



## Harmonized Sales Tax: Information for Builders of New Housing in Ontario

The Government of Ontario is introducing a harmonized sales tax (HST) that will come into effect on July 1, 2010.

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

This info sheet reflects proposed tax changes announced in:

- the 2009 Ontario Budget, in Information Notice No. 2, *Helping Homebuyers and the Housing Industry with an Enhanced New Housing Rebate, A New Rental Housing Rebate and Transitional Rules* released by the Government of Ontario on June 18, 2009; and
- Information Notice No. 4, *Additional Information for Homebuyers and the Housing Industry under Ontario HST* released by the Government of Ontario on November 19, 2009.

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 for builders who sell newly constructed or substantially renovated housing in Ontario, 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-091, *Harmonized Sales Tax: Information for Landlords of New Rental Housing*, which will be published soon.

Definitions for GST purposes, e.g., builder, condominium complex, mobile home, residential complex, residential unit, residential condominium unit and substantial renovation, will generally apply

under the HST, as will the CRA's current policies on the application of the GST to housing. Guide RC4052, *GST/HST Information for the Home Construction Industry* and GST/HST Info Sheet GI-005, *Sale of a Residence by a Builder Who is an Individual* explore many of these important terms and concepts. 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 will 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 will apply. If the facility is a condominium, the rules for residential condominiums will 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 will generally be required to charge the HST when they sell new housing if, under a written

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agreement of purchase and sale for the housing, **both** ownership and possession of the housing are transferred after June 2010.

If either ownership or possession is transferred under the written agreement to the purchaser before July 2010, the GST will apply and the HST will not apply.

This general rule applies 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-082, *Harmonized Sales Tax: Information for Owner-built Homes, Mobile Homes and Floating Homes in Ontario*.

An exception exists for certain types of housing if, among other conditions, the written agreement of purchase and sale was entered into on or before June 18, 2009 (see the section below on 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 June 2010, the HST will 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 Ontario's *Condominium Act, 1998*, the HST will become payable when ownership of the unit is transferred, or 60 days following the date of registration of the condominium, whichever is earlier.

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

You are a builder who enters into a written agreement of purchase and sale in March 2010 to sell a newly constructed residential condominium unit. Under the agreement, ownership and possession transfer to the purchaser in June 2010. Since ownership and possession transfer before July 2010, only the GST at 5% applies to the sale. If either ownership or possession transfers after June 2010, GST would still apply at 5%.

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

You are a builder who enters into a written agreement of purchase and sale in April 2009 to sell a newly constructed detached house, possession of which transfers to the purchaser under the agreement on May 31, 2010. Ownership transfers on July 31, 2010. Since possession transfers before July 2010, only the GST at 5% applies to the sale, regardless of when the builder and purchaser entered into the agreement.

#### **Example 3 – HST applies**

You are a builder who enters into a written agreement of purchase and sale in December 2009 to sell a newly constructed detached house. Under the agreement, ownership and possession of the house transfer to the purchaser in July 2010. Since the written agreement was entered into after June 18, 2009, and both ownership and possession of the house transfer to the purchaser after June 2010, the HST at 13% applies to the sale.

If the construction of the house is at least 10% complete as of July 1, 2010, the purchaser in example 3 may be entitled to claim a retail sales tax (RST) transitional new housing rebate to recover some of the embedded RST. This rebate may be assigned to the builder. For details, refer to GST/HST Info Sheet GI-096, *Harmonized Sales Tax: Provincial Transitional New Housing Rebates for Housing in Ontario and British Columbia*, which will be published soon. The purchaser may also be entitled to claim an Ontario new housing rebate in respect of the provincial part of the HST. Refer to GST/HST Info Sheet GI-079, *Harmonized Sales Tax: Ontario New Housing Rebate* for details.

