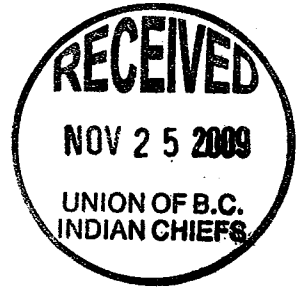


Minister of Finance



Ministre des Finances

Ottawa, Canada K1A 0G5



2009FIN301275

NOV 19 2009

Grand Chief Stewart Phillip,  
Chief William Charlie and  
Chief Robert Chamberlain  
Union of British Columbia Indian Chiefs  
5th Floor, 342 Water Street  
Vancouver, B.C.  
V6B 1B6

Dear Chiefs Phillip, Charlie and Chamberlain:

Thank you for your correspondence of October 22, 2009, regarding the implementation of the proposed Harmonized Sales Tax (HST) for British Columbia and the implications for First Nations in British Columbia.

In regard to your concern about the interaction of the HST with the tax exemption under section 87 of the *Indian Act*, I can assure you that the application of the HST will indeed continue to give effect to that exemption. The tax exemption under section 87 of the *Indian Act* is administered, in regard to purchases by status Indians, under the Goods and Services Tax (GST)/HST in essentially the same way as it is for the purposes of the current British Columbia Social Service Tax. In our view, non-derogation language is not needed to preserve the application of section 87 of the *Indian Act* as the Act itself already contains, in effect, a non-derogation clause, in that by its own terms it applies "notwithstanding any other Act of Parliament or any Act of the legislature of a province."

Further to this, the Canada Revenue Agency (CRA) proposes to make information publicly available concerning sales tax harmonization, which will contain pertinent Questions and Answers for First Nations and their members. In addition, I would draw to your attention the enclosed CRA Technical Information Bulletin, also available at: <http://www.cra-arc.gc.ca/E/pub/gm/b-039/b-039r3-e.pdf>, which explains the application of the GST/HST to status Indians. The CRA would be pleased to respond to any specific questions that you may have concerning the administration of the GST/HST.

You also raised the issue of the continuing application or availability of First Nation taxation powers under the First Nation Sales Tax (FNST) and the First Nation Goods and Services Tax (FNGST). I can assure you that these programs, which further important interests of both the Government of Canada and participating First Nations, will indeed

Canada

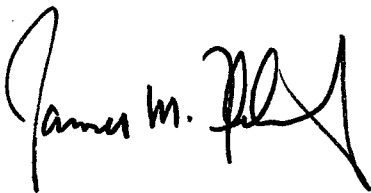
continue to be available with respect to the 5% federal portion of the harmonized tax in exactly the same manner as they currently apply to the 5% GST. The CRA plans to ensure that registrants on affected First Nation lands are informed of this. The Comprehensive Integrated Tax Coordination Agreement with British Columbia will not affect the Government of Canada's ability or commitment to negotiate or implement tax administration agreements like the FNGST or FNST with First Nations.

The Resolution attached to your letter also raised a number of other issues on how First Nations engaged in extractive industries such as mining and forestry might benefit from harmonization, and the transition of existing provincial environmental incentives under the harmonized regime. These are matters for the Government of British Columbia to respond to and I note that you have also sent a copy of your letter to the Honourable Colin Hansen, the Minister of Finance of British Columbia.

I hope this information resolves your concerns. In light of this information, I do not believe that it is necessary for us to meet or to establish a formal consultation process. Should you or your staff have further questions or concerns, I invite you to contact Ms. Annie Carrier, Principal Manager, Aboriginal Tax Policy Section, Finance Canada by e-mail at [Annie.Carrier@fin.gc.ca](mailto:Annie.Carrier@fin.gc.ca) or by telephone at (613) 992-5933.

Thank you for communicating your concerns.

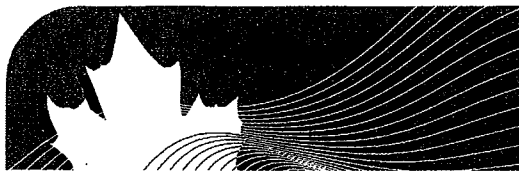
Sincerely,

A handwritten signature in black ink, appearing to read "James M. Flaherty". The signature is fluid and cursive, with the first name "James" and the last name "Flaherty" clearly legible.

