



Western Region
LPRA Division – GST/HST Rulings
PO Box 1022 Station Main
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HOPE Outreach
Unit 101, 241 Scott Avenue
Penticton BC V2A 2J6

Case Number: 227027
Business Number: n/a

Attention: Meghan Harms, CPA, CGA, MA

September 9, 2021

Dear Meghan Harms:

Subject: GST/HST INTERPRETION
Tax status of supplies made by sex workers

Thank you for your letter dated April 5, 2021, concerning the application of the goods and services tax/harmonized sales tax (GST/HST) to supplies made by sex workers. We apologize for the delay in our response.

The HST applies in the participating provinces at the following rates: 13% in Ontario; and 15% in New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. The GST applies in the rest of Canada at the rate of 5%.

All legislative references are to the *Excise Tax Act* (ETA) unless otherwise specified.

From your letter and the additional information provided, we understand the following:

1. Helping Out People Exploited Society, operating as HOPE Outreach (Hope), is a registered charity that supplies outreach to women of Kelowna and Vernon who are homeless, living in addiction, exploited, and working in sex work.
2. For purposes of this request, you indicate that a “sex worker” supplying “sex work” includes a person in Canada who:
 - a. engages in the in-person exchange of sexual acts for money;
 - b. acts as a social escort;
 - c. provides sexual body rub services (collectively, in-person sex work);
 - d. provides digitally interactive sexual services by webcam or other medium; and

- e. independently produces and distributes sexual images or videos (collectively, digital sex work)
3. A sex worker who provides digitally interactive sexual services by webcam or other medium enters into contracts with third party international agencies. We do not have a contract to review.
4. A sex worker who independently produces and distributes sexual images or videos distributes them electronically; they are not tangible products.

INTERPRETATIONS REQUESTED

You would like to know

1. if the supply of in-person sex work by a sex worker is subject to the GST/HST; and
2. how the GST/HST applies to the supply of digital sex work by a sex worker.

INTERPRETATIONS GIVEN

Generally, most supplies of property and services that are made in Canada are taxable supplies subject to the GST/HST unless they are specifically identified as exempt. Taxable supplies include zero-rated supplies (subject to the GST/HST at the rate of 0%) which are listed in Schedule VI. Exempt supplies are not subject to the GST/HST and are listed in Schedule V.

Interpretation 1

In-person sex work

There is no provision in Schedule V that applies to exempt the services of engaging in the in-person exchange of sexual acts for money, acting as a social escort, and providing sexual body rub services in Canada. These supplies are generally taxable.

Interpretation 2

Digital sex work

Characterization of the supply

The characterization of a supply is fundamental to the application of the GST/HST as it affects the place where a supply is considered to be made and the tax rate that applies to the supply.

With respect to digital or e-commerce supplies, a supply made by electronic means can be characterized as either a supply of intangible personal property (IPP) or a supply of a service. In determining whether a particular supply made by electronic means is a supply of IPP or a supply of a service, the Canada Revenue Agency (CRA) will consider a number of factors.

CRA publications and other tax information may be found under the Taxes menu on the Canada.ca website.

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Factors that generally indicate that a supply made by electronic means is one of IPP are:

- a right in a product or a right to use a product for personal or commercial purposes is provided, such as:
 - intellectual property or a right to use intellectual property (for example, a copyright); or
 - rights of a temporary nature (for example, a right to view, access or use a product while online);
- a product is provided that has already been created or developed, or is already in existence;
- a product is created or developed for a specific customer, but the supplier retains ownership of the product; and
- a right to make a copy of a digitized product is provided.

Factors that generally indicate that a supply made by electronic means is one of a service are:

- the supply does not include the provision of rights (for example, technical know-how), or if there is a provision of rights, the rights are incidental to the supply;
- the supply involves specific work that is performed by a person (includes a corporation) for a specific customer; and
- there is human involvement in making the supply.

It is a question of fact as to whether a particular supply is that of IPP or a service for GST/HST purposes. However, a supply of images or videos distributed electronically is generally considered a supply of IPP. Further, a supply of a right to view images or videos distributed electronically, for example, by way of subscription, is generally considered a supply of IPP.

In this case, as we do not have a contract to review, we are unable to determine whether the digital sex work provided via webcam or other medium are a supply of IPP (for example, a licence or a right to view) or a supply of a service to a third party agency, or both. We are, therefore, including information with respect to the place of supply for both IPP and services, as well as any zero-rating provisions that may apply.

Place of supply

Generally, a supply of IPP is deemed to be made in Canada if the IPP may be used in whole or in part in Canada. Where the use of IPP is not restricted exclusively to outside Canada, the supply of IPP is generally deemed to be made in Canada. Regarding a supply of a service, other than a service in relation to real property, the supply is generally deemed to be made in Canada if the service is, or is to be, performed in whole or in part in Canada.

