



GST/HST Memoranda Series

19.1.1 Special Rules for Real Property under the HST

Overview

The harmonized sales tax (HST) came into effect on April 1, 1997, in the provinces of Nova Scotia, New Brunswick and Newfoundland—the participating provinces. The HST replaces the GST and the provincial sales tax in these provinces. The harmonized rate is 15% and has two parts: a 7% federal component and an 8% provincial component.

Because the HST applies only in the participating provinces, special place-of-supply rules have been developed for determining if a supply is made within a participating province. In addition, special provisions apply the HST to transactions straddling the start-up date.

The HST applies in much the same manner to real property transactions as the GST. For example, HST (both the federal and the provincial component) can be recovered through input tax credits (ITCs) under the same rules as under the GST. The application of the GST to real property transactions is discussed in the remaining sections of Chapter 19, *Special Sectors: Real Property*. This section on the HST should be read in conjunction with the GST sections. Revenue Canada administers the HST.

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19.1.1 Special Rules for Real Property under the HST (continued)

Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax 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 a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

Implementation

Timing ss 349(1)

1. The HST applies to taxable sales of real property in a participating province where ownership and possession are transferred on or after April 1, 1997. The HST also applies to taxable supplies of real property made in a participating province by way of lease, licence or similar arrangement where all or part of the consideration for the supply becomes due or is paid, or is deemed to have become due or deemed to have been paid, on or after April 1, 1997.

2. The HST is not payable on any part of the consideration that becomes due or is paid or is deemed to have become due or is deemed to have been paid before April 1, 1997, unless otherwise provided under the transitional provisions respecting real property.

Rebates on housing

3. The provisions of the *Excise Tax Act* (the Act) that provide new housing rebates apply with the same eligibility requirements in relation to the federal component of the HST in the participating provinces as they do to the GST in the rest of Canada. In addition, Nova Scotia provides a rebate for part of the provincial component of the HST that applies to new and, in certain cases, substantially renovated housing. See Section 19.3.8, *New Housing Rebates and the HST*. As well, among a number of provisions developed to effect the transition to the HST from the GST and the sales tax acts of the participating provinces is a rebate that applies to supplies of new housing and substantial renovations. See the guide, *Provincial Sales Tax (PST) Transitional New Housing Rebate (97-161)* which contains the form GST493, *Application for Provincial Sales Tax Transitional New Housing Rebate*.

Other real property rebates

4. The rebates provided in section 256.1 (rebate where land leased for residential use) and section 257 (rebate on sale of real property) are available in respect of both the federal and provincial components of the HST. Refer to Sections 19.3.5 *Rebate to Owner of Land Leased for Residential Use* and Section 19.3.6 *Non-Registrant's Rebate* for details on these rebates.

Place of supply: supply of real property

Made in the province
s 144.1
Sch IX, Part IV, s 1

5. Because of the differing tax rates, it is important to determine if a supply is made in a participating province or in a non-participating province. Generally, a supply of real property is considered to be made in the province in which the real property is situated.

Deemed separate
supplies for calculating
provincial portion of
HST
s 136.2

6. If the real property is situated partly in a participating province and partly in a non-participating province, or outside Canada, the provision of each part of the property is deemed to be a separate supply, and each supply is deemed to be made for separate consideration. This deemed division into separate properties is for the purpose of determining which portion of the land lies in a participating province, and in which participating province the supply of real property is made. The amount of consideration for each part is equal to the portion of the total consideration that can reasonably be attributed to each part. Once the consideration is apportioned among the parts, tax can be calculated on the separate portions. All portions will attract the 7% federal tax either as GST or the federal portion of the HST. The portion or portions of the property that are supplied in the participating provinces attract the 8% provincial portion of the HST in addition to the 7% federal portion. Portions of the property that lie outside the participating provinces attract the provincial taxes of the particular non-participating province as well as the 7% GST.