James M. Flaherty

- c. The Honourable Colin Hansen, M.L.A.  
Minister of Finance and Deputy Premier, British Columbia
  
- c. The Honourable Jean-Pierre Blackburn, P.C., M.P.  
Minister of National Revenue and Minister of State (Agriculture and Agri-Food)

Enclosure



## GST/HST Administrative Policy – Application of the GST/HST to Indians

**Note:** This supersedes GST/HST Technical Information Bulletin B-039R2, dated October 2005.

The information in this bulletin 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 *Excise Tax Act* or its Regulations, 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*. A ruling should be requested for certainty in respect of any particular GST/HST matter.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec by calling 1-800-567-4692. For general information, please visit their Web site at [www.revenu.gouv.qc.ca](http://www.revenu.gouv.qc.ca).

Reference in this publication is made to supplies taxable at 5% (the rate of the GST) or 13% (the rate of the HST). The HST applies to supplies made in Nova Scotia, New Brunswick, and Newfoundland and Labrador (the "participating provinces"). If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-078, *Place of Supply Rules Under the HST*.

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### Introduction

This bulletin summarizes the CRA's policy concerning the treatment of supplies made to, or by, Indians\*, Indian bands and band-empowered entities under the goods and services tax/harmonized sales tax (GST/HST).

The treatment of Indian purchases under the GST/HST is consistent with the *Indian Act* under which personal property of an Indian or an Indian band situated on a reserve and their interests in reserves or designated lands are not subject to tax.

\* The Canada Revenue Agency (CRA) recognizes that many First Nations people in Canada prefer not to describe themselves as Indians. However, the term Indian is used in this publication because it has a legal meaning in the *Indian Act*.

La version française de la présente publication est intitulée *Politique administrative sur la TPS/TVH – Application de la TPS/TVH aux Indiens*.

The information in this bulletin does not apply to taxes imposed by First Nations and administered by the CRA. Information on these taxes is available in the following CRA publications:

- *First Nations Tax (FNT) (RC4072)*
- *First Nations Goods and Services Tax (FNGST) (RC4365)*

In addition, the policy in this bulletin does not apply to First Nations that have signed final and/or self-government agreements that include a provision that the tax relief under section 87 of the *Indian Act* is no longer applicable. These include the Tlicho First Nation in the Northwest Territories and those Yukon First Nations with final land claim agreements in place or Indians who are members of these First Nations. Information on how the GST/HST applies to First Nations and Indians in the Yukon may be found in GST/HST Notice 143, *Application of GST/HST to Yukon First Nations and Yukon Indians*.

## Definitions

The following is a summary of terms used throughout this bulletin.

A “band-empowered entity” is a corporation, board, council, association, society, or other organization that is owned or controlled by a band, a tribal council, or a group of bands other than a tribal council. This policy is applicable to those band-empowered entities that are situated on a reserve. A band-empowered entity is considered to be situated on a reserve when the entity maintains a presence on a reserve.

An entity is considered to be owned by a band, a tribal council or a group of bands other than a tribal council if:

- the band, tribal council or group of bands owns all or substantially all of the shares or holds all or substantially all of the memberships of the entity; or
- the band, tribal council or group of bands holds title to the assets of the entity or controls its disposition, such that in the event of wind up or liquidation, these assets are vested in the band.

An entity is considered to be controlled by a band, tribal council or group of bands if:

- the band, tribal council, group of bands or individual members of the band, tribal council or group of bands, appoint or elect a majority of the members of the governing body of the entity (e.g., directors); and
- the entity is required by legislation, by-laws, or an operating agreement, to submit to the band, tribal council or group of bands, its operating budget and where applicable, its capital budget for review and approval.

“Band management activities” are activities or programs undertaken by a band or band-empowered entity that are not commercial activities for which they would otherwise be entitled to an input tax credit. In determining whether the acquisition of a supply is for band management, the output of the activity or program will be the determining factor, as opposed to the objectives of the activity or program. For example, a band’s objective may be to provide employment and training to band members. To achieve this objective, the band may form a commercial enterprise which will provide on-the-job training and also create employment. Although the band’s objective is to train persons, the output is a commercial activity for which there is an entitlement to input tax credits. As a result, supplies acquired for use in this band program are not considered to have been acquired for use in band management activities.

