



Canadian Sales Taxes Issues for US Organizations



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THE INTERNATIONAL TRADE ASSOCIATION OF GREATER CHICAGO

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Agenda

- Overview / basic concepts
- When does GST apply?
- Registration requirements
- Recovery of tax
- Summary
- Questions



Overview

Canadian Sales Taxes

- Historically two levels of taxation
 - Federal - value added tax
 - Goods and services tax (“GST”)
 - Provincial - sales and use type tax (“PST”, “RST”)
- As of July 1, 2010
 - 2 more provinces (BC & ON) harmonized with the federal GST
 - Effectively eliminating the provincial sales tax in 5 of the 9 provinces who had provincial sales taxes
 - Known as the harmonized sales tax (“HST”)



Overview

What is GST?

- Cdn Goods and services tax
- Value-added tax
 - Applicable to most goods and services acquired for consumption, use or supply in Cda
 - Suppliers charge tax on the “value” of the goods they sell
 - Suppliers recover the GST incurred related to the provision of taxable supplies
 - Suppliers effectively only remit net tax collected
 - Perceived benefits of a value added tax
 - Eliminates embedded tax in business



WHEN DOES GST APPLY?





When does GST apply?

Taxable supplies made in Canada

- Most goods and services supplied in Canada
- Collected by GST registered suppliers
 - No exemptions for goods for resale
- Rate varies by province (see next slide)



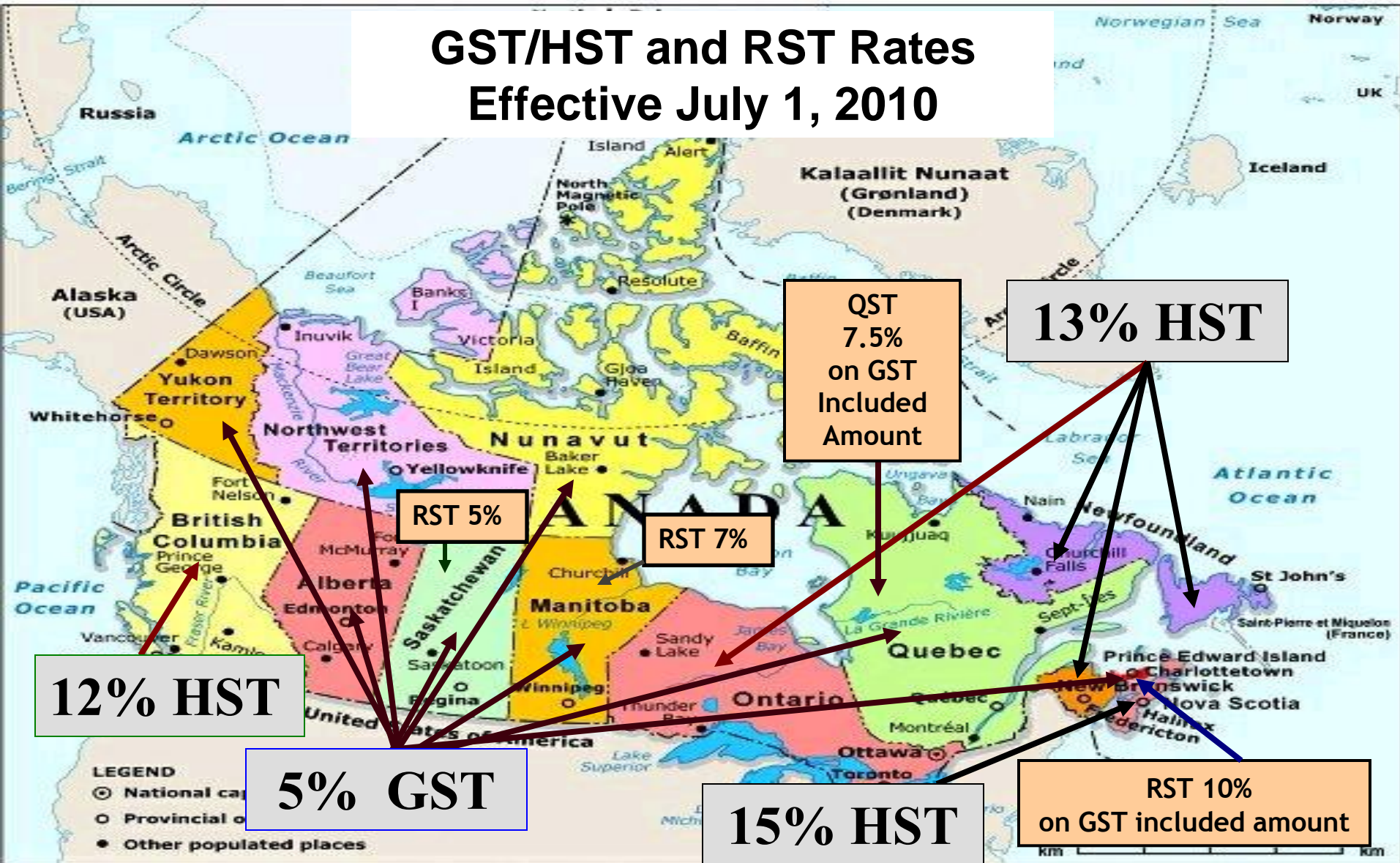
When does GST apply?

