



## Harmonized Sales Tax: Resales of New Housing in Ontario and British Columbia

**NOTE:** This version replaces the one dated August 2010.

The Government of Ontario and the Government of British Columbia have each introduced a harmonized sales tax (HST) that came into effect on July 1, 2010.

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

The HST rate in British Columbia is 12% of which 5% is the federal part and 7% the provincial part.

This info sheet reflects tax changes included in the *New Harmonized Value-added Tax System Regulations No. 2*.

This info sheet explains how the HST transitional rules apply to resales of new housing in Ontario and British Columbia (B.C.).

Definitions for GST purposes, e.g., builder, residential complex, residential unit, residential condominium unit and substantial renovation, generally apply under the HST, as do the CRA's current policies on the application of the GST to housing. Guide RC4052, *GST/HST Information for the Home Construction Industry*, GST/HST Info Sheet GI-005, *Sale of a Residence by a Builder Who is an Individual*, and GST/HST Memorandum 19.2, *Residential Real Property*, explore many of these important terms and concepts.

The terms "arm's length", "associated persons", "first reseller", "original builder", "specified related person" and "subsequent reseller", as used in this info sheet are explained in the appendix.

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

### Sales and resales of new housing – General rules

As explained in GST/HST Memorandum 19.2.1, *Residential Real Property – Sales*, the sale of new housing by someone other than a "builder" is generally exempt from the GST/HST. Conversely, the sale of new housing by a builder is generally taxable for GST/HST purposes.

A builder may include a person who physically constructs the housing, but may also include a person who, because of the circumstances surrounding a sale or their intentions at the time of their own purchase, buys previously unoccupied housing for the purpose of selling it.

Generally, the HST applies where a builder sells (or resells) new housing in Ontario or B.C. and **both** ownership and possession of the housing are transferred after June 2010.

However, exceptions are made for "grandparented sales of housing".

La version française du présent document est intitulée *Taxe de vente harmonisée – Reventes d'habitations neuves en Ontario et en Colombie-Britannique*.



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## **Grandparented sales of housing – Initial sale by builder**

Where the sale of new housing by the builder of the housing (referred to as the original builder) is grandparented, the provincial part of the HST does not apply to the sale even though both ownership and possession of the housing are transferred to the purchaser after June 2010. Only the GST at the rate of 5% applies to the sale.

The grandparenting rule may apply to sales of newly constructed or substantially renovated single-unit housing, residential condominium units and condominium complexes, but not to the sale of multiple-unit housing (e.g., a traditional apartment building or a duplex), or a mobile home or floating home. Single-unit housing includes a detached house, semi-detached house and a rowhouse unit that is not a condominium.

For further information on grandparented housing, refer to GST/HST Info Sheet GI-083, *Harmonized Sales Tax: Information for Builders of New Housing in Ontario*, and GST/HST Info Sheet GI-084, *Harmonized Sales Tax: Information for Builders of New Housing in British Columbia*.

## **Resales of new housing**

Where the purchaser of grandparented housing is considered to be a “builder” of that housing such that their resale of the housing is taxable for GST/HST purposes, depending on the circumstances, the housing may or may not be subject to the provincial part of the HST when it is sold.

## **Sale by first reseller**

Where the sale of new housing by the first reseller is taxable for GST/HST purposes, the sale will not be subject to the provincial part of the HST if the following conditions are met:

- the first reseller receives possession of the grandparented housing after the construction or substantial renovation is substantially complete;
- the original builder and the first reseller are dealing at arm’s length and are not associated for GST/HST purposes;
- the first reseller:
  - is a builder of the housing only under paragraph (d) of the definition of “builder”, or
  - is a builder of the housing only under paragraphs (b) and (d) of the definition of “builder”, and the construction or substantial renovation completed by the first reseller is less than 10% of the total construction or substantial renovation of the housing that was completed when the housing is sold by the first reseller;
- 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, the purchaser is an individual.

While the provincial part of the HST does not apply to the resale of the housing by the first reseller in these circumstances, the GST at 5% does apply.

