

# DMCL INSIGHT – tax bulletin

HST: Harmonized Sales Tax Effective July 1, 2010



## What is Harmonized Sales Tax?

HST is a combined Federal and Provincial sales tax that is intended to simplify compliance, and reduce the cost of business inputs and compliance. Like GST, HST is administered under the Excise Tax Act by the Canada Revenue Agency and is conceptually very similar to GST. Effective July 1, 2010, BC and Ontario will drop their provincial sales taxes and become participating provinces in the HST. New Brunswick, Nova Scotia and Newfoundland already participate in the HST. **After June 30, 2010, HST will apply at 12% in BC** and 13% in ON, NB, NS and NL, and there will be no PST in these provinces. GST at 5% will apply in all other provinces and territories along with PST, as levied by the particular province or territory.

Like GST, **many businesses will be able to claim an input tax credit for any HST paid** in the course of their commercial activities (except where the business makes exempt supplies).

Both Ontario and BC negotiated certain exemptions from HST as a condition of agreeing to become a participating province. **In BC, retailers will provide point of sale rebates** of the provincial portion of the HST for books, children's clothing and footwear, diapers, children's car and booster seats, feminine hygiene products and gas and diesel motor fuel. **Retailers must ensure their systems are ready to process these point of sale rebates and report them on their HST returns.**

## HST Transitional Rules

A number of transitional rules have been implemented to determine which tax, GST or HST will apply to pre-payments or to transactions that straddle July 1, 2010. Under these transitional rules, **HST may apply to transactions occurring as early as October 15, 2009.**

A key to understanding these rules is an understanding of when GST/HST become payable. **In general GST/HST is payable on the earlier of two dates:** first the date the consideration for the supply of the good/service is paid, and second the date the consideration becomes due. In general, consideration becomes due on the date that an invoice is issued, but under certain deeming rules, it may be considered to have become due on an earlier date.

### **HST & Pre-Payments**

Where consideration for a supply is paid or becomes due **before October 15, 2009**, the supply will not be subject to HST, even if the supply of the goods or services will be made after June 30, 2010.

Where consideration for a supply is paid or becomes due **after October 14, 2009 and before May 1, 2010**, and the supply of the goods or services will be made after June 30, 2010, **certain purchasers may be required to self-assess** the provincial portion of the HST. Rather than specify who is required to self-assess, the transitional rules specify who is not required to self assess HST. Any purchaser who is a "consumer"<sup>1</sup> or who is entitled to claim a full input tax credit of the GST/HST applicable to the transaction will not be required to self assess the provincial portion of the HST. **Purchasers**

<sup>1</sup> A 'consumer' is a natural person who acquires good or services for personal use or consumption, other than in the course of commercial activities or the making of exempt supplies.

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**who will be required to self-assess include**, amongst others, un-registered small suppliers, persons who make exempt supplies (e.g. health care services, financial services, etc.), registrants who use the quick method, and charities and public service bodies.

Where consideration for a supply is paid or becomes due **after April 30, 2009 and before July 1, 2010**, and the supply of the goods or services will be made after June 30, 2010, **vendors will be required to collect HST** on the transaction.

Despite the foregoing, **the sale of goods will only be subject to HST** where delivery of the goods and the transfer of ownership both occur after June 30, 2010.

## *HST & Transactions that Straddle July 1, 2010*

Where **property is supplied by way of lease or license**, the portion of the consideration that relates to time periods after June 30, 2010 will be subject to HST. However, where the lease term begins before July 1, 2010 and ends before July 31, 2010, only GST will apply.

**HST will apply to the portion of a service that is performed after June 30, 2010.** The portion that is performed before July 1, 2010 will only be subject to GST. In addition, where the work is 90% or more complete by June 30, 2010, only GST will apply.

