



Harmonized Sales Tax: Assignment of Purchase and Sale Agreements for Grandparented 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 explains how the rules would apply to the assignment of grandparented purchase and sale agreements for housing in P.E.I. The rules for grandparented purchase and sale agreements for housing are explained in GST/HST Info Sheet GI-146, *Harmonized Sales Tax: Information for Builders of New Housing in Prince Edward Island*.

Definitions for GST purposes, e.g., builder, 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.

The terms "arm's length", "associated persons" and "specified related person" as used in this info sheet are explained below.

Arm's length

For GST/HST purposes,

- related persons are deemed not to deal with each other at arm's length and it is a question of fact whether persons who are not related to each other are, at any given time, dealing with each other at arm's length;
- persons are considered to be related to each other if they are related to each other for income tax purposes under subsections 251(2) to (6) of the *Income Tax Act* (further information on these subsections can be found in Interpretation Bulletin IT-419, *Meaning of Arm's Length*); and
- a member of a partnership is deemed to be related to the partnership.

In addition, for purposes of the assignment of grandparented purchase and sale agreements for housing in P.E.I., aunts and uncles would be considered to be related to their nieces and nephews in applying the arm's length test in this info sheet.

Associated persons

For GST/HST purposes, persons are considered to be associated in the following circumstances:

- (a) two corporations are associated if they are associated for income tax purposes under subsections 256(1) to (6) of the *Income Tax Act* (further information on these subsections can be found in Interpretation Bulletin IT-64 (Consolidated), *Corporations: Association and Control*);
- (b) a person other than a corporation is associated with a particular corporation if that corporation is controlled by the person, or controlled by a group of persons of which the person is a member and each of the members is associated with each other;



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- (c) a person is associated with
- (i) a partnership if the total of the shares of the profits of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total profits of the partnership, or would be more than half of the total profits of the partnership if it had profits; and
 - (ii) a trust if the total of the values of the interests in the trust of the person and all other persons who are associated with the person is more than half of the total value of all interests in the trust; and
- (d) a person is associated with another person if each of them is associated with the same third person.

Specified related person

A specified related person is any person who is not dealing at arm's length with, or who is associated with, the original builder.

The original builder is a builder who enters into a grandparented purchase and sale agreement for newly constructed or substantially renovated housing.

Grandparented purchase and sale agreements

Builders would generally be required to charge the HST when they sell newly constructed or substantially renovated housing where both ownership and possession are transferred after March 2013.

However, where ownership and possession of the housing are transferred after March 2013 and the purchase and sale agreement is grandparented, the provincial part of the HST would not apply to the sale of the housing. Only the GST at the rate of 5% would apply to the grandparented sale of housing.

The grandparenting rules would apply only to single-unit houses, residential condominium units and condominium complexes. The grandparenting rules would not apply to multiple unit housing (e.g., an apartment building). For grandparenting purposes, a single-unit house would include a detached house, semi-detached house and a rowhouse unit (where such housing is not a condominium), but would not include a duplex, mobile home or floating home.

Assignment of grandparented purchase and sale agreements

If a purchaser, referred to in this info sheet as the original purchaser, enters into a grandparented agreement of purchase and sale for new housing with the original builder of that housing, the purchaser may assign the agreement to another person (referred to as the "assignee purchaser"). Similarly, that assignee purchaser may assign the agreement to yet another person (also referred to as an assignee purchaser).

If the original builder transfers ownership and possession of the housing to an assignee purchaser after March 2013, the sale of the housing from the original builder to the assignee purchaser would be grandparented (not subject to the provincial part of the HST) if the following conditions were met:

- there is no novation of the purchase and sale agreement between the original builder and the original purchaser and, where there is more than one assignee purchaser, there is no novation of the purchase and sale agreement between the original builder and any assignee purchaser;
- the original purchaser and the original builder are dealing at arm's length and are not associated persons for GST/HST purposes and, where there is more than one assignee purchaser, the assignee purchaser and any previous assignee purchaser are dealing at arm's length with the original builder and are not associated with the original builder for GST/HST purposes;
- the original builder or a specified related person does not acquire or reacquire, by way of sale, the housing or an interest in the housing; and
- in the case of single-unit housing, all assignee purchasers are individuals.

If novation has occurred, the existing agreement is considered to be terminated and a new agreement is considered to exist.

Example 1

On October 1, 2012, Lynn (the original purchaser) and a builder (the original builder) enter into a written agreement of purchase and sale for a newly constructed detached house. Ownership and possession of the house will transfer after March 2013. As such, the sale of the house to Lynn would be grandparented, i.e., the sale would be subject to the GST at 5%.