## **Paragraph (d) of the definition of “builder”**

This paragraph generally refers to a person<sup>1</sup> who acquires an interest in housing before anyone has lived in it (or in the case of a residential condominium unit, either before the complex is registered as a condominium or before anyone has lived in it) for the primary purpose of:

- selling the housing or an interest in it, or
- leasing the housing to
  - a person other than an individual, or
  - an individual who will use the housing in the course of a business or an adventure or concern in the nature of trade.

## **Paragraph (b) of the definition of “builder”**

This paragraph generally refers to a person<sup>2</sup> who acquires an interest in housing when the housing is under construction or substantial renovation, except

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<sup>1</sup> The definition of builder does not include individuals who acquire their interest in the housing, unless done so in the course of a business or an adventure or concern in the nature of trade. Guidelines for determining if a sale of real property is made in the course of a business or an adventure or concern in the nature of trade are provided in Appendix C to GST/HST Memorandum 19.5, *Land and Associated Real Property*. Info sheet GI-005, *Sale of a Residence by a Builder Who is an Individual*, also discusses this topic.

<sup>2</sup> See previous note.

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where the interest is only a right to purchase the housing or an interest in the housing from a builder.

#### **Example 1 – Resale is not subject to the provincial part of the HST**

On May 1, 2009, the original builder and a purchaser who is an individual enter into a written agreement of purchase and sale for a newly constructed detached house in Ontario. The purchaser is acquiring the house for resale. The construction of the house is substantially complete on July 10, 2010, and under the agreement, ownership and possession of the house transfer to the purchaser on July 15, 2010. Therefore, the sale of the house from the original builder to the individual is grandparented. The purchaser does not undertake any further construction of the house. The original builder and the purchaser are not associated for GST/HST purposes and are dealing at arm's length. On July 20, 2010, the purchaser resells the house to a third party before the house has been occupied by anyone as a place of residence or lodging. The third party is not a specified related person.

The purchaser is a "builder" because they bought the house for the purpose of resale, such that their sale of the house is taxable for GST/HST purposes. The purchaser is also the "first reseller" of the house, as defined in the appendix. The sale of the house by the first reseller is not subject to the provincial part of the HST since the original written agreement of purchase and sale for the house was entered into on or before June 18, 2009, both ownership and possession of the house are transferred after June 2010, and the conditions for not having the provincial part of the HST apply to the sale in the case of a first reseller are met. The sale of the house to the third party is subject to GST at the rate of 5%.

#### **Resale subject to HST**

Where the conditions above are not met, the resale of the housing by the first reseller will be subject to the HST (12% in B.C. or 13% in Ontario). In such situations, the first reseller will generally be entitled to claim an ITC (if a registrant) or a rebate (if a non-registrant), to recover an amount on account of the retail sales tax or provincial sales tax, as the case may be, that is embedded in the price of the housing.

However, if the sale of the housing by the first reseller is made to the original builder or specified related person before March 16, 2011, or is made under a written agreement of purchase and sale entered into on or before that date, the original builder or specified related person, as the case may be, is eligible for an ITC if that builder or person is a GST/HST registrant.

The ITC or rebate available to the first reseller, or the ITC available to the original builder or specified

related person, is equal to 2% of the purchase price payable by the first reseller on the purchase of the grandparented housing from the original builder. If the first reseller, or original builder or specified related person, is a registrant, the ITC may be claimed in the GST/HST return for the reporting period in which possession of the housing is given to the person purchasing it from the first reseller. If the first reseller is a non-registrant, a rebate may be claimed on form RC7003-BC, *British Columbia Provincial Sales Tax (PST) Transitional New Housing Rebate For Certain Non-Registrants*, or RC7003-ON, *Ontario Retail Sales Tax (RST) Transitional New Housing Rebate For Certain Non-Registrants*.

The first reseller may or may not have to collect the HST on the resale. For more information on the requirement to collect tax on a taxable sale of real property, refer to "Who remits the tax for a taxable sale of real property – vendor or purchaser?" in Guide RC4052, *GST/HST Information for the Home Construction Industry*.

