



Harmonized Sales Tax for Ontario – Questions and Answers on Housing Rebates and Transitional Rules for Housing and Other Real Property Situated in Ontario

NOTE: This notice replaces the earlier version dated October 2009. It has been revised to add and update the questions and answers following a recent information notice released by the Government of Ontario.

The 2009 Ontario Budget proposed a harmonized sales tax (HST), which, subject to legislative approval by the Ontario legislature, would come into effect on July 1, 2010, and be administered by the Canada Revenue Agency (CRA).

This publication provides questions and answers that reflect the proposed tax changes as announced in the 2009 Ontario Budget, in Information Notice No. 2, *Helping Homebuyers and the Housing Industry with an Enhanced New Housing Rebate, A New Rental Housing Rebate and Transitional Rules*, in Information Notice No. 3, *General Transitional Rules for Ontario HST* and in Information Notice No. 4, *Additional Information for Homebuyers and the Housing Industry under Ontario HST*. These three information notices were released by the Government of Ontario, respectively, on June 18, 2009, October 14, 2009 and November 19, 2009.

Any commentary in this publication should not be taken as a statement by the CRA that these proposed changes will be enacted in their current form.

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La version française de la présente publication est intitulée *Taxe de vente harmonisée de l'Ontario – Questions et réponses sur les remboursements pour habitations et les règles transitoires visant les habitations et autres immeubles situés en Ontario*.



Residential real property

Note: For purposes of this document, the word house means both the building and land portions of the house, unless otherwise specified. In applying the arm's length test in this notice, aunts and uncles would be considered to be related to their nieces and nephews. A specified related party is any person who is not dealing at arm's length with, or who is a person associated with, the original builder. Associated is defined in section 127 of the *Excise Tax Act*.

General

1. What is the current Ontario retail sales tax (RST) treatment for new housing?

Information relating to the application of the RST in Ontario is available online at www.rev.gov.on.ca. You may also contact the Government of Ontario's Budget hotline at 1-800-337-7222 for more information on the current application of the RST.

2. What is the proposed treatment for sales of residential housing in Ontario under a harmonized sales tax (HST)?

The HST at 13%, composed of a federal part at 5% and a provincial part at 8%, would apply to a builder's sale of a newly constructed or substantially renovated residential complex, including a multiple unit residential complex (e.g., an apartment building). The sale of housing that has been previously occupied by an individual as a place of residence and that is exempt from GST would also be exempt for purposes of the HST. The definitions in the *Excise Tax Act* that relate to housing (e.g., builder, residential complex, residential unit, residential condominium unit, substantial renovation) and the CRA's current policies regarding the application of the GST to housing, would generally apply under the HST.

3. I am selling my house and the sale is exempt from GST. If the closing date for the sale of my house is after June 2010, would the sale of the house be exempt under the HST?

Yes. The sale of your previously occupied house would be exempt under the HST and you would not be required to charge or collect the HST.

4. I am a builder and I am registered for GST/HST purposes. I currently claim input tax credits (ITCs) for the 5% GST that I pay on the lumber I purchase to build new houses. Would I be able to claim ITCs for the 13% HST paid on lumber purchased after June 2010?

Yes. You would be able to claim an ITC for the 13% HST paid on your purchase of lumber and other construction materials that you use to construct new housing.

Application of the HST to new housing

5. When would the HST apply to a sale of a residential complex?

Generally, the HST would apply to a builder's taxable supply by way of sale of a newly constructed or substantially renovated residential complex where both ownership and possession of the complex are transferred to the purchaser under the agreement for the supply after June 2010. If either ownership or possession is transferred to the purchaser before July 2010, the HST would not apply.

This general rule applies to sales of all housing types, including residential condominium units, mobile homes and floating homes. An exception exists for certain types of housing if, among other conditions, a written agreement of purchase and sale was entered into on or before June 18, 2009 – see the section below on grandparented sales of housing.

The HST would generally be payable on the earlier of the day ownership or possession of the residential complex is transferred to the purchaser. In the case of a residential condominium unit, if possession of the unit

is transferred before the condominium has been registered under the *Condominium Act, 1998* [S.O. 1998, c. 19], the HST would generally become payable on the earlier of the day ownership of the unit is transferred or the day that is 60 days following the date of registration.

6. A builder and a purchaser enter into a written agreement of purchase and sale in August 2009 for a newly constructed house. The agreement provides that ownership and possession of the house will transfer to the purchaser on July 14, 2010. The builder is not a reseller. Would the HST apply to the sale?

Yes. Since the written agreement of purchase and sale is entered into after June 18, 2009, and both ownership and possession of the house transfer to the purchaser after June 2010, the HST at 13% would apply to the sale. If the construction of the house is at least 10% complete as of July 1, 2010, the purchaser would be entitled to claim an RST transitional new housing rebate – see the section below on RST transitional new housing rebates. The purchaser may also be entitled to claim a GST new housing rebate in respect of the federal part of the HST and an Ontario new housing rebate in respect of the provincial part of the HST provided that all of the conditions for each of these rebates are met – see the section below on new housing rebates. For more information on resellers, see the section below on resellers of housing.

7. When would the HST not apply to a sale of a newly constructed or substantially renovated residential complex?

Generally, the HST would not apply to a builder's taxable supply by way of sale of a newly constructed or substantially renovated residential complex where either ownership or possession of the complex is transferred, under a written agreement of purchase and sale, to the purchaser before July 2010, regardless of when the purchase and sale agreement was entered into. However, GST at 5% would apply.

The HST would also not apply if the sale of the newly constructed or substantially renovated residential complex is grandparented – see the sections below on grandparented sales of housing and resellers of housing. However, GST at 5% would apply to the sale of the complex.

8. A builder and a purchaser enter into a written agreement of purchase and sale on July 3, 2009 for a newly constructed house. The agreement provides that ownership and possession of the house will transfer to the purchaser in May 2010. Would the HST apply to the sale?

No. If ownership or possession (or both) of the house transfers to the purchaser in accordance with the written agreement before July 2010, the HST would not apply. However, the GST at 5% would apply to the sale of the house.

9. I entered into a written agreement of purchase and sale for a newly constructed house with a builder on June 5, 2009. I take ownership and possession of the house, in accordance with the agreement, in May 2010. Would the HST apply to the sale?

No. If ownership or possession (or both) of the house transfers to you in accordance with the written agreement before July 2010, the HST would not apply, regardless of when the purchase and sale agreement was entered into. However, the GST at 5% would apply to the sale of the house.

9.1 I entered into a written agreement of purchase and sale in December 2009 for a newly constructed residential condominium unit. The agreement provides that possession of the unit will transfer to me in May 2010 but ownership will only be transferred after July 1, 2010, following the registration of the condominium complex. Would the HST apply to the sale?

No. If ownership or possession (or both) of the residential condominium unit transfers to you in accordance with the written agreement before July 2010, the HST would not apply. However, the GST at 5% would apply to the sale of the residential condominium unit.

Grandparented sales of housing

10. What is a grandparented sale of a house?

Where a written agreement of purchase and sale for a newly constructed or substantially renovated detached house, semi-detached house, attached house, residential condominium unit or condominium complex was entered into on or before June 18, 2009, the sale would generally be grandparented if both ownership and possession of the housing transfer to the purchaser, under the agreement, after June 2010. In this case, the provincial part of the HST would not be payable on the sale. Only the federal part of the HST would apply, i.e., the sale would be subject to the GST at 5%. In the case of a detached house, semi-detached house or attached house, the purchaser must be an individual in order for the grandparenting rule to apply. In the case of residential condominiums, the grandparenting rule would apply to all purchasers, including individuals.

While a grandparented sale of housing is not subject to the HST, the builder would be required to remit a transitional tax adjustment if the construction straddles the July 1, 2010 implementation date and the construction is less than 90% complete as of July 1, 2010. The transitional tax adjustment is intended to approximate the amount of the RST that would have been paid in respect of the construction costs incurred after June 2010 – see the section below on the transitional tax adjustment for houses and residential condominiums.

For information on the assignment of a purchase and sale agreement for a grandparented house, see the section below on assignments of purchase and sale agreements for grandparented housing.

For information on resellers of housing, see the sections below on resellers of housing.

11. Are there any exceptions to the grandparenting rule?

Yes. For example, newly constructed or substantially renovated houses built by owners for their personal use, as well as duplexes, traditional apartment buildings, mobile homes and floating homes would not be grandparented under the transitional rules for purchases of new housing, as the transitional rules would apply differently to these houses.

Modular homes are considered to be mobile homes for GST/HST purposes provided they meet certain criteria including that the manufacture or assembly of the modular home is substantially completed prior to being moved to a site. For more detailed information refer to GST/HST Policy Statement P-223, *Meaning of manufacture or assembly of which is completed or substantially completed in the definition of mobile home*.

Reference should also be made to the sections below on assignments of purchase and sale agreements for grandparented housing and on resellers of housing.

12. I entered into a written agreement of purchase and sale for a new house with a builder on May 31, 2009. I take ownership and possession of the house, in accordance with the agreement, in August 2010. The builder is not a reseller. Would the HST at 13% apply to the sale?

Generally, no. The purchase of the house would normally be grandparented since the written agreement of purchase and sale was entered into on or before June 18, 2009 and both ownership and possession of the house are transferred after June 2010. However, the sale of the house would be subject to the GST at 5%.

13. I am a builder and I am registered for GST/HST purposes. I am constructing a house whose sale would be grandparented and the construction of this house straddles the July 1, 2010 implementation date for the HST. Would I be able to claim ITCs for the HST paid on lumber and other construction materials purchased after June 30, 2010 that will be used to complete the construction of this grandparented house?

Yes. Even if the sale of the house would normally be grandparented, you would be entitled to claim ITCs for the 13% HST paid on the lumber and other construction materials used in the construction. If the construction of the house is less than 90% complete as of July 1, 2010, you would be required to account for a transitional tax adjustment in calculating your net tax remittance – see the section below on transitional tax adjustment for houses and residential condominiums.

14. After entering into a written agreement of purchase and sale on April 1, 2009 for a newly constructed house, the purchaser requests that upgrades be made to the house. Ownership and possession of the house will transfer to the purchaser under the agreement on September 10, 2010. The builder is not a reseller. Would the HST apply to the additional amount payable for the upgrades?

Upgrades to a house will generally result in modifications to the existing agreement such that the upgrades form part of the written agreement for the purchase and sale of the house. In such a case, the tax applicable to the purchase of the house would prevail. In this case, since a written agreement of purchase and sale was entered into on or before June 18, 2009, and ownership and possession will transfer to the purchaser after June 2010, the HST would not apply. However, the GST at 5% would apply on the total amount payable for the house, including the amount payable for the upgrades.