## ***Input Tax Credit Recapture for Certain Business on Certain Property and Services***

The transitional rules also contain **provisions that will effectively limit the ability of financial institutions and “large businesses” to claim input tax credits** on the provincial portion of HST paid on certain property and services. A particular business will be considered a “large business” where it has greater than \$10,000,000 in annual sales in its preceding fiscal period, including sales by “associated persons”. In BC, the recapture rule will deny the claiming of 100% of the provincial portion of the ITCs on these property and services for 5 years (i.e. from July 1, 2010 to June 30, 2015) and then will be phased out over a 3 year period (75% recapture from July 1, 2015 to June 30, 2016, 50% recapture from July 1, 2016 to June 30, 2017 and 25% recapture from July 1, 2017 to June 30, 2018).

These restrictions will generally apply to purchases of energy (except for energy used in the production of goods for resale), telecommunication services (except for internet access services, web-hosting services, or toll-free telephone services), motor vehicles weighing less than 3,000 kg, and meals and entertainment.

Taxpayers subject to the ITC restriction rules must report the recaptured ITCs on the filing of their HST returns and may not simply forego the claiming of the provincial portion of the HST in order to fulfill these requirements. Accordingly, affected Taxpayers are required to track restricted ITCs.

## **Real Property Transitional Rules**

The HST legislation includes a number of transitional rules that apply to new housing transactions that straddle July 1, 2010. The intent of these rules is to ensure that neither the builder nor the purchaser of new housing is at an advantage or disadvantage under the HST regime as compared to under the old regime.

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## ***Grandparented Homes***

Sales of certain types of newly constructed or substantially renovated homes under agreements entered into, on or before November 18, 2009 will not be subject to the HST, even if both ownership and possession of the homes are transferred after June 2010. This exception applies to **sales of single-unit homes to individuals** and to **sales of residential condominiums to individuals, corporations, trusts, etc.** (a “Grandparented Home”). This exception does not apply to traditional apartment buildings, duplexes, mobile homes, floating homes and homes built by owners for their personal use where construction straddles July 1, 2010.

Builders of Grandparented Homes are generally required to pay a transitional tax adjustment, depending on the degree of completion on July 1, 2010. For **grandparented single-unit homes**, the transitional tax is a maximum of 2% of the purchase price of the home (when the home is less than 10% complete on July 1, 2010), and is reduced to 0% (when the home is greater than 90% complete on July 1, 2010). Builders would also be required to meet certain reporting and disclosure requirements for Grandparented Homes. For **grandparented residential condominiums**, the transitional tax is a flat 2% of the purchase price of the home, but the builder may be eligible for a PST Transitional New Housing Rebate.

## ***PST Transitional New Housing Rebate***

For new homes that would be subject to the provincial component of the HST after June 2010, a PST Transitional New Housing Rebate would be available to provide relief in respect of the PST embedded in the price of the home at June 30, 2010.

For newly constructed or substantially renovated single-unit homes, including detached homes, semi-detached homes, attached homes, and duplexes, the PST Transitional New Housing Rebate would be available to individuals purchasing the home or to builders who first rent the home, as the case may be, after June 2010. For these new homes, the rebate would only be available where the proposed HST would apply. It would not be available for Grandparented Homes.

For newly constructed or substantially renovated homes that are residential condominiums, traditional apartment buildings, or new additions to traditional apartment buildings, the PST Transitional New Housing Rebate would be available to the builder rather than the purchaser. For new homes that are residential condominiums, the rebate would be available where the transitional tax adjustment or the HST would apply, as applicable.

## **Place of Supply Rules**

The Excise Tax Act contains “place of supply” rules which are critical in determining what tax rate is charged by a supplier of goods or services. For example, after June 30, 2010 a business located in BC is required to charge HST at 13% on goods or services that are considered to be supplied in Ontario, but only GST at 5% if they are considered supplied in Alberta. Businesses supplying goods or services to customers in various provinces need to introduce systems that will ensure they are charging the correct rate of tax, GST at 5%, or HST at 12% (BC only) or 13% (ON, NB, NS and NL) - see the table of Sales Tax Rates below for a complete listing of sales tax rates. Because of these different rates, Taxpayers will be required to track the provincial component of the HST charged on sales by province for reporting on their HST returns.

