



# GST/HST Memoranda Series

NOTICE OF CHANGE: January 16, 2002

NOTICE OF CHANGE: February 20, 2002

## 19.3.2 Rebate for Builder-Built Unit (Land Leased)

July 1998

### Overview

Section 254.1 of the *Excise Tax Act* (the Act) offers a new housing rebate in situations where an individual purchases a building that forms part of a new single unit residential complex or residential condominium unit and leases the land attributed to the complex or unit from the builder on a long-term basis or with an option to purchase. Section 254.1 also applies in situations where the builder assigns the leasehold interest in the underlying land on which the building is situated.

### 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.

### Note

This section of Chapter 19, *Special Sectors: Real Property* supersedes paragraphs 22 to 27 of GST memorandum 500-4-5, *Housing and Other Real Property Rebates*. Side-barring indicates significant changes.

## Buildings on leased land

### Qualifying unit para 254.1(2)(a)

1. If an individual purchases a newly constructed or substantially renovated single unit residence and the related land is leased, the individual may apply for a rebate of part of the GST or the federal component of the HST embedded in the purchase price of the building. For rebate applications that are filed with the Department on or after April 23, 1996, the rebate also applies to sales of new residential condominium units built on leased land. Moreover, effective November 26, 1997, the rebate is available for duplexes, provided the other conditions for the rebate are met. Note also, that effective October 20, 2000, the rebate applies in situations where the land related to the residential unit is supplied by way of licence or similar arrangement. (In the remainder of this memorandum, any reference to land acquired by way of lease, can be read as land acquired by lease, licence or similar arrangement if the supply occurs on or after October 20, 2000.)

## 19.3.2 Rebate for builder-built unit (land leased) (continued)

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2. An individual may qualify for this new housing rebate if the following conditions are met:

Builder liable for tax  
subpara 191(1)(b)(ii)

(a) the builder self-assesses for the GST/HST as required by subsection 191(1) or subsection 191(3) calculated on the fair market value of both the building and the leased land;<sup>1</sup>

(b) the individual purchases the building from the builder;

(c) the sale of the building to the individual is not subject to GST/ HST (the builder is required to self-assess, see (a) above);

Long-term or option to  
purchase

(d) the land on which the building is situated is subject to a lease for a term of not less than 20 years, or there is an option to purchase the land<sup>2</sup>;

Primary place of  
residence

(e) at the time the individual becomes liable under the agreement for the acquisition of the complex, the individual intends to use the building as his or her primary place of residence or as the primary place of residence of a relation, which includes a former spouse and, effective January 1, 2001, a former common-law partner;

Limit to fair market  
value

(f) at the time of possession by the individual, the fair market value of the building (including related structures, such as a detached garage or shed) and related land is less than \$481,500;

Timing of possession

(g) transfer of possession to the individual occurs after construction or substantial renovation of the building is substantially completed;

Building unoccupied

(h) no one occupies the building as a place of residence or lodging between the time construction or substantial renovation is substantially completed and the time that possession is given to the individual;

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Footnote <sup>1</sup>  
No tax = no rebate  
ss 254.1(2.1)

Note that a rebate will not be available in instances where the builder is deemed to have made a taxable supply of the property under the self-supply rules of subsection 191(1) or 191(3), but because of the terms of another Act or law is exempt from payment of GST/HST in respect of the deemed supply. However, this provision does not apply to a rebate for which an application was received at a Revenue Canada office before April 23, 1996. For a discussion of the self-supply rules, see Section 19.2.3, *Residential Real Property—Deemed Supplies*.

Footnote <sup>2</sup>  
ss 254.1(1)

Note that for supplies made after September 14, 1992, the definition of “long-term lease” has been clarified to provide that the minimum 20-year period provided under the lease must be a period of continuous possession. However, this clarification does not apply for the purposes of determining any amount claimed in a rebate application received at a Revenue Canada office before April 23, 1996.

### 19.3.2 Rebate for builder-built unit (land leased) (continued)

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First occupant (i) the individual or relation is the first person to occupy the building as a place of residence after construction or substantial renovation is substantially completed<sup>3</sup>; and

Time limit  
ss 254.1(3)

- (j) the rebate application is filed within the required time limit:
- if possession of the complex is transferred to the individual after June 1996, the individual must file the rebate application with the Department within two years after possession of the complex is transferred;
  - if the individual files the rebate application with the builder and possession is transferred after June 1996, the individual has two years after possession of the complex is transferred to submit the application to the builder; or
  - if possession of the complex was transferred to the individual prior to July 1996, the rebate application must have been filed within four years from the time the purchaser took possession of the complex.

Transitional rules – bed  
and breakfast  
establishments

2.1 Effective June 1, 1997, the definition of a single unit residential complex in section 254.1 is extended to include a bed and breakfast establishment that meets certain conditions. (See the discussion of “bed and breakfast establishment” in GST/HST Memorandum 19.3, *Real Property Rebates*.) A special transitional rule is provided to address circumstances in which all or part of the normal two-year limitation period for claiming the new housing rebate under section 254.1 has expired. A special rule is also provided in cases where a person had previously filed a rebate claim that was assessed based on the pre-amended definition, since the Act generally does not permit more than one rebate application to be filed with respect to the same matter. The transitional rules provide that a person has until March 31, 2003, to file an original or second application for a rebate in respect of a residential complex newly covered by the extended definition of “single unit residential complex”.