An “Indian” is a person who is registered under the *Indian Act*. An Indian does not have to live or maintain a residence on a reserve. Such a person may be issued a *Certificate of Indian Status* card by the Department of Indian Affairs and Northern Development.

An “Indian band”, for purposes of the GST/HST, includes both a band council and a tribal council. The band council is the primary unit of an Indian government.

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A tribal council is another level of Indian government. It is a grouping of bands with a common interest that have joined together to provide advisory or program services for two or more bands. Band council members compose the tribal council Board of Directors.

“Property” means any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money.

“Real property” includes

- in respect of property in the Province of Quebec, immovable property and every lease thereof,
- in respect of property in any other place in Canada, messuages, lands and tenements of every nature and description and every estate or interest in real property, whether legal or equitable, and
- a mobile home, a floating home and any leasehold or proprietary interest therein.

A “reserve” means a reserve within the meaning of the *Indian Act*, that is, a tract of land which has been set apart for the use and benefit of a band within the meaning of the *Indian Act*, and equivalent lands under self-government legislation, i.e. the *Cree-Naskapi (of Quebec) Act* and the *Sechelt Indian Band Self-Government Act*. “Reserve” also includes “designated land”, which, according to the *Indian Act*, is a tract of land whose legal title remains vested in Her Majesty and in which the band for whose use and benefit it was set apart as a reserve has, otherwise than absolutely, released or surrendered its rights or interests.

The settlements affected by remission orders for Indians and bands on certain Indian settlements are also treated as reserves for the purposes of this policy. These remission orders cover a limited number of settlements in Canada for which a public commitment has been made by the Government of Canada to grant reserve status under the *Indian Act*. Information on these remission orders is available from CRA tax services offices.

### **Certificate of Indian Status card**

An Indian must present proof of registration under the *Indian Act* to a vendor in order to acquire property or services on a reserve without paying the GST/HST. The CRA will accept as proof of registration under the *Indian Act* the *Certificate of Indian Status* card.

The *Certificate of Indian Status* card is issued by the Department of Indian Affairs and Northern Development to eligible Indians. The cards display the Canadian maple leaf logo, followed immediately by the caption “Indian and Northern Affairs Canada”. They also bear a photograph of the individual. Further information on these cards, including samples, is available on the Indian and Northern Affairs Canada Web site at the following address: [www.ainc-inac.gc.ca/br/is/index-eng.asp](http://www.ainc-inac.gc.ca/br/is/index-eng.asp)

**Note:** An individual presenting any other “membership” or “association” type card, such as a Metis Association card, is not entitled to tax relief under this policy.

### **Supplies made to Indians, Indian bands and band-empowered entities**

#### ***Property***

#### **On a reserve**

Indians, Indian bands, or unincorporated band-empowered entities may acquire property on a reserve without paying the GST/HST, provided they have the appropriate documentation to show the vendor.

Acquisitions of property on a reserve by non-Indians will be subject to the normal GST/HST rules.

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Corporations are considered to be separate legal persons from either an Indian or an Indian band and would not usually be eligible for relief from the GST/HST. However, the tax will not apply to incorporated band-empowered entities purchasing property for band management activities.

### **Off reserve**

Indians, Indian bands and unincorporated band-empowered entities, as well as incorporated band-empowered entities purchasing for band management activities, may acquire property off a reserve without paying the GST/HST, provided

- they have the appropriate documentation to show the vendor; and
- the property is delivered to a reserve by the vendor or the vendor's agent.

However, if the purchaser uses his or her own vehicle to transport the property to the reserve, the acquisition is subject to the normal GST/HST rules.

**Note:** Delivery is not required if property is acquired off a reserve from a qualifying remote store. For information on remote stores, refer to page 8.