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## *Place of Supply – Goods and Real Property*

Goods are considered to be supplied in the province **in which physical possession is transferred**. For instance, if the customer picks up the goods at the vendor's premises, the place of supply is at the vendor's premises. If the vendor either personally delivers or arranges for delivery of the goods to the customer's premises, the place of supply is at the customer's premises. Note that the place where title transfers (for example, f.o.b. place) is not relevant in determining the place of delivery. Real property is considered supplied in the province in which it is located.

## *Place of Supply – Services*

The **new general place of supply rule for services** introduces a four stage test. Where the place of supply cannot be determined under the first stage, the next stage is applied. Under the first stage test, the supply of a service is considered to be made in a province if, in the normal course of business, the supplier of the service obtains an address of the recipient that is located in the province and that is the home or business address in Canada of the recipient that is most "closely connected" with the supply. If the supplier does not obtain a home or business address in Canada of the recipient, then any other address of the recipient that is located in the province and is most "closely connected" with the supply will be considered the place of supply. The CRA has not provided any guidance on the meaning of "closely connected".

Note that **there are exceptions to the general rule** for various types of services, including services in respect of real property, services in respect of tangible personal property, personal services, litigation services, etc.

## *Place of Supply – Intangible Personal Property*

The **new place of supply rules for IPP** (for example, inventions, patents, trade secrets, trademarks, trade names, copyrights or industrial designs) depend on the nature of the IPP and whether it relates to real property; tangible personal property; services to be performed; or other supplies of IPP.

## **Real Property**

Generally, sales of newly constructed or substantially renovated homes would be subject to the proposed HST, where both ownership and possession of the homes are transferred after June, 2010 (except for Grandparented Homes as discussed above).

## *New Housing Rebates*

New Housing Rebates will be available for the provincial component of the HST paid for all types of housing eligible for the GST New Housing Rebate. Qualifying housing would generally include the following types of newly constructed and substantially renovated homes used as a primary place of residence by an individual or qualifying relation of the individual:

- purchase of new houses together with land;
- purchase of new houses together with leased land;
- purchase of new mobile homes and floating homes;
- houses acquired through the purchase of qualifying shares in a housing co-op; and
- houses constructed or substantially renovated by the owner who is an individual (i.e., owner-built homes).

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The New Housing Rebate would be subject to the same eligibility conditions as the New Housing Rebate under the GST. The calculation of the rebate depends on which of the foregoing situations applies. For example, for an individual purchasing a new single unit house, the rebate is 71.43% of the 7% provincial portion of HST paid, to a maximum of \$26,250 [which caps the New Housing Rebate at a cost of \$525,000].

## ***New Rental Housing Rebate***

B.C. is proposing to provide an enhanced new rental housing rebate of 71.43% of the 7% provincial component of the HST paid, up to a maximum rebate of \$26,250. B.C.'s new rental housing rebate will be available for the provincial component of the HST paid for all types of new or substantially renovated rental housing, and would be subject to the same eligibility conditions, as the GST rebate for new residential rental properties.

This would include the following types of rental housing where it reasonably can be expected that the first use of the housing would be for occupancy or use by an individual under a rental arrangement or for occupancy by the builder as a primary place of residence for a period of at least one year:

- single-unit housing, residential condominium units and duplexes;
- mobile homes and floating homes;
- units in multiple unit housing (e.g., residential units in traditional apartment buildings or long-term care residential facilities);
- the land component of single-unit or multiple unit housing where the land is leased together with the sale of the building component of the housing; and
- single-unit housing or units in multiple unit housing in a housing co-op.

The rebate for new rental housing will be administered in a manner similar to the GST rebate for new residential rental properties.

