

**QUESTIONS AND ANSWERS RELATING TO ONTARIO AND BRITISH COLUMBIA SALES TAX
HARMONIZATION**

The following questions and answers regarding the proposed Ontario and British Columbia sales tax harmonization have been prepared by the Canadian Real Estate Association in consultation with KPMG LLP. The questions and answers were developed to assist REALTORS® in determining the impact of sales tax harmonization on their business, as well as providing general guidance on the impact of sales tax harmonization on real estate transactions.

The questions and answers will be expanded and amended as additional information is made available by the tax authorities. In addition, new questions and answers will be added as a result of questions posed by our members.

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A. General

Question 1 - What is the HST?

Answer

The Harmonized Sales Tax (HST) is the harmonized value-added tax that will replace the federal Goods and Services Tax (GST) and Provincial Sales Taxes (PSTs) in Ontario and British Columbia (BC) on July 1, 2010.

The HST will apply at a rate of 13% in Ontario and 12% in BC to taxable property (includes goods, intangible personal property such as licensed software, and real property) and services.

In other words, the PST will be eliminated and an 8% or 7% provincial rate will be added to the 5% GST. This combined tax at the rate of 13% in Ontario and 12% in BC will be called the HST.

Question 2 - Will HST apply to the same things as the GST?

Answer

In general, property (i.e., goods, intangible personal property such as software and real property) and services that are taxable for GST purposes will become taxable for HST purposes. REALTORS® services, sales of new homes and sales of commercial property will be subject to the HST in Ontario and BC.

However, point of sale rebates will be available for the provincial portion of the harmonized tax on certain specified consumer goods. Although there is GST on these items, the provincial portion of the HST will not apply (i.e., you will not pay the Ontario or BC portion of the tax).

Question 3 - What is the difference between taxable, zero-rated and exempt sales?

Answer

Under the GST and HST, there are three different ways that property and services are treated: they are taxable, exempt or zero-rated.

a) Taxable

Most property (i.e., goods, intangible personal property such as software, and real property) and services are taxable, which means that HST is charged on the sale, lease or rental of those items.

Businesses, such as REALTORS®, are providing taxable services. They would be required to charge and collect HST on their services performed in Ontario or BC on or after July 1, 2010. GST/HST registered businesses that make taxable sales are able to recover the GST/HST they pay in the course of their taxable activities (also referred to as “commercial activities”) by claiming input tax credits.

Examples of taxable sales include new home sales, commercial real estate sales and leases, and sales and leases of cars and furniture.

b) Zero-rated

Zero-rated sales are taxable, but at the rate of 0%.

GST/HST registered businesses making zero-rated sales can claim input tax credits to recover the GST/HST they pay in the course of making zero-rated sales.

Examples of zero-rated sales are basic groceries, prescription drugs, medical devices, exports.

c) Exempt

Certain specified sales are exempt from GST/HST. Businesses making exempt sales do not charge and collect GST/HST.

Unlike zero-rated sales, businesses making exempt sales cannot claim input tax credits to recover tax paid on inputs used in making these sales.

Examples of exempt sales include medical services, financial services, long-term residential rental accommodation, child-care services and educational services.

Question 4 - What are input tax credits?

Answer

Under a harmonized sales tax, GST/HST registered businesses are able to claim input tax credits (also referred to as “ITCs”) for the HST they pay on costs relating to their taxable activities (also referred to as “commercial activities”). GST/HST registered REALTORS® will generally be entitled to ITCs.

Under an HST system, businesses making taxable or zero-rated sales can deduct ITCs from the total amount they collect from customers. The result is that these businesses do not end up paying unrecoverable HST.

If the business pays more in HST than it collects from its customers, it can claim a refund.

For example, a REALTOR® will pay HST on business costs including office lease payments, office supplies and equipment. The REALTOR® will also have to charge HST on commissions.

If the REALTOR® pays \$100,000 in HST on the goods and services it uses to provide services and collects \$250,000 in HST from its customers, it will remit \$150,000 to the government. So, effectively, the REALTOR® recovers HST on its purchases.

For HST purposes, large businesses are restricted from claiming ITCs for the provincial portion of the HST on certain purchases. For additional information on restricted ITCs, please refer to the response to Question 6.

B. Impact of the HST on REALTORS®

Question 5 - Does HST apply to REALTORS® services?