Where an existing agreement of purchase and sale is modified, varied or otherwise materially altered to such an extent that it is considered to be a new agreement, the application of the transitional rules will be based on the date that the new agreement is entered into. Reference should be made to GST/HST Policy Statement P-249, *Agreements and Novation*.

If a purchaser and a builder renegotiate the terms of a written agreement of purchase and sale for new housing, that was entered into on or before June 18, 2009, and enter into a new agreement after June 18, 2009, the transitional rules would apply based on the date that the new agreement was entered into.

14.1 After entering into a written agreement of purchase and sale for a newly constructed house on June 10, 2009 for a house that is to be built on lot 22, the purchaser and the builder renegotiate the terms of the agreement on July 15, 2009, such that the house will now be built on lot 8 as opposed to lot 22. Ownership and possession will transfer to the purchaser under this new agreement on July 15, 2010. Would the HST apply to the sale of the house?

Yes. The HST at 13% would apply to the sale of the house since the written agreement of purchase and sale for the house is entered into after June 18, 2009, and both ownership and possession are transferred after June 2010. The transitional rules would apply based on the new agreement entered into on July 15, 2009 in respect of the house to be constructed on lot 8.

Assignment of purchase and sale agreements for grandparented housing

14.2 A builder (referred to as the “original builder”) and a purchaser enter into a written agreement of purchase and sale for a newly constructed residential condominium unit on May 18, 2009. In accordance with the agreement of purchase and sale for the condominium unit, ownership and possession of the unit will transfer to the purchaser on July 15, 2010. Would the HST apply to the sale of the condominium unit if the purchaser assigns its rights under the agreement to a third party?

Generally, no. Where a written agreement of purchase and sale for grandparented housing is assigned to a third party (assignee), the housing will remain grandparented provided that the assignee receives ownership and

possession of the grandparented housing from the original builder, under the agreement with the original builder, after June 2010 and:

- there is no novation of the agreement;
- the purchaser and the original builder are dealing at arm's length and are not associated; and
- the original builder or a specified related party does not acquire or reacquire by way of sale any legal or beneficial interest in the housing.

Where all of the above conditions are met, the sale of the residential condominium unit from the original builder to the assignee would be grandparented since the written agreement of purchase and sale was entered into on or before June 18, 2009 and both ownership and possession of the condominium unit are transferred after June 2010. As such, the HST would not apply. However, the sale of the condominium unit would be subject to the GST at 5%.

14.3 After entering into a written agreement of purchase and sale on May 1, 2009 for a newly constructed house with a builder (referred to as the "original builder"), the purchaser, who is an individual, assigns its rights under the purchase and sale agreement to an unrelated third party (assignee) for \$10,000 on October 15, 2009. In accordance with the agreement of purchase and sale for the house, ownership and possession of the house will transfer to the purchaser/assignee from the original builder on July 15, 2010. There is no novation of the agreement. The original builder and the purchaser are not associated and are dealing at arm's length. Would the assignee be required to pay the HST on the purchase of the house? Would the assignee be required to pay the HST to the purchaser on the \$10,000 paid in accordance with the assignment agreement entered into on October 15, 2009?

The sale of the house by the original builder would remain grandparented since the conditions for grandparenting when there is an assignment of a purchase and sale agreement are met, and the written agreement of purchase and sale was entered into on or before June 18, 2009 with both ownership and possession of the house being transferred after June 2010. As such, the HST would not apply on the purchase of the house from the original builder. However, the sale of the house would be subject to the GST at 5%.

The \$10,000 paid under the assignment agreement is consideration paid for an interest in the house supplied by the purchaser to the assignee. For GST/HST purposes, the supply of an interest in real property is a supply of real property. If the purchaser is a builder for GST/HST purposes, the supply would be subject to the GST/HST. However, since ownership of the interest transfers to the purchaser under the assignment agreement on October 15, 2009, the HST would not apply. The GST at 5% would apply to the \$10,000 paid to the purchaser.

Resellers of housing – Sale of housing purchased on a grandparented basis by a first reseller

14.4 A builder (referred to as the "original builder") and a purchaser enter into a written agreement of purchase and sale for a newly constructed residential condominium unit on May 18, 2009. In accordance with the agreement of purchase and sale for the condominium unit, ownership and possession of the unit will transfer to the purchaser on July 15, 2010. If the purchaser resells the condominium unit, would the HST apply to the sale of the condominium unit?

A first reseller is the first purchaser that enters into a written agreement of purchase and sale for grandparented housing with the original builder. Where the sale of the housing by the first reseller is taxable for GST purposes, the HST would not apply to the sale (i.e., the sale of the housing would be grandparented) if all of the following conditions are met:

- the first reseller obtained possession of the housing from the original builder after the construction or substantial renovation was substantially completed;
- the original builder and the first reseller are dealing at arm's length and are not associated;

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- the first reseller:
 - is a builder of the housing only because of paragraph (d) of the definition of “builder” in the *Excise Tax Act*, or
 - is a builder of the housing only because of paragraphs (b) and (d) of the definition of “builder” in the *Excise Tax Act* and the construction or renovation completed by the first reseller is not greater than 10% of the total construction or substantial renovation that was completed when the housing was sold by the first reseller; and
 - the original builder or a specified related party does not acquire or reacquire by way of sale any legal or beneficial interest in the housing.

In this case, the purchaser is a first reseller of the residential condominium unit. Where all of the above conditions are met, the HST would not apply to the sale of the residential condominium unit by the first reseller. However, the sale of the condominium unit would be subject to the GST at 5%.

See question 54.1 for information on the disclosure requirements for resellers.

14.5 A builder (referred to as the “original builder”) and a purchaser who is an individual enter into a written agreement of purchase and sale for a newly constructed house on May 18, 2009. In accordance with the agreement of purchase and sale for the house, ownership and possession of the house will transfer from the original builder to the purchaser on July 15, 2010. The purchaser acquires the house for resale. The construction of the house is substantially completed on July 10, 2010. The purchaser does not complete any of the construction. The original builder and the purchaser are not associated and are dealing at arm’s length. On July 20, 2010, the purchaser sells the house to an unrelated third party. The house has not been occupied by an individual. Would the sale of the house to the third party be subject to the HST?

No. The purchaser is a first reseller of the house. As such, the sale of the house by the first reseller would not be subject to the HST since the conditions for grandparenting in the case of a first reseller are met and the original written agreement of purchase and sale for the house was entered into on or before June 18, 2009 with both ownership and possession of the house being transferred under the agreement after June 2010. The sale of the house to the unrelated third party would be subject to the GST at 5%.

For information on disclosure requirements for resellers, see question 54.1.

14.6 Where the HST applies to a sale of a house that was purchased on a grandparented basis by a first reseller, would the first reseller be entitled to claim an ITC or a rebate to recover the transitional tax adjustment and/or RST that may be embedded in the amount paid by the first reseller to purchase the house?

Yes. Where the HST applies to the sale of the house by the first reseller, the first reseller would be entitled to claim an ITC or a rebate equal to 2% of the consideration paid by the first reseller to purchase the house from the original builder on a grandparented basis. The amount of the ITC or rebate represents the estimated RST and/or the transitional tax adjustment amount considered to be collected by the original builder and embedded in the price paid by the first reseller to purchase the house.

14.7 A builder (referred to as the “original builder”) and a purchaser who is an individual enter into a written agreement of purchase and sale for a newly constructed house on May 18, 2009 for \$400,000. In accordance with the agreement of purchase and sale for the house, ownership and possession of the house will transfer from the original builder to the purchaser on July 15, 2010. The purchaser is a GST/HST registrant who acquires the house for resale. The construction of the house is substantially completed on July 10, 2010. The purchaser does not complete any of the construction. The original builder and the purchaser are associated. On July 20, 2010, the purchaser sells the house to an unrelated third party for \$435,000. The house has not been occupied by an individual. Would the sale of the house to the third party be subject to the HST?

Yes. Although the purchaser is a first reseller of the house, the conditions for grandparenting in the case of a first reseller are not met given that the original builder and the first reseller are associated. As such, the sale of the house by the first reseller would be subject to the HST at 13%.

Given that the sale of the house by the first reseller would be subject to the HST, the first reseller would be entitled to claim an ITC equal to \$8,000 (i.e., 2% of \$400,000- the consideration paid by the first reseller to the original builder to purchase the house on a grandparented basis).

Resellers of housing – Sale of housing purchased on a grandparented basis by a subsequent reseller

14.8 A builder (referred to as the “original builder”) and a first reseller enter into a written agreement of purchase and sale for a newly constructed residential condominium unit on May 18, 2009. In accordance with the agreement of purchase and sale for the condominium unit, ownership and possession of the unit will transfer to the first reseller on July 15, 2010. The first reseller sells the condominium unit to an unrelated third party. If the third party sells the condominium unit, would the HST apply to the sale of the condominium unit?

Where the sale of housing that was purchased on a grandparented basis by a subsequent reseller is taxable for GST purposes, the HST would not apply to the sale (i.e., the sale would be grandparented) if all of the following conditions are met:

- the purchase of the housing by the subsequent reseller was not subject to the HST;
- the subsequent reseller:
 - is a builder of the housing only because of paragraph (d) of the definition of “builder” in the *Excise Tax Act*, or
 - is a builder of the housing only because of paragraphs (b) and (d) of the definition of “builder” in the *Excise Tax Act* and the construction or renovation completed by the first reseller is not greater than 10% of the total construction or substantial renovation that was completed when the housing was sold by the first reseller; and
- the original builder or a specified related party does not acquire or reacquire by way of sale any legal or beneficial interest in the housing.

In this case, the third party is a subsequent reseller of the residential condominium unit. Where all of the above conditions are met, the HST would not apply to the sale of the condominium unit by the subsequent reseller. However, the sale of the condominium unit would be subject to the GST at 5%.

See question 54.1 for information on the disclosure requirements for resellers.

Self-assessment requirements

14.9 What are the tax consequences if the original builder or a specified related party acquires a legal or beneficial interest in housing that was newly constructed or substantially renovated by the original builder and sold by the original builder on a grandparented basis?

Where the original builder or a specified related party acquires from any person by way of a taxable sale, a legal or beneficial interest (including a sale by way of reversion or the exercise of an option or a right of first refusal) in housing previously supplied on a grandparented basis by the original builder, the original builder or the specified related party, as the case may be, would be required to self-assess and pay the provincial part of the HST in respect of the interest.

In this case, the original builder or the specified related party, as the case may be, would generally be entitled to claim an ITC or a rebate equal to 2% of the consideration paid to the original builder on the first grandparented sale of the housing.