Example

A farmer in New Brunswick sells his farm. The land is situated 65% in New Brunswick, and 35% in Quebec. In this situation, 15% HST is calculated on the value of the consideration that can reasonably be attributed to the property in New Brunswick. The property in Quebec is subject to 7% GST and provincial taxes as required by Quebec law.

Place of supply: supply of services in relation to real property

Property location
determines tax rate
Sch IX, Part IV,
para 2(a)

7. A taxable supply of a service in respect of real property (e.g., an appraisal or legal service) that is all or substantially all (90% or more) situated in a participating province is subject to 15% HST, regardless of the supplier's business location. Conversely, if the service relates to real property that is located in a non-participating province, it is subject to tax at the 7% GST rate.

Example

An Ontario firm that owns commercial property in Newfoundland hires building inspection services from a firm in Prince Edward Island, a non-participating province. Since the property is located in a participating province, the services are subject to 15% HST.

Place of negotiation
Sch IX, Part IV,
para 2(b)

8. Services supplied in respect of real property are also regarded as being made in a particular province if the place of negotiation for the supply is in the province, unless 90% or more of the real property is situated outside that province.

19.1.1 Special Rules for Real Property under the HST (continued)

Definition
Sch IX, Part I

9. “Place of negotiation” of a supply means

“the location of the supplier's permanent establishment at which the individual principally involved in negotiating for the supplier the agreement for the supply ordinarily works, or to which that individual ordinarily reports, in the performance of the individual's duties in relation to the activities of the supplier in the course of which the supply is made and, for the purposes of this definition, “negotiating” includes the making or acceptance of an offer.”

Sch IX, Part IV, s 3

10. If after considering the conditions cited in paragraphs 7 and 8, it is still unclear where the service is supplied, the following conditions apply:

- If the place of negotiation for the supply of the service is located in Canada, and if all of the real property to which the service relates is situated in Canada with its primary portion (more than 50%) being in the participating provinces, then the supply is regarded as being made in a participating province. If the real property to which the service relates lies in more than one participating province, the service is considered to be made in the participating province in which the greatest proportion of the real property is situated.

Example

A.B.C. firm that supplies building maintenance services negotiates a contract with an Ontario company. The Ontario company owns three office buildings of a similar size. Two of these buildings are in New Brunswick and one in Prince Edward Island. In this case, the place of supply of the building maintenance service is considered to be in a participating province—New Brunswick.

- If the place of negotiation for the supply of the service is located outside Canada, and all or substantially all of the real property is situated in Canada with its primary portion situated in the participating provinces, the supply is regarded as being made in the participating provinces. If the real property to which the service relates lies in more than one participating province, the service is considered to be made in the participating province in which the greatest proportion of the real property is situated.

Example

An American firm owns several similar-sized shopping centres in the Atlantic provinces: one in Prince Edward Island, three in New Brunswick and one in Nova Scotia. The firm hires an American engineering firm to test the quality of the cement in the parking garages of the shopping centres. In this case, the supply of the service is considered to be in New Brunswick.

Deemed or prescribed

11. If a supply of a service in respect of real property is not determined to be made in a participating province in the circumstances cited in paragraphs 7, 8 and 10, it may nevertheless be determined to be made in a participating province if it is a deemed or prescribed supply pursuant to Part IX of Schedule IX:

19.1.1 Special Rules for Real Property under the HST (continued)

Deemed supplies of property
Sch IX, Part IX, s 1

- Section 1 of Part IX of Schedule IX refers to a number of sections of the Act. If a supply of property is deemed at a particular time to have been made or received under any of these sections, the supply is deemed to have been made where the property is situated at that time. The sections referred to under Section 1 of Part IX of Schedule IX that may involve supplies of real property are:

section 129 (becoming a small supplier),

section 129.1 (supplies by a small supplier division of a public service body),

section 171 (becoming and ceasing to be a registrant),

section 172 (appropriation of property),

subsection 183(1) (seizure and repossession),

subsection 183(4) (forfeitures, seizures and repossessions: use of real property),

subsection 184(1) (supply to insurer on settlement of claim),

subsection 184(3) (property acquired by insurer on settlement of claim: use of real property by the insurer),

section 196.1 (appropriation of property to use as capital property), and

section 268 (property settled on an *inter vivos* trust).