Answer

Yes. HST will generally apply to the same tax base as the current GST. Also, GST registered REALTORS® will be automatically registered for the HST. As a result, REALTORS® will apply HST on the fees for their services that are currently subject to GST.

GST/HST registered REALTORS® will need to take into account the province in which their services are performed and the timing of their services during the transitional period for purposes of determining whether GST or HST applies.

a) Place of Supply

At the date of writing this response, Ontario and BC have not published the technical rules explaining how a GST/HST registrant is to determine if a sale of a good or service is made in or outside Ontario or BC for GST/HST purposes. However, based on the rules that were implemented for sales tax harmonization in Quebec and the Atlantic provinces, we can make some reasonable assumptions about how the place of supply of REALTORS® services will be determined for Ontario and BC HST purposes. The HST will likely apply to REALTORS® services based on the location of the real property to which the REALTORS® services relate. For example, Ontario HST will apply to a REALTORS® commission for services in respect of a house sale in Ottawa, Ontario.

b) Transitional Rules

The transitional rules explain how HST will apply to transactions that straddle the start-up date. For purposes of the following discussion, it is assumed that a REALTORS® commission becomes due or is paid when the property is sold or leased.

The HST would generally apply to a REALTORS® services to the extent, expressed as a percentage, that the services are performed on or after July 1, 2010. However, if 90% or more of the services are performed before July 1, 2010, the HST will not apply.

For example, a REALTORS® services are performed from June 1, 2010 to July 2, 2010 with the sale of the property closing on July 2, 2010. The REALTORS® commission becomes due at that time of closing. More than 90% of the REALTORS® services were performed before July 1, 2010. In these circumstances, the GST at the rate of 5 percent will apply to the REALTORS® services.

In another example, a REALTORS® services are performed from May 1, 2010 to July 31, 2010 with the sale of the property closing on July 31, 2010. The REALTORS® commission becomes due at that time. In this case, 2/3 of the services were performed from May 1, 2010 to June 30, 2010 and 1/3 of the services were performed from July 1, 2010 to July 31, 2010. The REALTORS® will charge GST on 2/3 of the amount charged for the services and HST on the remaining 1/3.

Question 6 - Will REALTORS® recover the HST they pay on their costs?

Answer

Yes. GST/HST registered REALTORS® will generally be able to claim ITCs for the HST on their purchases for consumption or use in their taxable business activities.

However, large businesses (with annual taxable sales exceeding \$10 million) will be unable to claim ITCs for the provincial portion of the HST related to:

- energy (except where used to produce goods for sale);
- telecommunication services, except internet access and toll-free numbers;
- road vehicles weighing less than 3,000 kilograms and related fuel and certain repairs; and
- meals, beverages, and entertainment.

After the first five years of HST implementation, full ITCs on taxable purchases made by large businesses will be phased in over three years.

Certain REALTORS®, with total annual revenues (including GST/HST) of \$200,000 or less, may be using a simplified method to calculate their net tax payable; the Quick Method. There are special rules that may require REALTORS® using the Quick Method to self-assess the provincial component of the HST when prepaying for property or services after October 14, 2009 and before May 2010. REALTORS® using the Quick Method should be aware of these rules and seek guidance if any prepayments are made during this time period.

REALTORS® in non-HST provinces, such as Alberta, Saskatchewan, Manitoba, and Prince Edward Island, will also be entitled to claim ITCs for HST incurred on purchases in an HST province. However, the ITCs would remain subject to the restrictions for large businesses.

Question 7 - Does HST apply to prepayments for property to be delivered or services to be performed on or after July 1, 2010?

Answer

Yes. A GST/HST registered supplier may be required to charge and collect HST on a prepayment that is due or paid on or after May 1, 2010 for property (e.g., an equipment sale) or services to be performed (e.g., legal services) on or after July 1, 2010.

If you are required to pay HST before July 1, 2010, you must track the HST payable in order to claim the provincial portion of the HST in your GST/HST Return for the reporting period that includes July 1, 2010. If you are a monthly filer, this means you would claim the provincial portion of the HST in your GST/HST return for July that is due at the end of August 2010.

Question 8 - Will REALTORS® be compensated for collecting and remitting the HST?