New housing rebates

15. Would a new housing rebate be available for the provincial part of the HST?

The Ontario new housing rebate would be available in respect of the provincial part of the HST paid on the purchase of a newly constructed or substantially renovated house. Where the house is purchased for use as the primary place of residence of the purchaser or a relation of the purchaser and the remaining conditions for claiming a GST new housing rebate are met*, the purchaser would be entitled to claim an Ontario new housing rebate of 75% of the provincial part of the HST, subject to a maximum rebate amount. In the case of the purchase of a house, the maximum rebate amount is \$24,000. See question 19, for maximum rebate amounts for other types of housing. The Ontario new housing rebate would be available regardless of the purchase price for the house. (* Note that the \$450,000 threshold that applies for the GST new housing rebate would not apply to the Ontario new housing rebate).

The Ontario new housing rebate would be available for the same types of residential properties for which a GST new housing rebate is currently available. Qualifying housing would include newly constructed and substantially renovated housing, co-operative housing, owner-built housing, mobile homes, floating homes and housing on leased land.

16. I entered into a written agreement of purchase and sale for a new house with a builder on May 31, 2009. I take ownership and possession of the house, in accordance with the agreement, in August 2010. Would I be entitled to claim an Ontario new housing rebate?

No. If the sale of the house is grandparented (see the section above on grandparented sales of housing), the HST at 13% would not apply. However, the sale of the house would be subject to the GST at 5%. You may be entitled to claim a GST new housing rebate provided that you meet all of the conditions for claiming this rebate. Refer to GST/HST Guide RC4028, *GST/HST New Housing Rebate* for more information on the new housing rebate in respect of the GST.

17. I entered into a written agreement of purchase and sale for a new house on July 31, 2009. The house will be my primary place of residence and I meet all of the conditions for claiming a GST new housing rebate. I take ownership and possession of the house, in accordance with the agreement, in August 2010. Would I be entitled to claim an Ontario new housing rebate?

Yes. The sale of the house would be subject to the HST at 13% and you would be entitled to claim an Ontario new housing rebate in respect of the provincial part of the HST, up to a maximum rebate amount of \$24,000.

18. If I am entitled to claim an Ontario new housing rebate, would I still be able to claim a new housing rebate for the federal part of the HST?

Provided that you meet all of the conditions for claiming the GST new housing rebate, you would be entitled to claim a rebate for the federal part of the HST.

For example, if you purchased a new house for \$300,000 to use as your primary place of residence, you would pay the HST of \$39,000. If you meet all of the other conditions for claiming the rebate, you would be entitled to claim a GST new housing rebate of \$5,400 in respect of the federal part of the HST and an Ontario new housing rebate of \$18,000 in respect of the provincial part of the HST.

If you purchased a house for \$450,000 or more, you would not be entitled to claim a GST new housing rebate in respect of the federal part of the HST. However, if you meet all of the other conditions for claiming the rebate, you would be entitled to claim an Ontario new housing rebate in respect of the provincial part of the HST.

19. If all of the conditions for claiming the rebate are met, how would the Ontario new housing rebate in respect of the provincial part of the HST be calculated?

PURCHASE OF A HOUSE

For purchases of newly constructed or substantially renovated houses, the Ontario new housing rebate would be equal to 75% of the provincial part of the HST paid on the purchase, up to a maximum rebate amount of \$24,000. There would be no phase out of this rebate, such that homes priced above \$400,000 would qualify for the maximum rebate amount of \$24,000. This rebate would essentially reduce the provincial part of the HST to a rate of 2% on the first \$400,000 of the purchase price of the house.

PURCHASE OF HOUSE TOGETHER WITH LEASE OF LAND

For purchases of newly constructed or substantially renovated houses together with land leased from the builder, the Ontario new housing rebate would be equal to 5.31% of the price paid for the building portion of a house on leased land, up to a maximum rebate amount of \$24,000. There would be no phase out of this rebate. If the price paid for the building portion of a newly constructed or substantially renovated house is above \$452,000, the house would qualify for the maximum rebate amount of \$24,000.

PURCHASE OF MOBILE OR FLOATING HOME

For purchases of newly constructed or substantially renovated mobile homes and floating homes, the Ontario new housing rebate would be equal to 75% of the provincial part of the HST paid, up to a maximum rebate amount of \$24,000. There would be no phase out of this rebate, such that mobile and floating homes priced above \$400,000 would qualify for the maximum rebate amount of \$24,000.

PURCHASE OF SHARES IN A HOUSING CO-OP

For newly constructed or substantially renovated houses in a cooperative housing complex acquired by purchasing qualifying shares in the cooperative housing corporation, the Ontario new housing rebate would be equal to 5.31% of the price paid for the qualifying share, up to a maximum rebate amount of \$24,000. There would be no phase out of this rebate, such that a qualifying share priced above \$452,000 would qualify for the maximum rebate amount of \$24,000.

OWNER-BUILT HOUSING

For owner-built housing, the maximum Ontario new housing rebate amount would depend on whether the individual paid the provincial part of the HST on the purchase of the land upon which the individual constructed or substantially renovated the housing.

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- Where the provincial part of the HST was paid on the land, the Ontario new housing rebate would be equal to 75% of the provincial part of the HST paid, up to a maximum rebate amount of \$24,000. There would be no phase out of this rebate, such that owner-built homes with a fair market value above \$400,000 would qualify for the maximum rebate amount of \$24,000.
 - Where the provincial part of the HST was not paid on purchase of the land, the Ontario new housing rebate would be equal to 75% of the provincial part of the HST paid, up to a maximum rebate amount of \$16,080.

The rebate for owner-built housing would be available for purchases of newly constructed or substantially renovated mobile or floating homes and for housing constructed or substantially renovated by an individual or a person hired by the individual to do so, for use as the primary place of residence of the individual or a relation of the individual.

20. Assuming I would be entitled to claim the Ontario new housing rebate in respect of the provincial part of the HST, what would the rebate amount be where the purchase price of the house, not including the HST and any rebates, is:

- (a) \$300,000?
- (b) \$400,000?
- (c) \$500,000?

The Ontario new housing rebate would be available in respect of the provincial part of the HST paid for the house, up to a maximum rebate amount of \$24,000. The rebate would be available for houses in all price ranges provided that all of the conditions for claiming the rebate are met (e.g., a new house purchased in Ontario for use as the primary place of residence of the purchaser or a relation of the purchaser).

(a) \$18,000 – Where the purchase price of the house, not including the HST and any rebates, is \$300,000, the HST payable would be \$39,000, composed of the federal part at 5% (\$15,000) and the provincial part at 8% (\$24,000). The Ontario new housing rebate in respect of the provincial part of the HST would be equal to \$18,000 in this case (i.e., 75% of \$24,000). Note that the GST new housing rebate would also be available in respect of the federal part of the HST paid on the purchase of the house. In this case, the GST new housing rebate would be equal to \$5,400 (i.e., 36% of \$15,000).

(b) \$24,000 – Where the purchase price of the house, not including the HST and any rebates, is \$400,000, the HST payable would be \$52,000, composed of the federal part at 5% (\$20,000) and the provincial part at 8% (\$32,000). The Ontario new housing rebate for the provincial part of the HST would be equal to \$24,000 in this case (i.e., 75% of \$32,000). Note that the GST new housing rebate would also be available in respect of the federal part of the HST paid on the purchase of the house. In this case, the GST new housing rebate would be equal to \$3,150 (i.e., $\$6,300 \times [(\$450,000 - \$400,000) \div \$100,000]$).

(c) \$24,000 – Where the purchase price of the house, not including the HST and any rebates, is \$500,000, the HST payable would be \$65,000, composed of the federal part at 5% (\$25,000) and the provincial part at 8% (\$40,000). The Ontario new housing rebate for the provincial part of the HST would be equal to \$24,000 in this case (i.e., 75% of \$40,000, to a maximum rebate amount of \$24,000). There is no GST new housing rebate in respect of the federal part of the HST paid on the purchase of a house where the purchase price is \$450,000 or more.

20.1 I am constructing a house for my family on land that I purchased in January 2009. I paid GST on the purchase price of the land. I have paid GST on the construction materials used to date to construct the house. The construction of the house will be completed in September 2010 and I will likely pay the HST on some additional construction materials. Would I be entitled to claim an Ontario new housing rebate?

Yes, you would be entitled to claim an Ontario new housing rebate for owner-built homes provided that you meet the same conditions, other than the maximum threshold amount of \$450,000, that are in place for claiming

the GST new housing rebate. The Ontario new housing rebate would be equal to 75% of the provincial part of any HST paid on your construction materials. Given that you have not paid the provincial part of the HST when you purchased the land, the maximum rebate amount that you would be entitled to claim is \$16,080, regardless of the fair market value of your house when you complete the construction. You would also be entitled to claim a GST new housing rebate for the GST paid on the purchase of the land and construction materials and the federal part of the HST paid on the additional construction materials provided that the fair market value of the house does not exceed \$450,000.

21. How would I claim the Ontario new housing rebate?

The Ontario new housing rebate in respect of the provincial part of the HST would be administered by the CRA in a manner similar to the GST new housing rebate. Builders would be able to pay or credit the Ontario new housing rebate to the purchaser of a new house, just as they currently may pay or credit the GST new housing rebate. Individuals would also be able to file an application for the Ontario new housing rebate directly with the CRA if the builder does not pay or credit the rebate to the purchaser. A single rebate application for both the Ontario new housing rebate and the GST new housing rebate will be available on the CRA Web site by July 1, 2010.

Individuals claiming the Ontario new housing rebate for owner-built housing would file an application directly with the CRA. A single rebate application for both the Ontario new housing rebate and the GST new housing rebate for owner-built housing will be available on the CRA Web site by July 1, 2010.

The time limits for claiming an Ontario new housing rebate are the same as those for claiming a GST new housing rebate.

Retail sales tax (RST) transitional new housing rebates

22. Under what circumstances would a purchaser be entitled to claim an RST transitional new housing rebate?

An individual who purchases a newly constructed or substantially renovated house would be entitled to claim an RST transitional new housing rebate where the construction or substantial renovation of the house straddles the July 1, 2010 implementation date and the HST is payable on the purchase (i.e., the sale of the house would not be grandfathered and both ownership and possession of the house transfer to the individual after June 2010). See question 23 for the types of housing for which an individual would be entitled to claim a rebate. For the purchaser to be eligible to claim this rebate, the construction or substantial renovation of the house must be at least 10% complete as of July 1, 2010 and the builder must certify the degree of completion of the construction or substantial renovation as of July 1, 2010.

The individual would be able to obtain the rebate from the builder or from the CRA. The rebate application for the RST transitional new housing rebate will be available on the CRA Web site by July 1, 2010. Where the rebate application is submitted to the builder, the builder is required to attach a valid provincial certificate to the rebate application when the builder submits the application to the CRA.