Supplies deemed to be made in a province
Sch IX, Part IX, s 2

- In addition, a supply of property or a service is deemed to be made in a province if it is deemed under Part IX of the Act, or regulations made under that Part, to be made in that province. To date, no provisions in the draft *Place of Supply (GST/HST) Regulations* apply to real property.

Place of supply: supply of intangible personal property relating to real property

Sch IX, Part III,
para 2(a)

12. If a supply is a supply of intangible personal property that relates to real property and if all or substantially all of the real property that is situated in Canada is situated in a particular province, the supply is considered to be made in that province. Supplies of intangible personal property that relate to real property are also considered to be made in a particular province if the place of negotiation for the supply is in that province, unless all or substantially all of the related real property is located outside that province.

13. All or substantially all means 90% or more. See paragraph 9 for the meaning of “place of negotiation”.

19.1.1 Special Rules for Real Property under the HST (continued)

Sch IX, Part III,
para 3(a)

14. If a supply of intangible personal property relating to real property is not determined to be made in a particular province in the circumstances described above, it may be regarded as being made in a participating province:

- where the place of negotiation for the supply is in Canada, if the real property that is situated in Canada is situated primarily in the participating provinces. The supply of the intangible personal property is considered to be made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated; or
- where the place of negotiation for the supply is outside Canada, if all or substantially all of the real property is situated in Canada and the real property that is situated in Canada is situated primarily in the participating provinces. The supply of the intangible personal property is considered to be made in the participating province in which the greatest proportion of the real property that is situated in the participating provinces is situated.

Transitional provisions

Taxable sale of real
property before
April 1, 1997
ss 168(5)
s 350

15. Under the time of liability rule provided in subsection 168(5), the GST/HST on a taxable sale of real property is generally payable on the day on which possession or ownership of the property transfers to the recipient, whichever is earlier. If real property is sold in a participating province and ownership or possession of the property is transferred under the agreement for that supply to the recipient before April 1, 1997, the provincial component of the HST is not payable.

Taxable supplies of real property by way of lease, licence or similar arrangement

Transitional rules
s 354

16. Generally, the HST applies if a taxable supply of real property made by way of lease, licence or similar arrangement is made in a participating province and consideration for the supply is attributable to a period that begins on or after April 1, 1997. Transitional provisions specify the application of HST in cases where payments

- made before April 1, 1997, are for periods after March 31, 1997;
- made after March 31, 1997, are for periods before that date; or
- are for periods that straddle April 1, 1997.

Prepayments:
February 1, 1997 to
March 31, 1997
ss 354(1)

17. If a payment for a taxable supply of real property made by way of lease, licence or similar arrangement was made or became due after January 31, 1997, and before April 1, 1997, and the payment is attributable to a period after March 31, 1997, HST applies. Note, however, that HST does not apply if the period begins before April 1, 1997, and ends before April 30, 1997. The GST only will apply to a taxable supply in that period.

19.1.1 Special Rules for Real Property under the HST (continued)

Prepayments:
October 24, 1996 to
January 31, 1997
ss 354(2)

18. The HST applies in certain circumstances on payments for a taxable supply of real property made by way of lease, licence or similar arrangement to the extent the payment was made or became due after October 23, 1996, and before February 1, 1997, and is attributable to a period after March 1997. In this situation, a person must self-assess the provincial component of the HST if:

- the person is acquiring this supply of real property made by way of lease, licence or similar arrangement for use in commercial activities and the use is less than exclusive use (exclusive use means 90% or more) in the person's commercial activities;
- the person is a selected listed financial institution;
- the person is a charity that is not a public institution; or
- the person determines its net tax under Part IV (quick method of accounting) or Part V (special quick method for public service bodies) of the *Streamlined Accounting (GST) Regulations*.