Taxable supplies made in Canada

- Exceptions - certain products
 - Zero-rated (taxed at rate of 0%)
 - Basic groceries
 - Qualifying exports
 - Exempt (not taxed)
 - Financial services
 - Most supplies made by the MUSH sector



GST/HST and RST Rates Effective July 1, 2010





When does GST apply?

Goods imported into Canada

- Collected by Canada Border Service Agency (“CBSA”)
- Collected from the importer of record
- GST @ 5% of value for duty

- Possible to pay tax twice
 - Once, on import
 - Twice, to a GST registered supplier
 - Generally recoverable to GST registrants



When does GST apply?

Place of supply rules

- Varies depending on type of supply (e.g., goods, services etc.)
- Goods - Tax generally follows the goods
 - US to Cda → need to consider where title transfers
 - If transfer in the US → no Cdn taxes
 - If transfers in Cda → Cdn taxes will generally apply
 - Cda to Cda → generally look to where goods delivered
 - Cda to US → generally not subject to tax
 - supplier to maintain proof of export
 - Cda to Cda to US → taxable unless certain conditions met



When does GST apply?

Place of supply rules

- Services - new rules as of May 1, 2010
 - Generally look to customer's location
 - Subject to numerous exceptions
 - Zero-rating provisions for most services to non-residents
 - Subject to certain conditions and exclusions
 - Certificate of non-resident or unregistered non-resident status



When does GST apply?

Sample certification of unregistered non-resident status

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 Authorized Individual

Title



REGISTRATION REQUIREMENTS





GST Registration Requirements

Resident vs. Non-resident

- A question of fact
- Incorporated in Cda → Cdn resident
- Not incorporated in Cda → need to consider other factors
 - Central management and control
 - Permanent establishment in Cda
 - Includes
 - A fixed place of business of the person
 - A fixed place of business of another person



GST Registration Requirements

Non-resident registration requirement

- Mandatory
 - Resident of Cda
 - Carrying on business in Cda for GST purposes
 - Not the same as for income tax purposes
 - Question of fact
 - Current CRA policy relies on numerous factors
 - Significant changes in policy
 - Suppliers of certain admissions in Cda



GST Registration Requirements

“Carrying on business” factors include

- the place where agents or employees are located
- the place of delivery
- the place of payment
- the place where purchases are made or assets are acquired
- the place from which transactions are solicited
- the location of assets or an inventory of goods
- the place where business contracts are made
- the location of a bank account
- the place where the service is performed
- the place of manufacture or production



GST Registration Requirements

Non-resident voluntary registration requirements

- For organizations who
 - are engaged in a commercial activity in Cda
 - regularly solicit orders for goods to be exported or delivered to Cda
 - regularly supply services to be performed in Cda
 - regularly supply intangibles related to property or rights in Cda



GST Registration Requirements

Why register for Cdn GST?

- Compliance
 - CRA taking a much broader view on non-resident registration requirements
 - Increase in tax rates on July 1, 2010 (BC and ON HST)
- To recover GST/HST paid
- Customer request



GST Registration Requirements

Key consideration re GST/HST registration

- Applies at a legal entity level
 - Once registered must collect tax on all taxable supplies made
- Security deposit required for all non-residents
 - Generally 50% of estimated net tax
- Reporting requirements
 - Generally monthly (depends on sales volume)
 - New Netfiling requirement as of July 1, 2010



RECOVERY OF TAX





Recovery of Tax

Input tax credits

- Mechanism to recover GST/HST incurred related commercial activity
- Must be registered
- Subject to certain conditions
 - Recipient of the supply
 - Documentary requirements
- For tax paid to suppliers and tax paid on import
- Available for employee reimbursements and allowances
- Generally subject to a 4 year recovery period



Recovery of Tax

Input tax credits

- New HST in provinces of BC and ON (July 1, 2010)
 - Subject to additional restrictions with respect to the recovery of the provincial portion of the HST paid
 - Applicable to large businesses (<\$10 million)
 - Road vehicles
 - Fuel for road vehicles (other than diesel fuel)
 - Energy
 - Telecommunications
 - Meals and entertainment
- Please refer to GST/HST Technical Bulletin B-104, “Temporary Recapture of Input Tax Credits in Ontario and British Columbia”.



Recovery of Tax

Tax paid on import

- Paid by importer of record
- Generally cannot be recovered by GST registered subsidiary
- Generally only recoverable by the person who owned the goods at the time of import
 - Where did title transfer?
 - Consider use of election where title transfers in US & US GST registered supplier clearing goods thru customs (ETA, s. 178.8)
- Flow through provision (ETA, s. 180)
 - For tax paid on import by an unregistered non-resident



Recovery of Tax

Rebates of tax paid in error

- Many supplies of services to non-residents zero-rated
- Rebate for tax charged in error
- Subject to a 2 year recovery period



SUMMARY





Summary

Key questions to consider

- What sort of activity do you have in/with Cda?
- Are you possibly “carrying on business” in Cda?
- Are you currently incurring any unrecoverable GST?
 - GST paid on import
 - GST on goods or services incurred in Cda
- If registered for GST,
 - Are all divisions collecting and remitting tax?
 - Are you familiar with recent changes?
 - HST (July 1, 2010)
 - Net filing requirements



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Questions

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Useful links

RC – 4027 Doing Business in Canada – GST/HST Information for Non-Residents

<http://www.cra-arc.gc.ca/E/pub/gp/rc4027/>



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Thank you