See question 24 for more information with respect to the provincial certificate.

In some cases, builders would be entitled to claim an RST transitional new housing rebate, see question 24.

23. Which types of housing qualify for the RST transitional new housing rebate that would be available to purchasers who are individuals?

An individual who purchases a newly constructed or substantially renovated single detached house, semi-detached house, attached house (row house) or duplex (in each case, the individual must purchase both the

building and land portions of the housing) would be entitled to claim an RST transitional new housing rebate where the construction or substantial renovation of the housing straddles the July 1, 2010 implementation date and the HST is payable on the purchase (i.e., the sale of the housing would not be grandparented – see the section above on grandparented sales of housing). The construction or substantial renovation of the housing must be at least 10% complete as of July 1, 2010. An RST transitional new housing rebate would not be available to purchasers of mobile homes, floating homes and residential condominiums. Also, an RST transitional new housing rebate would not be available for owner-built homes.

24. Under what circumstances would a builder be entitled to claim an RST transitional new housing rebate?

A builder of newly constructed or substantially renovated rental housing such as a single detached house, semi-detached house, attached house (row house), duplex, residential condominium unit, traditional apartment building or an addition to an apartment building would be entitled to claim an RST transitional new housing rebate where the construction or substantial renovation of the housing straddles the July 1, 2010 implementation date and the HST is payable in respect of a self-supply of the housing (i.e., possession of the housing, or unit in the housing, is first given to an individual after the construction or substantial renovation is substantially completed and after June 2010 for occupancy as a place of residence). The construction or substantial renovation of the housing must be at least 10% complete as of July 1, 2010 in order to be entitled to claim this rebate.

A builder of a newly constructed or substantially renovated residential condominium unit or complex would also be entitled to claim an RST transitional new housing rebate if the builder sells the condominium unit or complex where the builder is required to pay the transitional tax adjustment in respect of the unit or complex or the sale of the unit or complex is subject to the HST – see the section below on the transitional tax adjustment for houses and residential condominiums. In this case, the rebate would be available whether or not the sale of the condominium unit or complex was grandparented.

PROVINCIAL CERTIFICATE

As a condition of obtaining an RST transitional new housing rebate, a builder would be required to attach a valid provincial certificate – a letter of good standing - to their first rebate application and file the application with the CRA. The letter of good standing would be obtained from the Ontario Ministry of Revenue, would be issued where the builder has no outstanding provincial debts and would generally be valid for one year from the date of issuance unless revoked by the province. The letter of good standing would be used by the CRA to process subsequent RST transitional new housing rebate applications filed by the builder provided that the letter of good standing remains valid and has not been revoked. The province would notify the CRA and the builder if it revokes a letter of good standing. Where a letter of good standing is no longer valid, a builder would be required to attach a new letter of good standing to any subsequent rebate application filed with the CRA.

25. How would the RST transitional new housing rebate be calculated?

The RST transitional new housing rebate would be based on the degree of completion of the construction or substantial renovation of the housing as of the July 1, 2010 implementation date (i.e., at 11:59 p.m. on June 30, 2010) and the estimated RST embedded in the housing. With respect to housing that is 90% or more complete as of July 1, 2010, there would be a 100% rebate of the estimated RST embedded in the housing. No rebate would be available where the housing is less than 10% complete as of July 1, 2010.

The RST transitional new housing rebate would be calculated as follows:

| Degree of completion of the housing as of July 1, 2010 | % of estimated RST that would be rebated |
|--|--|
| Less than 10% | 0% |
| Equal to or greater than 10% and less than 25% | 25% |
| Equal to or greater than 25% and less than 50% | 50% |
| Equal to or greater than 50% and less than 75% | 75% |
| Equal to or greater than 75% and less than 90% | 90% |
| Equal to or greater than 90% | 100% |

26. How would I determine the amount of the estimated RST embedded in the housing?

The estimated RST embedded in the housing would be calculated by choosing one of the following two methods:

- the floor space method – the total square metres of floor space completed in the housing multiplied by \$45.00; or
- the consideration or fair market value method – 2% of the total consideration paid for the housing or, in certain situations, 2% of the fair market value of the housing.

27. A newly constructed single detached house is 90% or more complete as of July 1, 2010. The written agreement of purchase and sale for the house is entered into after June 18, 2009, and the agreement provides that both ownership and possession will transfer to the purchaser who is an individual after June 2010. As a result, the HST would apply to the sale of the house. Would the individual purchasing the house be entitled to claim an RST transitional new housing rebate, an Ontario new housing rebate in respect of the provincial part of the HST and a GST new housing rebate in respect of the federal part of the HST?

Yes, provided that all of the conditions for claiming each rebate are met. For a house with a purchase price of \$350,000 (excluding the HST and any rebates) the individual would pay the HST at 13% ($\$350,000 \times 13\% = \$45,500$). The individual would be entitled to claim an RST transitional new housing rebate of \$7,000 (using the consideration or fair market value method, $\$350,000 \times 2\% \times 100\%$), an Ontario new housing rebate of \$21,000 ($\$350,000 \times 8\% \times 75\%$) and a GST new housing rebate of \$6,300 ($\$350,000 \times 5\% \times 36\%$), provided that all of the conditions for claiming each rebate are met.

27.1 A newly constructed single detached house is 80% complete as of July 1, 2010. An individual enters into a written agreement of purchase and sale for the house after June 18, 2009, and the agreement provides that both ownership and possession will transfer to the individual after June 2010. As a result, the HST would apply to the sale of the house. The individual is purchasing the house for the purpose of renting it to a third party. Would the individual purchasing the house be entitled to claim an RST transitional new housing rebate?

Yes, provided that all of the conditions for claiming an RST transitional new housing rebate are met. There would be no restriction that limits the rebate to situations where the house is purchased for use as the primary place of residence of the individual or a relation of the individual, as in the case of the Ontario new housing rebate or the GST new housing rebate. Where all of the conditions are met, the individual would be entitled to claim the RST transitional new housing rebate whether the house was acquired for the purpose of rental, resale or personal use.

27.2 A newly constructed single detached house is 70% complete as of July 1, 2010. A corporation enters into a written agreement of purchase and sale for the house after June 18, 2009, and the agreement provides that both ownership and possession will transfer to the corporation after June 2010. As a result, the HST would apply to the sale of the house. The corporation is not a builder of the house. Would the corporation be entitled to claim the RST transitional new housing rebate?

No, the RST transitional new housing rebate would not be available to the corporation. Only individuals and certain builders would be entitled to claim an RST transitional new housing rebate in respect of a single detached house provided that all of the other conditions for claiming the rebate are met.

28. A newly constructed single detached house is 75% complete as of July 1, 2010, and the written agreement of purchase and sale for the house was entered into on or before June 18, 2009. Ownership and possession of the house will transfer to the purchaser who is an individual, in accordance with the agreement, after June 2010. Would the purchaser be entitled to claim an RST transitional new housing rebate, an Ontario new housing rebate for the provincial part of the HST and a GST new housing rebate in respect of the federal part of the HST?

If the sale of the house is grandparented (see the section above on grandparented sales of housing), the HST would not apply to the sale of the house and the purchaser of the house would not be entitled to claim an RST transitional new housing rebate. The purchaser would not be entitled to claim an Ontario new housing rebate since the provincial part of the HST would not be payable by the purchaser. However, the sale would be subject to the GST at 5% and the purchaser would be entitled to claim a GST new housing rebate in respect of the GST paid at 5%, provided that all of the conditions for claiming the rebate are met.

29. I am the builder of an apartment building. Possession of an apartment in the building is given to an individual, who is the first to occupy a unit in the building as a place of residence, after the construction or substantial renovation is substantially completed and after June 2010. Construction of the apartment building is 40% complete as of July 1, 2010. The fair market value of the apartment building (building and land) at the time of the self-supply is \$1,500,000. Based on the consideration or fair market value method, what would be the amount of the RST transitional new housing rebate that I would be entitled to claim?

The amount of the RST transitional new housing rebate for the apartment building would be calculated as follows:

$$\text{Fair market value of the apartment building (building and land) at the time of self-supply} \times 2\% \times 50\%$$

where:

2% is the estimated RST based on the consideration or fair market value method;

50% is based on the degree of completion (40%) for the complex as of July 1, 2010 (i.e., equal to or greater than 25% and less than 50%, as per table in question 25).

The rebate amount would therefore be \$15,000 ($\$1,500,000 \times 2\% \times 50\%$).

30. I entered into a written agreement of purchase and sale for a newly constructed residential condominium unit with a builder in September 2009. I will occupy the condominium unit as my primary place of residence. I take possession of the unit, in accordance with the agreement, in March 2011 and ownership in May 2011. Would I be entitled to claim the RST transitional new housing rebate?

No. For residential condominium units, the RST transitional new housing rebate would only be available to the builder of the condominium complex. Note that you may be entitled to claim an Ontario new housing rebate in respect of the provincial part of the HST and a GST new housing rebate in respect of the federal part of the HST payable on the sale, if all of the conditions for claiming each rebate are met.

31. When would the RST transitional new housing rebate be available?

If you are using the floor space method, you would be eligible to file a rebate application with the CRA after June 2010 and generally before July 1, 2014.

If you are using the consideration or fair market value method, you would be eligible to file a rebate application with the CRA no earlier than the day the HST is payable or the day you are considered to have collected the transitional tax adjustment, as the case may be, and generally before July 1, 2014.

Where a builder is unable to file the rebate application by July 1, 2014 due to extenuating circumstances (such as a delay in completing the sale of the housing), the builder would be able to file a request for an extension of the time to file the rebate application. The request must be made in writing and received by the CRA before July 1, 2014.

The rebate application for the RST transitional new housing rebate will be available on the CRA Web site by July 1, 2010.

Transitional tax adjustment for houses and residential condominium units

32. What is the transitional tax adjustment?

The transitional tax adjustment would apply to grandparented sales of detached houses, semi-detached houses, attached houses, residential condominium units and condominium complexes. Given that the provincial part of the HST would not apply to grandparented housing, the transitional tax adjustment is intended to approximate the amount of tax that would have been paid in respect of such housing under the RST regime where the construction of the housing straddles the July 1, 2010 implementation date. The transitional tax adjustment would be considered to be collected by the builder and would be included by the builder in the net tax calculation on its GST/HST return.

33. What type of housing would be subject to the transitional tax adjustment?

The transitional tax adjustment would apply to grandparented sales of newly constructed or substantially renovated detached houses, semi-detached houses, attached houses, residential condominium units and condominium complexes, i.e., for which a written agreement of purchase and sale was entered into on or before June 18, 2009, and both ownership and possession are transferred to the purchaser, in accordance with the agreement, after June 2010.