### **Intangible personal property (IPP)**

As IPP is not a physical object, it cannot be delivered to a reserve. However, tax relief may apply if the IPP is situated on a reserve. IPP will be considered to be situated on a reserve where there are sufficient factors to connect the IPP to a reserve. For example, the purchase of a membership by an Indian to a golf course will be considered to be situated on a reserve where all rights in respect of the membership (i.e. rights to property or services) can be used or exercised exclusively on a reserve. As well, a ticket acquired by an Indian off a reserve to attend a concert will also be considered situated on a reserve if the concert is held on a reserve.

Further, the supply of software over the Internet will be considered to be situated on a reserve where the Indian purchaser lives on a reserve and the software supplier establishes that the software is downloaded onto a computer located on a reserve.

Also, where an Indian band or band-empowered entity registers an employee or other official to attend an off-reserve conference for band management activities, the conference fee (i.e. the right to attend) will be relieved of tax provided a certificate is given to the conference organizer (see "Vendor documentation").

### **Memberships**

A membership comprises various rights to property or services, and is therefore considered to be intangible personal property. Since it is intangible personal property and not a physical object that can be delivered to a reserve, the place where the membership can be used determines its tax status. For tax relief to apply, the rights provided by the membership must be exercisable exclusively on a reserve to be considered "situated" on a reserve. For example, where the rights to property or services in respect of a recreation centre membership can only be used or exercised exclusively on a reserve, that membership will be situated on a reserve. An Indian, an Indian band or a band-empowered entity may acquire an otherwise taxable membership on a tax-relieved basis.

### **Leases, licences and similar arrangements**

For information on how the GST/HST applies to tangible personal property acquired by Indians, Indian bands and band-empowered entities by way of lease, licence or similar arrangement refer to Policy Statement P-230R, *Application of the Excise Tax Act (ETA) to Leases, Licences and Similar Arrangements of Tangible Personal Property by Indians, Indian Bands and Band Empowered Entities*.

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## **Importations**

Importations made by Indians, Indian bands or band-empowered entities are subject to the normal import rules. That is, importations are taxable at 6% or 14% unless they are specifically zero-rated. The GST/HST on imported goods is collected by the Canada Border Services Agency under the authority of the *Customs Act* at the time of importation.

Importations of goods are subject to the GST/HST even in those instances where, after importation, the property is delivered to a reserve by the vendor's agent or by Canada Post.

## **Services**

### **Individual Indians**

**Services for property:** If a service is performed totally on a reserve and the property is situated on a reserve at that time, the GST/HST will not apply.

**Note:** A repair service performed on a vehicle off a reserve will be subject to tax. If the repair service involves the provision of parts (e.g., a new engine) and the parts are invoiced separately on the Indian purchaser's invoice, the parts will be relieved of tax if the vehicle with the installed parts is delivered to a reserve by the vendor or vendor's agent.

**Services for individuals:** If the service is performed totally on a reserve for an Indian who is on a reserve at the time the service is performed (e.g., a haircut given on a reserve), the service will not be subject to the GST/HST.

Individual Indians must pay the GST/HST on all taxable services that are not performed or do not occur totally on a reserve, unless the service is purchased for real property interests on a reserve or is a transportation service described below.

Services are subject to the normal GST/HST rules when they are provided to non-Indians on a reserve.

**Transportation services:** The GST/HST will apply to these services, unless both the origin and the destination are on a reserve. For example, a taxi service operating within the boundaries of a reserve would not charge the GST/HST on the fare when the service is provided to an Indian. In addition, the GST/HST would not apply on a transportation service provided to an Indian from one reserve to another.

### **Indian bands and band-empowered entities**

Services acquired on or off a reserve by an Indian band or band-empowered entity (incorporated or unincorporated) for band management activities or for real property on a reserve are not subject to the GST/HST. **Exception:** Indian bands and band-empowered entities will pay the GST/HST on off-reserve purchases of transportation, short-term accommodation, meals and entertainment. A rebate to recover the GST/HST paid on these purchases may be available where certain conditions are met.

All services acquired by an Indian band or band-empowered entity for real property off a reserve are subject to the GST/HST (e.g., construction services acquired by an Indian band to build a friendship centre located off a reserve).

