Act may have to self-assess the provincial component of the HST applicable in the province.</p> <p>GST</p> <p>Commercial goods are subject to GST only at time of importation.</p>	<p>Exceptions to GST and HST</p> <p>Goods that qualify as non-taxable importations under Schedule VII of the Excise Tax Act (ETA), which will be fully relieved of GST/HST.</p> <p>Exceptions to Self-Assessment</p> <p>Self-assessment is not required if you are a registrant and the property or service is consumed, used, or supplied in at least 90% in your commercial activities.</p> <p>However, this does not apply to motor vehicles required to be registered in a province; these vehicles are subject to provincial tax at time of registration.</p> <p>It also does not apply to persons using a streamlined accounting method or to listed financial institutions that have to use the attribution method to determine their net tax remittance; these individuals must self-assess.</p>	<p>5% GST</p>

GST/HST APPLICABLE ON CUSTOMS BROKERAGE SERVICES

Notes

1. The term “customs brokerage services” are those services, made in respect of the importation of goods, of arranging for the release of goods, or the fulfilling of any requirement to account for the goods, to report, or provide information, or remit any amount.
2. Other services not included in the term “customs brokerage services” that may be provided by a customs broker include filing objections, appeals, redeterminations, reappraises, reviews, refunds, abatements, remissions, drawbacks or anything in relation to the foregoing.
3. Generally, any service provided by a customs broker, for a Canadian resident, is subject to either GST or HST.

Canadian Importer - Non-commercial (Casual) Goods

<p>Customs Brokerage Services, that is:</p> <p>Services made in respect of the importation of goods, of arranging for the release of goods, or the fulfilling of any requirement to account for the goods, to report, or provide information, or remit any amount.</p>	<p>A customs brokerage service in respect of imported non-commercial (casual) goods is deemed made in a participating province if the provincial component of the HST is imposed on the goods at importation (or would be imposed if certain other provisions in the Excise Tax Act did not apply to relieve the imposition of the provincial component of the HST).</p> <p>The provincial component of the HST applies in respect of an imported good when the good is imported by a resident of a participating province.</p> <p><u>In other words, if the goods are subject to HST at importation (or would be, if they were not otherwise relieved by a provision in the Excise Tax Act), the customs brokerage service is deemed made in a participating province and subject to HST.</u></p> <p>If imported non-commercial (casual) goods are not subject to the provincial portion of the HST at the time they are imported, the supply of customs brokerage services is considered made in a non-participating province and only GST applies in respect of the brokerage service.</p> <p>Example: A customs brokerage service supplied by a customs broker in Alberta, who arranges for the release of non-commercial (casual) goods for a client resident in BC, is subject to HST at the rate of 12%, since the BC provincial component of the HST is imposed on the imported goods.</p> <p>If the consumer were resident in Alberta, the brokerage service would be subject only to GST at the rate of 5%, since only GST applies in respect of the imported non-commercial (casual) goods.</p>
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Canadian Importer - Non-commercial (Casual) Goods

<p>Other services, that is:</p> <p>Other services not included in the term “customs brokerage services” that may be provided by a customs broker include filing objections, appeals, redeterminations, reappraises, reviews, refunds, abatements, remissions, drawbacks or anything in relation to the foregoing.</p>	<p>The general place of supply rule for services applies.</p> <p>These rules are found in the draft Regulations in Respect of the Place of Supply of Property and Services released by the Department of Finance on April 30, 2010. The Canada Revenue Agency has provided their interpretation of these rules in their publication B-103, Harmonized Sales Tax - Place of supply rules for determining whether a supply is made in a province.</p> <p>The rules in the draft regulations that correspond to the four place of supply rules listed in B-103 are as follows:</p> <p>Draft Regulations, paragraph 12.(1)(a)(b) and (c) are Rule 1 in B-103, page 26 Draft Regulations, paragraph 12.(2)(a)(i) is Rule 2 in B-103, page 30 Draft Regulations, paragraph 12.(2)(a)(ii) is Rule 3 in B-103, page 30 Draft Regulations, paragraph 12(2)(b) is Rule 4 in B-103, page 30</p> <p>Under Rule 1, a supply of a service is deemed to be made in a province if, in the ordinary course of business of the supplier, the supplier:</p> <ul style="list-style-type: none"> ▪ obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada of the recipient in the province, (this means that if the supplier of the service [the customs broker] has only one address of either a home or business for the recipient of the supply [their client] and that address is in a participating province, HST will apply to the service. ▪ obtains more than one address described above, the address in the province described above that is most closely connected with the supply, (this means that that if the supplier of the service [the customs broker] has more than one address for the recipient of the supply [their client], a determination must be made with respect to which of these addresses is the address most closely connected to the supply. This is usually the contracting business address of the recipient. If not, it is likely the business address of the recipient that the supplier has the most contact with and that is most used by the suppliers in connection with the supply. If that address is in a participating province, HST will apply to the service) or, ▪ in any other case, obtains an address in Canada of the recipient that is most closely connected with the supply, where the supplier does not obtain a home or business address in Canada of the recipient, the address in Canada of the recipient that is most closely connected with the supply (this means that if the supplier of the service [the customs broker], does not obtain a home or business address of the recipient of the service, but in the ordinary course of business of the supplier, the supplier obtains an address in Canada of the recipient that is most closely connected with the supply, and that address is in a participating province, HST will apply to the service.) <p>If by virtue of any of Rule 1 it is determined that the address of the recipient of the supply of the service (the client) is in a participating province, the service will be deemed to be supplied in a participating province and be subject to HST.</p>
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If Rule 1 does not deem the supply to be made in a province, Rules 2 to 4 must be considered, in order.