For housing other than residential condominium units or condominium complexes, the transitional tax adjustment would apply if the housing is less than 90% complete as of July 1, 2010.

The transitional tax adjustment would not apply to sales of traditional apartment buildings, duplexes, mobile homes and floating homes.

33.1 Can a builder claim an ITC for the transitional tax adjustment?

Generally, no. For example, where a builder (referred to as “the original builder”) sells a house on a grandparented basis to an individual and would be required to account for the transitional tax adjustment in its net tax calculation, the builder would not be entitled to claim an ITC for the amount of the transitional tax adjustment. However, where an individual purchases a house from the original builder on a grandparented basis and sells the house before it is occupied by an individual for residential use, the individual (i.e., the first reseller) would generally be entitled to claim an ITC, if the individual is a GST/HST registrant and the sale of the house is subject to the HST. The ITC would be equal to 2% of the consideration paid by the first reseller to the original builder which represents the estimated RST and/or the transitional tax adjustment embedded in the

price of the house. Where the first reseller is not a registrant, the first reseller would generally be entitled to claim a rebate equal to 2% of the consideration paid by the first reseller to the original builder.

See the sections above on resellers of housing.

34. How would the transitional tax adjustment be calculated for a house where the sale is grandparented?

The transitional tax adjustment for a grandparented sale of a newly constructed or substantially renovated single unit house (other than a residential condominium unit or a condominium complex – see question 40 for the rebate calculation for residential condominiums) would be based on the total consideration payable for the house, as determined for GST purposes, and the degree of completion of the construction or substantial renovation of the house as of July 1, 2010. Because there is a greater element of embedded RST in the price of a house whose construction or substantial renovation is completed to a greater degree as of July 1, 2010, the transitional tax adjustment rate decreases as the degree of completion increases.

The following chart provides the different rates of the transitional tax adjustment for various degrees of completion of the construction or substantial renovation of the house as of the July 1, 2010 implementation date (i.e., at 11:59 p.m. on June 30, 2010).

Transitional tax adjustment for a house (other than a condominium complex or a residential condominium unit)

| Degree of completion of construction or substantial renovation as of July 1, 2010 | Transitional tax adjustment rate as a percentage of consideration |
|---|---|
| Less than 10% | 2.0 % |
| Equal to or greater than 10% and less than 25% | 1.5 % |
| Equal to or greater than 25% and less than 50% | 1.0 % |
| Equal to or greater than 50% and less than 75% | 0.5 % |
| Equal to or greater than 75% and less than 90% | 0.2 % |
| Equal to or greater than 90% | 0.0 % |

The transitional tax adjustment would be calculated on the consideration payable for the grandparented sale of the housing, which would exclude the GST payable and any new housing rebates. For purposes of calculating the transitional tax adjustment, the consideration would be deemed to be equal to the fair market value where the consideration payable for the housing is less than the fair market value of the housing on July 1, 2010, as if the housing had been substantially completed on that date.

35. I am the builder of a single detached house the sale of which would be grandparented. The consideration payable (excluding GST and any rebates) for the house is \$450,000. The construction of the house is 85% complete as of July 1, 2010. What would be the amount of the transitional tax adjustment I would need to include in my net tax calculation?

Where the construction of the house is 85% complete as of July 1, 2010, the transitional tax adjustment to be included in your net tax calculation would be equal to 0.2% of the total consideration payable for the house, i.e., \$900 ($\$450,000 \times 0.2\%$).

36. I am the builder of a single semi-detached house the sale of which would not be grandparented (i.e., the written agreement of purchase and sale was entered into after June 18, 2009). Ownership and possession of the house will transfer to the purchaser, in accordance with the agreement, in August 2010. Would the transitional tax adjustment apply in this case?

No. The transitional tax adjustment would only apply if the sale of the house is grandparented. In the circumstances described, the HST would be payable on the sale of the house and the transitional tax adjustment would not apply.

37. I am a builder of a single detached house, the sale of which would be grandparented, and I am required to account for the transitional tax adjustment. How would I account for this tax?

You would report the transitional tax adjustment in your regular GST/HST return for the reporting period that includes the day you transfer possession of the house to the purchaser. More information on how the amount of the transitional tax adjustment would be reported in your regular GST/HST return will be provided in the coming months.

38. How would I determine the degree of completion of the construction or substantial renovation of a house as of July 1, 2010, for purposes of the transitional tax adjustment?

The method used to determine the percentage of completion must be fair and reasonable. For instance, it may be based on progress billings made before July 1, 2010, as a percentage of the total consideration for the construction or substantial renovation of the house.

In determining the percentage of completion, the cost of land and costs associated with the acquisition and maintenance of the land, including related servicing costs, legal, accounting and financing charges, real estate taxes, etc., are not to be included. More information on this determination will follow in the coming months.

39. On May 11, 2009, I entered into a written agreement of purchase and sale with a builder for a newly constructed single detached house. I will occupy the house as my primary place of residence. Would I have to pay the transitional tax adjustment to the CRA?

No. The transitional tax adjustment is an amount that would be considered to have been collected by the builder of the house. The builder would include the amount of the transitional tax adjustment in its net tax calculation.

40. How would the transitional tax adjustment be calculated for a grandparented sale of a newly constructed or substantially renovated residential condominium unit or condominium complex?

The transitional tax adjustment for a grandparented sale of a newly constructed or substantially renovated residential condominium unit or condominium complex would be equal to 2% of the total consideration payable for the unit or complex, as determined for GST purposes. The builder would be entitled to claim an RST transitional new housing rebate if the construction of the condominium complex is at least 10% complete as of July 1, 2010 – see the section above on RST transitional new housing rebates.

The transitional tax adjustment would be calculated on the consideration payable for the grandparented housing, which would exclude the GST payable and any new housing rebates. For purposes of calculating the transitional tax adjustment, the consideration would be deemed to be equal to the fair market value where the consideration payable for the housing is less than the fair market value of the housing on July 1, 2010, as if the housing had been substantially completed on that date.

41. I am the builder of a condominium complex that has 150 residential condominium units. Sales of 100 residential condominium units in the complex will be grandparented. The total consideration payable (excluding GST and any rebates) for the sale of each of the grandparented units is \$500,000. Construction of the condominium complex is 60% complete as of July 1, 2010. What would be the amount of the transitional tax adjustment that I would need to include in my net tax calculation?

The amount of the transitional tax adjustment would be equal to 2% of the total consideration for each of the 100 grandparented units, i.e., \$10,000 for each unit ($\$500,000 \times 2\%$). The transitional tax adjustment for a particular unit would be included in your net tax calculation for the reporting period during which possession of the particular unit is transferred to the purchaser. As the builder, you would be entitled to claim an RST transitional new housing rebate in these circumstances – see the section above on RST transitional new housing rebates. Since this is a condominium complex, the fact that the construction of the condominium complex is 60% complete as of July 1, 2010 does not have any impact on the calculation of the transitional tax adjustment.

42. I am the builder of a condominium complex. On May 28, 2008, I entered into a written agreement of purchase and sale for the complex with another person who will either sell or rent the units in the complex. Ownership of the condominium complex transfers to the purchaser, in accordance with the agreement, on June 1, 2012. The consideration (excluding GST and any rebates) for the sale of the condominium complex is \$30 million. What would be the amount of the transitional tax adjustment that I need to include in my net tax calculation?

The transitional tax adjustment that would need to be included in your net tax calculation would be equal to 2% of the total consideration for the condominium complex, i.e., \$600,000 ($\$30,000,000 \times 2\%$). As the builder, you would be entitled to claim an RST transitional new housing rebate provided that the construction of the complex is at least 10% complete as of July 1, 2010 – see the section above on RST transitional new housing rebates.

43. I am the builder of a condominium complex. I have pre-sold a number of condominium units in the complex; however all of the written agreements of purchase and sale were entered into after June 18, 2009 and are not grandparented. Would I have to account for the transitional tax adjustment?

No. The transitional tax adjustment would not apply since the sales of the condominium units are not grandparented.

Application of the HST to new rental housing

44. How would the proposed HST apply to landlords who construct or substantially renovate their own rental housing?

Builders of newly constructed or substantially renovated rental housing, including single houses, residential condominium units and traditional apartment buildings, who make a supply by way of lease, licence or similar arrangement of the house or condominium unit—or in the case of an apartment building, a unit in the apartment building—are considered to have paid and collected tax under the self-supply rules for rental housing. Where the self-supply occurs after June 2010, the HST at 13% would apply to the self-supply. The HST would be calculated on the fair market value of the house, condominium unit or apartment building, as the case may be, including the building and the land reasonably necessary for the use of the housing as a place of residence for individuals.

The self-supply generally occurs at the later of the time construction or substantial renovation of the rental housing is substantially completed and the time possession or use of the rental property is given under a lease, licence or similar arrangement to an individual who is the first to occupy it as a place of residence. In the case of an apartment building, the self-supply occurs at the later of the time construction or substantial renovation of the apartment building is substantially completed and the time possession or use of a unit in the building is given to an individual who is the first to occupy a unit in the building as a place of residence.

If a builder is required to pay tax on a self-supply before July 2010, the provincial part of the HST would not apply. However, the GST at 5% would apply. For more information on the self-supply of a rental property, see GST/HST Guide RC4052, *GST/HST Information for the Home Construction Industry*.

45. I am the builder of a traditional apartment building. Construction of the apartment building is substantially completed in June 2010, and under a lease, possession of a unit in the apartment building is given to an individual on July 1, 2010. The individual is the first to occupy a unit in the building as a place of residence. Would I account for the GST at 5% or the HST at 13% on this self-supply?

You would be considered to have paid and collected the HST at 13% on the self-supply of the apartment building. As the self-supply occurs at the later of the time construction of the rental property is substantially completed and the time possession of a unit in the apartment building is first given to an individual as a place of residence, the self-supply occurs on July 1, 2010 at which time the HST at 13% would apply. The HST would be calculated on the fair market value of the apartment building (i.e., building and land) at that time.

46. I am a builder of a duplex. On June 1, 2010, under a lease agreement, I give possession of one of the units in the duplex to an individual who is the first to occupy a unit in the duplex as a place of residence. Construction of the duplex is substantially completed on June 15, 2010. Under a lease, I give possession of the other unit in the duplex on August 1, 2010, to an individual who occupies it as a place of residence. Would I account for the GST at 5% or the HST at 13% for this self-supply?

You would be considered to have paid and collected the GST at 5% on a self-supply of the duplex. The self-supply occurs on June 15, 2010 (i.e., the later of the time construction of the rental property is substantially completed and the time possession of a unit is first given to an individual for use as a place of residence). As such, the HST at 13% would not apply on the self-supply.