**General rebate under code 8:** An Indian band or a band-empowered entity may be entitled to recover the GST/HST paid on certain travel expenses (e.g., transportation, short-term accommodation, meals and entertainment expenses) incurred off-reserve by band employees or officials for band-management activities or for real property on a reserve. A rebate to recover the GST/HST paid on such eligible travel expenses may be claimed under code 8 of form GST189, *General Application for Rebate of GST/HST*. This form must be filed no later than two years after the GST/HST was paid.

Examples of other eligible travel expenses include meeting rooms, rental of an automobile, and parking. They also include reimbursements or allowances paid by an Indian band or band-empowered entity to a band employee or official.

A rebate is not available on reimbursements or allowances paid to band members for costs related to personal travel (e.g., medical or dental appointments).

**Other Rebate:** Indian bands and band-empowered entities may be entitled to file the applicable Public Service Body Rebate on the remaining GST/HST that was paid and not refunded. Please note that band funding of First Nation non-profit organizations will be considered equivalent to government funding to qualify for the 50% GST/HST rebate to non-profit organizations. For more information, please see CRA guide RC4034, *GST/HST Public Service Bodies' Rebate – Includes Form GST66*.

**Vendor documentation**

Vendors must keep adequate evidence that sales for which no GST/HST was payable were made to Indians, Indian bands or band-empowered entities.

**Individual Indians**

When the purchaser is an individual Indian, vendors must maintain adequate evidence that a sale was made to an Indian, as registered under the *Indian Act*. The CRA will accept as adequate evidence, notation on the invoice or other sales document that is retained by the vendor, of the registry number or the band name and family number (commonly referred to as the band number/treaty number).

**Indian bands and band-empowered entities**

When the purchaser is an Indian band or band-empowered entity, a certificate must be provided and retained by the vendor that the property is being acquired by an Indian band or band-empowered entity or that the services are being acquired for band management activities.

Please refer to page 5 of this bulletin regarding the entitlement for tax relief on acquisitions by incorporated and unincorporated band-empowered entities.

The certification should be similar in wording to the following:

<i>This is to certify that the property or service being acquired by [Insert the name of band or band-empowered entity] is for band-management activities (if applicable) or for real property on the reserve. This supply will not be subject to the goods and services tax/harmonized sales tax (GST/HST).</i>	
_____	_____
<i>Signature of Authorized Officer</i>	<i>Date</i>
_____	
<i>Title of Signing Officer</i>	

**Off-reserve purchases of property delivered to a reserve**

Along with the individual's *Certificate of Indian Status* card number or the certification by the Indian band or band-empowered entity, the vendor is required to maintain proof of delivery (e.g., waybill, postal receipt or freight bill), indicating the destination of the property to a reserve.

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## **Delivery**

If property is acquired from a vendor that is not located on a reserve, the property must be delivered to a reserve for the purchase to be relieved from the GST/HST. The property must be delivered by either the vendor or an agent of the vendor.

If these conditions are not met, or if the vendor does not qualify as one of the remote stores described on page 9, the normal GST/HST rules apply.

## **Vendor**

Where property is delivered to a reserve in the vendor's own vehicle, the vendor must maintain proof that delivery was made to a reserve. This will be indicated on the invoice issued by the vendor and the vendor's internal records (e.g., mileage logs or dispatch records). Such proof must be maintained in addition to the proof of Indian status or certification by an Indian band or band-empowered entity.

Normal GST/HST rules will apply where an Indian, Indian band or band-empowered entity that is the purchaser takes possession of the property off a reserve and delivers the property to a reserve in his or her own vehicle.

## **Vendor's agent**

Where the property is delivered by the vendor's agent to a reserve, the vendor must maintain:

- proof of Indian status or certification by the Indian band or band-empowered entity; and
- proof of delivery being made to the reserve (e.g., a waybill, postal receipt showing a reserve address).

An agent of the vendor includes an individual or company under contract to the vendor for making deliveries (e.g., postal services, trains, boats or couriers). The vendor would normally bear all the risks of the agent during the course of the delivery as if these risks were the vendor's own, unless specifically covered in the agency agreement.

A carrier who is under contract with the purchaser is not regarded as the agent of the vendor. In addition, undertakings by purchasers of property to deliver the property to themselves as agents of the vendor are not acceptable to the CRA.

