

**QUESTIONS AND ANSWERS RELATING TO ONTARIO AND BRITISH COLUMBIA SALES TAX
HARMONIZATION**

The following questions and answers regarding Ontario and British Columbia sales tax harmonization have been prepared by the Canadian Real Estate Association (CREA) in consultation with KPMG LLP. The questions and answers were developed to assist REALTORS® in determining the impact of sales tax harmonization on their business, as well as providing general guidance on the impact of sales tax harmonization on real estate transactions.

The questions and answers will be expanded and amended as additional information is made available by the tax authorities. In addition, new questions and answers will be added as a result of questions posed by our members.

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A. General

Question 1 - What is the HST?

Answer

The Harmonized Sales Tax (HST) is the harmonized value-added tax that will replace the federal Goods and Services Tax (GST) and Provincial Sales Taxes (PSTs) in Ontario and British Columbia (BC) on July 1, 2010.

The HST will apply at a rate of 13% in Ontario and 12% in BC to taxable property (includes goods, intangible personal property such as licensed software, and real property) and services.

In other words, the PST will be eliminated and an 8% or 7% provincial rate will be added to the 5% GST. This combined tax at the rate of 13% in Ontario and 12% in BC will be called the HST.

Question 2 - Will HST apply to the same things as the GST?

Answer

In general, property (i.e., goods, intangible personal property such as software and real property) and services that are taxable for GST purposes will become taxable for HST purposes. REALTORS® services, sales of new homes and sales and leases of commercial property will be subject to the HST in Ontario and BC.

However, point of sale rebates will be available for the provincial portion of the harmonized tax on certain specified consumer goods. Although there is GST on these items, the provincial portion of the HST will not apply (i.e., you will not pay the Ontario or BC portion of the tax).

Question 3 - What is the difference between taxable, zero-rated and exempt sales?

Answer

Under the GST and HST, there are three different ways that property and services are treated: they are taxable, exempt or zero-rated.

a) Taxable

Most property (i.e., goods, intangible personal property such as software, and real property) and services are taxable, which means that HST is charged on the sale, lease or rental of those items.

Businesses, such as REALTORS®, are providing taxable services. They would be required to charge and collect HST on their services performed in Ontario or BC on or after July 1, 2010. GST/HST registered businesses that make taxable sales are able to recover the GST/HST they pay in the course of their taxable activities (also referred to as “commercial activities”) by claiming input tax credits (also referred to as “ITCs”).

Examples of taxable sales include new home sales, commercial real estate sales (and leases), and sales (and leases) of cars and furniture.

b) Zero-rated

Zero-rated sales are taxable, but at the rate of 0%.

GST/HST registered businesses making zero-rated sales can claim input tax credits to recover the GST/HST they pay in the course of making zero-rated sales.

Examples of zero-rated sales are basic groceries, prescription drugs, medical devices and exports.

c) Exempt

Certain specified sales are exempt from GST/HST. Businesses making exempt sales do not charge and collect GST/HST.

Unlike zero-rated sales, businesses making exempt sales cannot claim input tax credits to recover tax paid on inputs used in making these sales.

Examples of exempt sales include medical services, financial services, long-term residential rental accommodation, child-care services and educational services.

Question 4 - What are input tax credits?

Answer

Under a harmonized sales tax, GST/HST registered businesses are able to claim input tax credits for the HST they pay on costs relating to their taxable activities (also referred to as “commercial activities”). GST/HST registered REALTORS® will generally be entitled to input tax credits.

Under an HST system, businesses making taxable or zero-rated sales can deduct input tax credits from the total amount they collect from customers. The result is that these businesses do not end up paying unrecoverable HST.

If the business pays more in HST than it collects from its customers, it can claim a refund.

For example, a REALTOR® will pay HST on business costs including office lease payments, office supplies and equipment. The REALTOR® will also have to charge HST on commissions (Please refer to Question 5).

If the REALTOR® pays \$100,000 in HST on the goods and services it uses to provide services and collects \$250,000 in HST from its customers, it will remit \$150,000 to the government. So, effectively, the REALTOR® recovers HST on its purchases.

For HST purposes, large businesses are restricted from claiming input tax credits for the provincial portion of the HST on certain purchases. For additional information on restricted input tax credits, please refer to Question 6.

B. Impact of the HST on REALTORS®

Question 5 - Does HST apply to REALTORS® services?

Answer

Yes. HST will generally apply to the same tax base as the current GST. Also, GST registered REALTORS® will be automatically registered for the HST. As a result, REALTORS® will apply HST on the fees for their services that are currently subject to GST.

GST/HST registered REALTORS® will need to take into account the province in which their services are performed and the timing of their services during the transitional period for purposes of determining whether GST or HST applies.

a) Place of Supply

REALTORS® services are considered to be “in relation to” real property for purposes of the GST/HST legislation.¹ A supply of a service made in relation to real property is deemed to have been made in the province where the real property is located. For example, Ontario HST will apply to a REALTORS® commission for services in relation to a house sale in Ottawa, Ontario.

b) Transitional Rules

The transitional rules explain how HST will apply to transactions that straddle the start-up date. For purposes of the following discussion, it is assumed that a REALTORS® commission becomes due or is paid when the property is sold or leased.