47. I am leasing an apartment and I am not required to pay GST on my lease payments. Following the implementation of the HST, would I be required to pay HST on my lease payments?

No, long-term residential rents are exempt from the GST and would also be exempt under the HST.

New residential rental property rebates

48. Would a new residential rental property rebate be available for the provincial part of the HST?

The Ontario new residential rental property rebate would be available in respect of the provincial part of the HST so that qualifying newly constructed or substantially renovated rental properties across all price ranges would qualify for a maximum rebate amount of up to \$24,000 per rental unit.

Landlords who purchase newly constructed or substantially renovated residential rental properties and pay the HST would be entitled to claim the Ontario new residential rental property rebate. Landlords who build their own residential rental properties and are required to account for the HST under the self-supply rules would also be entitled to claim the rebate.

The Ontario new residential rental property rebate would be available for the same type of residential rental properties for which a GST new residential rental property rebate is currently available. Qualifying housing would include newly constructed and substantially renovated rental housing, new additions to traditional apartment buildings, co-operative rental housing and long-term residential care facilities.

LEASE OF LAND FOR RESIDENTIAL USE

The Ontario new residential rental property rebate would also be available for persons who make exempt supplies of land used for residential purposes by way of lease (i.e., the lease or rental of a residential lot, a site in

a residential trailer park or a site in an addition to a residential trailer park) and, as a result, would be required to self-assess and pay the HST under the self-supply or change-in-use rules on the fair market value of the land. In this case, the maximum rebate amount is \$7,920. For multiple residential lots or sites in a residential trailer park or an addition to a residential trailer park, the maximum rebate amount of \$7,920 would apply to each lot or site.

49. How would the Ontario new residential rental property rebate for the provincial part of the HST be calculated?

The Ontario new residential rental property rebate would be equal to 75% of the provincial part of the HST paid on the purchase or self-supply of a newly constructed or substantially renovated rental property, up to a maximum rebate amount of \$24,000 per qualifying rental unit. This rebate would essentially reduce the provincial part of the HST to a rate of 2% on the first \$400,000 of the purchase price or, in the case of a self-supply, the fair market value, of each qualifying rental unit.

In the case of traditional (non-condominium) apartment buildings, the rebate calculation would be based on each qualifying residential unit in the apartment building.

In the case of land leased for residential use, the rebate would be equal to 75% of the provincial part of the HST paid on the fair market value of the land under the self-supply or change-in-use rules, up to a maximum rebate amount of \$7,920 for each qualifying lot or site.

50. After June 2010, I will purchase a newly constructed triplex for \$900,000 not including the HST or any rebates (the purchase price is equal to the fair market value) and I will rent out each unit in the triplex to a different individual as a place of residence. The duration of the rental arrangement for each unit will be for one year. Assuming I would qualify for an Ontario new residential rental property rebate in respect of the provincial part of the HST, what would be the rebate amount that I would be entitled to claim for each rental unit where each unit is identical in floor space and design (i.e., each unit has the same fair market value)?

The HST payable on the purchase of the triplex would be \$117,000, composed of the federal part at 5% (\$45,000) and the provincial part at 8% (\$72,000).

The Ontario new residential rental property rebate amount for the provincial part of the HST would be equal to \$18,000 per rental unit (i.e., 75% of \$24,000 – the provincial part of the HST for each unit that has a fair market value of \$300,000). A GST new residential rental property rebate would also be available in respect of the federal part of the HST paid on the purchase of the triplex. In this case, the rebate would be equal to \$5,400 per rental unit (i.e., 36% of \$15,000 - the federal part of the HST for each unit that has a fair market value of \$300,000).

51. Would all of the conditions for claiming the GST new residential rental property rebate apply for purposes of the Ontario new residential rental property rebate?

The rules and conditions for claiming an Ontario new residential rental property rebate would mirror the rules and conditions for the GST new residential rental property rebate with the exception of the rebate rate and the phase out provision for units whose fair market value is more than \$350,000. The Ontario new residential rental property rebate would be available across all price/fair market value ranges up to a maximum rebate amount of \$24,000 for each qualifying rental unit and \$7,920 for each qualifying lot or site. Reference may be made to GST/HST Guide RC4231, *GST/HST New Residential Rental Property Rebate*.

52. How would I claim the Ontario new residential rental property rebate?

The Ontario new residential rental property rebate in respect of the provincial part of the HST would be administered by the CRA in a manner similar to the GST new residential rental property rebate. Landlords would apply for an Ontario new residential rental property rebate by filing a rebate application with the CRA. A single rebate application for both the Ontario new residential rental property rebate and the GST new residential rental property rebate will be available on the CRA Web site by July 1, 2010.

53. I will purchase a new residential rental property from a builder. Would the builder of the rental property pay or credit the Ontario new residential rental property rebate amount to me?

No. The Ontario new residential rental property rebate would not be paid or credited by the builder to the purchaser of the property. The purchaser would need to apply for the rebate directly with the CRA. This also applies in respect of the GST new residential rental property rebate that would be available for the federal part of the HST.

53.1 A public service body purchases a newly constructed apartment building and pays the HST on the consideration payable for the building. The public service body is entitled to claim a GST new residential rental property rebate. Would the public service body be entitled to claim an Ontario new residential rental property rebate?

Where all of the conditions are met, the public service body would be entitled to claim an Ontario new residential rental property rebate. However, if the public service body is entitled to claim an Ontario public service body rebate in respect of the provincial part of the HST paid to purchase the apartment building, the public service body would generally claim the Ontario public service body rebate, which has the higher rebate rate, as opposed to the Ontario new residential rental property rebate.

Builders' disclosure requirements

54. What would the disclosure requirements be for builders under the proposed transitional rules for sales of newly constructed or substantially renovated housing in Ontario?

If a written agreement of purchase and sale for a newly constructed or substantially renovated residential complex is entered into after June 18, 2009 and before July 1, 2010, the builder would be required to disclose in the written agreement whether the provincial part of the HST applies to the sale and, if so, whether the stated price in the agreement includes the provincial part of the HST, net of the Ontario new housing rebate and the RST transitional new housing rebate, if applicable.

If the transaction is subject to the HST and the builder did not make a disclosure as outlined above, the stated price in the written agreement would be deemed, under the transitional rules, to include the provincial part of the HST. In such a case, the purchaser would not be required to pay the provincial part of the HST in addition to the stated price in the agreement.

Resellers' disclosure requirements

54.1 Are there special disclosure requirements for resellers of grandparented housing?

Yes. A reseller of housing that was purchased by the reseller on a grandparented basis and sold, where the sale was not subject to the provincial part of the HST, would be required to make the following disclosures in a written agreement for the sale of the housing:

- the name(s) of the original builder(s) who constructed the housing;
- whether the housing was purchased on a grandparented basis or was relieved from the provincial part of the HST under the resellers rule; and
- whether the provincial part of the HST applies to the sale and if so, whether the purchase price stated in the agreement includes the provincial part of the HST, net of any Ontario new housing rebate, if applicable.

If the transaction is subject to the provincial part of the HST and the reseller did not make the above disclosures, the stated price in the written agreement would be deemed, under the transitional rules, to include

the provincial part of the HST. In such a case, the purchaser would not be required to pay the provincial part of the HST in addition to the stated price in the agreement.

Non-residential real property

Sales of non-residential real property

55. What is the current Ontario retail sales tax (RST) treatment for sales of non-residential real property in Ontario?

Information relating to the application of the RST in Ontario is available online at www.rev.gov.on.ca. You may also contact the Government of Ontario's Budget hotline at 1-800-337-7222 for more information on the current application of the RST.

56. Would the HST apply to sales of non-residential real property in Ontario?

The HST at 13%, composed of the federal part at 5% and the provincial part at 8%, would generally apply to the sale of non-residential real property. Sales of real property that are currently exempt under the GST rules would also be exempt for purposes of the HST. The definitions in the *Excise Tax Act* that relate to real property and the CRA's current policies regarding the application of the GST to sales of real property would generally apply under the HST.

57. I am an individual selling personal use vacant land and the sale is exempt from GST. Would the sale of the land be exempt under the HST?

Yes. The sale of the land would be exempt under the HST and you would not be required to charge or collect the HST.

58. A corporation constructs commercial properties and sells them in the course of its commercial activities. The corporation is registered for GST/HST purposes. The corporation currently claims ITCs for the 5% GST that it pays on construction inputs. Would the corporation be entitled to claim ITCs for the 13% HST payable on its construction inputs?

Generally, yes. The corporation would be entitled to claim ITCs to recover the 13% HST paid or payable on most purchases of construction inputs and operating expenses used to construct the commercial properties. The corporation would claim ITCs for the 13% HST on its regular GST/HST return, but would not claim any ITCs for any RST paid or owing. For example, the corporation would claim ITCs for the HST paid or payable on:

- a lease of commercial real property for use as an office and for storage of equipment and materials;
- building materials;
- plumbing and electrical subcontracts;
- inspection services; and
- legal and accounting services.

In some cases, businesses may be required to recapture certain amounts claimed as ITCs. Further information on temporarily restricted ITCs will be provided in the near future.

59. When would the HST apply to a sale of commercial real property?

Generally, the HST would apply to a taxable supply by way of sale of real property (other than housing) where both ownership and possession of the property are transferred to the purchaser under the agreement for the supply on or after July 1, 2010.

60. When would the HST not apply to a taxable sale of real property?

Where either ownership or possession of the real property transfers before July 2010, the HST would not apply to the sale. However, the GST at 5% would apply to the sale.

61. I am purchasing vacant land from a developer. In June 2010, I take possession under a written agreement of purchase and sale for the land, though title will not transfer to me until July 5, 2010. Would the HST apply to the sale?

No. Since possession of the land transfers to you before July 2010, the HST would not apply. However, the GST at 5% would apply to the sale.

62. I enter into a written agreement of purchase and sale in May 2009 for the taxable sale of commercial real property. Possession and ownership of the property do not transfer under the agreement until July 2010. Would the sale of the real property be subject to the HST?

Yes. As both ownership and possession of the real property transfer after June 2010, the HST would apply to the sale. For sales of real property, other than housing, the date the agreement of purchase and sale is entered into does not affect the application of the HST. There is no grandparenting provision for sales of non-residential real property as there is for certain sales of housing. For information on grandparenting in respect of housing, see the section above on grandparented sales of housing.

63. I am an individual purchasing vacant land from a developer to build a home for my family. Ownership and possession of the land will transfer to me in August 2010. Would the HST apply to the sale?