When return and tax
due
paras 354(2)(d) and (e)

19. If the person is required to self-assess in the circumstances outlined in paragraph 18, and the person's return for the period that includes April 1, 1997, is due before August 1, 1997, the tax must be reported in that return and paid by the due date of the return. Otherwise, the person must file form GST 489, *Tax Return for Self-Assessment of Provincial Component of the Harmonized Sales Tax* and pay the amount before August 1, 1997.

Payments made after
April 1, 1997 for a
period that is before
April 1
ss 354(3)

20. If the payment for a taxable supply of real property by way of lease, licence or similar arrangement is for a period that precedes April 1, 1997, and the payment becomes due or is paid before August 1, 1997, HST does not apply. Note, however, that GST applies.

Self-assessment if
service included
ss 354(4.1)

21. As noted in paragraph 17, the provincial component of the HST does not apply if the payment for a supply of real property by way of lease, licence or similar arrangement is for a period that begins before April 1, 1997, and ends before April 30, 1997. However, if a taxable supply of real property by way of lease, licence or similar arrangement is provided together with a supply of a service for a period that begins before April 1, 1997, and ends before April 30, 1997, and if the charges for the property and the service are included in the same invoice, then HST will apply to the portion of the lease payment attributable to the period after March 1997. This is consistent with the application of the HST under subsection 352(10) to the portion of the payment relating to the services performed after March 1997.

19.1.1 Special Rules for Real Property under the HST (continued)

Example

A registrant leases a warehouse that the registrant uses to store equipment for the registrant's roofing company. The registrant also buys security services from the same company that leases the warehouse to the registrant. The invoice for the period March 15, 1997, to April 15, 1997, includes the charge for leasing the property and the charge for the security service. In this case, since both these charges are included in the same invoice, the registrant must self-assess the provincial component of the HST on the portion of the lease charge for the warehouse attributable to the period after March 1997.

Supply of "grandfathered" housing

Transfer of a single unit residential complex or residential condominium unit on or after April 1, 1997
ss 351(1)
ss 351(3)

22. The provincial component of the HST is not payable on a taxable sale of

- a single unit residential complex that is sold to an individual;
- a building or part of a building containing a residential unit that forms part of a single unit residential complex that is sold to an individual, i.e., the residential unit is sold but the land is leased; or
- a residential condominium unit that is sold to a person;

if the individual or person and the supplier have entered into a written agreement for the sale on or before October 23, 1996. Moreover, the provincial component of the HST does not apply if there is a deemed sale under the self-supply rules in subsection 191(1) as a consequence of possession being transferred to the individual or person under this written agreement. Note, however, that the GST or federal component of the HST applies to these sales.

23. The builder of such a "grandfathered" single unit residential complex or residential condominium unit is not entitled to claim ITCs for the provincial component of the HST payable on the complex or unit, the land included in the complex or unit or improvements thereto, or any other property or services to the extent that they were acquired, imported or brought into the participating province to complete the complex or unit or for use in making the supply. However, the builder may claim ITCs on the GST or the federal component of the HST that is payable.

Resupply of a single unit residential complex or residential condominium unit
ss 351(2)
ss 351(4)

24. Paragraph (d) of the definition of builder in subsection 123(1) defines as a "builder" a person who acquires an interest in a residential complex or residential condominium unit that is already built if:

- this person is acquiring the interest before the home has been occupied by an individual as a place of residence or lodging;
- in the case of a residential condominium unit, this person acquires the interest when the condominium complex is not registered as a condominium; and
- this person is acquiring the interest as part of that person's business or trade of selling the home or leasing it (other than to individuals who are acquiring the home for non-business use).