IPP

Generally, there are three rules that apply where the Canadian rights in respect of a supply of IPP can be used otherwise than only primarily (more than 50%) in participating provinces and otherwise than only primarily outside participating provinces (in other words, the IPP is not limited to being used only primarily in participating provinces or to being used only primarily outside participating provinces).

Those rules are summarized below:

- (1) If the value of the consideration (the amount payable) for the supply of the IPP is \$300 or less, the supply is made in a province if the supply is made through a specified location (for example, a permanent establishment) of the supplier located in the province in the presence of an individual who is, or who acts on behalf of, the recipient; and the IPP can be used in the province.
- (2) If Rule 1 does not deem the supply to be made in a province, the supply may be deemed to be made in a province if the supplier obtains an address of the recipient in the province in the ordinary course of business.
- (3) If Rule 1 or Rule 2 does not deem the supply of the IPP to be made in a province, the supply is made in the participating province for which the tax rate is the highest among the tax rates for the provinces in which the property can be used (for example, the highest GST/HST rate is 15%).

Export of IPP

Certain supplies of IPP that would normally be subject to the GST/HST are zero-rated where they are made to non-residents of Canada.

Section 10 of Part V of Schedule VI generally zero rates a supply of IPP or a right, licence or privilege to use any such IPP where the recipient of the supply is a non-resident person who is not registered for the GST/HST at the time the supply is made.

Section 10.1 of Part V of Schedule VI generally zero-rates a supply of IPP made to a non-resident person who is not registered for GST/HST purposes at the time the supply is made. However, the following supplies are excluded from this zero-rating provision:

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- a supply made to an individual unless the individual is outside Canada when the supply is made;
- a supply of IPP that relates to real property that is situated in Canada or to tangible personal property that is ordinarily situated in Canada;
- a supply of IPP that relates to a supply of a service that is made in Canada and is not zero-rated as an export, a transportation service, or a financial service;
- a supply of IPP that may only be used in Canada; or
- a supply of making a telecommunications facility that is IPP available for use in providing a telecommunication service.

To support the zero-rating of supplies of IPP, suppliers must verify and maintain satisfactory evidence that the supplies are made to non-residents of Canada who are not registered for GST/HST purposes when the supplies are made. GST/HST Info Sheet GI-034, *Exports of Intangible Personal Property*, provides additional information regarding exports of IPP, including the evidence accepted by the CRA to substantiate that the supplies are zero-rated.

Services

The place of supply rules for services, with exceptions, are generally based on the home or business address of the recipient in Canada that the supplier obtains in the ordinary course of its business.

Generally, a supply of a service is made in a province if, in the ordinary course of business, the supplier obtains an address in the province that is:

- (a) if the supplier obtains only one address that is a home or a business address in Canada of the recipient, the home or business address in Canada obtained by the supplier;
- (b) if the supplier obtains more than one address described in paragraph (a), the address described in that paragraph that is mostly connected with the supply; or
- (c) in any other case, the address in Canada of the recipient that is most closely connected with the supply.

Where a supply of a service is made and an address is not obtained, the supply is generally deemed to be made based on the location of the performance of the service. The place where a service is performed is traditionally the place where the person physically doing the work is situated at the time the work is being conducted.

Where the service is not performed primarily in participating provinces, the supply is made in a non-participating province.

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Where the performance of a service is performed primarily in participating provinces, the supply is made in a participating province if an equal or greater proportion of the Canadian element (the portion of the service that is performed in Canada) of the service is not performed in another participating province.

Export of services

A supply of a service made to a non-resident person is zero-rated unless it is specifically excluded under any of paragraphs (a) to (h) of section 7 of Part V of Schedule VI.

GST/HST Memorandum 4.5.3, *Exports – Services and Intellectual Property*, provides additional information on this general zero-rating provision and the exclusionary paragraphs.

References

Additional information on the topics discussed above can be found in GST/HST Technical Information Bulletin B-090, *GST/HST and Electronic Commerce* and in GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province*, under the headings “Characterization of supplies”, “Intangible personal property – General rules”, and “Services – General rules.”

In accordance with the qualifications and guidelines set out in GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service* the interpretation(s) given in this letter, including any additional information, is not a ruling and does not bind the CRA with respect to a particular situation. Future changes to the ETA, regulations, or the CRA’s interpretative policy could affect the interpretation(s) or the additional information provided herein.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at 1-833-451-1579. Should you have additional questions on the interpretation and application of the GST/HST, please contact a GST/HST Rulings officer at 1-800-959-8287.

Yours truly,

T. Ironside

T. Ironside, B.Comm
Senior Technical Interpretation Analyst