



HST Takes Effect in Ontario July 1, 2010; Owners, Operators, Managers of Real Property Are Advised to Review Their Agreements

by Jeffrey Warren

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The combination of the Ontario retail sales tax (RST) and the federal goods and services tax (GST) to form a harmonized sales tax (HST) takes effect July 1, 2010. This article briefly examines the application of the HST to transactions involving real property.

The harmonized sales tax will have an impact on all businesses in Ontario, including developers, owners, operators and managers of real property and businesses that buy or sell real property.

Businesses that develop, own, operate and manage real property, and the businesses that work with them, will have to understand the ins and outs of the new HST regime and will have to take a number of steps to integrate the new regime smoothly into their operations. Landlords, to take one example, will have to review their form of lease to ensure that the sales tax definition contained in it is broad enough to include the HST. Businesses that intend to acquire or sell real property after July 1, 2010 will also need to be familiar with the new HST regime.

Generally speaking, the HST will operate much as the existing GST regime does. While the current policies of the Canada Revenue Agency (CRA) regarding the application of the GST and the provisions in the *Excise Tax Act* (the Act) that relate to real property will apply for the most part under the new HST regime, there will be grandparenting provisions, transitional rules and exceptions to which businesses will have to be sensitive.

The following are some particulars:

Purchase and Sale of Commercial Real Property

The HST will apply to the purchase and sale of commercial real property in the same manner that the GST does at present. The HST will apply to a purchase and sale of commercial real property if both ownership and possession of the property are transferred on or after July 1, 2010, regardless of the date on which the agreement of purchase and sale was entered into. A purchaser of commercial real property who is a registrant under the Act will be able to self-assess the HST in the same manner that it now self-assesses the GST.

Leases and Licences of Commercial Real Property

The HST will apply to leases and licences of commercial real property in the same manner that the GST currently does, subject to transitional rules.

The HST applies to consideration that becomes due, or is paid without having become due, on or after July 1, 2010, for a supply of property by way of lease, licence or similar arrangement, to the extent that the consideration is for the part of a lease interval that occurs on or after July 1, 2010.

The HST will not, however, apply to a lease or licence of real property, or a similar arrangement, if the lease interval begins before July 1, 2010 and ends before July 31, 2010.

The HST will also apply to consideration that becomes due, or is paid without having become due, between May 1, 2010 and June 30, 2010, for a supply of real property by way of lease, licence or similar arrangement, to the extent that the consideration is for the part of a lease interval that occurs on or after July 1, 2010 (unless the lease interval begins before July 1, 2010 and ends before July 31, 2010). As is mentioned above, landlords will need to review their form of lease to ensure that the sales tax definition in their lease is broad enough to include harmonized sales tax.

Purchase and Sale of Newly Constructed Residential Property

The supply of newly constructed or substantially renovated residential housing that is now subject to the GST will be subject to the HST when both ownership and possession are transferred on or after July 1, 2010, subject to the grandparenting provisions, transitional rules and other exceptions and qualifications implemented by the CRA.

An agreement of purchase and sale between a builder and a purchaser for the purchase and sale of newly constructed or substantially renovated residential housing that was entered into prior to June 18, 2009 will be grandparented and will not be subject to the Ontario component of the HST if ownership and possession are transferred on or after July 1, 2010.

The grandparenting provisions do not apply to newly constructed or substantially renovated homes built by owners or traditional apartment buildings, duplexes, mobile homes and modular homes.

Developers of newly constructed or substantially renovated homes, condominium complexes and residential condominium units that are sold pursuant to grandparented agreements of purchase and sale will be required to pay a transitional tax adjustment to account for the tax that would otherwise have been embedded in the price of the new home under the existing RST regime.

In respect of newly constructed or substantially renovated homes, the amount of the transitional tax adjustment that will be payable will depend on the degree of construction on July 1, 2010. Developers will need to review the Act and the transitional rules implemented by the CRA to determine the amount of the transitional tax adjustment that is payable.

A purchaser of a newly constructed or substantially renovated single detached home, semi-detached home, attached home or duplex may be eligible to receive an RST transitional housing rebate where construction of the home straddles the July 1, 2010 HST implementation date, ownership and possession is transferred after July 1, 2010 and the HST is payable on the purchase price.

The purpose of the RST transitional housing rebate is to provide relief from the RST embedded in the purchase price to purchasers of non-grandparented single detached homes, semi-detached homes, attached homes or duplexes that are at least 10 per cent complete on July 1, 2010.

A builder of newly constructed or substantially renovated rental housing such as a single detached house, semi-detached house, attached house, duplex, residential condominium unit, traditional apartment building or an addition to an apartment building may be entitled to claim an RST transitional housing rebate where the construction of the housing straddles the July 1, 2010 HST implementation date and the HST would apply in respect of a self supply of the housing. The construction or substantial renovation of the housing must be at least 10 per cent complete on July 1, 2010 in order to be eligible for the rebate.

A builder of a newly constructed or substantially renovated condominium complex that is at least 10 per cent complete on July 1, 2010 will also be entitled to claim an RST transitional housing rebate if the builder sells the condominium complex, or a unit in the condominium complex, that was subject to the transitional tax adjustment or the HST.

A new housing rebate for the Ontario component of the HST will be provided for the same types of new residential housing in respect of which a rebate is currently available for the GST. The existing GST rebate will remain in place after July 1, 2010 in respect of the federal component of the HST. A rebate will be provided in the amount of 75 per cent of the Ontario component of the HST (in other words, 6 of the 8 percentage points of the Ontario component of the HST) to a maximum of \$24,000 for new homes purchased. A similar rebate will be available for new rental housing, including investment properties, to be rented out for use as a primary residence. This rebate now exists for the GST.

Resale of Residential Property

Under the Act, the purchase and sale of a used residential complex is exempt from the GST. After the implementation of the HST, the purchase and sale of a used residential complex will be exempt from the HST. ■

The foregoing is a brief summary of the effect of the implementation of the HST on transactions involving real property. It is only intended as an overview. There are a number of exceptions and qualifications to the general provisions that have been discussed in this article. In addition, a number of matters have not been addressed (e.g. the availability of input tax credits in respect of the HST). Businesses that develop, own, operate and manage real property will have their own particular circumstances that need to be addressed. The Act and the transitional rules implemented by the CRA must be reviewed to determine how the rules apply to those particular circumstances or to anything that has not been discussed in this article.