Answer

Businesses will not be compensated for collecting and remitting the HST. However, to support small businesses, Ontario will provide one-time transition assistance to small business in the form of a transition credit. REALTORS® with less than \$2 million in annual revenue from taxable sales will be eligible for the Small Business Transition Credit of up to \$1,000.

British Columbia is not providing similar assistance.

Question 9- Who administers the HST and how do I report the HST?

Answer

The HST will be administered by the federal government in the same way that the federal government now administers the GST and the HST in other HST provinces. Specifically, the HST will be administered by the Canada Revenue Agency (CRA).

The HST collectible and HST payable in a reporting period are reported on your regular GST/HST Return. If the GST/HST collectible in a period exceeds the GST/HST payable in the reporting period the net GST/HST would be remitted in the usual manner that you currently remit GST.

Question 10 - What do REALTORS® need to begin thinking about to be ready for HST?

Answer

REALTORS® should begin to prepare now in order to be ready. For example, the following items may be affected by harmonization:

- the tax clauses of real estate listing agreements, co-operating broker/agent agreements and other sales and/or purchase agreements;
- sales and receivable systems;
- purchasing and payable systems;
- expense reports; and
- Quick Method GST/HST calculations.

REALTORS® should also consider a strategy for communicating with clients and future clients on the impact of harmonization. Finally, REALTORS® should plan for significant purchases during transition to reduce unrecoverable sales tax (e.g., deferring PST taxable purchases).

C. HST Application to Real Estate Transactions

Question 11 - What is the general impact of HST on real estate transactions?

Answer

The HST treatment of real estate transactions will generally follow the current GST treatment of real estate transactions.

Sales of new residential housing will be subject to HST and will qualify for GST, HST, and transitional rebates (subject to certain thresholds and maximum amounts). Sales and rentals of commercial real property will be subject to HST.

On the other hand, sales of used residential housing and long-term rentals of residential housing will be exempt for HST purposes.

Question 12 - How will the HST apply to leases and licenses of real property, other than long term residential rents during transition?

Answer

Ontario and BC released general transitional rules for HST. The transitional rules work in the same fashion for both provinces.

The HST will generally apply to a supply of real property by way of lease, license or similar arrangement to the extent, expressed as a percentage, the amount paid relates to a period (e.g., lease period) that occurs on or after July 1, 2010. However, periods that begin before July 2010 and end before July 31, 2010 will not be subject to HST.

For example, a lease payment is due on July 1, 2010 for the period July 1 to July 31, 2010 HST will be applicable on the entire lease payment.

In another case, a lease payment is payable on June 1, 2010 for the 3 month period of June 1 to August 31. In this case, GST will apply to the portion of the payment relating to June (i.e., one third) and HST will apply to the portion of the payment relating to July and August (i.e., two thirds).

Question 13 - How will the HST apply to sales of real property, other than residential housing, during the transitional period?

Answer

Ontario and BC released general transitional rules for HST. The transitional rules work in the same fashion for both provinces.

The HST will generally apply to a sale of real property (other than residential housing) if both ownership and possession are transferred on or after July 1, 2010.

Question 14 - How does the HST apply to sales of new residential housing during the transitional period?

Answer

On June 18, 2009 Ontario released transitional rules for the application of the Ontario HST to sales of residential housing that will be proposed to be enacted in the HST and PST legislations.

The HST in Ontario and BC will not apply to used residential housing. As a result, the following discussion applies to sales of new residential housing in Ontario. The HST will generally apply to sales of new residential housing if both ownership and possession are transferred on or after July 1, 2010. However, grand parenting is generally provided for sales of new residential housing where an agreement for the purchase and sale of the housing was entered into on or before June 18, 2009. Generally, grand parented sales of new residential housing are not subject to the HST regardless of when ownership and possession pass. Builders of grand parented homes may be required to pay a Transitional Tax Adjustment.

At the time of writing this response, BC has not released transitional rules for sales of new residential housing. Transitional rules relating to the application of the BC HST on new housing will be released in the coming months. In developing these rules, the government announced that it will be reviewing the transitional rules that were announced in Ontario.

Question 15 - What is the transitional tax adjustment relating to sales of new housing?