## **Self-Assessment on Imports into BC**

Persons who import goods or services into BC may be required to self-assess GST and/or the provincial portion of HST. However, no self-assessment is required where HST was paid at the time of purchase in another province or on importation into Canada, nor where the purchaser is entitled to a full input tax credit for any GST/HST paid.

## **Special Industries and Rules**

There are special HST transitional and HST rules to persons who are involved in the financial services industry, residential and commercial property builders, charities, contractors and developers, passenger and freight transporters and persons who are considered Direct Sellers or who provide Continuous Supplies.

## **Other Matters**

A person who is already registered for GST need not register for HST and will begin reporting the HST on new revised HST returns starting July 1, 2010 using the person's existing GST number.

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Registrants with greater than \$1.5 million in annual taxable supplies (including supplies by “associated persons”) or registrants that are subject to the recaptured ITC provisions for the provincial portion of the HST and certain builders affected by the transitional housing measures in BC will be required to electronically file their HST returns starting July 1, 2010 by means of a specified method. The particular method required will depend on which of the foregoing criteria requires the registrant to electronically file. The specified methods are GST / HST Netfile, GST / HST Telefile, Electronic Data Interchange or GST / HST Internet File Transfer options.

## We can help!

As a reader of DMCL’s Advisory Bulletin you are cautioned that the information contained is of a general nature and does not address specific circumstances. Accordingly, readers should not act upon the information without seeking advise regarding their particular fact pattern. DMCL can help you with these or other federal or provincial indirect tax matters that may affect your business. For details, please contact your DMCL advisor.

## References

For more information on how the HST will affect you or your business, please refer to the following sources:

### A) BC GOVERNMENT WEBSITES

[http://www.sbr.gov.bc.ca/business/Consumer\\_Taxes/Harmonized\\_Sales\\_Tax/hst.html](http://www.sbr.gov.bc.ca/business/Consumer_Taxes/Harmonized_Sales_Tax/hst.html)  
[http://www.gov.bc.ca/hst/tax\\_professionals.html](http://www.gov.bc.ca/hst/tax_professionals.html)

### B) CANADA REVENUE AGENCY WEBSITES

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/menu-eng.html>  
<http://www.cra-arc.gc.ca/gncy/hrmnztn/bc/menu-eng.html>

### C) AVAILABLE SEMINARS, WEBCASTS AND WEBINARS

<http://www.cra-arc.gc.ca/vnts/hrmnztn/bc/menu-eng.html>  
<http://www.cra-arc.gc.ca/vnts/hrmnztn/wbmnr-eng.html>  
<http://www.cra-arc.gc.ca/gncy/hrmnztn/wbcsts/menu-eng.html>

## SALES TAX RATES IN CANADA EFFECTIVE JULY 1, 2010

	GST or HST Rate	PST or QST Rate
British Columbia	12% HST (5% federal component and 7% provincial component)	
Alberta	5% GST	
Saskatchewan	5% GST	5% PST
Manitoba	5% GST	7% PST
Ontario	13% HST (5% federal component and 8% provincial component)	
Quebec	5% GST	7.5% QST** on GST-included price
New Brunswick and Newfoundland and Labrador	13% HST (5% federal component and 8% provincial component)	
Nova Scotia	15% HST (5% federal component and 10% provincial component)	
Prince Edward Island	5% GST	10% PST on GST-included price

\*\*The QST rate will rise to 8.5% on Jan. 1, 2011 and to 9.5% on Jan. 1, 2012.

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## DMCL Chartered Accountants

DMCL is a leading full-service firm of Chartered Accountants located in the Lower Mainland of Vancouver, with 130 professional and support personnel in its Vancouver, White Rock and Port Coquitlam offices. DMCL offers a full range of high-quality assurance, tax and business advisory services to clients in a wide variety of industries. DMCL is also an independent member of Moore Stephens International, a leading global professional services association.