



New Brunswick and Newfoundland and Labrador HST Rate Increases – Sales and Rentals of Non-residential Real Property

On February 2, 2016, and April 14, 2016, respectively, the Government of New Brunswick and the Government of Newfoundland and Labrador announced their intentions to increase the provincial part of the harmonized sales tax (HST) by two percentage points from 8% to 10%, effective July 1, 2016. This results in an increase in the HST rate from 13% to 15%.

On March 30, 2016, the Government of New Brunswick released transitional rules to determine the HST rate applicable to transactions that straddle the July 1, 2016, implementation date.

On May 3, 2016, the Government of Newfoundland and Labrador released transitional rules to determine the HST rate applicable to transactions that straddle the July 1, 2016, implementation date.

This info sheet provides information that reflects the application of those transitional rules, which have been enacted in the *Regulations Amending Various GST/HST Regulations, No. 8* (SOR/2016-119).

All supplies referred to in the examples are made in New Brunswick or Newfoundland and Labrador. If you are uncertain as to whether a supply is made in a participating province, refer to GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province*.

This info sheet explains the rules for the New Brunswick and Newfoundland and Labrador HST rate increases that apply to the taxable sale or rental of non-residential real property (that is, real property other than housing) in New Brunswick and Newfoundland and Labrador.

Exempt sales and rentals of non-residential real property are not affected by the HST rate increases.

Refer to GST/HST Info Sheet GI-190, *New Brunswick and Newfoundland and Labrador HST Rate Increases – Sales and Rentals of New Housing*, for information on how the HST rate increases apply to taxable sales, “self-supplies,” and rentals of new

housing in New Brunswick and Newfoundland and Labrador.

Sale of non-residential real property

Effective July 1, 2016, the HST at 15% applies to a taxable sale of non-residential real property in New Brunswick or Newfoundland and Labrador.

However, transitional rules apply to determine which HST rate (13% or 15%) applies to transactions that straddle the July 1, 2016, implementation date.

Transitional rules – HST at 15%

The HST at 15% applies to a taxable sale of non-residential real property in New Brunswick or Newfoundland and Labrador if ownership **and** possession of the property transfer to the purchaser **after** June 2016.

In the following examples, all of the suppliers are GST/HST registrants and all of the supplies are subject to the HST.

Example 1

In June 2016, a land developer in New Brunswick enters into a written agreement of purchase and sale to sell a small commercial mall to an individual. Under the agreement, ownership and possession of the mall transfer to the individual in September 2016.

The HST at 15% applies to the sale of the mall since ownership and possession of the mall transfer to the individual after June 2016.

Transitional rules – HST at 13%

The HST at 13% applies to a taxable sale of non-residential real property in New Brunswick or Newfoundland and Labrador if ownership **or** possession of the property transfers to the purchaser **before** July 2016.

Example 2

In February 2016, a land developer in Newfoundland and Labrador enters into a written agreement of purchase and sale to sell a parcel of bare land to a purchaser. Under the agreement, possession of the land transfers to the purchaser on June 27, 2016, and ownership of the land transfers to the purchaser on July 8, 2016.

The HST at 13% applies to the sale of the land since possession of the land transfers to the purchaser before July 2016.

Rental of non-residential real property

For purposes of this info sheet, the word “lease” refers to a lease, licence, or similar arrangement.

Effective July 1, 2016, the HST at 15% applies to a taxable lease of non-residential real property in New Brunswick or Newfoundland and Labrador.

However, transitional rules apply to determine which HST rate (13% or 15%) applies to transactions that straddle the July 1, 2016, implementation date.

To determine whether the HST at 13% or 15% applies to a taxable lease of non-residential real property in New Brunswick or Newfoundland and Labrador, one must also consider when the consideration for the lease becomes due or is paid without having become due.

When consideration becomes due

For GST/HST purposes, in the case of a written lease agreement for non-residential real property, consideration becomes due on the day the lessee is required to pay the consideration under the agreement.

If the lease is not made under a written lease agreement, consideration, or a part thereof, becomes due on the earliest of:

- the day the supplier first issues an invoice for the consideration or part;
- the date of that invoice; and
- if there is an undue delay in issuing that invoice, the day the supplier would have issued the invoice.

When consideration is paid without becoming due

For GST/HST purposes, in the case of a supply of non-residential real property made by way of lease, consideration is paid without having become due when the lessee pays the consideration before the lessee is required to pay the consideration (for example, payment is made before the consideration becomes due under a written lease agreement).

Does the HST apply at 13% or 15%?

Once it is determined when the consideration becomes due or is paid without having become due, the following rules are applied to determine whether the HST at 13% or 15% applies to a taxable lease of non-residential real property in New Brunswick or Newfoundland and Labrador:

- the HST at 15% applies to any consideration that becomes due or is paid without having become due after June 2016; and
- the HST at 13% applies to any consideration that becomes due or is paid without having become due before July 2016.

Example 3

The owner of a commercial building in New Brunswick makes a supply by way of licence of space in the building to a dance studio for the period from June 6, 2016, to July 15, 2016. Under the written agreement for the supply, the licence payment for the period is due on June 6, 2016, and the dance studio makes the payment on the same day it becomes due.

The HST at 13% applies since the payment becomes due before July 2016.

Example 4

The owner of a commercial building in Newfoundland and Labrador makes a supply by way of licence of space in the building to a couple for the period June 18, 2016, to June 20, 2016. The couple will use the space for their wedding ceremony and reception. The licence payment for the period is \$650.

Under the written agreement for the supply, a portion of the licence payment (\$300) becomes due and is paid by the couple on June 1, 2016. The remaining \$350 becomes due and is paid by the couple on July 1, 2016.

Since the payment of \$300 is not a deposit and it becomes due before July 2016, the HST at 13% applies to that payment. Since the payment of \$350 becomes due and is paid after June 2016, the HST at 15% applies to that payment, even though the licence period is before July 2016.

Example 5

An individual enters into a written agreement with the operator of a marina in New Brunswick for the right to dock the individual's boat for the period from July 1, 2016, to August 31, 2016. The docking fee for the entire period is \$450.

Under the agreement, a portion of the docking fee (\$200) becomes due on June 1, 2016. The remaining \$250 becomes due on July 1, 2016. The individual pays the full \$450 on June 1, 2016.

Since the amount of \$200 becomes due and is paid before July 2016, the HST at 13% applies to that payment. Since the balance of \$250 is paid without having become due before July 2016, the HST at 15% applies to that payment.

Example 6

An individual rents a parking space in Newfoundland and Labrador on a monthly basis from the operator of a parking lot located near the individual's work. The payments are due and paid on the first day of each month. There is no written agreement and the operator issues a receipt when payment is made.

For the month of July 2016, the HST at 15% applies to the payment. This is the first payment to which the HST at 15% applies and all subsequent payments for parking are subject to the HST at 15%.

Example 7

A non-profit organization makes a supply by way of licence of an ice rink in New Brunswick to a hockey club every Monday night for the period from January 1, 2016, to August 1, 2016. The hockey club pays the licence fee on the day of use. There is no written agreement and the non-profit organization issues a receipt when payment is made.

As of July 1, 2016, the HST at 15% applies to the licence payment paid by the hockey club on the day of use. The HST at 13% applies to licence payments paid by the hockey club on days of use that occur before July 2016.

Example 8

An individual has a licence to use real property in Newfoundland and Labrador for the period from June 15, 2016, to August 15, 2016. The licence payment for the period is due and paid in-full on June 15, 2016.

Although a part of the licence period occurs after June 2016, the HST at 13% applies to the full amount since the payment for the licence becomes due and is paid before July 2016.

Example 9

A hotel operator in New Brunswick rents a room to an individual for a 4-night stay beginning on June 30, 2016. The supply is made under a written agreement under which the hotel operator charges a nightly rate of \$125 that is payable when the individual checks out of the hotel. However, the individual pays the full amount for the 4-night stay when checking in to the hotel on June 30, 2016.

Although the payment for the 4-night stay becomes due after June 2016, the HST at 13% applies since the payment is paid before July 2016.

Example 10

A hotel operator in Newfoundland and Labrador rents a room to an individual for a 4-night stay beginning on June 30, 2016. The supply is made under a written agreement under which the hotel operator charges a nightly rate of \$125 that is payable when the individual checks out of the hotel. The individual pays the full amount for the 4-night stay when checking out of the hotel on July 4, 2016.

The HST at 15% applies to the full amount since the amount becomes due after June 2016 and it is not paid before July 2016.

Example 11

An individual enters into a lease agreement in February 2016 for the taxable lease of commercial real property in New Brunswick. The term of the lease commences July 1, 2016, and requires monthly lease payments, due in advance, on the first of the month beginning July 1, 2016. The individual takes possession of the property under the lease on July 1, 2016, and makes the lease payment for the month of July on that date.

The HST at 15% applies to each lease payment since each lease payment becomes due after June 2016, and is not paid before July 2016.

Deposits

Deposits given in respect of a supply are not consideration for a supply unless and until the supplier applies the deposit as consideration for the supply or the amount is forfeited. Generally, a deposit is an amount, whether refundable or not, given by a recipient as security for the performance of an obligation by the recipient. A deposit is not a

prepayment. One way of determining whether an amount is a deposit or a prepayment of consideration for a supply is to refer to how the supplier accounts for the receipt of funds in its books and records. An amount paid to a person as a deposit would generally not be recorded in the person's books and records as revenue until such time as the person applies the amount as a payment or the amount is forfeited.

Example 12

A guest makes a deposit in May 2016 in respect of a supply of accommodation to be made by a hotel operator in Newfoundland and Labrador in July 2016. Upon receiving the payment, the hotel operator sends the guest confirmation of the reservation and receipt of the deposit. No invoice was issued either upon receipt of the deposit or beforehand, and there is no written agreement in respect of the accommodation. The deposit is not applied as consideration for the supply until the guest checks out of the hotel in July 2016.

The supply of accommodation is subject to the HST at 15% since the consideration becomes due and is paid after June 2016.

For additional information on the transitional rules for housing and other real property, refer to GST/HST NOTICE 298, *New Brunswick HST Rate Increase – Questions and Answers on Housing Rebates and Transitional Rules for Housing and Other Real Property Situated in New Brunswick*, or GST/HST NOTICE 299, *Newfoundland and Labrador HST Rate Increase – Questions and Answers on Housing Rebates and Transitional Rules for Housing and Other Real Property Situated in Newfoundland and Labrador*.

Further information

All GST/HST technical publications are available on the CRA website at www.cra.gc.ca/gsthstech.

To make a GST/HST enquiry by telephone:

- for general GST/HST enquiries, call **Business Enquiries** at 1-800-959-5525
- for technical GST/HST enquiries, call **GST/HST Rulings** at 1-800-959-8287

If you are located in Quebec, call **Revenu Québec** at 1-800-567-4692 or visit their website at www.revenuquebec.ca.

If you are a **selected listed financial institution** (whether or not you are located in Quebec) and require information on the GST/HST or the QST, go to www.cra.gc.ca/sfi or

- for general GST/HST or QST enquiries, call **Business Enquiries** at 1-800-959-5525
- for technical GST/HST or QST enquiries, call **GST/HST Rulings SLFI** at 1-855-666-5166

Any legislative references in this publication are to the *Excise Tax Act* (the Act) unless otherwise specified. The information in this publication does not replace the law found in the Act and its regulations.

If this information does not completely address your particular situation, you may wish to refer to the Act or relevant regulation, or call GST/HST Rulings at 1-800-959-8287 for additional information. If you require certainty with respect to any particular GST/HST matter, you may request a ruling. GST/HST Memorandum 1.4, *Excise and GST/HST Rulings and Interpretations Service*, explains how to obtain a ruling or an interpretation and lists the GST/HST rulings centres.