Answer

For grandparented sales of newly constructed or substantially renovated single detached homes, semi-detached homes and attached homes, the builder would generally be required to pay a transitional tax adjustment where the home is completed in full or in part after June 2010. The transitional tax adjustment for these homes would be calculated on the total purchase price of the home, as established for GST purposes, based on the extent of construction or substantial renovation completed as of July 1, 2010, as follows:

- 100% of the transitional tax adjustment rate of 2%, where the home is less than 10% completed on July 1, 2010;
- 75% of the transitional tax adjustment rate of 2%, where the home is 10% or more and less than 25% completed on July 1, 2010;
- 50% of the transitional tax adjustment rate of 2%, where the home is 25% or more and less than 50% completed on July 1, 2010;
- 25% of the transitional tax adjustment rate of 2%, where the home is 50% or more and less than 75% completed on July 1, 2010;
- 10% of the transitional tax adjustment rate of 2%, where the home is 75% or more and less than 90% completed on July 1, 2010; or
- 0% where the home is 90% or more completed on July 1, 2010.

Question 16 - Will there be a HST rebate for new housing?

Answer

Yes. Purchasers of new homes in Ontario will be eligible for a rebate of 75% of the provincial component (i.e., 8%) of the HST paid to a maximum of \$24,000. Sales of new homes above \$400,000 will remain eligible for a maximum rebate of \$24,000 (i.e., a rebate on the first \$400,000 value).

Purchasers of new homes in BC will be eligible for a rebate of 5/7, or 71.43% of the provincial component (i.e., 7%) of the HST paid to a maximum of \$20,000. Sales of new homes above \$400,000 will remain eligible for a maximum rebate of \$20,000 (i.e., a rebate on the first \$400,000 value).

The rebate will be available whether the new housing is to be owner occupied or rented.

These rebates are in addition to the GST rebate that currently applies to sales of new housing.

Question 17 - In addition to the GST and HST rebates available to purchasers of new homes, are other rebates available?

Answer

Yes. The following describes two other rebate programs relating to real estate during the transitional period.

a) Ontario Retail Sales Tax Transitional Housing Rebate

An Ontario Retail Sales Tax (RST) Transitional Housing Rebate would be available to individuals purchasing a new home or to builders who first rent a home, as the case may be, after June 2010. The rebate would only be available when the HST would apply. It is not available for grand parented homes. Generally, the rebate would be calculated as a proportion of the estimated embedded PST in the home, based on the degree of completion of the home as of July 1, 2010.

Eligible applicants would be permitted to calculate the estimated embedded PST by choosing one of the following two methods:

- Estimated PST content calculated at a prescribed amount per square metre of floor space in the home ("floor space method"); or
- Estimated PST content based on the selling price of the home, calculated at two per cent of the total price established for GST purposes ("selling price method").

The rebate would be calculated using the selling price method as follows:

- 100% of the embedded PST rate of 2%, where the home is more than 90% completed on July 1, 2010;
- 75% of the embedded PST rate of 2%, where the home is 75% or more and less than 90% completed on July 1, 2010;

- 50% of the embedded PST rate of 2%, where the home is 50% or more and less than 75% completed on July 1, 2010;
- 25% of the embedded PST rate of 2%, where the home is 25% or more and less than 50% completed on July 1, 2010;
- 10% of the embedded PST rate of 2%, where the home is 10% or more and less than 25% completed on July 1, 2010; or
- 0% where the home is 10% or less completed on July 1, 2010.

The calculation of the rebate using the floor space method has yet to be released.

b) Ontario and BC Inventory Rebate for Contractors

A Provincial Sales Tax (PST) rebate is available in respect of the PST embedded in construction materials used in residential real property contracts that are subject to the HST. This rebate is available to contractors for the PST paid on construction materials that are purchased or produced for the contractor's own use, held in inventory at the end of the day on June 30, 2010 and used in a residential real property contract to which the HST applies.

Question 18 - How do the GST, HST, GST New Housing Rebate, HST New Housing Rebate, RST Transitional Adjustment, and/or RST Transitional Housing Rebate apply to sales of new homes in Ontario?

Answer

The following examples and tables set out the implications of the introduction of the HST on sales of new homes in Ontario, based on certain assumptions.

It is assumed that the sale price is on a tax-included basis. Each table includes the amount of GST and HST payable, the GST New Housing Rebate and the HST New Housing Rebate, as well as the RST Transitional Adjustment, and/or RST Transitional Housing Rebate. The rebates are assigned to the builder. Finally each table indicates the cash available to the builder after taxes and rebates.