19.1.1 Special Rules for Real Property under the HST (continued)

25. If an individual who is considered to be a builder only because of paragraph (d) in the definition of builder purchases a grandfathered single unit residential complex or residential condominium unit prior to its occupancy as a place of residence, no provincial component of the HST is payable on any subsequent supply by that builder or successor in title, unless that builder or successor

- has used the complex or unit as capital property in a business,
- has substantially renovated the complex or unit,
- has sold and subsequently reacquired the complex or unit, or
- is making a taxable supply of the complex or unit by way of lease, licence or similar arrangement.

26. Where the provincial component of the HST is not payable in the circumstances listed in paragraph 25, the builder or successor is not entitled to claim ITCs for the provincial component of the HST on property and services to the extent that they were acquired, imported or brought into a participating province for consumption or use in making a supply of the complex or unit. However, the builder or successor may claim ITCs on the federal component of the HST.

Transfer of a
condominium complex
on or after April 1, 1997
ss 351(5)

27. The transitional provisions governing the taxable sale of a condominium complex are similar to the provisions governing a taxable sale of a single unit residential complex or a residential condominium unit. Specifically, the provincial component of the HST is not payable in respect of a taxable sale of a condominium complex in a participating province made under a written agreement between the supplier and a person entered into on or before October 23, 1996, or in respect of any supply of any residential condominium unit located in the complex deemed under subsection 191(1) to have been made before ownership is transferred to the person under that agreement.

28. The builder of such a grandfathered condominium complex is not entitled to claim ITCs for the provincial component of the HST payable on the complex, the land included in the complex or improvements thereto, or any other property and services to the extent that they were acquired, imported or brought into a participating province to complete or supply the complex. However, the builder may claim ITCs on the GST or the federal component of the HST that is payable.

Resupply of a
condominium complex
ss 351(6)

29. If a person is considered to be a builder of a grandfathered condominium complex only because of paragraph (d) of the definition of builder in subsection 123(1) (see paragraph 24), no provincial component of the HST is payable in respect of a taxable supply of the complex by the builder or any successor in title if the ownership of the complex is not transferred to the individual (or the person) under the agreement before April 1, 1997, and possession thereof is transferred to the individual (or the person) on or after April 1, 1997, unless that builder or any successor:

- has used the complex as capital property in a business,
- has substantially renovated the complex,

19.1.1 Special Rules for Real Property under the HST (continued)

- has sold and subsequently reacquired the complex, or
- is making a taxable supply by way of lease, licence or similar arrangement.

30. In addition, the provincial component of the HST is not payable in respect of a taxable supply of a residential condominium unit located in the grandfathered condominium complex if the ownership of the unit is not transferred to the individual (or the person) under the agreement before April 1, 1997, and possession thereof is transferred to the individual (or the person) on or after April 1, 1997, unless that builder or successor in title

- has used the unit as capital property in a business,
- has sold and subsequently reacquired the unit, or
- is making a taxable supply by way of lease, licence or similar arrangement of the unit.

31. Where the provincial component of the HST is not payable in the circumstances listed in paragraphs 29 and 30, the builder or successor is not entitled to claim ITCs for the provincial component of the HST on property and services to the extent that they were acquired, imported or brought into a participating province for consumption or use in making a supply of the condominium complex or unit. However, the builder or successor may claim ITCs on the GST or the federal component of the HST.