## **Supplies provided by Indians, Indian bands and band-empowered entities**

Businesses owned by Indians, Indian bands or band-empowered entities whose annual taxable sales of property and services are more than \$30,000, are required to register for the GST/HST. Like other businesses, once registered, they must collect and remit the tax on their sales of property and services (unless the sales are made to Indians, Indian bands or band-empowered entities under conditions where the GST/HST is not payable). They may also claim input tax credits for the GST/HST paid on purchases made in the course of their commercial activities.

Businesses, whether owned by Indians or non-Indians, selling property or services to Indians must include their taxable sales to Indians, even if no GST/HST was charged, in their calculation of annual revenue to determine if they must register for the GST/HST. Sales of taxable property and services that are relieved from tax when supplied to Indians, Indian bands or band-empowered entities under the circumstances described in this bulletin are still considered to be taxable sales for determining registration requirements.

Sole proprietorships and partnerships owned by individual Indians receive the same treatment on purchases as individual Indians. If they are registered for the GST/HST, they, like all other businesses, must collect the GST/HST on their sales of taxable property and services (unless they are made to Indians, Indian bands or

band-empowered entities under the conditions in which the GST/HST is not payable) and they can recover any GST/HST paid on their eligible off-reserve business purchases by claiming input tax credits.

In the case of purchases made by partnerships, tax relief is available for purchases made in either the Indian purchaser's own name or the partnership name. Where a partnership has both Indian and non-Indian participants, relief from the GST/HST will apply fully to the partnership. However, all conditions for the Indian or Indian band partner to receive tax relief on the acquisition must be met, i.e., property must be acquired on a reserve or delivered to a reserve and the proper documentation must be maintained.

Partnerships with partners that are Indian bands or band-empowered entities are also afforded tax relief on purchases when acquired in either the name of the Indian band or the band-empowered entity or the partnership name.

It is important to establish whether you are dealing with a partnership or a joint venture. GST/HST Policy Statement P-171R, *Distinguishing Between a Joint Venture and a Partnership for the Purposes of the Section 273 Joint Venture Election*, may be of assistance.

Where a joint venture election under section 273 of the *Excise Tax Act* is made and the operator is an Indian, Indian band or band-empowered entity, the operator will qualify for tax relief on property where the requirements in this bulletin apply. An election as operator may be made provided the joint venture is involved in a commercial activity for the exploration or exploitation of mineral deposits or is a prescribed activity.

For purposes of the Act, a trust is considered a separate person from its beneficiaries. Consequently, a trust is not an Indian or an Indian band and is not eligible for relief under this bulletin. In addition, a trust does not qualify as a band-empowered entity as it cannot meet the "owned or controlled" criteria. However, a supply provided by a trust (e.g., an estate) to an Indian, an Indian band or a band-empowered entity (e.g., a beneficiary) may be eligible for relief under this bulletin.

### **Remote stores and other off-reserve stores**

Some vendors who are not located on a reserve may make a significant portion of their sales to Indians, Indian bands and band-empowered entities. In some instances, these vendors are in a remote location and their regular trading zone includes a reserve that is not in the immediate vicinity. In such cases, the requirement to deliver goods to a reserve in order for tax relief to apply may be difficult for the vendor to meet (e.g., prohibitive cost or a lack of means of transportation).

In recognition of these unique circumstances, the CRA has developed a policy to enable vendors who meet certain conditions to provide point-of-sale tax relief to Indians, Indian bands and band-empowered entities on the acquisition of goods without the need to deliver those goods to a reserve. For detailed information please refer to the GST/HST Policy Statement P-246, *Remote Stores and Other Off-reserve Stores with Significant Sales to Indians, Indian Bands and Band-empowered Entities*.

### **Enquiries by telephone**

**Technical enquiries on the GST/HST:** 1-800-959-8287

**General enquiries on the GST/HST:** 1-800-959-5525 (Business Enquiries)

**If you are located in Quebec:** 1-800-567-4692 (Revenu Québec)

All technical publications related to the GST/HST are available on the CRA Web site at [www.cra.gc.ca/gsthstech](http://www.cra.gc.ca/gsthstech).