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

#### **Builder disclosure requirements for housing**

For information on the disclosure requirements for a builder where a written agreement of purchase and sale for new housing is entered into after June 18, 2009, and before July 1, 2010, refer to GST/HST Info Sheet GI-090, *Harmonized Sales Tax: Builder Disclosure Requirements in Ontario and British Columbia*, which will be published soon. The info sheet will also explain the consequences 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 June 2010, under a written agreement of purchase and sale that was entered into **on or before June 18, 2009**, 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 only applies if the purchaser is an individual. This type of housing may include an accessory suite. There is no condition with respect to how the individual will use the housing. For example, the sale will 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.

If the sale of the housing is grandparented, the builder is not required to collect the provincial part of the HST from the purchaser on the sale of the housing. The GST at 5% applies to the grandparented sale of the housing. However, the builder may be considered to have collected a transitional tax adjustment and if so, will 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-095, *Harmonized Sales Tax: Information on the Transitional Tax Adjustment for Builders in Ontario and British Columbia*, which will be published soon.

### Exceptions to grandparenting rule

The grandparenting rule does 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 the application of the grandparenting rule.

#### 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 May 2009. Under the agreement, the individual takes ownership and possession of the house in August 2010.

The sale of the house is grandparented because the written agreement was entered into on or before June 18, 2009, the purchaser is an individual and both ownership and possession of the house transfer under the agreement to the individual after June 2010. The sale of the house is subject to GST at 5%.

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 13%.

#### 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 2009. Under the agreement, the purchaser takes ownership and possession of the condo unit in August 2010.

The sale of the condo unit is grandparented because the written agreement was entered into on or before June 18, 2009, and both ownership and possession of the condo unit transfer under the agreement to the purchaser after June 2010. The sale of the condo unit is subject to GST at 5%.

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

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

#### 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 March 2009. Under the agreement, ownership and possession of the house transfer to the corporation in August 2010.

Although the written agreement was entered into on or before June 18, 2009, the sale is not grandparented because the house is being sold to someone other than an individual. As a result, the general rule applies. Since both ownership and possession transfer under the agreement to the corporation after June 2010, the sale of the house is subject to HST at 13%.

#### 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 2009. Under the agreement, the purchaser takes ownership and possession of the building in September 2010.

Although the written agreement of purchase and sale was entered into on or before June 18, 2009, the general rule applies to the sale because a traditional apartment building does not qualify for grandparenting. Since both ownership and possession transfer under the agreement to the purchaser after June 2010, the sale of the apartment building is subject to HST at 13%.

If the construction of the house in example 6 and the apartment building in example 7 is at least 10% complete as of July 1, 2010, the purchaser in example 6 and the builder in example 7 may be entitled to claim a retail sales tax (RST) transitional new housing rebate to recover some of the embedded RST. For details, refer to GST/HST Info Sheet GI-096, *Harmonized Sales Tax: Provincial Transitional New Housing Rebates for Housing in Ontario and British Columbia*, which will be published soon. The purchaser in example 7 may also be entitled to claim an Ontario new residential rental property rebate in respect of the provincial part of the HST. For details, refer to GST/HST Info Sheet GI-093, *Ontario New Residential Rental Property Rebates*, which will be published soon.

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## 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.

### Example 8

A builder enters into a written agreement of purchase and sale with an individual for the sale of a new house on June 18, 2009. On June 27, 2009, 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 June 2010.

As the written agreement was entered into on or before June 18, 2009, the purchaser is an individual and both ownership and possession of the house transfer under the agreement to the individual after June 2010, the sale of the house is grandparented. GST at 5% 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 (i.e., novation has occurred), the application of the grandparenting rule will be based on the date that the new agreement is entered into. Refer to GST/HST Policy Statement P-249, *Agreements and Novation* for information on when novation occurs.

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 June 18, 2009, 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.

### Example 9

On June 1, 2009, 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 June 2010. On June 25, 2009, the written 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 June 25, 2009. Since this agreement was entered into after June 18, 2009, the sale of the condo unit (Unit 15) is not grandparented and HST at 13% applies.

## 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 was grandparented, refer to GST/HST Info Sheet GI-097, *Assignment of Purchase and Sale Agreements for Grandparented Housing in Ontario and British Columbia*, which will be published soon, for an explanation of the rules that apply to these assignments.

