

## Harmonized Sales Tax: Information for Builders of New Housing in Prince Edward Island

The Government of Prince Edward Island has proposed a harmonized sales tax (HST) that would come into effect on April 1, 2013.

The HST rate in Prince Edward Island would be 14% of which 5% would represent the federal part and 9% the provincial part.

This info sheet reflects proposed tax changes announced in the *Prince Edward Island 2012 Budget and Revenue Tax Guide RTG185, Implementation of the Harmonized Sales Tax in Prince Edward Island*.

Any commentary in this info sheet should not be taken as a statement by the Canada Revenue Agency (CRA) that the proposed transitional rules will be enacted in their current form.

This info sheet outlines the transitional rules that would apply for builders who sell newly constructed or substantially renovated housing in P.E.I., including single unit housing that is not a condominium (e.g., detached houses, semi-detached houses, units in a rowhouse), residential condominium units, mobile homes, floating homes, duplexes and multi-unit residences such as traditional apartment buildings, co-operative rental buildings and long-term residential care facilities.

Builders who rent newly constructed or substantially renovated housing should refer to GST/HST Info Sheet GI-149, *Harmonized Sales Tax: Information for Landlords of New Rental Housing in Prince Edward Island*.

Definitions for GST purposes, e.g., builder, condominium complex, mobile home, residential complex, residential unit, residential condominium unit and substantial renovation, would generally apply under the HST, as would 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*, discuss many of these important terms and concepts. Others are explained in GST/HST Memorandum 19.2, *Residential Real Property* or related policy statements.

Long-term care facilities such as nursing homes or personal care homes would be treated the same as other residential housing under the HST. If a newly constructed or substantially renovated long-term care facility is similar to a traditional apartment building, the rules for apartment buildings would apply. If the facility is a condominium, the rules for residential condominiums would apply.

### 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 Technical Information Bulletin B-092, *Substantial Renovations and the GST/HST New Housing Rebate*.

### Application of the HST to sales of new housing – General rule

Builders would generally be required to charge the HST when they sell new housing if, under a written agreement of purchase and sale for the housing, **both** ownership and possession of the housing are transferred after March 2013.

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If either ownership or possession is transferred under the written agreement to the purchaser before April 2013, the GST will apply and the HST would not apply.

This general rule would apply to sales of all housing types, including single unit housing, residential condominium units, traditional apartment buildings, as well as mobile homes and floating homes. For more information on mobile homes, including certain modular homes, refer to GST/HST Info Sheet GI-145, *Harmonized Sales Tax: Information for Owner-built Homes, Mobile Homes and Floating Homes in Prince Edward Island*.

An exception would exist for certain types of housing if, among other conditions, the written agreement of purchase and sale was entered into on or before November 8, 2012 (refer to the section “Grandparented sales of housing”).

If the builder and purchaser sign the written agreement of purchase and sale on different dates, for purposes of applying the transitional rules, 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.

After March 2013, the HST would generally be payable on the earlier of the day on which ownership or possession of the housing is transferred to the purchaser. However, where the housing is a residential condominium unit in a condominium complex and possession is transferred before the condominium has been registered under P.E.I.’s *Condominium Act*, the HST would become payable when ownership of the unit is transferred, or 60 days following the date of registration of the condominium, whichever is earlier.

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### **Example 1 – HST would not apply**

You are a builder who enters into a written agreement of purchase and sale in January 2013 to sell a newly constructed residential condominium unit. Under the agreement, ownership and possession transfer to the purchaser in March 2013. Since ownership and possession transfer before April 2013, only the GST at 5% applies to the sale. If either ownership or possession transfers before April 2013, GST would still apply at 5%.

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### **Example 2 – HST would not apply**

You are a builder who enters into a written agreement of purchase and sale in September 2012 to sell a

newly constructed detached house, possession of which transfers to the purchaser under the agreement on February 28, 2013. Ownership transfers on April 30, 2013. Since possession transfers before April 2013, only the GST at 5% applies to the sale, regardless of when the builder and purchaser entered into the agreement.

