

Summary of Residential Real Property Rules

	Houses	Condos
Ownership or Possession before July 1/10	- 5% GST - 8% RST on materials embedded in purchase price	- 5% GST - 8% RST on materials embedded in purchase price
Ownership and Possession after June 30/10 Agreement before June 19/09	- No HST on sale (grandfathered) - Up to 2% TTA payable by builder, based on % complete @ July 1/10	- No HST on sale (grandfathered) - 2% TTA payable by builder - Builder eligible for RST rebate based on % complete @ July 1/10
Ownership and Possession after June 30/10 Agreement after June 18/09	- HST on sale - Purchaser entitled to receive RST rebate based on % complete @ July 1/10 - Builder disclosure requirements	- HST on sale - Builder entitled to receive RST rebate based on % complete @ July 1/10 - Builder disclosure requirements

New Residential Real Property

The impact of the Ontario HST on the sale of new homes will be mitigated by rebates. However, consumers will incur significant increases on the cost of repairs and renovations as they will be required to pay the full 8% sales tax increase.

Current legislation

- RST is not charged on the sale of newly constructed residential homes, but is embedded in the price of building materials.
- GST rebate of 36% for properties up to \$350,000, phased out from \$350,000 to \$450,000

New HST legislation

- 13% HST will apply to the sale of new homes
- Current GST rebate will remain in effect for the federal portion of the HST
- A Ontario HST new housing rebate will be introduced for the Ontario portion of the HST

Ontario HST New Housing Rebate

The Ontario HST new housing rebate is a 75% rebate for houses up to \$400,000. Therefore, the rebate will refund the Ontario portion of HST to a maximum of \$24,000 ($\$400,000 \times 8\% \times 75\% = \$24,000$).

As a result, the Ontario portion of the HST is limited to 2% for new homes up to \$400,000.

The rebate is fixed at \$24,000 for homes over the \$400,000 threshold.

New Residential Real Property Sales - Transitional Rules

Property sales where possession or ownership transfers before July 1, 2010 will fall under the current excise tax rules where GST applies less a rebate and RST is only applicable to the building materials. However, for property sales where possession and ownership transfer after June 30, 2010 HST will apply, unless the agreement is subject to grandfathering rules.

Grandfathering Rules

Grandfathering rules will apply to property sales where possession and ownership transfer after June 30, 2010 and the related Purchase & Sale Agreement was entered into before June 19, 2009.

HST will not apply to grandfathered sales; however, the builder may be required to pay a Transitional Tax Adjustment (TTA) if the unit is less than 90% complete on July 1, 2010.

The transitional tax is calculated as a percentage of the unit selling price. The tax percentage is based on the degree to which the housing unit is complete as of July 1, 2010, as displayed in the following chart:

% Complete	Tax
0-10	2.0%
10-25	1.5%
25-50	1.0%
50-75	0.5%
75-90	0.2%
90-100	Nil

The degree of completion should be calculated using a fair and reasonable method and exclude costs of land and related costs, legal, accounting, financing, and real estate taxes.

For grandfathered sales where the property sells for less than the Fair Market Value (FMV) as of July 1, 2010, the TTA is based on the July 1, 2010 FMV. Therefore, builders will have to value properties subject to the grandfathering provisions as of July 1, 2010 to ensure that the transitional tax is calculated correctly.

The grandfathered rules will not apply to homes built by the owner for personal use, duplexes, traditional apartment buildings, mobile homes, as well as detached, semi-detached, and attached houses where the purchaser is not an individual. The transitional rules will apply differently to these houses.

Where a written agreement of purchase and sale for grandfathered housing is assigned to a third party the housing will remain grandfathered if there is no significant change to the agreement, the purchaser and

builder are not associated and dealing at arms length, and the builder or a related party does not acquire or reacquire any interest in the housing.

This transitional tax is payable in the GST/HST reporting period that includes the date of transfer to the purchaser.

Condos that fall under the grandfathering rules will be treated differently than houses. The builder will be required to remit a 2% TTA regardless of the percentage of completion of the housing at July 1. However, in order to approximate the tax result under the RST regime the builder will be entitled to claim a RST transitional housing rebate based on the degree of completion.

RST Transitional Housing Rebate

The RST transitional housing rebate is based on the “estimated RST content” of a home which can be calculated using either of the following methods:

- Floor space method - \$45 per completed square metre
- Selling price method - 2% of the total consideration paid for the housing unit

The estimated RST content is then multiplied by the degree of completion of the construction as of July 1, 2010 to calculate the rebate.

For condos, as previously noted, the builder is eligible to claim the RST rebate. However, for houses where HST applies to the purchase price, the purchaser is eligible to receive the rebate. The purchaser may either assign the rebate to the builder or apply to CRA to receive the rebate themselves. Where the purchaser claims the rebate the builder must provide a certificate indicating the degree of completion as of July 1, 2010.

If the RST rebate is based on the floor space method the rebate application must be filed after July 1, 2010 and before July 1, 2014. If the rebate is based on the selling price method the rebate application must be filed after the HST or the TTA becomes payable and before July 1, 2014.

Since the rebate is administered by the Canada Revenue Agency the builder must obtain a certificate from the provincial government attesting that the builder has no outstanding debts and attach this to the rebate application.

Builder Disclosure Requirements

For written agreements entered into after June 18, 2009 and before June 1, 2010, the builder must disclose whether the provincial portion of HST applies to the sale. If HST applies to the sale, the agreement must also state whether the provincial portion of the HST less the new housing rebate is included in the stated price. If the builder does not make these specific disclosures the price of the house is deemed to include the provincial portion of the HST less the new housing rebate.

Residential and Non-residential Renovations & Repairs

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, 2010 that are used in a contract to which HST applies. The rebate is not available if the RST is recoverable by any party.

Qualifying contacts include repairs to land or permanent attachments to land. The rebate does not apply to new home construction.

Businesses must apply for the rebate directly with the Ministry of Revenue by December 31, 2010.

For construction services straddling the July 1, 2010 implementation date the invoice amount needs to be apportioned based on the actual performance of the services. GST will apply to services performed before July 1, 2010 and HST will apply to services performed after June 30, 2010. In the same way HST will only apply to progress payments that relate to services performed after June 30, 2010.

Non-residential Properties

The TTA and the RST rebate do not apply to sales of non-residential property. If possession or ownership transfers before July 1, 2010 the old rules apply, whereas if possession and ownership transfer on or after July 1, 2010 the HST provisions apply.

Planning for Harmonization

When planning for the July 1, 2010 harmonization real estate developers should be sure to consider:

- The impact of HST, TTA, and the RST rebate on their pricing
- Pressuring their suppliers to pass on the RST savings that they are experiencing
- The process to determine the completion status at July 1, 2010 of houses and condo complexes
- Deferring purchases subject to RST until after July 1, 2010
- Obtaining RST refunds while they still can

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.