Despite the general rules on the requirement to collect tax set out in the guide, if the sale by the first reseller is made to the original builder or a specified related person, the original builder or specified related person, as the case may be, must remit the provincial part of the HST payable on the sale to the Receiver General rather than paying it to the first reseller. The federal part of the HST must be accounted for under the normal rules. That is, the first reseller must collect and remit the federal part of the HST if the original builder or specified related person, as the case may be, is not registered for the GST/HST or if the original builder or specified related person, as the case may be, is an individual regardless of whether that builder or person is registered for the GST/HST. If the original builder or specified related person is registered for the GST/HST, then that builder or person must pay the federal part of the HST to the Receiver General.

#### **Example 2 – Resale is subject to the provincial part of the HST**

On May 1, 2009, the original builder and a purchaser who is an individual enter into a written agreement of purchase and sale for a newly constructed detached house in B.C. The purchaser is a GST/HST registrant who acquires the house for resale and is a first reseller. Under the agreement, the purchase price is \$400,000. Possession of the house is transferred from the original builder to the first reseller on July 10, 2010 before the construction of the

house is substantially complete. Ownership of the house transfers to the purchaser on July 15, 2010. On July 20, 2010, the first reseller sells the house to a third party, an individual that is not registered for the GST/HST. The third party is not a specified related person and the house has not been occupied by anyone as a place of residence or lodging.

The first reseller is a “builder” because he or she bought the house for the purpose of resale, such that their sale of the house is taxable for GST/HST purposes. While the individual is a first reseller of the house, the conditions for having the provincial part of the HST not apply to the sale are not met, given that possession of the house was transferred before construction of the house was substantially complete. As such, the sale of the house by the first reseller is subject to the HST at 12%.

Given that the resale of the house is subject to the HST, and that the third party is an individual who is neither the original builder nor a specified related person, the first reseller must charge, collect and remit the HST owing on the sale. The first reseller is entitled to claim an ITC equal to 2% of the \$400,000 paid by the first reseller to the original builder on the purchase of the grandparented house.

### **Sale of a grandparented housing by a subsequent reseller**

Where the sale of new housing by a subsequent reseller is taxable for GST/HST purposes, the sale of the housing will not be subject to the provincial part of the HST if the following conditions are met:

- the purchase of the housing by the subsequent reseller was not subject to the provincial part of the HST;
- the subsequent reseller:
  - is a builder of the housing only under paragraph (d) of the definition of “builder”,
  - or

- is a builder of the housing only under paragraphs (b) and (d) of the definition of “builder”, and the construction or renovation completed by the subsequent reseller is less than 10% of the total construction or substantial renovation of the housing that was completed when the housing is sold by the subsequent reseller;

- the original builder or a specified related party 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, the purchaser is an individual.

While the provincial part of the HST does not apply to the sale of the housing by the subsequent reseller in these circumstances, the GST at 5% does apply.

Where the conditions above are not met, the resale of the housing by the subsequent reseller will be subject to the HST (12% in B.C. or 13% in Ontario).

### **Reseller disclosure requirements**

In order to qualify for relief under the resellers rules explained above, a reseller will be required to make specific disclosures in the written agreement of purchase and sale for the housing. These are set out in GST/HST Info Sheet GI-090, *Builder Disclosure Requirements in Ontario and British Columbia*.

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.

Reference in this publication is made to supplies that are subject to the GST or the HST. The HST applies in the participating provinces at the following rates: 13% in Ontario, New Brunswick and Newfoundland and Labrador, 15% in Nova Scotia, and 12% in British Columbia. The GST applies in the rest of Canada at the rate of 5%. If you are uncertain as to whether a supply is made in a participating province, you may 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*.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec at 1-800-567-4692. You may also visit the Revenu Québec Web site to obtain general information.

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

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## **Appendix – Definitions**

### **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-419R2, *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 reseller rules set out in this info sheet, aunts and uncles are considered to be related to their nieces and nephews in applying the arm's length test.

### **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-64R (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;
- (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.

### **First reseller**

A first reseller is a person who acquires housing from the original builder on a grandparented basis for the purpose of making a taxable sale of the housing. In the case of single-unit housing, only an individual may be a first reseller.

### **Original builder**

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

### **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.

### **Subsequent reseller**

A subsequent reseller is a person who acquires housing from a first reseller or a subsequent reseller (where the provincial part of the HST was not payable on the purchase) for the purpose of making a taxable sale of the housing. In the case of single-unit housing, only an individual may be a subsequent reseller.