## Resales of housing

To find out how the rules will apply to the sale of housing that was purchased by a reseller on a grandparented basis, refer to GST/HST Info Sheet GI-098, *Harmonized Sales Tax: Resales of New Housing in Ontario and British Columbia*, which will be published soon.

## Input tax credits (ITCs) for GST/HST registrant builders

Builders who are registered for GST purposes are considered to be registered for HST purposes and will 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 will not be eligible to claim ITCs for any RST paid or owing.

### Example 10

You are a GST registrant who buys a vacant lot and begins in January 2010 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 July 1, 2010, while the HST applies to most of your related construction costs incurred

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after June 2010. You finish building the house in August 2010 and enter into a written agreement of purchase and sale in November 2010 to sell the house. HST at 13% applies to the sale.

As a GST/HST registrant, you are generally entitled to claim ITCs for the GST you are required to pay on related expenses prior to July 2010, and for the HST you are required to pay on those incurred after June 2010. You will claim the ITCs on your GST/HST returns.

#### **Example 11**

You are a GST registrant builder constructing a house that is grandparented and the construction of the house straddles the July 1, 2010 implementation date for the HST.

Even though the sale of the grandparented house is subject to the GST rather than the HST, you are generally entitled to claim ITCs for the 13% HST paid or payable on your expenses incurred after June 2010 to complete the construction of this house. However, you are not entitled to claim any ITCs for the HST paid with respect to materials acquired before July 1, 2010.

In some cases, builders will 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* or Technical Information Bulletin B-104, *Harmonized Sales Tax - Temporary Recapture of Input Tax Credits in Ontario and British Columbia*, which will be published soon. The rules for claiming ITCs for the **federal**

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

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

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

part of the HST paid or payable on these construction inputs will not be affected.

#### **New filing requirements for GST/HST registrants**

Most GST/HST registrants, including builders, will be required to electronically file their GST/HST return for reporting periods ending on or after July 1, 2010. For more information on the electronic filing requirements for builders, refer to GST/HST Info Sheet GI-099, *Builders and Electronic Filing Requirements*, which will be published soon.

#### **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 GI-101, *Harmonized Sales Tax: Information for Non-registrant Builders of Housing in Ontario, British Columbia and Nova Scotia*, which will be published soon.

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

**APPLICATION OF HST - GENERAL RULE**

	June 18, 2009		July 1, 2010		
Example 1		↑ Agreement date	↑ Possession/ ownership transferred		GST at 5%
Example 2	↑ Agreement date		↑ Possession transferred	↑ Ownership transferred	GST at 5%
Example 3		↑ Agreement date		↑ Possession/ ownership transferred	HST at 13%

**GRANDPARENTING RULE**

	June 18, 2009		July 1, 2010		
Example 4 (house)	↑ Agreement date		↑ Possession/ ownership transferred to individual		Grandparented GST at 5%
Example 5 (condo unit)	↑ Agreement date		↑ Possession/ ownership transferred to any purchaser		Grandparented GST at 5%

**Appendix B – Summary chart**

**APPLICATION OF HST – GRANDPARENTING RULE**

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

HOUSING TYPE	DOES THE GRANDPARENTING RULE APPLY?
Residential condominium unit	<p>Yes, if the written agreement of purchase and sale was entered into on or before June 18, 2009, and <b>both</b> ownership <b>and</b> possession of the unit transfer under the agreement to the purchaser after June 2010, 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 July 2010, 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 June 18, 2009, <b>and</b> both ownership <b>and</b> possession of the complex transfer under the agreement to the purchaser after June 2010, 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 July 2010, 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 June 18, 2009, and, under the agreement, <b>both</b> ownership and possession of the single unit housing transfer to the individual after June 2010. 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 July 2010, 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 July 1, 2010.</p>
Duplex	No
Apartment	No
Mobile home and floating home	No

Where the grandparenting rule does not apply, HST at 13% applies if, under the agreement, both ownership and possession transfer to the purchaser after June 2010.