Transfer of a residential condominium unit by a limited partnership

“Grandfathered” fixed-price offering
ss 351(7)

32. There are special rules in respect of the sale of interests in a limited partnership under a fixed-price offering memorandum issued on or before October 23, 1996, where at the time of the offering the limited partnership is formed for the exclusive purpose of acquiring land or a beneficial interest in land, constructing a condominium complex on the land, owning residential condominium units in the complex, and renting those units as places of residence. Under these rules, the limited partnership which is regarded as the builder of the complex will not be required to pay the provincial component of the HST under the self-supply rules in subsection 191(1). For this to apply, at the time of the offering, the following conditions must exist:

- para 351(7)(a)
- the interest in the limited partnership was sold under a fixed-price offering memorandum issued on or before October 23, 1996;
- para 351(7)(e)
- the partnership acquired ownership of or a beneficial interest in land located in the participating province before April 1, 1997, and engaged a person to construct a condominium complex on that land under
 - (i) written agreements entered into on or before October 23, 1996, or
 - (ii) written agreements entered into after October 23, 1996, that substantially conform with what was set out in the offering memorandum;

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- para 351(7)(f) • the particular interest in the limited partnership relates to a particular residential condominium unit that is owned by the limited partnership and is located in the condominium complex; and
- para 351(7)(g) • possession of the particular residential condominium unit is given to a person on or after April 1, 1997, under a lease, licence or similar arrangement for the purpose of its occupancy as a place of residence.

Note that the federal component of the HST will apply to a deemed sale of the units pursuant to subsection 191(1).

Definitions: “offering memorandum”
ss 336(6)

33. An “offering memorandum”, in respect of an offer to sell interests in a limited partnership to the prospective subscribers, means one or more documents in writing that set out

- (a) all facts concerning the limited partnership and its activities or proposed activities that significantly affect, or could reasonably be expected to have a significant effect on, the value of those interests;
- (b) the price at which those interests are being offered; and
- (c) the date on which ownership of the interests in the partnership are to be transferred to persons who subscribe to the offering.

“subscription price”
ss 336(6)

34. “Subscription price”, for an interest in a limited partnership, means the consideration payable for the interest as set out in the offering memorandum.

No provincial component of HST: land and construction services
para 351(7)(h)

35. The provincial component of the HST is not payable by a limited partnership in respect of the acquisition of land or construction services for the condominium complex where the partnership obtains ownership or beneficial interest in the land prior to April 1, 1997, and the land (or beneficial interest therein) and construction services are obtained under a written agreement entered into on or before October 23, 1996 or, if the written agreements are entered into after October 23, 1996, the agreements substantially conform with the terms and conditions for the agreements outlined in the “grandfathered” offering memorandum.

No ITC for provincial component
para 351(7)(i)

36. The limited partnership, as the builder, is not entitled to claim ITCs for the provincial component of the HST payable on any improvement to the land or any other property and services acquired, imported or brought into a participating province by the limited partnership for consumption or use in making a supply of the complex or a unit located in the complex. However, the limited partnership may claim ITCs for the GST or the federal component of the HST that is payable.

37. The supplier of the construction service is not entitled to claim ITCs for the provincial component of the HST on property and services acquired, imported or brought into a participating province by the supplier for consumption or use in making the supply of a construction service. However, the supplier of the construction service may claim ITCs on the GST or the federal component of the HST that is payable.

19.1.1 Special Rules for Real Property under the HST (continued)

Progress payments before April 1, 1997

Not payable
ss 351(8)

38. The provincial component of the HST is not payable on progress payments made in respect of an otherwise taxable supply of construction services made in a participating province to an individual where:

- (a) the individual has entered into a written agreement on or before October 23, 1996, for the construction or substantial renovation of a single unit residential complex, a residential condominium unit, or a multiple unit residential complex that does not contain more than two residential units (i.e., a duplex) in a participating province, and
- (b) the unit or complex is to be used as the primary place of residence of the individual, or of another individual who is related to, or is the former spouse of the individual.

No ITCs on provincial
component

39. In these circumstances, the supplier of the construction service of the unit or complex is not entitled to claim ITCs for the provincial component of the HST payable on property and services to the extent that they were acquired, imported or brought into a participating province for consumption or use in making the supply of the construction service. However, the supplier may claim ITCs on the GST or the federal component of the HST that is payable.