Yes. Since both ownership and possession of the vacant land transfer to you after June 2010, the HST would apply to the sale. The fact that you are building a home on the vacant land does not affect the application of the HST. However, you may be entitled to recover some of the HST paid by way of a GST new housing rebate and an Ontario new housing rebate. For information on the Ontario new housing rebate for owner-built houses, see the section above on new housing rebates.

64. I am making a taxable sale of commercial real property to a corporation that is registered for GST/HST purposes. Ownership and possession of the property transfer after June 2010. Do I have to collect the HST on the sale?

No. While the sale would be subject to the HST, since the corporation (i.e., the recipient) is registered for the GST/HST, the corporation would include the amount of the HST payable on the sale of the real property in its regular GST/HST return if the property is used primarily in its commercial activities. Otherwise, the corporation would report the HST on Form GST60, *GST/HST Return for Acquisition of Real Property*.

Leases of non-residential real property¹

General rule

65. What is the current RST treatment for leases of non-residential real property?

Information relating to the application of the RST in Ontario is available online at www.rev.gov.on.ca. You may also contact the Government of Ontario's Budget hotline at 1-800-337-7222 for more information on the current application of the RST.

66. Would the HST apply to leases of non-residential real property in Ontario?

The HST at 13%, composed of the federal part at 5% and the provincial part at 8%, would generally apply to the lease of non-residential real property made by a GST/HST registrant. Leases of real property that are currently exempt under the GST rules would also be exempt under the HST. The definitions in the *Excise Tax Act* that

¹ In this document, references to a lease include a licence or similar arrangement.

relate to real property and the CRA's current policies regarding the application of the GST to leases of real property would generally apply under the HST.

67. A charity leases real property to a tenant and the lease is exempt from GST. Would the lease of the property be exempt under the HST?

Yes. The lease of the real property would be exempt and the charity would not be required to charge or collect the HST.

68. A landlord owns a shopping mall and leases space within the mall to retailers. The landlord is registered for GST/HST purposes and currently claims ITCs for the 5% GST it pays on various business expenses, e.g., maintenance and repair services. Would the landlord be entitled to claim ITCs for the 13% HST payable on such expenses? Would a retailer, who is registered for GST/HST purposes, be entitled to claim ITCs for the HST payable on the lease payments?

Generally, yes. Both the landlord and the retailer would be entitled to claim ITCs to recover the 13% HST paid or payable on the acquisition of property and services for consumption, use or supply in the course of their respective commercial activities. The landlord and the retailer would claim ITCs on their regular GST/HST returns, but could not claim any ITCs for any RST paid or owing.

In some cases, businesses may be required to recapture certain amounts claimed as ITCs. Further information on temporarily restricted ITCs will be provided in the near future.

69. When would the HST apply to a taxable lease of commercial real property?

The following rules apply based on the earlier of the date the consideration for the lease, licence or similar arrangement becomes due and the date the consideration is paid without having become due.

LEASE PAYMENT DUE OR PAID WITHOUT HAVING BECOME DUE ON OR AFTER JULY 1, 2010

Generally, the HST would apply to any lease payment that becomes due, or is paid without having become due, on or after July 1, 2010, to the extent that the lease payment is attributable to a lease interval, or any part of a lease interval, that begins on or after July 1, 2010. However, the HST would not apply to a lease payment for a lease interval that begins before July 2010 and ends before July 31, 2010.

LEASE PAYMENT DUE OR PAID WITHOUT HAVING BECOME DUE ON OR AFTER MAY 1, 2010 AND BEFORE JULY 2010

Generally, the HST would apply to any lease payment that becomes due, or is paid without having become due, during the period after April 2010 and before July 2010, to the extent that the lease payment is attributable to a lease interval, or any part of a lease interval, that begins on or after July 1, 2010 (other than a lease interval that begins before July 2010 and ends before July 31, 2010). In these situations, a lessor would be required to account for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010. If eligible, a lessee would be entitled to claim any corresponding ITC in its GST/HST return for the reporting period that includes July 1, 2010.

LEASE PAYMENT DUE OR PAID WITHOUT HAVING BECOME DUE AFTER OCTOBER 14, 2009 AND BEFORE MAY 2010

Generally, the HST would apply to any lease payment that becomes due, or is paid without having become due, during the period after October 14, 2009 and before May 2010, to the extent that the lease payment is attributable to a lease interval, or any part of a lease interval, that begins on or after July 1, 2010 (other than a lease interval that begins before July 2010 and ends before July 31, 2010) if the lessee is not a consumer, e.g., a business or public service body. In these situations, the non-consumer may be required to self-assess (i.e., account for tax themselves rather than paying tax to the supplier) the provincial part of the HST. The requirement to self-assess would generally apply only to:

- non-consumers who acquire the property for consumption, use or supply otherwise than exclusively in the course of their commercial activities (e.g., a business that is making GST/HST-exempt supplies, such as a financial institution);
- non-consumers who acquire the property for consumption, use or supply exclusively in the course of their commercial activities in circumstances where the property is subject to an ITC restriction or recapture;
- non-consumers who use simplified methods to calculate their net tax (e.g., certain charities, public service bodies, and small businesses); and
- selected listed financial institutions that use a special attribution method to determine their net tax.

Persons liable to self-assess the provincial part of the HST under this rule would be required to account for the tax in their GST/HST return for the reporting period that includes July 1, 2010, if the due date of that return is before November 2010. In any other case, the person would account for the tax in a form filed before November 2010. Further information regarding this form will be available in the coming months and the form will be available on the CRA Web site by July 1, 2010.

70. I lease warehouse space from a GST/HST registered person and the supply of the space is subject to the GST. The lease payments are due, in advance, on the first day of each month. I pay the lease payments on the same day they become due. Which monthly lease payment would be the first payment on which I have to pay the HST?

The first lease payment that would be subject to the HST would be the lease payment that becomes due and is paid on July 1, 2010. The HST would also apply to all subsequent lease payments.

71. I work downtown and I rent a parking space from the operator of a parking lot that is located near my work. The operator of the parking lot is registered for GST/HST purposes. At the beginning of each month, I pay the operator \$150.00 to park on the lot during that month. Would the HST apply to these payments?

Yes. The HST would apply to the payment you make on July 1, 2010 for the month of July and on all subsequent payments for parking.

72. I have a licence to use real property for the period of June 15, 2010 to July 15, 2010. The person supplying the licence is registered for the GST/HST and the licence is taxable for GST purposes. The payment for the licence is due and paid on June 15, 2010. Would any part of the payment be subject to the HST?

No. As the licence period begins before July 2010 and ends before July 31, 2010, the HST would not apply to the payment. However, the GST at 5% would apply.

73. I enter into a lease agreement in May 2009 for the taxable lease of commercial real property. The term of the lease commences July 1, 2010, and requires monthly lease payments, payable in advance, on the first of the month beginning July 1, 2010. I take possession of the property under the lease on July 1, 2010, and make the lease payment for the month of July on that date. Would the lease of the real property be subject to the HST?

Yes. Regardless of when the parties entered into the lease agreement and when possession is given, since each lease payment becomes due on or after July 1, 2010, is not paid before that date and is wholly attributable to a period after June 2010, the lease payments would be subject to the HST.

74. I lease real property from a GST/HST registered person for June and July 2010. The lease is subject to the GST and the lease payment for the two-month period (the lease interval) is due and paid on June 1, 2010. Would any part of the lease payment be subject to the HST?

Yes, part of the lease payment would be subject to the HST. The lease payment becomes due during the period after April 2010 and before July 2010 and is attributable to a period that begins on July 1, 2010. Although the lease interval begins before July 2010, the lease interval ends on July 31, 2010 (rather than before July 31, 2010). Accordingly, the HST would apply to the portion of the lease payment that is attributable to the month of July, i.e., 50% of the lease payment would be subject to the HST. The lessor would account for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010. If eligible, the lessee would be entitled to claim any corresponding ITC in its GST/HST return for the reporting period that includes July 1, 2010.

75. A GST/HST registered landlord receives a prepayment of rent on May 10, 2010 for a taxable lease of real property. The amount of the prepayment did not become due before that date. The term of the lease is from July 1, 2010 to December 31, 2010. When would the landlord be required to report the provincial part of the HST that applies to the prepayment? If eligible, when would the tenant be entitled to claim an ITC for the provincial part of the HST?

Since the lease payment is paid without having become due during the period after April 2010 and before July 2010 and is wholly attributable to a period beginning on July 1, 2010, the HST would apply to the prepayment. The landlord would be required to account for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010. The landlord would account for the GST collectible on the lease payment in its GST/HST return for the reporting period that includes May 10, 2010. If eligible, the tenant would be entitled to claim any corresponding ITC for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010.

76. I lease pasture land from a grazing association every year for seven months from April through October. The lease of the land is subject to the GST. I am engaged exclusively in commercial activities and the land is for use in those activities. One lease payment is due and made on April 1 of each year for the seven-month period. Would the association be required to collect the HST on the lease payment I make on April 1, 2010?

No. The lease payment becomes due and is paid during the period after October 14, 2009 and before May 2010; therefore the association would not be required to collect the HST. If you are not using a simplified method to calculate your net tax and you are acquiring the land for use exclusively in your commercial activities and the land is not subject to an ITC restriction or recapture, you are not required to self-assess the HST. However, the GST at 5% would apply. Lease payments that become due and are paid on April 1 of subsequent years, however, would be subject to the HST.

77. The operator of a daycare centre leases an area in a building from a landlord and uses the area in the course of making exempt supplies. The lease payment of \$100,000 is payable and paid by the operator on January 1, 2010, and covers the lease interval of January 1 to December 31, 2010. The lease of the property is subject to the GST. The operator is not registered for GST/HST purposes. Would the operator be required to self-assess the provincial part of the HST?

Yes. The lease payment becomes due and is paid during the period after October 14, 2009 and before May 2010. Given that the operator of the daycare is leasing the area in the building for use in the course of making exempt supplies, the operator would have to self-assess the provincial part of the HST. The HST would apply to the part of the lease payment that is attributable to the period beginning on July 1, 2010 i.e., six out of the twelve-month lease interval or 50% of the \$100,000 lease payment. The operator would be required to self-assess the provincial part of the HST calculated on \$50,000 (50% of \$100,000) and account for the tax (8% of \$50,000 = \$4,000) in a form filed before November 2010.

78. A small business using the Quick Method of accounting to calculate its net tax for GST purposes, leases space in a building from a landlord and uses the space exclusively in the course of its commercial activities. The lease payment is payable and paid by the business on January 1, 2010, and covers the lease interval of January 1 to December 31, 2010. The lease of the property is subject to the GST. The business files monthly GST/HST returns. Would the business be required to self-assess the provincial part of the HST?