Lynn is acquiring the house for resale and assigns the purchase and sale agreement to Carmela (assignee purchaser) for \$10,000 on March 1, 2013. Ownership and possession of the house transfer from the original builder to Carmela on July 15, 2013. There is no novation of the purchase and sale agreement that was entered into between Lynn (the original purchaser) and the original builder. The original builder and Lynn are not associated for GST/HST purposes and are dealing at arm's length. Carmela is not a specified related person. The builder does not reacquire the house or an interest in the house under the assignment agreement.

The sale of the house by the original builder to Carmela (the assignee purchaser) would be grandparented since the conditions for grandparenting when there is an assignment of a purchase and sale agreement are met:

- there is no novation of the purchase and sale agreement;
- the original builder and original purchaser are dealing at arm's length and are not associated;
- neither the builder nor a specified related person acquires or reacquires the house or an interest in the house; and
- the assignee purchaser is an individual.

The grandparented sale of the house is subject to the GST at the rate of 5%. Carmela would not be required to pay the HST on the purchase of the house from the original builder.

If Lynn had assigned the purchase and sale agreement to a person other than an individual (e.g., a partnership or corporation), the sale of the house by the original builder to that assignee purchaser would not be grandparented. In the case of a single-unit house, all assignee purchasers would have to be individuals in order for the sale to be grandparented.

The \$10,000 paid under the assignment agreement is the purchase price for the sale of an interest in the house supplied by Lynn (the original purchaser) to Carmela (the assignee purchaser). For GST/HST purposes, the sale of the interest is a supply of real property. As no exemption applies to the sale of the interest in this particular case, the supply is a taxable sale. However, as ownership of the interest transfers to Carmela under the assignment agreement on March 1, 2013, (i.e., before April 2013), the HST would not apply to Lynn's taxable sale of the interest

to Carmela. As such, the GST at a rate of 5% applies on the \$10,000 paid by Carmela to Lynn under the assignment agreement.

Example 2

On September 1, 2012, BuyCo, which is a corporation (the original purchaser) and a builder (the original builder) enter into a written agreement of purchase and sale for a newly constructed residential condominium unit in a condominium complex. Ownership and possession of the unit will transfer after March 2013. As such, the sale of the unit to BuyCo would be grandparented, i.e., the sale is subject to the GST at 5%.

BuyCo is acquiring the unit for resale and assigns the purchase and sale agreement to UseCo, a corporation (assignee purchaser) for \$10,000 on February 15, 2013. Ownership and possession of the unit transfer from the original builder to UseCo on April 15, 2013. There is no novation of the purchase and sale agreement that was entered into between BuyCo (the original purchaser) and the original builder. The original builder and BuyCo are not associated for GST/HST purposes and are dealing at arm's length. UseCo is not a specified related person. The builder does not reacquire the unit or an interest in the unit under the assignment agreement.

The sale of the unit by the original builder to UseCo (the assignee purchaser) would be grandparented since the conditions for grandparenting when there is an assignment of a purchase and sale agreement for a residential condominium unit are met:

- there is no novation of the purchase and sale agreement;
- the original builder and original purchaser are dealing at arm's length and are not associated; and
- neither the builder nor a specified related person acquires or reacquires the unit or an interest in the unit.

The grandparented sale of the unit is subject to the GST at the rate of 5%. UseCo would not be required to pay the HST on the purchase of the unit from the original builder.

Since this is a residential condominium unit, the original purchaser and the assignee purchaser would not need to be individuals in order for the sale by the original builder to be grandparented.

Example 3

Ms. Mulinda is the sole shareholder of, and controls, CanCo, a corporation in the business of building and selling new housing. Ms. Mulinda decides to purchase one of CanCo's new houses for her personal use. The written agreement of purchase and sale is entered into on November 1, 2012, and both ownership and possession of the house are to transfer to Ms. Mulinda after March 2013. As such the sale of the house to Ms. Mulinda would be grandparented, i.e., the sale would be subject to the GST at 5%.

Ms. Mulinda changes her mind in January 2013 and assigns the purchase and sale agreement to Francine (assignee purchaser). CanCo transfers ownership and possession of the house to Francine on July 15, 2013.

Although the sale by CanCo to Ms. Mulinda would have been grandparented, the sale by CanCo to Francine (the assignee purchaser) would not be grandparented. The conditions for grandparenting when there is an assignment of a purchase and sale agreement would not be met because Ms. Mulinda (the original purchaser) and CanCo (the original builder) are associated persons for GST/HST purposes. Francine would have to pay the HST at the rate of 14% on the purchase of the house.

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/gsthstech.