

Implications to Businesses

Supplies to consumers	Supplies to taxable businesses
Formerly RST taxable Was: 5% + 8% Now: 13% (no change) RST savings to supplier	Formerly RST taxable Was: 5% + 8% Now: 13%, but ITC to buyer (8% savings) RST savings to supplier
Formerly RST exempt Was: 5% Now: 13% (8% increase) RST savings to suppliers	Formerly RST exempt Was: 5% Now: 13%, but ITC to buyer (no change) RST savings to supplier

General Transitional Rules

Goods

- RST applies if goods delivered or ownership transferred before July 1, 2010
- HST applies if goods delivered and ownership transferred on or after July 1, 2010

Services

- RST applies to taxable services to extent performed before July 1, 2010 (most services not RST taxable)
- HST applies to services to extent performed on or after July 1, 2010
- De minimis rule: No HST if services performed all or substantially all (>90%) before July 1, 2010

Leases and Licenses

- RST applies to extent lease interval occurs before July 1, 2010
- HST applies to extent lease interval occurs on or after July 1, 2010
- One month rule: No HST if lease interval begins before July 1, 2010 and ends before July 31, 2010

Intangible Personal Property

- HST applies if due or paid on or after July 1, 2010
- Memberships: treated as a service, i.e. HST applies to extent membership period is on or after July 1, 2010
- Admissions: treated as a service, i.e. HST applies to extent event or activity is on or after July 1, 2010

Please refer to our detailed memo for exceptions to these general rules and expansion on the complexities of the new GST/HST legislation.

Disclaimer

This memorandum was prepared with information available at the time. The government legislation is continuing to be developed in this area and is subject to change. Please contact us if you require advice regarding a specific business situation.

On December 9, 2009 legislation to harmonize Ontario's Retail Sales Tax (RST) with the Federal Goods and Services Tax (GST) passed into law. As a result, the Harmonized Sales Tax (HST) will replace Ontario's existing sales tax regime on July 1, 2010. The HST rate will be 13% which is comprised of an 8% Ontario Value-Added Tax (OVAT) and the 5% GST.

The CRA will administer the HST which will eliminate the requirement to file separate RST returns with the Ministry and eliminate separate sales tax audits by the CRA and the Ministry.

The HST is levied under the *Excise Tax Act* so; in general, its application will mirror the current GST.

HST will apply to some items that were not previously subject to RST (e.g. most services). As a result, consumers will pay more directly. Businesses will also pay more; however, they can claim input tax credits (ITCs) to recover HST paid on purchases.

ITC Restrictions

Temporary ITC restrictions on the following items will apply to businesses with annual taxable supplies over \$10 million (including zero-rated supplies):

- Electricity, gas, combustibles and steam - except where purchased by farms or used to produce goods for sale
- Telecommunication services - other than internet access or toll-free numbers
- Road vehicles weighing less than 3,000 kgs (and parts, services, and fuel to power those vehicles)
- Food, beverages and entertainment (same 50% restriction as exists on GST)

The restrictions will be temporary during the initial implementation of the HST and will only apply to the Ontario portion of the HST. The restrictions will apply for 5 years and then be phased out over 3 years as follows:

- July 1, 2010 to June 20, 2015 – 100% restriction
- July 1, 2015 to June 30, 2016 – 75% restriction
- July 1, 2016 to June 20, 2017 – 50% restriction
- July 1, 2017 to June 20, 2018 – 25% restriction
- On or after July 1, 2018 – 0% restriction

Transitional Rules

Transitional rules have been established to aid in determining which tax, the existing RST or the Ontario portion of the HST, would apply to transactions that straddle the July 1, 2010 implementation date.

Key Dates:

- June 18, 2009 Release date of transitional rules for housing
- October 14, 2009 Release date of general transitional rules
- May 1, 2010 As of this date HST will apply to amounts due or amounts paid for goods or services provided on or after July 1, 2010
- July 1, 2010 Implementation date for the HST and date that RST will generally cease to apply
- October 31, 2010 Date on which any outstanding RST would become payable

If the goods were received or services performed all or substantially all (> 90%) before July 1, 2010, then HST is not applicable.

If the goods were received or services performed after July 1, 2010, and payment was due, or made without coming due:

- before Oct 14 HST is not applicable
- between Oct 14 and May 1 purchaser required to self assess the Ontario portion of HST if acquired for exclusive use in commercial activity or if ITCs restricted
- between May 1 and July 1 HST is applicable *
- after July 1 HST is applicable

* In these circumstances the supplier would be required to account for the Ontario portion of the HST in the GST/HST reporting period of the supplier that includes July 1, 2010. The recipient of the supply would be able to claim any available ITCs with respect to the Ontario portion of the HST in the GST/HST reporting period of the recipient that includes July 1, 2010.

Returns and Exchanges

These rules apply to RST applicable purchases made before July 1, 2010, but returned after July 1, 2010.

- Full refund for purchased goods. RST will also be refunded.
- Full Exchange of purchased goods. There will be no refund of RST or payment of HST.
- Exchange resulting in a partial refund. The Ontario component of the HST is not payable on the replacement property and the purchaser can recover the RST applicable to the amount refunded.
- Exchange resulting in additional payment. No RST would apply; however, HST applies to the additional payment.
- If RST did not apply to the good originally purchased, then HST will apply to the full consideration of the replacement property.

GST/HST Filing

Qualifying companies will be required to electronically file their GST/HST returns beginning in July 2010.

A company qualifies if any of the following applies:

- Its threshold for reporting period is over \$1.5 million in annual taxable supplies.
- It is required to recapture ITCs for the provincial part of the HST paid or payable on certain taxable supplies acquired in Ontario.
- It is a builder making sales of houses subject to GST/HST 'grandfathering rules'.
- It is a builder who is required to report a transitional tax adjustment amount or is reporting a provincial transitional new housing rebate.

There are four different filing options that can be used to file GST/HST returns, based on different reporting circumstances. These include Netfile, Telefile, Electronic Data Interchange and Internet File Transfer.

RST Filing

Final RST returns will generally be due by July 23, 2010. If any RST amounts are received or become payable subsequent to that date, they are due on the 23rd of the following month. All RST returns are required to be filed by November 23, 2010.

Other Notes

The portion of a lease after July 1st is HST applicable, unless the lease ends before July 31.

HST will only apply to the sale of real property (other than residential housing) when ownership and possession transfer to the purchaser on or after July 1.

RST will continue to apply to insurance that is currently PST applicable (e.g. Group insurance).

An Ontario sales tax transition benefit of up to \$1,000 is available to small businesses and individuals to aid in the transition to HST.

HST is not applicable on freight charges if continuous freight movement begins before July 2010.

A transitional RST inventory rebate will be available to provide relief with respect to RST embedded in materials used in residential real property contracts subject to HST. The rebate will apply to items in inventory at June 30 that are used in a contract to which HST applies. The rebate is not available if the RST is recoverable by any party. Qualifying contracts include repairs to land or permanent attachments to land. Businesses must apply for the rebate directly with the Ministry of Revenue by December 31, 2010.

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