The tables illustrate the GST/HST application depending on various prices. Also, the tables illustrate the GST/HST application depending on whether the agreement of purchase and sale was entered into before June 19, 2009 (grandparented) or on or after June 19, 2009 (not grandparented)

Further, examples 1 to 3 assume that the home is 50% to 74% completed at June 30, 2010.

Example 1: \$300,000 selling price (GST/HST included)

| | Grandparented | Not Grandparented |
|--|---------------|-------------------|
| GST/HST Payable | \$14,535 | \$37,608 |
| GST Rebate | \$5,233 | \$5,207 |
| HST Rebate | \$0 | \$17,358 |
| RST Transitional Housing Rebate | \$0 | \$4,339 |
| Total | \$300,000 | \$300,000 |
| Transitional Tax Adjustment (payable by builder) | \$1,453 | \$0 |
| Cash Payable to Builder | \$289,245 | \$289,296 |

Example 2: \$400,000 selling price (GST/HST included)

| | Grandparented | Not Grandparented |
|--|---------------|-------------------|
| GST/HST Payable | \$19,243 | \$49,808 |
| GST Rebate | \$4,103 | \$4,212 |
| HST Rebate | \$0 | \$22,988 |
| RST Transitional Housing Rebate | \$0 | \$5,747 |
| Total | \$400,000 | \$400,000.00 |
| Transitional Tax Adjustment (payable by builder) | \$1,924 | \$0.00 |
| Cash Payable to Builder | \$382,936 | \$383,139 |

Example 3: \$500,000 selling price (GST/HST included)

| | Grandparented | Not Grandparented |
|--|---------------|-------------------|
| GST/HST Payable | \$23,810 | \$61,094 |
| GST Rebate | \$0 | \$0 |
| HST Rebate | \$0 | \$24,000 |
| RST Transitional Housing Rebate | \$0 | \$7,049 |
| Total | \$500,000 | \$500,000 |
| Transitional Tax Adjustment (payable by builder) | \$2,380 | \$0 |
| Cash Payable to Builder | \$473,810 | \$469,955 |

The next group of examples and tables contrast the GST and HST application to sales of new homes in Ontario that are either fully constructed and sold before July 1, 2010 or fully constructed and sold after June 30, 2010 as well as the cash available to the builder after taxes and rebates

It is assumed that the sale price is on a tax-included basis. Each table includes the amount of GST/HST payable, the GST New Housing Rebate and the HST New Housing Rebate available for the sale of new homes. The rebates are assigned to the builder.

Example 4: \$300,000 selling price (GST/HST included)

| | Before July 1, 2010 | After June 30, 2010 |
|-------------------------|---------------------|---------------------|
| GST/HST Payable | \$14,535 | \$37,072 |
| GST Rebate | \$5,233 | \$5,133 |
| HST Rebate | \$0 | \$17,110 |
| Total | \$300,000 | \$300,000 |
| Cash Payable to Builder | \$290,698 | \$285,171 |

Example 5: \$400,000 selling price (GST/HST included)

| | Before July 1, 2010 | After June 30, 2010 |
|-------------------------|---------------------|---------------------|
| GST/HST Payable | \$19,243 | \$49,149 |
| GST Rebate | \$4,104 | \$4,532 |
| HST Rebate | \$0 | \$22,684 |
| Total | \$400,000 | \$400,000 |
| Cash Payable to Builder | \$384,861 | \$378,067 |

Example 6: \$500,000 selling price (GST/HST included)

| | Before July 1, 2010 | After June 30, 2010 |
|-------------------------|---------------------|---------------------|
| GST/HST Payable | \$23,810 | \$60,284 |
| GST Rebate | \$0 | \$0 |
| HST Rebate | \$0 | \$24,000 |
| Total | \$500,000 | \$500,000 |
| Cash Payable to Builder | \$476,190 | \$463,716 |

The answers to the questions are based on notices released by the tax authorities to October 21, 2009. The legislation relating to sales tax harmonization has not been released and the rules discussed above are not complete. As such, the rules are subject to change.

The Canada Real Estate Association ("CREA") cannot guarantee that all the information contained in the answers to the questions is accurate, complete or up-to-date and CREA makes no representations to that effect. In particular, the information contained in the answers should not be relied upon or construed as legal, tax and/or accounting advice. REALTORS® and any other person involved in real estate transactions are urged to seek professional advice on the specific issues affecting them.