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Footnote <sup>3</sup>

If the individual's interest in the building is sold or assigned by the individual prior to anyone having occupied the building, the individual may still apply for the rebate and the resale or assignment is exempt from GST/HST. If the individual rents the building prior to making it the individual's primary place of residence, the rebate is not available. In a situation where the individual sells or assigns the interest in the building, the individual must be able to demonstrate that there was, in fact, an intent to move into the building as the primary place of residence of the individual or relation.

## 19.3.2 Rebate for builder-built unit (land leased) (continued)

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- Mobile homes
3. This rebate does not apply to mobile homes that are not affixed to the leased land or that are situated in a residential trailer park. The builder (i.e., the dealer or manufacturer) would not have self-assessed tax based on the fair market value of the mobile home on leased land (see item (a) in paragraph 2). In such cases, the sale of the newly constructed or substantially renovated mobile home is subject to GST/HST, and a builder-built home rebate under section 254 or an owner-built home rebate under section 256 may be available if the eligibility requirements of the section are met. (For information about the rebate under section 254, see Section 19.3.1, *Rebate for Builder-Built Unit (Land Purchased)* or section 256, see Section 19.3.4, *Rebate For Owner-Built Homes*. For information concerning rebate claims and mobile homes, see Section 19.3.7, *Real Property Rebates—Special Cases*.)
- Subsequent sale of leased land
4. A subsequent sale of the leased land by the builder is normally exempt from GST/HST under Schedule V, Part I, section 5.2 (sale of leased land that forms part of a residential complex).
- If owner builds on leased land
5. Section 254.1 applies only to situations where the building (on leased land) is purchased from a builder. It does not apply to an individual who leases land and then constructs, or engages someone to construct, a building intended as the individual's primary place of residence. Such an individual may claim the housing rebate for owner-built homes under section 256, providing that the eligibility requirements of that provision are satisfied. (For information about the rebate under section 256, see Section 19.3.4, *Rebate For Owner-Built Homes*.)

### Total consideration

- Items to include or exclude from total consideration
6. The housing rebate is based on the total consideration paid or payable for the building (and related structures) and will generally be similar to the amounts paid or payable for homes purchased from a builder together with the related land. Items to include or exclude from total consideration are discussed in Section 19.3.1, *Rebate For Builder-Built Unit (Land Purchased)*. When calculating the rebate for a single unit residential complex or residential condominium unit where the land attributed to the building is leased, no amount paid or payable as rent for the land, nor any amount paid or payable for an option to purchase the land is to be included in calculating the total consideration.

### Calculating the rebate

- Rebates 254.1
7. The housing rebate under subsection 254.1(2) is calculated as 2.34% of the total consideration payable to a maximum of \$8,750 for the building and related structures, such as a detached garage or shed, where the fair market value of the building, its related structures and the related land is not more than \$374,500. The rebate is gradually reduced where the fair market value is between \$374,500 and \$481,500. Once the fair market value reaches \$481,500, no rebate is available. (For information regarding the amount of land that is included as part of a residential complex when determining the fair market value, see the discussion of land allowance and the half-hectare rule, in Section 19.3.1, *Rebate For Builder-Built Unit (Land Purchased)*).

### 19.3.2 Rebate for builder-built unit (land leased) (continued)

Rebate  
s 254.1

*Calculating the Rebate (Building Purchased/Land Leased)* where the rebate does not form part of value of consideration for the building:

Fair market value of land, building, and related structures:	Rebate Calculation:	Example <sup>4</sup>
\$374,500 or less	2.34% of the total consideration for the building and related structures to a maximum of \$8,750	<p><i>Assume that total consideration for the building and related structures is \$90,000.</i></p> <p>Rebate = <math>(\\$90,000 \times 2.34\%)</math> = \$2,106</p>
More than \$374,500, but less than \$481,500	$A \times \frac{(\$481,500 - B)}{\$107,000}$ <p>where:</p> <p>A = 2.34% of the total consideration for the building and related structures to a maximum of \$8,750,</p> <p>B = the fair market value of the complex (land, building and related structures)</p>	<p><i>Assume that an individual enters into an agreement and pays \$300,000 as total consideration to a builder for the building and related structures and has a 20-year lease for the land which is valued at \$75,000.</i></p> <p>A = 2.34% of the total consideration for the building and related structures = <math>\\$300,000 \times 2.34\%</math> = \$7,020</p> <p>B = \$375,000</p> <p>Rebate = <math>\\$7,020 \times \frac{(\\$481,500 - \\$375,000)}{\\$107,000}</math> = \$6,987.</p>
\$481,500 or more	no rebate	

Nova Scotia rebate

8. A rebate of part of the provincial component of the HST is available for qualifying purchases of buildings on leased land in Nova Scotia. For further information, see Section 19.3.8, *New Housing Rebates and the HST*.

Footnote <sup>4</sup>

The builder in these examples would be required to account for GST/HST under subsection 191(1) on the fair market value of the land and building. A subsequent sale of building and land would be exempt under sections 5.1 and 5.2 respectively of Part I of Schedule V where all conditions therein are satisfied. For a discussion of section 191 and other self-supply provisions, see Section 19.2.3, *Residential Real Property—Deemed Supplies*.