Yes. The lease payment becomes due and is paid during the period after October 14, 2009 and before May 2010. Even though the business uses the property exclusively in commercial activities, it uses a simplified method for calculating net tax and therefore would be required to self-assess the provincial part of the HST on the part of the lease payment that is attributable to the period beginning on July 1, 2010, i.e., six out of the twelve-month lease interval or 50% of the lease payment. The business would be required to account for the tax in its GST/HST return for the reporting period that includes July 1, 2010.

79. The operator of a trailer park, who is a GST/HST registrant, leases a site in the park to an individual for the individual's personal use. The lease payment is subject to the GST and is due in April 2010 for the six-month period from May 1, 2010 to October 31, 2010. The lease payment is not paid before it becomes due. Would the operator be required to collect the HST? Would the individual be required to self-assess the Ontario part of the HST?

No, the operator would not be required to collect the HST and the individual would not be required to self-assess. Given that the lease payment becomes due during the period after October 14, 2009 and before May 2010, the operator would not be required to collect the HST for any part of the lease payment that is attributable to a period beginning on July 1, 2010. Given that the individual is a consumer, the individual would not be required to self-assess the provincial part of the HST. However, the GST at 5% would apply to the lease payment.

80. The operator of a trailer park, who is a GST/HST registrant, leases a site in the park to an individual for the individual's personal use. The lease payment is subject to the GST and is due on May 1, 2010, for the six-month period from May 1, 2010 to October 31, 2010. The individual paid the amount of the lease payment on April 15, 2010. Would the operator be required to collect the HST? Would the individual be required to self-assess the provincial part of the HST?

No, the operator would not be required to collect the HST and the individual would not be required to self-assess. Although the lease payment becomes due in the period after April 2010 and before July 2010, the payment is made without becoming due by the individual on April 15, 2010, which is after October 14, 2009 and before May 2010. The transitional rules apply based on the earlier of the date the lease payment becomes due and the date the lease payment is made without having become due. As such, the operator would not be required to collect the HST for any part of the lease payment that is attributable to a period beginning on July 1, 2010. Given that the individual is a consumer, the individual would not be required to self-assess the provincial part of the HST. However, the GST at 5% would apply to the lease payment.

81. The operator of a trailer park, who is a GST/HST registrant, leases a site in the park to an individual for the individual's personal use. The lease payment is subject to the GST and is due on May 1, 2010 for the six-month period from May 1, 2010 to October 31, 2010. The individual paid the amount of the lease payment on May 10, 2010. Would the operator be required to collect the HST? Would the individual be required to self-assess the provincial part of the HST?

Yes, the operator would be required to collect the HST for part of the lease payment as the lease payment becomes due during the period after April 2010 and before July 2010 and is not paid before that period. Accordingly, the HST would apply to the part of the lease payment that is attributable to the period beginning on July 1, 2010 i.e., four out of the six months or 67% of the lease payment. The operator must account for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010.

Progress payments

82. Would the HST apply to progress payments made for the construction of real property in Ontario?

The HST at 13%, composed of the federal part at 5% and the provincial part at 8%, would generally apply to progress payments made under contracts for the construction, renovation, alteration or repair of real property where the progress payment becomes due after October 14, 2009 to the extent that the payment can reasonably be attributed to property delivered or services performed on or after July 1, 2010. To the extent that the progress payment can reasonably be attributed to property delivered or services performed before July 2010, the payment would not be subject to the provincial part of the HST.

The provincial part of the HST would not apply to a progress payment that becomes due or is paid on or before October 14, 2009, regardless of when property is delivered or services are performed. If a progress payment becomes due or is paid without having become due after October 14, 2009 and before July 2010, the payment would be considered to become due on July 1, 2010, and not to have been paid before that date. To the extent that the progress payment is attributable to property delivered or services performed on or after July 1, 2010, the HST would be payable on July 1, 2010. In this case, a supplier would be required to account for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010. If eligible, the recipient would be entitled to claim any corresponding ITC for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010.

In cases of written contracts, if the construction, renovation, alteration or repair is substantially complete (90% or more) before June 2010, the construction would be considered to be substantially completed on June 1, 2010. Any consideration or part of the consideration for the contract, other than an amount that is a holdback, that has not been paid or become due on or before July 31, 2010, would be considered to become payable on that date.

83. On January 15, 2009, a corporation entered into a contract to construct a six storey building. Construction began on July 1, 2009 and is expected to be completed on August 15, 2010. A progress payment is due on July 5, 2010, for the work completed up until the end of June 2010. Would the HST apply to the progress payment?

No. Although the progress payment becomes due on July 5, 2010, the payment is attributable to property delivered and services performed before July 2010. As such, the HST would not apply to the progress payment. However, the GST at 5% would apply.

84. On March 10, 2010, a corporation entered into a contract to construct a parking garage. Construction began on July 1, 2010, and is expected to be completed on October 1, 2010. A progress payment is due on August 1, 2010, for the work completed up until the end of July 2010. Would the HST apply to the progress payment?

Yes. The HST would apply to the progress payment, or that part of the payment, that is attributable to property delivered and services performed on or after July 1, 2010. If any part of the progress payment can reasonably be attributed to property delivered or services performed before the construction actually began (July 1, 2010), the HST would not apply to that part of the progress payment. However, the GST at 5% would apply.

85. My company is renovating a house and the first three progress billings are due as follows: \$20,000 on April 15, 2010; \$15,000 on June 1, 2010; and \$10,000 on August 1, 2010. The agreement for the renovation was entered into on November 1, 2009. Would the HST apply to these progress payments?

Yes, the HST would apply to some of the progress payments to the extent that the payments are attributable to property delivered or services performed on or after July 1, 2010. The date the agreement is entered into by the parties does not affect the application of the HST to progress payments. If the \$20,000 progress payment is reasonably attributable to property delivered and services performed before July 2010, the HST would not apply to this payment; however, the GST at 5% would apply.

If 40% of the \$15,000 progress payment (i.e., \$6,000) is reasonably attributable to property delivered and services performed before July 2010, the HST would not apply to that part of the payment. However, GST at 5% applies to 40% of this payment (GST = 5% of \$6,000 = \$300). Since 60% of the \$15,000 progress payment (i.e., \$9,000) is reasonably attributable to property delivered and services performed on or after July 1, 2010, the HST at 13% would apply to 60% of the payment (HST = 13% of \$9,000 = \$1,170).

If the \$10,000 progress payment is wholly attributable to property delivered and services performed on or after July 1, 2010, the HST at 13% would apply to this payment.

85.1 On May 21, 2010, the construction of a parking garage is substantially complete. A progress payment of \$10,000 is due and paid on August 15, 2010. \$4,000 of this progress payment is reasonably attributable to property delivered and services performed on or after July 1, 2010. Would the HST apply to this progress payment?

Yes. The provincial part of the HST would apply to the part of the progress payment that is attributable to property delivered and services performed on or after July 1, 2010 i.e., \$4,000. For purposes of determining when the provincial part of the HST would be payable, the construction would be considered to be substantially completed on June 1, 2010, given that the construction was substantially completed on May 21, 2010. As a result, the provincial part of the HST (i.e., 8% of \$4,000 = \$320) would be payable on July 31, 2010. The federal part of the HST payable in respect of the progress payment (i.e., 5% of \$10,000 = \$500) would be payable on June 30, 2010 in accordance with the current GST rules.

Holdbacks

86. Would the HST apply to holdbacks for the construction of real property in Ontario?

If, in accordance with federal or provincial law or a written agreement for the construction, renovation, alteration or repair of real property, a purchaser keeps a part of a progress payment as a holdback pending satisfactory completion of the work, the HST at 13% would generally apply to the holdback to the extent that the progress payment can reasonably be attributed to property delivered or services performed on or after July 1, 2010, provided that the progress payment becomes due or is paid without having become due after October 14, 2009. The GST/HST on the amount of the holdback, or any part thereof, becomes payable on the earlier of the day the purchaser pays the holdback and the day the holdback period expires. The GST/HST is collectible by the supplier on the earlier of the above dates even if the supplier already issued an invoice for the holdback and charged the GST/HST on this amount. The provincial part of the HST would not apply to a holdback that is withheld from a progress payment that is attributable to property delivered and services performed before July 2010 even if the holdback is paid on or after July 1, 2010.

87. On August 1, 2010, a final progress payment of \$25,000 less a holdback amount is due for the construction of a house on land owned by an individual. 70% of the progress payment is reasonably attributable to property delivered and services performed after June 2010. In accordance with the written contract for the construction of the house, the individual only pays \$5,000 and keeps \$20,000 (10% of the value of the contract) as a holdback pending satisfactory completion of the work. Would the HST apply to the holdback amount?

Yes, the HST would apply to a part of the holdback amount. Since 70% of the progress payment is reasonably attributable to property delivered and services performed after June 2010, 70% of the progress payment of \$5,000 would be subject to the HST at 13%. GST at 5% applies to 30% of the \$5,000 progress payment. Given that the holdback is retained from this progress payment, the HST would apply to 70% of the holdback amount i.e., 70% of \$20,000 = \$14,000. The amount of the GST on the holdback i.e., 5% of \$6,000 = \$300 and the amount of the HST on the holdback i.e., 13% of \$14,000 = \$1,820, would be payable on the earlier of the day the purchaser pays the holdback amount and the day the holdback period expires.

Additional questions and answers related to real property

88. When I purchase a house, I incur additional costs such as legal fees, home inspection fees and real estate agent commission fees. Currently, I am required to pay GST of 5% in respect of these fees. Would these fees be subject to tax at 13% under the HST?

Yes. Under the HST, you would be required to pay the HST at 13% for taxable goods and services that you acquire in relation to the purchase of your house where these goods and services are currently subject to the GST at 5%. The HST would generally apply to these goods and services even if the sale of the house is grandparented or exempt from the tax (e.g., the house was previously occupied by an individual as a place of residence).

89. Would a construction business that is registered for GST/HST purposes recover the HST it pays on business expenses?

Generally, yes. If eligible, businesses that are GST/HST registrants would claim ITCs to recover the HST at 13% paid or payable on most purchases and operating expenses for use in their commercial activities, in the same manner that they currently do for the GST. Businesses would claim ITCs on their regular GST/HST returns, but would not claim any ITCs for any RST paid or owing. For example, a contractor who is registered for GST/HST purposes and engaged in the business of providing home renovation services would claim ITCs for the HST paid or payable:

- on a lease of commercial real property for use as an office and for storage of equipment and materials;
- on building materials;
- to plumbing and electrical subcontractors;
- on inspection services, and
- on legal and accounting services.

In some cases, businesses may be required to recapture the provincial part of certain amounts claimed as ITCs. Further information on ITC restrictions will be provided in the near future.

Enquiries by telephone

Questions relating to this notice or 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 on GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthstech.