



Harmonized Sales Tax: Builder Disclosure Requirements in Ontario and British Columbia

The Government of Ontario and the Government of British Columbia are introducing a harmonized sales tax (HST) that will come into effect on July 1, 2010.

The HST rate in Ontario will be 13% of which 5% is the federal part and 8% the provincial part.

The HST rate in British Columbia will be 12% of which 5% is the federal part and 7% the provincial part.

This info sheet reflects tax changes included in the *New Harmonized Value-added Tax System Regulations, No. 2*.

This info sheet explains the disclosure requirements for a builder who sells newly constructed or substantially renovated housing in Ontario or British Columbia (B.C.). It also explains the disclosure requirements for a builder whose resale of previously grandparented housing is subject to the HST at 13% in Ontario or 12% in B.C.

Definitions for GST purposes, e.g., builder, residential complex, residential unit, residential condominium unit and substantial renovation, will generally apply under the HST, as will the CRA's current policies on the application of the GST to housing. Guide RC4052, *GST/HST Information for the Home Construction Industry*, and GST/HST Info Sheet GI-005, *Sale of a Residence by a Builder Who is an Individual* explore many of these important terms and concepts.

New housing

The term "new housing" used throughout this info sheet refers to newly constructed or substantially renovated housing. Housing that has been substantially renovated is generally given the same treatment under the GST/HST as newly constructed housing. Extensive modifications must

be made to the housing in order to meet the definition of a "substantial renovation" for GST/HST purposes. For a full explanation of the factors to consider in deciding if a substantial renovation has taken place, refer to GST/HST Technical Information Bulletin B-092, *Substantial Renovations and the GST/HST New Housing Rebate*.

Builder disclosure requirements

Except for the disclosure requirements for resales of previously grandparented housing, which are set out below in the section "Reseller disclosure requirements", the builder disclosure requirements set out in this info sheet **only** apply to a builder's taxable sale of new housing where:

- the HST is payable on the sale;
- the builder is required to collect the tax payable on the sale; and
- the written agreement of purchase and sale for the housing was entered into by the builder and the purchaser
 - **after June 18, 2009, and before July 1, 2010**, if the housing is situated in Ontario; and
 - **after November 18, 2009, and before July 1, 2010**, if the housing is situated in B.C.

If the builder and purchaser sign the written agreement of purchase and sale on different dates, for purposes of applying the disclosure requirements, the agreement is entered into on the date of the last signature of a party (i.e., the builder or purchaser) to the written agreement.

Refer to GST/HST Info Sheet GI-083, *Harmonized Sales Tax – Information for Builders of New Housing in Ontario*, or GST/HST Info Sheet GI-084, *Harmonized Sales Tax – Information for Builders of New*

La version française du présent document est intitulée *Taxe de vente harmonisée – Exigences de divulgation à l'intention des constructeurs en Ontario et en Colombie-Britannique*.



Housing in British Columbia, for a detailed explanation on the application of the HST to sales of new housing.

Where a builder makes a taxable sale of new housing in Ontario or B.C., the builder must disclose in the written agreement of purchase and sale:

- the total amount of the HST payable on the sale and whether that total includes the GST/HST new housing rebate and the provincial new housing rebate paid or credited by the builder; or
- the rate at which tax applies, i.e., 13% in Ontario or 12% in B.C.

If the sale of the new housing by the builder is subject to the HST and the builder is required to collect that HST, but the builder does not meet the disclosure requirements in the written agreement of purchase and sale, the sale price (i.e., the consideration, as established in the agreement, before the GST or HST or any new housing rebates are taken into account) will be considered to **include** the provincial part of the HST.

The purchaser is not required to pay the provincial part of the HST in addition to the price stated in the agreement. The builder is considered to have collected the provincial part of the HST equal to:

- 8% of 100/113 multiplied by the sale price where the housing is located in Ontario, and
- 7% of 100/112 multiplied by the sale price where the housing is located in B.C.

This amount must be included in the builder's net tax for the reporting period that includes the earlier of the day ownership or possession of the housing transfers, under the agreement, to the purchaser.

Where the builder paid or credited the GST/HST new housing rebate in respect of the federal part of the HST to the purchaser, the builder is also considered to have credited the provincial new housing rebate to the purchaser. The rebate is considered to be credited on the earlier of the day ownership or possession of the housing is transferred, under the agreement, to the purchaser. The builder may claim the amount credited as a deduction in determining its net tax. The purchaser

is not entitled to claim the provincial new housing rebate in such circumstances.