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### **Example 3 – HST would apply**

You are a builder who enters into a written agreement of purchase and sale in January 2013 to sell a newly constructed detached house. Under the agreement, ownership and possession of the house transfer to the purchaser in April 2013. Since the written agreement was entered into after November 8, 2012, and both ownership and possession of the house transfer to the purchaser after March 2013, the HST at 14% would apply to the sale.

If the construction of the house is at least 10% complete immediately before April 1, 2013, the purchaser in example 3 may be entitled to claim a provincial sales tax (PST) transitional new housing rebate to recover some of the embedded PST. This rebate may be assigned to the builder. For details, refer to GST/HST Info Sheet GI-151, *Harmonized Sales Tax: Provincial Transitional New Housing Rebate for Housing in Prince Edward Island*.

Refer to Appendix A for a summary chart of how the general rule would apply in examples 1 to 3.

## **Builder disclosure requirements for housing**

For information on the disclosure requirements that would apply for a builder where a written agreement of purchase and sale for new housing is entered into after November 8, 2012, and before April 1, 2013, refer to GST/HST Info Sheet GI-153, *Harmonized Sales Tax: Builder Disclosure Requirements in Prince Edward Island*. The info sheet also explains the consequences that would apply for builders if the disclosure requirements are not met.

## **Grandparented sales of housing**

In the case of a newly constructed or substantially renovated detached house, semi-detached house, rowhouse unit, residential condominium unit or condominium complex, where **both** ownership and possession are transferred after March 2013, under a written agreement of purchase and sale that was

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entered into on or before November 8, 2012, the sale of the housing may be grandparented.

For single unit housing that is not a condominium (e.g., a detached house, semi-detached house or rowhouse unit), the grandparenting rule would only apply if the purchaser is an individual. There would be no condition with respect to how the individual will use the housing. For example, the sale may be grandparented whether the individual rents the housing to a third party on a short or long-term basis or occupies the housing either as a principal residence or otherwise.

In the case of a grandparented sale of housing, the builder would not be required to collect the provincial part of the HST from the purchaser on the sale of the housing. The GST at 5% would apply to the grandparented sale of the housing. However, the builder may be considered to have collected a transitional tax adjustment and if so, would be required to include that amount in its net tax calculation. For more information on the transitional tax adjustment, refer to GST/HST Info Sheet GI-150, *Harmonized Sales Tax: Information on the Transitional Tax Adjustment for Builders in Prince Edward Island*.

## Exceptions to the grandparenting rule

The grandparenting rule would not apply to the sale of new floating homes, mobile homes, including modular homes that qualify as mobile homes, or multi-unit residences (e.g., duplexes, co-operative rental buildings, apartment buildings and residential care facilities that are not condominiums).

Refer to Appendix B for a summary chart of how the grandparenting rule would apply.

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### Example 4 – Grandparented house

You are the builder of a new detached house who enters into a written agreement of purchase and sale with an individual in July 2012. Under the agreement, the individual takes ownership and possession of the house in May 2013.

The sale of the house would be grandparented because the written agreement was entered into on or before November 8, 2012, the purchaser is an individual and both ownership and possession of the house transfer under the agreement to the individual after March 2013. The sale of the house is subject to GST at 5%.

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If the purchaser in this example were a partnership or corporation, the sale of the house would not be grandparented and would be subject to HST at 14%.

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### Example 5 – Grandparented condo

You are the builder of a new residential condominium unit who enters into a written agreement of purchase and sale in March 2012. Under the agreement, the purchaser takes ownership and possession of the condo unit in May 2013.

The sale of the condo unit would be grandparented because the written agreement was entered into on or before November 8, 2012, and both ownership and possession of the condo unit transfer under the agreement to the purchaser after March 2013. The sale of the condo unit is subject to GST at 5%.

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For a residential condominium unit or condominium complex, the grandparenting rule would apply whether or not the purchaser is an individual.

Refer to Appendix A for a summary chart of how the grandparenting rule would apply in examples 4 and 5.

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### Example 6 – House not grandparented

You are the builder of a new detached house who enters into a written agreement of purchase and sale with a corporation in August 2012. Under the agreement, ownership and possession of the house transfer to the corporation in June 2013.

Although the written agreement was entered into on or before November 8, 2012, the sale would not be grandparented because the house is being sold to someone other than an individual. As a result, the general rule would apply. Since both ownership and possession transfer under the agreement to the corporation after March 2013, the sale of the house would be subject to HST at 14%.

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### Example 7 – Apartment building not grandparented

You are the builder of a new apartment building who enters into a written agreement of purchase and sale for the apartment building in February 2012. Under the agreement, the purchaser takes ownership and possession of the building in September 2013.

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Although the written agreement of purchase and sale was entered into on or before November 8, 2012, the general rule would apply to the sale because a traditional apartment building would not qualify for grandparenting. Since both ownership and possession transfer under the agreement to the purchaser after March 2013, the sale of the apartment building would be subject to HST at 14%.

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If the construction of the house in example 6 and the apartment building in example 7 were at least 10% complete as of April 1, 2013, the purchaser in example 6 and the builder in example 7 may be entitled to claim a provincial sales tax (PST) transitional new housing rebate to recover some of the embedded PST. For details, refer to GST/HST Info Sheet GI-151, *Harmonized Sales Tax: Provincial Transitional New Housing Rebates for Housing in Prince Edward Island*.

## Upgrades

A request by a purchaser for upgrades to housing, such as a detached house or residential condominium unit, can generally be accommodated by an amendment to an existing written agreement of purchase and sale such that the upgrades form part of that agreement. In this case, the tax rate for the upgrades will be the same as the tax rate that applies to the sale of the housing.

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### Example 8

A builder enters into a written agreement of purchase and sale with an individual for the sale of a new house on November 8, 2012. On January 15, 2013, the purchaser requests some flooring and lighting fixture upgrades. The agreement of purchase and sale is amended to reflect these upgrades and their additional cost. Under the agreement, ownership and possession of the house transfer to the individual after March 2013.

As the written agreement was entered into on or before November 8, 2012, the purchaser is an individual and both ownership and possession of the house transfer under the agreement to the individual after March 2013, the sale of the house would be grandparented. GST at 5% applies to the total amount payable for the house (including the upgrades).

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Where an existing agreement of purchase and sale is modified, varied or otherwise materially altered to such an extent that it is considered to be a new agreement (i.e., novation has occurred), the application of the grandparenting rule would be based on the date that the new agreement is entered into.

If a builder and purchaser renegotiate the terms of a written agreement of purchase and sale for new housing that was entered into on or before November 8, 2012, and enter into a new agreement, whether or not the grandparenting rule would apply would depend on the date that the builder and purchaser entered into the new agreement.

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### Example 9

On November 1, 2012, a builder enters into a written agreement of purchase and sale with an individual for the sale of Unit 5, a newly constructed residential condominium unit. Under the agreement, ownership and possession of the condo unit transfer to the individual after March 2013. On February 3, 2013, the agreement is amended so that the builder will now sell Unit 15 to the individual and not Unit 5. There is no additional cost to the individual to make this change.

Given that the individual is purchasing a different condo unit, the builder and the individual are considered to have entered into a new agreement on February 3, 2013. Since this agreement was entered into after November 8, 2012, the sale of the condo unit (Unit 15) would not be grandparented and HST at 14% would apply.

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## Assignment of purchase and sale agreement for grandparented housing

Where a builder enters into a written agreement of purchase and sale for housing with a purchaser (original purchaser), in some cases, the original purchaser may assign their rights and obligations under the agreement to another person (assignee purchaser).

If the sale of the housing to the original purchaser would be grandparented, refer to GST/HST Info Sheet GI-152, *Assignment of Purchase and Sale Agreements for Grandparented Housing in Prince Edward Island* for an explanation of the rules that would apply to these assignments.

## Resales of grandparented housing

The resale of housing that was purchased on a grandparented basis would be subject to the HST at 14% if the resale was made under a written agreement of purchase and sale entered into after November 8, 2012.

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Where the HST applies to the resale of housing by a “first reseller” (defined below) of the housing, the first reseller would be entitled to claim an input tax credit (ITC) or a rebate equal to 4.5% of the consideration paid by the first reseller on their grandparented purchase of the housing. The amount of the ITC or rebate would represent the estimated PST and/or the transitional tax adjustment embedded in the price the first reseller paid to purchase the housing.

If entitled to claim a rebate for 4.5% of the consideration, the first reseller would claim that rebate on a new rebate application form that will be available on the CRA Web site by April 1, 2013. If entitled to claim an ITC equal to 4.5% of the consideration, the first reseller would claim the amount on their GST/HST return.

If a GST/HST registrant, the first reseller would also be entitled to claim an ITC or a rebate with respect to the 5% GST it paid on the purchase of the housing. If a non-registrant, the first reseller would be entitled to the rebate for a non-registrant that makes a taxable sale of real property. Refer to Guide RC4033, *General Application for GST/HST Rebates*, for more information.

### **Who is a first reseller of housing?**

The first reseller of housing is the first purchaser:

- to have entered into a grandparented sales agreement for the housing for the primary purpose of reselling the housing;
- to have received possession of the housing from the original builder under the grandparented agreement of purchase and sale; and
- to resell the housing under an agreement of purchase and sale entered into after November 8, 2012 (i.e., a non-grandparented agreement of purchase and sale).

### **Input tax credits for GST/HST registrant builders**

Builders who are registered for GST purposes are considered to be registered for HST purposes and would be eligible to claim ITCs to recover the provincial part of the HST paid or payable on most purchases and operating expenses incurred for use in their commercial activities, in the same way and under the same rules that apply for the recovery of the GST

paid or payable on inputs. The GST/HST rules for various types of expenses are explained in Guide RC4052, *GST/HST Information for the Home Construction Industry*. Builders would not be eligible to claim ITCs for any PST paid or owing.

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#### **Example 10**

You are a GST registrant who buys a vacant lot and begins in January 2013 to build a house for resale. GST may apply to your purchase of the land and to most of your costs related to the construction of the house incurred prior to April 1, 2013, while the HST would apply to most of your related construction costs incurred after March 2013. You finish building the house in June 2013 and enter into a written agreement of purchase and sale in November 2013 to sell the house. HST at 14% would apply to the sale.

As a GST/HST registrant, you would generally be entitled to claim ITCs for the GST you are required to pay on related expenses prior to April 2013, and for the HST you would be required to pay on such costs incurred after March 2013. You would claim the ITCs on your GST/HST returns.

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#### **Example 11**

You are a GST registrant builder constructing a house that would be grandparented and the construction of the house straddles the April 1, 2013 proposed implementation date for the HST.

Even though the sale of the grandparented house would be subject to the GST rather than the HST, you would generally be entitled to claim ITCs for the 14% HST paid or payable on your expenses incurred after March 2013 to complete the construction of this house. However, you would not be entitled to claim any ITCs for the PST paid with respect to materials acquired before April 1, 2013.

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In some cases, builders would be required to recapture the ITCs claimed for the **provincial** part of the HST paid or payable in respect of certain expenses. For more details, refer to GST/HST Info Sheet GI-100, *Builders and Recaptured Input Tax Credits*, which will be revised in the coming weeks. The rules for claiming ITCs for the **federal** part of the HST paid or payable on these construction inputs will not be affected.

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## Filing requirements for GST/HST registrants

Most GST/HST registrants, including builders, are required to electronically file their GST/HST returns. For more information on the electronic filing requirements for builders, refer to GST/HST Info Sheets GI-099, *Builders and Electronic Filing Requirements*, and GI-118, *Builders and GST/HST NETFILE*.

## Non-registrant builders

Builders who are not GST/HST registrants cannot claim ITCs to recover the GST/HST paid or payable by them on their land, construction and other costs incurred to construct or substantially renovate housing. However, they may be eligible to file a rebate application to recover some, or all, of these amounts if certain conditions are met. For more information, refer to GST/HST Info Sheet *Harmonized Sales Tax: Information for Non-registrant Builders of Housing in Prince Edward Island* which will be published in the coming weeks.

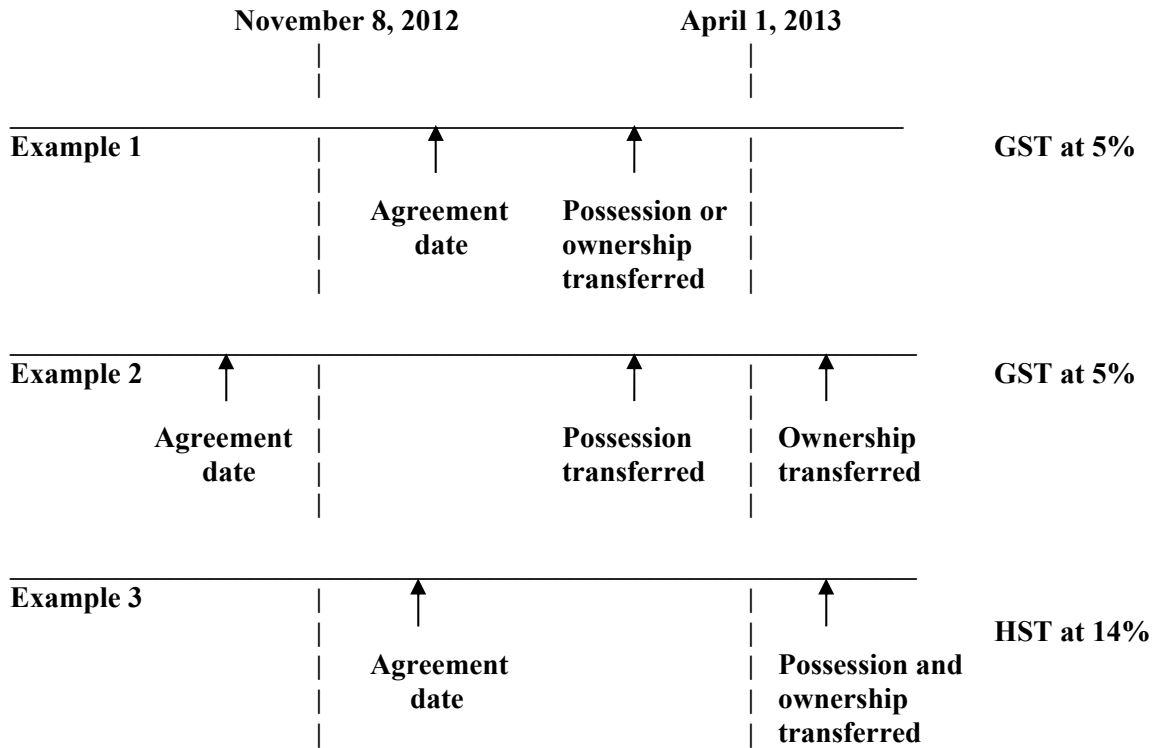
This info sheet does not replace the law found in *the Excise Tax Act* (the Act) and its regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate regulation, or contact any CRA GST/HST rulings office for 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 offices. 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 at 1-800-567-4692. You may also visit the Revenu Québec Web site to obtain general information.

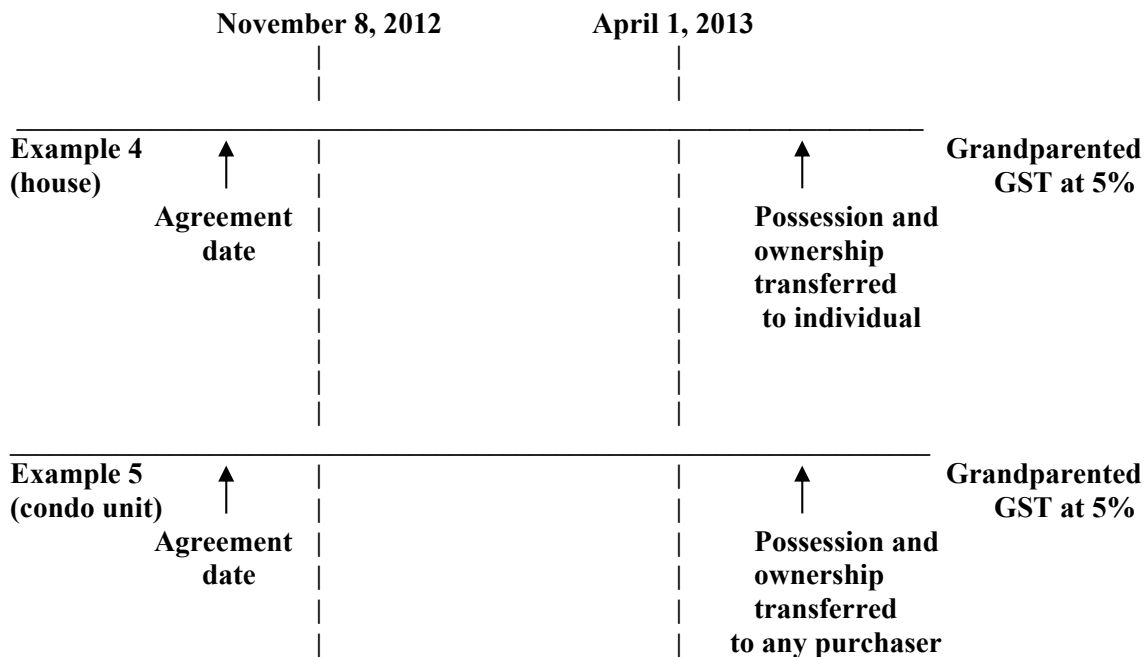
All technical publications related to GST/HST are available on the CRA Web site at [www.cra.gc.ca/gsthsttech](http://www.cra.gc.ca/gsthsttech).

# Appendix A – Summary chart – Sales of newly constructed or substantially renovated housing

## APPLICATION OF HST – GENERAL RULE



## GRANDPARENTING RULE



## Appendix B – Summary chart

### APPLICATION OF HST – GRANDPARENTING RULE

#### Sales of newly constructed or substantially renovated housing

HOUSING TYPE	WOULD THE GRANDPARENTING RULE APPLY?
Residential condominium unit	<p>Yes, if the written agreement of purchase and sale was entered into on or before November 8, 2012, and <b>both</b> ownership <b>and</b> possession of the unit transfer under the agreement to the purchaser after March 2013, regardless of who purchases the unit. GST applies at 5%.</p> <p>No, if, under the agreement, <b>either</b> ownership <b>or</b> possession of the unit transfers to the purchaser before April 2013, regardless of when the builder and purchaser enter into the agreement. GST applies at 5%.</p>
Residential condominium complex	<p>Yes, if the written agreement of purchase and sale was entered into on or before November 8, 2012, <b>and</b> both ownership <b>and</b> possession of the complex transfer under the agreement to the purchaser after March 2013, regardless of who purchases the complex. GST applies at 5%.</p> <p>No, if, under the agreement, <b>either</b> ownership <b>or</b> possession of the complex transfers to the purchaser before April 2013, regardless of when the builder and purchaser enter into the agreement. GST applies at 5%.</p>
Single unit housing that is not a condominium (e.g., detached houses, semi-detached houses, units in a rowhouse)	<p>Yes, if the purchaser is an individual, the written agreement of purchase and sale was entered into on or before November 8, 2012, and, under the agreement, <b>both</b> ownership and possession of the single unit housing transfer to the individual after March 2013. GST applies at 5%.</p> <p>No, if, under the agreement, <b>either</b> ownership <b>or</b> possession of the single unit housing transfers to the individual before April 2013, regardless of when the builder and the individual enter into the agreement.</p> <p>No, if the purchaser is not an individual.</p> <p>GST applies at 5% if, under the agreement, ownership or possession (or both) transfers before April 1, 2013.</p>
Duplex	No
Apartment	No
Mobile home and floating home	No

Where the grandparenting rule would not apply, HST at 14% would apply if, under the agreement, both ownership and possession transfer to the purchaser after March 2013.