Under Rule 2, if the Canadian element of the service is performed primarily (more than 50%) in the participating provinces, the supply is proposed to be deemed made in the participating province in which the greatest proportion of the Canadian element of the service that is performed in the participating provinces is performed.

This means that if under Rule 1 there is no address obtained of the recipient, the supply of the service to be made in the province in which the greatest proportion of the Canadian element of the service is performed.

If Rule 2 does not deem the supply of a service to be made in a participating province because the service is performed equally in two or more participating provinces, under **Rule 3** the service is proposed to be deemed to be supplied in the participating province among those provinces that has the highest rate for the provincial component of the HST.

If two or more of the participating provinces in this case have the same rate for the provincial component, HST will be required to be charged by the supplier using that particular rate and the supply is proposed to be made in the specified province where the business address of the supplier that is most closely connected with the supply is located or, if the business address of the supplier that is most closely connected with the supply is not located in one of the specified provinces, in the specified province that is closest in proximity, determined in any reasonable manner, to the business address of the supplier that is most closely connected with the supply.

If Rule 1 does not deem the supply of the service to be made in a province and the Canadian element of the service is performed otherwise than primarily (50% or less) in the participating provinces, under **Rule 4** the supply is proposed to be made in a non-participating province.

If it has been determined that the supply is made in a non-participating province, only GST will apply to the service.

Canadian Importer - Commercial Goods

<p>Customs Brokerage Services, that is:</p> <p>Services made in respect of the importation of goods, of arranging for the release of goods, or the fulfilling of any requirement to account for the goods, to report, or provide information, or remit any amount.</p>	<p>The supply of customs brokerage services in respect of imported commercial goods is considered made in the province in which the goods are situated at the time of their release. The residence of the importer is not relevant for the determination of the place of supply.</p> <p>Example: A customs broker located in Alberta arranges for the release of commercial goods that are located in BC. The customs broker will charge 12% HST on the customs brokerage services since the release took place in a participating province. If commercial goods are situated in Alberta at the time of their release, the customs brokerage service is subject only to 5% GST.</p>
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Canadian Importer - Commercial Goods

<p>Other services, that is:</p> <p>Other services not included in the term "customs brokerage services" that may be provided by a customs broker include filing objections, appeals, redeterminations, reappraises, reviews, refunds, abatements, remissions, drawbacks or anything in relation to the foregoing.</p>	<p>Same as for non-commercial (casual) goods.</p>
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As well, the Canada Revenue Agency has answered questions asked by CSCB members about HST. These questions, and responses, follow:

CSCB

1. What is the tax status of imported casual goods that are purchased by a resident of a participating province, imported through a non-participating province, and destined for use in the non-participating province? The specific question referred to a resident of BC purchasing appliances for his cottage in Alberta from a vendor in the U.S., and having the appliance shipped directly to Alberta from the vendor.

Answer

1. A resident of a participating province who imports casual goods will be required to pay the provincial portion of the HST when the goods are imported, regardless of where in Canada the goods are actually imported. However, in cases where the resident importer of the casual goods imports the goods in a non-participating province for use exclusively in another province, the resident may then apply for a rebate of the provincial portion of the HST if the prescribed conditions of amended section 261.2 of the Excise Tax Act (ETA) are met. Although the regulations governing rebates have not yet been released, the Department of Finance has indicated in its announcement of February 25, 2010, that the conditions under the current rebate rules will remain the same; thus, the person must pay all taxes, if any are imposed by the destination province, in respect of the casual goods that may be imposed by that province. Pursuant to Finance's announcement, a rebate will also be available if a resident of one participating province imports casual goods for use exclusively in another participating province with a lower rate of the provincial portion of the HST (e.g., a Nova Scotia resident imports goods for exclusive use at his or her cottage in New Brunswick).

CSCB

2. Can you also provide information on the tax status of the customs brokerage services in the above example? The importer is in BC.

Answer

2. As outlined in the draft Regulations in respect of the Place of Supply of Property and Services released by the Department of Finance, a customs brokers' service in respect of imported non-commercial (casual) goods is deemed to be made in a participating province if the provincial component of the HST is imposed on the goods at importation or would be imposed if certain other provisions in the ETA did not apply to relieve the imposition of the provincial component of the HST.

Goods are subject to the provincial portion of the HST at the time of importation only when they are imported by a resident of a participating province. Because the casual goods were imported by a resident of BC, the customs brokerage service is deemed to be made in BC, regardless of where the goods were released.

CSCB

3. When casual goods are imported by a non-resident importer, is the tax status of the goods dependent upon the where the Canadian purchaser is located? The rule states that HST applies to goods imported by a resident of a participating province, but the goods are being imported by the non-resident importer, not a resident of a participating province.

Answer

3. The response to this question is found in D17-1-22,where a foreign company sells goods and arranges with a Canadian customs broker or courier to obtain release and account for the duties and taxes on the goods on behalf of the Canadian resident purchasers, if the goods are not for sale or for any commercial, industrial, occupational, institutional, or other like use by the purchasers, then the HST or PST must be collected on these goods as required.

It should be noted that, while in many cases commercial accounting documents are used for importations of this nature, indicating the foreign or non-resident vendor as the importer on the documents may not in itself make the vendor the importer of the goods for purposes of the Customs Act. In the case where a Canadian resident orders casual goods from a foreign company, even where the goods are imported and accounted for on Form B3, Canada Customs Coding Form, with the name of the foreign company in the importer name field, it is the CBSA's position that the importer of the goods is the person in Canada to whom the goods have been addressed. Therefore, if these goods are casual, the HST or applicable provincial taxes must be collected.

The CSCB thanks the Canada Revenue Agency for their assistance in preparing this document and providing answers to the above questions.

Questions and comments can be directed to the CSCB at cscb@cscb.ca