If the builder did not pay or credit the GST/HST new housing rebate in respect of the federal part of the HST, the purchaser is entitled to claim a provincial new housing rebate in respect of the provincial part of the HST that the purchaser is deemed to have paid when the disclosure requirement is not met, provided that all of the conditions for claiming the rebate are met, including the time limit for claiming the rebate. The application for this new housing rebate should be sent to the CRA at the address included on the application form. For more information on claiming a provincial new housing rebate in respect of the provincial part of the HST, refer to GST/HST Info Sheet GI-079 *Harmonized Sales Tax: Ontario New Housing Rebate*, and GST/HST Info Sheet GI-080, *Harmonized Sales Tax: British Columbia New Housing Rebate*.

Example 1

You are the builder of a new house situated in Ontario. In September 2009, you enter into a written agreement of purchase and sale for the house. Under the agreement, possession and ownership transfer to the purchaser on August 15, 2010. The purchaser agrees to pay you \$350,000 on the purchase. This amount includes the GST at 5% and the GST/HST new housing rebate in respect of the GST, or the federal part of the HST, which the purchaser is entitled to claim and that you pay or credit to the purchaser. However, the agreement is silent about the application of the provincial part of the HST.

The sale of the house is subject to the HST at 13%. However, because the written agreement of purchase and sale does not disclose the amount of the tax payable and that tax applies at 13%, the sale price (i.e., the price established in the agreement before the GST and GST/HST new housing rebate are taken into account) is deemed to **include** the provincial part of the HST:

Stated price net of rebate, i.e., including GST at 5% and the GST/HST new housing rebate in respect of the GST, or the federal part of the HST	\$350,000.00
Sale price, i.e., before GST and GST/HST new housing rebate in respect of the GST, or federal part of the HST*	\$339,147.28
GST at 5% of sale price	\$16,957.36
GST/HST new housing rebate – 36% of GST paid	\$6,104.65
Provincial part of the HST you are considered to have collected – sale price multiplied by 100/113 x 8%	\$24,010.43

Ontario new housing rebate amount – 75% of the provincial part of the HST \$18,007.82

* To determine the consideration for a house that includes the GST at 5% and the GST/HST new housing rebate, refer to GST/HST Memorandum 19.3.1.2, *Stated Price Net of Rebate – GST at 5%*.

As the purchaser is entitled to claim a GST/HST new housing rebate in respect of the federal part of the HST and you paid or credited the amount of that rebate to the purchaser, you are also considered to have credited the amount of the Ontario new housing rebate to the purchaser. The amount of the Ontario new housing rebate may be deducted in determining your net tax for the reporting period that includes August 15, 2010 (this is the same reporting period in which you have to include the provincial part of the HST that you are considered to have collected). The purchaser is not entitled to submit a GST/HST new housing rebate application in respect of the federal part or the provincial part of the HST to the CRA in these circumstances.

Example 2

You are the builder of a new residential condominium complex in B.C. In May 2010, you enter into a written agreement of purchase and sale for a condo unit in the complex. Under the agreement, possession of the condo unit transfers to the purchaser on November 30, 2010 and ownership transfers shortly thereafter. The purchaser agrees to pay you \$630,000 for the condo unit. Given that the consideration exceeds \$450,000, a GST/HST new housing rebate is not available. The agreement states that the price includes the GST; however, the agreement is silent about the provincial part of the HST. You are not sure if the purchaser will qualify for the B.C. new housing rebate, so you instruct the purchaser to make such application directly to the CRA.

The sale of the condo unit is subject to the HST at 12%. However, because the written agreement of purchase and sale does not disclose the amount of the tax payable and that tax applies at 12%, the sale price (i.e. the price established in the agreement before the amount before the GST is taken into account) is deemed to **include** the provincial part of the HST:

Stated price including GST at 5%	\$630,000.00
Sale price i.e., before GST	\$600,000.00
GST at 5% of sale price	\$30,000.00
Provincial part of the HST you are considered to have collected – sale price x 100/112 x 7%	\$37,500.00

You must include the provincial part of the HST that you are considered to have collected in your net tax calculation for the reporting period that includes November 30, 2010. As you did not pay or credit the amount of a GST/HST new housing rebate in respect of the federal part of the HST (none was available), you are not considered to have credited the amount of the B.C. new housing rebate to the purchaser. As such, you cannot claim a deduction for this amount in determining your net tax. If the purchaser is entitled to claim a B.C. new housing rebate, the purchaser may file a rebate application for this rebate directly with the CRA.

Grandparented sales of new housing

When the sale of new housing in Ontario or B.C. is grandparented, the builder is not required to collect the provincial part of the HST on the sale of the new housing even though both ownership and possession are transferred to the purchaser after June 2010. The GST at the rate of 5% will apply to the sale. For further information on grandparented sales of housing, refer to GST/HST Info Sheet GI-077, *Harmonized Sales Tax: Purchasers of New Housing in Ontario* and GST/HST Info Sheet GI-078, *Harmonized Sales Tax: Purchasers of New Housing in British Columbia*.

Resale of grandparented housing

Persons who purchase grandparented housing may themselves be considered a builder of that housing for GST/HST purposes because of the circumstances or their intentions at the time they purchased the new housing. For a detailed explanation of the reseller rules, refer to GST/HST Info Sheet GI-098, *Harmonized Sales Tax – Resales of New Housing in Ontario and British Columbia*, which will be published soon.

When a purchaser (i.e., the first reseller) of grandparented housing is considered to be a “builder” of the new housing for GST/HST purposes, the sale of the new housing by the first reseller is taxable. The sale by the first reseller may or may not be subject to the provincial part of the HST, depending on whether certain conditions are met. Similarly, when a person who purchases new housing from a first reseller (a subsequent reseller) is considered to be a builder, the sale of the new housing is taxable. The sale by the subsequent reseller may or may not be subject to the provincial part of the HST depending on whether certain conditions are met.

Reseller disclosure requirements

A first reseller of new housing that was acquired on a grandparented basis, or a subsequent reseller of new housing acquired where the provincial part of the HST did not apply, must satisfy certain disclosure requirements when they enter into a written agreement of purchase and sale with a purchaser for the taxable sale of the new housing.

Specifically, where the taxable sale of the new housing by the reseller is not subject to the provincial part of the HST, or is subject to the provincial part of the HST only because the original builder, a person associated with the original builder, or a person that does not deal with the original builder at arm's length acquires an interest in the housing, the reseller, including an assignee purchaser who becomes a reseller (refer to GI-097, *Harmonized Sales Tax: Assignment of Purchase and Sale Agreements for Grandparented Housing in Ontario and British Columbia* for information on assignee purchasers), will be required to make the following disclosures in the written agreement of purchase and sale:

- the name of the original builder; and
- a statement indicating that the reseller acquired the housing on a grandparented basis or that no provincial part of the HST was payable on the purchase of the housing by the reseller.

If the taxable resale by the reseller is subject to the provincial part of the HST and the reseller is required to collect the tax payable on the sale, the reseller will be required to make the following disclosures in the written agreement of purchase and sale:

- the total amount of the HST payable on the sale and whether that total includes the GST/HST new housing rebate and the provincial new housing rebate paid or credited by the reseller, or
- the rate at which tax applies, i.e., 13% in Ontario or 12% in B.C.

Where the reseller does not meet the disclosure requirements in the written agreement of purchase and sale between the reseller and the purchaser, the sale price (i.e., the consideration, as established in the agreement, before the GST or HST or any new housing rebates are taken into account) will be considered to **include** the provincial part of the HST.

The purchaser is not required to pay the provincial part of the HST in addition to the price stated in the agreement.

The reseller is considered to have collected the provincial part of the HST equal to

- 8% of 100/113 multiplied by the sale price where the housing is located in Ontario, and
- 7% of 100/112 multiplied by the sale price where the housing is located in B.C.

This amount must be included in the reseller's net tax for the reporting period that includes the earlier of the day ownership or possession of the housing transfers, under the agreement, to the purchaser.

Where the reseller pays or credits the GST/HST new housing rebate in respect of the federal part of the HST to the purchaser, the reseller is also considered to have credited the provincial new housing rebate to the purchaser. The rebate is considered to be credited on the earlier of the day ownership or possession of the housing is transferred, under the agreement, to the purchaser. The reseller may claim the amount credited as a deduction in determining its net tax. The purchaser is not entitled to claim the provincial new housing rebate in such circumstances.

If the reseller did not pay or credit the GST/HST new housing rebate in respect of the federal part of the HST, the purchaser is entitled to claim a provincial new housing rebate in respect of the provincial part of the HST that the purchaser is deemed to have paid when the disclosure requirement is not met, provided that all of the conditions for claiming the rebate are met, including the time limit for claiming the rebate. The application for this new housing rebate should be sent to the CRA at the address included on the application form. For more information on claiming a provincial new housing rebate in respect of the provincial part of the HST, refer to GST/HST Info Sheet GI-079 *Harmonized Sales Tax: Ontario New Housing Rebate*, and GST/HST Info Sheet GI-080, *Harmonized Sales Tax: British Columbia New Housing Rebate*.

This info sheet does not replace the law found in *the Excise Tax Act* (the Act) and its regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate regulation, or contact any CRA GST/HST Rulings Centre for additional information. A ruling should be requested for certainty in respect of any particular GST/HST matter. Pamphlet RC4405, *GST/HST Rulings – Experts in GST/HST Legislation*, explains how to obtain a ruling and lists the GST/HST Rulings Centres. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec by calling 1-800-567-4692. You may also visit their Web site at www.revenu.gouv.qc.ca to obtain general information.

All technical publications related to GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthstech.