



New Brunswick HST Rate Increase – Questions and Answers on Housing Rebates and Transitional Rules for Housing and Other Real Property Situated in New Brunswick

On February 2, 2016, the Government of New Brunswick announced its intention to increase the provincial part of the harmonized sales tax (HST) by two percentage points from 8% to 10%, effective July 1, 2016. This will result 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.

This notice provides a detailed set of questions and answers that reflect the application of those transitional rules, which have been enacted in the *Regulations Amending Various GST/HST Regulations, No. 8 (SOR/2016-119)*.

For the purpose of this notice:

- “house” or “housing” means both the building and land portions of a residential complex, unless otherwise indicated;
- “commercial,” in the context of real property, means real property other than housing; and
- “supply by way of lease” includes a supply by way of licence or similar arrangement.

All supplies referred to in the examples are made in New Brunswick. 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*.

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La version française de la présente publication est intitulée *Hausse du taux de la TVH au Nouveau-Brunswick – Questions et réponses sur les remboursements pour habitations et les règles transitoires visant les habitations et les autres immeubles situés au Nouveau-Brunswick*.



Residential real property

General

1. When does the HST at 15% apply to taxable sales of newly constructed or substantially renovated housing in New Brunswick?

Effective July 1, 2016, the provincial part of the HST in New Brunswick increases from 8% to 10%. The federal part of the HST remains at 5%. This means that the HST at 15% generally applies where a builder sells a newly constructed or substantially renovated house in New Brunswick on or after July 1, 2016. Transitional rules apply where the transaction straddles the July 1, 2016, implementation date. The transitional rules are explained below.

2. I am selling my house in New Brunswick, and the sale is currently exempt from the HST. If the closing date for the sale is after June 2016, is the sale of the house still exempt under the HST at 15%?

Yes. There are no changes to the application of the HST where the sale of a house is exempt. As the sale of your previously occupied house is exempt, you are not required to charge or collect the HST.

3. I am a builder, and I am registered for GST/HST purposes. I previously claimed input tax credits (ITCs) for the HST at 13% that I paid on the lumber I purchased to build new houses. Am I able to claim ITCs for the HST at 15% paid on lumber purchased in New Brunswick after June 2016?

Yes. Subject to the normal ITC rules, you may be able to claim ITCs for the HST at the rate that was paid or became payable on the purchase of lumber and other construction materials that you use to construct new housing.

Application of the HST to new or substantially renovated housing

4. What are the transitional rules for the HST rate increase that apply to a sale of a newly constructed or substantially renovated house in New Brunswick?

Generally, the HST at 15% applies to a builder's taxable sale of a newly constructed or substantially renovated house where, under a written agreement of purchase and sale, ownership **and** possession of the house are transferred to the purchaser after June 2016. If ownership **or** possession is transferred to the purchaser before July 2016, the HST at 13% applies. This general rule applies to taxable sales of all housing types, including residential condominium units, mobile homes, and floating homes.

An exception to the general rule exists for certain types of housing if a written agreement of purchase and sale was entered into on or before March 30, 2016. For more information, refer to the section below on grandparented sales of housing.

5. A builder and a purchaser enter into a written agreement of purchase and sale in April 2016 for a newly constructed house in New Brunswick. The agreement provides that ownership and possession of the house will transfer to the purchaser on October 14, 2016. Does the HST at 15% apply to the sale?

Yes. Since the written agreement of purchase and sale is entered into after March 30, 2016, and ownership and possession of the house transfer to the purchaser after June 2016, the HST at 15% applies to the sale.

The purchaser may be entitled to claim a GST/HST new housing rebate in respect of the federal part of the HST paid, provided that all of the conditions for this rebate are met. For more information, refer to the section below on new housing rebates.

6. When does the HST at 13%, rather than 15%, apply to a sale of a newly constructed or substantially renovated house in New Brunswick?

Generally, the HST at 13%, rather than 15%, applies to a builder's taxable sale of a newly constructed or substantially renovated house where ownership or possession of the house is transferred, under a written agreement of purchase and sale, to the purchaser before July 2016, regardless of when the purchase and sale agreement was entered into.

Also, the HST at 13%, rather than 15%, applies if the taxable sale of the newly constructed or substantially renovated housing is grandparented. For more information, refer to the section below on grandparented sales of housing.

7. A builder and a purchaser enter into a written agreement of purchase and sale on April 10, 2016, for a newly constructed house in New Brunswick. Under the agreement, ownership and possession of the house will transfer to the purchaser in June 2016. Does the HST at 15% apply to the sale?

No. If ownership or possession (in this case, both) of the house transfers, in accordance with the written agreement, to the purchaser before July 2016, the HST at 13% applies to the sale of the house. Where ownership or possession transfer before July 2016, the date the written agreement is entered into is not relevant for purposes of applying the transitional rule.

8. I entered into a written agreement of purchase and sale in February 2016 for a newly constructed residential condominium unit in New Brunswick. The agreement provides that possession of the unit will transfer to me in June 2016 but ownership will only be transferred in September 2016, following the registration of the condominium complex. Does the HST at 15% apply to the sale?

No. If ownership or possession of the residential condominium unit transfers to you, in accordance with the written agreement, before July 2016, the HST at 13% applies to the sale of the residential condominium unit.

Grandparented sales of housing

9. What is a grandparented sale of a house?

Where a written agreement of purchase and sale for a newly constructed or substantially renovated detached house, semi-detached house, rowhouse unit, duplex, mobile home, floating home, or residential condominium unit was entered into **on or before** March 30, 2016, the sale is grandparented if ownership **and** possession of the housing transfer to the purchaser, under the agreement, after June 2016. In this case, the HST at 13% applies to the sale.

Mobile homes may include modular homes for GST/HST purposes provided they meet certain criteria, including that the manufacture or assembly of the modular home be substantially completed prior to being moved to a site. For more detailed information, refer to GST/HST Policy Statement P-223, *The Meaning of "Manufacture and Assembly of Which is Completed or Substantially Completed" in the Definition of "Mobile Home"*.

10. Does the grandparenting rule apply where a person purchases the building part of a house and leases the land part of a house from the builder?

Generally, grandparenting does not apply to deemed supplies of real property by way of sale, including where builder-landlords are required to self-assess the HST under the self-supply rules on newly constructed or substantially renovated housing after June 2016.

An exception exists for certain self-supplies of housing where the builder makes an exempt sale of the building part of newly constructed or substantially renovated housing together with a supply of the underlying land by way of lease or an assignment of a lease.

Specifically, where a builder is required to self-assess the HST under subsection 191(1) of the *Excise Tax Act* on an exempt sale of the building part of a single unit residential complex (for example, a detached house or a semi-detached house) or residential condominium unit and a supply by way of lease, or an assignment of a lease, of the land part of the complex or unit, the rate of HST payable in respect of the deemed supply is based on the date the agreement for the supply of the complex was entered into. Where the agreement was entered into on or before March 30, 2016, the HST at 13% applies to the deemed supply made by the builder even if the deemed supply is made after June 2016. Where the agreement was entered into after March 30, 2016, the general rule for deemed supplies of real property by way of sale applies (that is, where the builder is deemed to have made the supply after June 2016, the HST at 15% applies).

11. Are there any exceptions to the grandparenting rule?

Yes. For example, newly constructed or substantially renovated housing built by owners for their personal use, as well as condominium complexes and traditional apartment buildings, are not grandparented under the transitional rules for sales of new housing.

As stated above, grandparenting does not apply to deemed supplies of real property by way of sale (other than a deemed sale described in question 10).

12. I entered into a written agreement of purchase and sale for a new house with a builder on February 15, 2016. I will take ownership and possession of the house, under the agreement, in August 2016. Does the HST at 15% apply to the sale?

No. The sale of the house is grandparented since the written agreement of purchase and sale was entered into on or before March 30, 2016 and ownership and possession of the house are transferred after June 2016. The sale of the house is subject to the HST at 13%.

13. I entered into a written agreement of purchase and sale for a new mobile home with a mobile home dealer on March 15, 2016. I will take ownership and possession of the mobile home on July 15, 2016, when the dealer delivers the mobile home to a parcel of land that I am leasing. Does the HST at 15% apply to the sale?

No. The sale of the mobile home is grandparented since the written agreement of purchase and sale was entered into on or before March 30, 2016 and ownership and possession of the mobile home are transferred after June 2016. The sale of the mobile home is subject to the HST at 13%.

14. I am a builder, and I am registered for GST/HST purposes. I am constructing a new house in New Brunswick. The construction of this house straddles July 1, 2016, and the written agreement of purchase and sale was entered into on January 15, 2016. As such, the sale of the house is grandparented. Am I able to claim ITCs for the HST at 15% paid on lumber and other construction materials purchased after June 30, 2016, and used to complete the construction of this grandparented house?

Yes. Even if the sale of the house is grandparented, you may be entitled to claim ITCs for the HST paid or payable on the lumber and other construction materials used in the construction of the house, subject to the normal ITC requirements.

15. After entering into a written agreement of purchase and sale on February 10, 2016, for a newly constructed house, the purchaser requests that upgrades be made to the house. Ownership and possession of the house transfer, under the agreement, to the purchaser on August 10, 2016. Does the HST at 15% apply to the additional amount payable for the upgrades?

Upgrades to a house will generally result in modifications to the existing agreement such that the upgrades form part of the written agreement of purchase and sale for the house. In such a case, the tax applicable to the sale of the house prevails. In this case, since a written agreement of purchase and sale was entered into on or before March 30, 2016, and ownership and possession transfer to the purchaser after June 2016, the HST at 13% applies to the total amount payable for the house, including the upgrades.

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, the application of the transitional rules is based on the date that the new agreement is entered into.

If a purchaser and a builder renegotiate the terms of a written agreement of purchase and sale for new housing that was entered into on or before March 30, 2016, and enter into a new agreement after March 30, 2016, the transitional rules apply based on the date that the parties enter into the new agreement.

16. After entering into a written agreement of purchase and sale on December 5, 2015, for a newly constructed house that is to be built on lot 22, the purchaser and the builder renegotiate the terms of the agreement on May 24, 2016, such that the house will now be built on lot 8 as opposed to lot 22. Ownership and possession of the house transfer to the purchaser under this new agreement on November 15, 2016. Does the HST at 15% apply to the sale of the house?

Yes. The HST at 15% applies to the sale of the house since the new agreement of purchase and sale for the house is entered into after March 30, 2016, and ownership and possession of the house are transferred under the agreement after June 2016. The transitional rules are applied based on the new agreement entered into on May 24, 2016, in respect of the house to be constructed on lot 8.

17. A builder constructs a detached house on leased land. A written agreement for the sale of the building part of the house and a lease of the land on which the building is situated is entered into on December 15, 2015. Construction of the house is substantially completed on August 1, 2016, the same day that possession of the house is given to the purchaser. Does the HST at 13% or 15% apply?

Even though the builder is deemed to have made a self-supply of the house on August 1, 2016, the builder accounts for the HST at 13%, calculated on the fair market value of the house (building and land) on that date, as the agreement for the sale of the building part of the house and a lease of the land part of the house was entered into on or before March 30, 2016.

New housing rebates

18. Is a new housing rebate still available for the federal part of the HST at 15%?

The GST/HST new housing rebates, such as the rebate for owner-built homes, the rebate for new housing purchased from a builder, and the rebate for the purchase of a share in a cooperative housing corporation, in respect of the federal part of the HST continue to be available.

With respect to certain GST/HST new housing rebates (that is, the rebate where you buy the house and lease the land from the same builder and the cooperative housing rebate), certain threshold amounts and rebate rates are relevant in determining the amount of the rebate (refer to Guide RC4028, *GST/HST New Housing Rebate*, for information on these thresholds and rebate rates). These threshold amounts and rebate rates have been increased for such housing situated in New Brunswick to reflect the increased rate of the provincial part of the HST.

19. Is a builder still able to pay or credit the amount of the GST/HST new housing rebate to the purchaser at the time of purchase?

Builders continue to have the option of paying or crediting the GST/HST new housing rebate of the federal part of the HST. Builders may price their sales of newly constructed or substantially renovated housing net of the GST/HST new housing rebate in respect of the federal part of the HST. GST/HST Info Sheet GI-191, *New Brunswick and Newfoundland and Labrador HST Rate Increases – Stated Price Net of the GST/HST New Housing Rebate*, explains how to determine the consideration payable on newly constructed or substantially renovated housing in New Brunswick where the builder's price includes the HST at 15% and is net of the GST/HST new housing rebate in respect of the federal part of the HST.

20. A written agreement of purchase and sale for a new house is entered into with a builder in March 2016. Ownership and possession of the house transfer, under the agreement, on July 15, 2016. The purchaser is eligible for the GST/HST new housing rebate. Is the rebate application still filed with the Canada Revenue Agency (CRA)? Is the builder still able to pay or credit the amount of the rebate to the purchaser?

The GST/HST new housing rebate application (that is, Form GST190, *GST/HST New Housing Rebate Application for Houses Purchased from a Builder*) continues to be filed with the CRA. Subject to the normal conditions, the builder remains able to pay or credit the amount of the GST/HST new housing rebate in respect of the federal part of the HST to the purchaser. Where the builder pays or credits the total amount of the new housing rebate, the builder must submit the application to the CRA.

Application of the HST to new rental housing

21. What is a "self-supply" of rental housing?

A builder of newly constructed or substantially renovated housing, including single unit residential complexes (for example, detached houses and semi-detached houses), residential condominium units, and multiple unit residential complexes (for example, traditional apartment buildings) or additions thereto, who makes a supply by way of lease of the complex or condominium unit—or in the case of a multiple unit residential complex or addition thereto, a unit in the complex or addition—for use by an individual as a place of residence, is considered for GST/HST purposes to have self-supplied (sold and repurchased) the housing.

The self-supply generally occurs at the later of the time:

- construction or substantial renovation of the residential complex is substantially completed; and
- possession or use of the complex is given under a lease to an individual who is the first to occupy it as a place of residence.

In the case of a multiple unit residential complex or an addition thereto, the self-supply occurs at the later of the time:

- construction or substantial renovation of the complex or addition is substantially completed; and
- possession or use of a unit in the complex or addition is given to an individual who is the first to occupy the unit in the complex or addition as a place of residence.

The builder is considered to have paid and collected the GST/HST on the self-supply. The tax is calculated on the fair market value of the unit, complex, or addition, as the case may be, including the building and the land reasonably necessary for the use of the housing as a place of residence for individuals.

For more information on the self-supply of rental housing, refer to Guide RC4052, *GST/HST Information for the Home Construction Industry*.

22. How does the HST rate increase apply to the self-supply of rental housing in New Brunswick?

If the self-supply occurs before July 2016, the builder is considered to have paid and collected the HST at 13% on the self-supply.

If the self-supply occurs after June 2016, the builder is generally considered to have paid and collected the HST at 15% on the self-supply (refer to question 10 in the section above on grandparented sales of housing for the exception).

The HST (at 13% or 15%) is calculated on the fair market value of the housing (building and related land) at the time of the self-supply.

23. I am the builder of a traditional apartment building in New Brunswick. Construction of the apartment building is substantially completed in June 2016. Under a lease, possession of a unit in the building is given to an individual on July 1, 2016. The individual is the first to occupy a unit in the building as a place of residence. Do I account for the HST at 13% or 15% on the self-supply?

You are considered to have paid and collected the HST at 15% on the self-supply of the apartment building. As the self-supply occurs at the later of the time construction of the building is substantially completed and the time possession or use of a unit in the apartment building is given to an individual who is the first to occupy a unit as a place of residence, the self-supply in this case occurs on July 1, 2016, at which time the HST at 15% applies. The HST is calculated on the fair market value of the apartment building (that is, the building and land) at that time.

24. I am the builder of a duplex in New Brunswick. On June 1, 2016, under a lease agreement, I give possession of one of the units in the duplex to an individual who is the first to occupy a unit in the duplex as a place of residence. Construction of the duplex is substantially completed on June 15, 2016. Under a lease, I give possession of the other unit in the duplex on August 1, 2016, to an individual who occupies it as a place of residence. Do I account for the HST at 13% or 15% on the self-supply?

You are considered to have paid and collected the HST at 13% on a self-supply of the entire duplex (that is, the building and land). The self-supply occurs on June 15, 2016 (that is, the later of the time construction of the duplex is substantially completed and the time possession of a unit is given to an individual who is the first to occupy a unit as a place of residence).

25. I am renting an apartment in New Brunswick and am not required to pay HST on my rental payments. Following the HST rate increase to 15%, am I required to pay HST on my lease payments?

No. Long-term residential rents are exempt from the HST.

Builders' disclosure requirements

26. What are the disclosure requirements for builders under the transitional rules for the HST rate increase for sales of newly constructed or substantially renovated housing in New Brunswick?

If a written agreement of purchase and sale for a newly constructed or substantially renovated house is entered into after March 30, 2016 and before July 2016, and the sale is subject to the HST at 15%, the builder is required to disclose in the written agreement the total tax payable on the sale in a manner that clearly indicates that total and whether that amount is net of the GST/HST new housing rebate amount that was paid or credited by the builder to the purchaser, if applicable. Alternatively, the builder could indicate that the HST at 15% is payable in respect of the sale of the house.

If the transaction is subject to the HST at 15% and the builder is required to collect the tax payable on the sale (that is, the purchaser is not required to account for the tax directly to the Receiver General) but the builder did not make the disclosures as outlined above, the builder is deemed to have collected the HST at 15% and is required to remit tax on that basis. The purchaser is **not** liable to pay the additional 2% HST in addition to the price stated in the agreement.

27. I am the builder of a new house in New Brunswick. In June 2016, I enter into a written agreement of purchase and sale with an individual. In accordance with the agreement, ownership and possession transfer to the individual on August 15, 2016. The purchaser agrees to pay me \$350,000 for the house, and this amount is identified as the sale price in the agreement. The written agreement states that the price includes the HST but does not specify which HST rate applies. I am not sure that the purchaser qualifies for the GST/HST new housing rebate, so I instruct the individual to make their application directly to the CRA. If the sale is subject to the HST at 15%, could I collect the additional 2% provincial part of the HST from the purchaser?

The sale of the house is not a grandparented sale, so the HST at 15% applies. However, because you are liable to collect the tax payable on the sale and the written agreement of purchase and sale does not clearly disclose the total tax payable or that the HST at 15% applies to the sale, you are considered to have collected the HST at 15% as follows:

$$[\$350,000 - (\$350,000 \times 13/113)] \times 15\% = \$46,460.18$$

You are required to report and remit the tax of \$46,460.18 that you are deemed to have collected.

The purchaser is considered to have paid the HST at 13% (that is, $\$350,000 \times 13/113 = \$40,265.49$) and is not liable to pay the additional 2% HST in addition to the price stated in your agreement.

For more information as to the circumstances under which a vendor is not required to collect the GST/HST payable on a taxable sale of real property, refer to GST/HST Memorandum 19.1, *Real Property and the GST/HST*.

28. How does a builder affected by the transitional rules for the HST increase report the necessary information on their GST/HST return?

Registrant builders

GST/HST registrant builders are required to file their GST/HST returns using GST/HST NETFILE for reporting periods in which the builder:

- makes a taxable sale of grandparented housing in New Brunswick (that is, a sale where the HST at 13% applies) where the sales price for the sale of the grandparented housing is \$450,000 or more; or

-
- makes a taxable sale of housing in New Brunswick where the HST at 15% applies and the builder purchased that housing on a grandparented basis (that is, the builder paid the HST at 13% on the purchase).

The GST/HST NETFILE return includes certain schedules that have to be completed by a builder affected by the transitional rules for housing in New Brunswick. For more information on how registrant builders are required to file their returns, refer to GST/HST Info Sheet GI-118, *Builders and GST/HST NETFILE*, which will be updated to include changes for New Brunswick.

Non-registrant builders

Non-registrant builders have different filing requirements than GST/HST registrant builders. A non-registrant builder is required to use Form GST62, *Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return (Non-Personalized)*, and must attach a letter to its GST62 return to report certain information (that is, the same information that is required to be reported by a registrant builder on the schedule(s) to the GST/HST NETFILE return).

Information on how a non-registrant builder is required to file its return is available in GST/HST Info Sheet GI-189, *New Brunswick and Newfoundland and Labrador HST Rate Increases – Information for Non-registrant Builders*.

Commercial real property

Sales of commercial real property

29. Does the HST at 15% apply to taxable sales of commercial real property in New Brunswick?

Effective July 1, 2016, the HST at 15%, composed of a federal part at 5% and a provincial part at 10%, applies to a taxable sale of commercial real property in New Brunswick.

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

30. When does the HST at 15% apply to a taxable sale of commercial real property in New Brunswick?

The HST at 15% applies to a taxable sale of commercial real property where, under a written agreement of purchase and sale, ownership **and** possession of the property are transferred to the purchaser after June 2016.

31. When does the HST at 13% apply to a taxable sale of commercial real property in New Brunswick?

The HST at 13% applies to a taxable sale of commercial real property where, under a written agreement of purchase and sale, ownership **or** possession of the real property transfers to the purchaser before July 2016.

32. A person that is registered for GST/HST purposes purchases a commercial building in New Brunswick that is fully leased to retail tenants. The person enters into the written agreement of purchase and sale in December 2015 and, under the agreement, ownership and possession transfer to the person in August 2016. At what rate is the person required to report and pay the HST payable on the purchase?

Since ownership and possession of the commercial real property transfer after June 2016, the person is required to report and pay the HST at 15% on the purchase.

33. I am an individual selling personal use vacant land in New Brunswick, and the sale is currently exempt from the HST. Is the purchaser required to pay HST at 15% if ownership and possession of the land are transferred after June 2016?

There are no changes to the application of the HST where the sale of the real property is exempt. Generally, the sale of vacant land in these circumstances is exempt pursuant to Part I of Schedule V to the *Excise Tax Act*.

34. A person that is registered for GST/HST purposes constructs and sells commercial properties in New Brunswick in the course of its commercial activities. The person previously claimed ITCs for the HST paid at 13% on construction inputs. Is the person entitled to claim ITCs for the HST paid or payable at 15% on its construction inputs?

Generally, yes. The person may be entitled to claim ITCs on its GST/HST return to recover the HST paid or payable (at 13% or 15%, as the case may be) on operating expenses and on most purchases of construction inputs used to construct the commercial properties, subject to the normal ITC rules. For example, the person may be entitled to claim ITCs for the HST paid or payable on:

- a lease of commercial real property for use as an office and for storage of equipment and materials;
- building materials;
- plumbing and electrical subcontracts;
- inspection services; and
- legal and accounting services.

35. A GST/HST registrant paid the HST that was payable at the rate of 13% on the purchase of a commercial building in New Brunswick. If the GST/HST return for the reporting period in which tax becomes payable is due on or after July 1, 2016, can the registrant claim an ITC at the 15% rate or are they restricted to the 13% rate?

The registrant's ITC entitlement is limited to the actual HST paid or payable on the purchase (in this case, the HST paid or payable at 13%).

36. I am purchasing vacant land from a developer. In June 2016, I take possession under the written agreement of purchase and sale for the land, although ownership will not transfer to me until July 5, 2016. Does the HST at 15% apply to the sale?

No. Since possession of the land transfers to you, under the written agreement, before July 2016, the HST at 13% applies to the sale.

37. I entered into a written agreement of purchase and sale in December 2015 for the taxable sale of commercial real property in New Brunswick. Ownership and possession of the property do not transfer under the agreement until July 2016. Is the sale of the real property subject to the HST at 15%?

Yes. As ownership and possession of the real property transfer, under the written agreement, after June 2016, the HST at 15% applies to the sale. For sales of real property other than housing, the date that the agreement of purchase and sale is entered into does not affect the rate at which the HST applies. In other words, there is no grandparenting provision for sales of commercial real property as there is for certain sales of new housing.

38. I am an individual purchasing vacant land in New Brunswick from a developer to build a house for my family. Ownership and possession of the land will transfer to me in August 2016. Does the HST at 15% apply to the sale?

Yes. Since ownership and possession of the vacant land transfer to you after June 2016, the HST at 15% applies to the sale, regardless of when you entered into the agreement of purchase and sale for the vacant land. The fact that you are building a house on the vacant land does not affect the rate at which the HST applies. However, you may be entitled to recover some of the federal part of the HST paid by way of a GST/HST new housing rebate.

39. I am making a taxable sale of commercial real property in New Brunswick to a corporation that is registered for GST/HST purposes. Ownership and possession of the property will transfer after June 2016. Do I have to collect the HST on the sale?

No. While the sale is subject to the HST at 15%, since the corporation (that is, the recipient) is registered for GST/HST purposes, the corporation is to include the amount of the HST payable on the sale of the real property in its GST/HST return if the property is to be used primarily in its commercial activities. Otherwise, the corporation is required to report the HST payable on Form GST60, *GST/HST Return for Acquisition of Real Property*.

Leases of commercial real property

40. Does the HST at 15% apply to taxable leases of commercial real property in New Brunswick?

Effective July 1, 2016, the HST at 15%, composed of a federal part at 5% and a provincial part at 10%, applies to a taxable lease of commercial real property in New Brunswick.

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

41. A charity leases commercial real property in New Brunswick to a tenant, and the lease is exempt from the HST. Is the lease of the property still exempt under the HST at 15%?

Yes. The lease of the commercial real property is still exempt, and the charity is not required to charge or collect the HST. There are no changes to the application of the HST where the lease of the real property is exempt.

42. When does the HST at 15% apply to a taxable lease of commercial real property in New Brunswick?

The transitional rules for the application of the HST rate increase for the lease of real property are based on when consideration for the supply of real property becomes due or is paid without having become due.

The HST at 15% applies to any consideration that becomes due, or is paid without having become due, after June 2016 for a taxable lease of commercial real property.

43. When does the HST at 13% apply to a taxable lease of commercial real property in New Brunswick?

The HST at 13% applies to any consideration that becomes due, or is paid without having become due, before July 2016 for a taxable lease of commercial real property.

44. When does consideration for a lease become due for GST/HST purposes?

For GST/HST purposes, if a supply of property by way of lease is made under a written agreement, consideration becomes due on the day the lessee is required to pay the consideration under the agreement. In this case, the day the supplier issues an invoice for the consideration payable under the written agreement is irrelevant for purposes of determining when the consideration becomes due.

Where a supply of property by way of lease is **not** made under a written agreement, consideration, or a part thereof, for the supply becomes due on the earliest of the following days:

- 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.

45. When is consideration viewed as being paid without having become due for GST/HST purposes?

For GST/HST purposes, in the case of a written agreement for a supply of 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 it (for example, payment is made before consideration becomes due under a written agreement for the supply).

For GST/HST purposes, where a supply of property made by way of lease is not made under a written agreement, consideration is paid without having become due when the lessee pays the consideration before the lessee is required to pay it (for example, payment is made before the earlier of the day the supplier first issues the invoice for the consideration or part, the date of the invoice, and the day the supplier would have issued the invoice if there is an undue delay).

46. I lease warehouse space in New Brunswick from a GST/HST registered person, and the supply of the space is subject to the HST. The lease payments are due, in advance, on the first day of each month. I pay the lease payments on the same day they become due. Which monthly lease payment is the first payment on which I have to pay the HST at 15%?

The first lease payment that is subject to the HST at 15% is the lease payment that becomes due and is paid on July 1, 2016, for the month of July 2016. The HST at 15% also applies to all subsequent lease payments.

47. I work downtown, and I rent a parking space from the operator of a parking lot that is located in Moncton near my work. The operator of the parking lot is registered for GST/HST purposes. At the beginning of each month, I pay the operator \$150.00 to park on the lot during that month. Does the HST at 15% apply to these payments?

The HST at 15% applies to the payment you make on July 1, 2016, for the month of July 2016, since the payment becomes due and is paid after June 2016. The HST at 15% also applies to all subsequent payments for parking.

48. I have a licence to use commercial real property in New Brunswick for the period of June 15, 2016, to July 14, 2016. The person supplying the licence is registered for GST/HST purposes and the licence is taxable for GST/HST purposes. The payment for the licence is due and paid on June 15, 2016. Is the payment subject to the HST at 15%?

Regardless of the fact that a part of the licence period occurs after June 2016, since the payment for the licence becomes due or is paid (in this case, both) before July 2016, the HST at 13% applies.

49. I entered into a lease agreement in December 2015 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, payable in advance, on the first of the month beginning July 1, 2016. I take possession of the property under the lease on July 1, 2016, and make the lease payment for the month of July on that date. Is the lease of the real property subject to the HST at 15%?

Yes. Regardless of when the parties entered into the lease agreement and when possession is given, since each lease payment becomes due after June 2016 and is not paid before that time, the lease payments are subject to the HST at 15%.

50. I lease commercial real property in New Brunswick from a GST/HST registered person from June 1, 2016, to July 31, 2016. The lease is subject to the HST and the lease payment for the two-month period is due and paid on June 1, 2016. Is the lease of the real property subject to the HST at 15%?

Since the lease payment becomes due or is paid (in this case, both) before July 2016, it is subject to the HST at 13%.

51. A GST/HST registered landlord receives a prepayment of six months rent on April 10, 2016, for a taxable lease of commercial real property in New Brunswick. The amount of the prepayment is not a deposit. The term of the lease is from July 1, 2016, to December 31, 2016, and none of the rent payments are due before July 2016. Is the lease of the real property subject to the HST at 15%?

Since all of the lease payments are paid before July 2016, even though none of them become due before then, the HST at 13% applies to the prepayment.

52. On January 22, 2016, the operator of a daycare centre in New Brunswick entered into a written agreement to lease an area in a building for one year in the course of making exempt supplies. The total lease payment for the year is \$10,000. A lease payment of \$5,000 is payable and paid by the operator on January 22, 2016, for the first 6 months. A second lease payment of \$5,000 is payable and will be paid by the operator on July 22, 2016, for the last 6 months. Is the lease of the commercial real property subject to the HST at 15%?

Since the first lease payment becomes due and is paid before July 2016, the HST at 13% applies to the first payment of \$5,000. Since the second lease payment becomes due and is paid after June 2016, the HST at 15% applies to the second payment of \$5,000.

53. 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 pursuant to 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. Is the payment subject to the HST at 15%?

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

54. 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 pursuant to 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. Is the payment subject to the HST at 15%?

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

55. The operator of a trailer park in New Brunswick, who is a GST/HST registrant, leases a site in the park to an individual. The lease payment is subject to the HST and is due July 1, 2016, for the four-month period from July 1, 2016, to October 31, 2016. The lease payment is paid in June 2016 before it becomes due. Is the payment subject to the HST at 15%?

Although the payment for the four-month period becomes due after June 2016, the HST at 13% applies since the payment is paid before July 2016.

56. A landlord owns a shopping mall in New Brunswick and leases space within the mall to retailers. The landlord is registered for GST/HST purposes and previously claimed ITCs for the 13% HST it paid on various business expenses (for example, maintenance and repair services). Is the landlord entitled to claim ITCs for the HST paid or payable at 15% on such expenses? Is a retailer, who is registered for GST/HST purposes, entitled to claim ITCs for the HST paid or payable at 15% on the lease payments?

Yes. Subject to the normal ITC rules, both the landlord and the retailer may be able to claim ITCs to recover the HST paid or payable (at 13% or 15%, as the case may be) on the acquisition of property and services for consumption, use, or supply in the course of their respective commercial activities. The landlord and the retailer may be able to claim ITCs on their respective GST/HST returns.

Deposits

Deposits given in respect of a supply (for example, the sale of property or the provision of a service) are not consideration for the supply unless and until:

- the supplier applies the deposit as consideration for the supply; or
- the deposit is forfeited.

Generally, a deposit is an amount, whether or not refundable, given by a recipient as security for the performance of an obligation by the recipient. A deposit is not a prepayment. An indication of whether an amount is a deposit or a prepayment of consideration for a supply may be determined by reference 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.

57. I made a deposit before July 2016 for the use of a hotel room in New Brunswick in August 2016. The hotel applies the deposit as a payment on my account at checkout. Does the HST at 15% apply to my deposit?

The deposit is not applied as consideration for the supply until you check out of the hotel in August 2016. As a result, the HST at 15% applies to the supply calculated on the total amount paid or payable (including the amount of the deposit) for the supply.

If the deposit is forfeited in August 2016, the supplier must account for the HST at 15%, calculated as included in the amount of the deposit.

Other publications

58. Where can I find more information about the HST rate change in New Brunswick?

For more information on the HST rate change in New Brunswick, refer to the following publications:

- GST/HST Info Sheet GI-188, *New Brunswick and Newfoundland and Labrador HST Rate Increases – Sales and Rentals of Non-residential Real Property*;

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- GST/HST Info Sheet GI-189, *New Brunswick and Newfoundland and Labrador HST Rate Increases – Information for Non-registrant Builders*;
 - GST/HST Info Sheet GI-190, *New Brunswick and Newfoundland and Labrador HST Rate Increases – Sales and Rentals of New Housing*;
 - GST/HST Info Sheet GI-191, *New Brunswick and Newfoundland and Labrador HST Rate Increases – Stated Price Net of the GST/HST New Housing Rebate*;
 - GST/HST NOTICE 297, *HST Rate Increases for New Brunswick and Newfoundland and Labrador – Questions and Answers on General Transitional Rules for Personal Property and Services*.

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/slfi 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