The HST would generally apply to a REALTORS® services to the extent, expressed as a percentage, that the services are performed on or after July 1, 2010. However, if 90% or more of the services are performed before July 1, 2010, the HST will not apply.

For example, a REALTORS® services are performed from June 1, 2010 to July 2, 2010 with the sale of the property closing on July 2, 2010. The REALTORS® commission becomes due at the time of closing. More than 90% of the REALTORS® services were performed before July 1, 2010. In these circumstances, the GST at the rate of 5% will apply to the REALTORS® services.

In another example, a REALTORS® services are performed from May 1, 2010 to July 31, 2010 with the sale of the property closing on July 31, 2010. The REALTORS® commission becomes due at that time. In this case, 2/3 of the services were performed from May 1, 2010 to June 30, 2010 and 1/3 of the services were performed from July 1, 2010 to July 31, 2010. The REALTOR® will charge GST on 2/3 of the amount charged for the services and HST on the remaining 1/3.

¹ Confirmed in a telephone conversation with Excise and GST/HST Rulings Directorate, CRA on March 11, 2010

Question 6 - Will REALTORS® recover the HST they pay on their costs?

Answer

Yes. GST/HST registered REALTORS® will generally be able to claim input tax credits for the HST paid or payable on their purchases for consumption or use in their taxable activities.

However, large businesses (with annual taxable sales exceeding \$10 million) will be unable to claim input tax credits for the provincial portion of the HST relating to:

- energy (except where used to produce goods for sale);
- telecommunication services, except internet access and toll-free numbers;
- road vehicles weighing less than 3,000 kilograms and related fuel and certain repairs; and
- meals, beverages, and entertainment.

This restriction does not apply to public service bodies (i.e., schools, hospitals, public colleges, universities, municipalities, charities and non-profit organizations).

After the first five years of HST implementation, full input tax credits on taxable purchases made by large businesses will be phased in over three years. Accordingly:

- in the sixth year, a business that had been subject to the restrictions would be able to claim a 25 per cent input tax credit on the restricted items;
- in the seventh year, the business would be able to claim a 50 per cent input tax credit;
- in the eighth year, the business would be able to claim a 75 per cent input tax credit; and
- in the ninth year, the business would be able to claim full input tax credits (only with respect to inputs used in its commercial activities).

Certain REALTORS®, with total annual revenues (including GST/HST) of \$200,000 or less, may be using a simplified method to calculate their net tax payable; the Quick Method. There are special rules that may require REALTORS® using the Quick Method to self-assess the provincial component of the HST when prepaying for property or services after October 14, 2009 and before May 2010. REALTORS® using the Quick Method should be aware of these rules if any prepayments are made during this time period.

GST/HST registered REALTORS® in non-HST provinces, such as Alberta, Saskatchewan, Manitoba, Quebec and Prince Edward Island, will also be entitled to claim input tax credits for HST incurred on purchases in an HST province. However, the input tax credits would remain subject to the restrictions for large businesses.

Question 7 - Does HST apply to prepayments for property to be delivered or services to be performed on or after July 1, 2010?

Answer

Yes. A GST/HST registered supplier may be required to charge and collect HST on a prepayment that is due or paid on or after May 1, 2010 for property (e.g., an equipment sale) or services to be performed (e.g., legal services) on or after July 1, 2010.

If you are required to pay HST before July 1, 2010, you must track the HST payable in order to claim the provincial portion of the HST in your GST/HST Return for the reporting period that includes July 1, 2010. If you are a monthly filer, this means you would claim the provincial portion of the HST in your GST/HST return for July that is due at the end of August 2010.

Question 8 - Will REALTORS® be compensated for collecting and remitting the HST?

Answer

Businesses will not be compensated for collecting and remitting the HST. However, to support small businesses, Ontario will provide one-time transitional assistance to small business in the form of a transitional credit. REALTORS® with less than \$2 million in annual revenue from taxable sales will be eligible for the Small Business Transition Credit of up to \$1,000.

British Columbia is not providing similar assistance.

Question 9 - Who administers the HST and how do I report the HST?

Answer

The HST will be administered by the federal government in the same way that the federal government now administers the GST and the HST in other HST provinces. Specifically, the HST will be administered by the Canada Revenue Agency (CRA).

The HST collectible and HST payable in a reporting period are reported on your regular GST/HST Return. If the GST/HST collectible in a period exceeds the GST/HST payable in the reporting period, the net GST/HST would be remitted in the usual manner that you currently remit GST.

The CRA announced in a News Release and Backgrounder on January 4, 2010, entitled, "Government of Canada Announces New Electronic Filing Requirements for GST/HST Registrants" that GST/HST registrants who are subject to the input tax credit recapture requirement, businesses with over \$1.5 million in sales and certain builders of new homes are required to file their GST/HST Returns electronically beginning July 1, 2010. Reference may also be made to CRA Notice 249, "Questions and Answers on the New Reporting Requirements for GST/HST Registrants."

Question 10 - What do REALTORS® need to begin thinking about to be ready for HST?

Answer

REALTORS® should begin to prepare now in order to be ready for the July 1, 2010 implementation date. For example, the following items may be affected by harmonization:

- the tax clauses of real estate listing agreements, co-operating broker/agent agreements and other sales and/or purchase agreements;
- sales and receivable systems;
- purchasing and payable systems;
- expense reports; and
- Quick Method GST/HST calculations.

REALTORS® should also consider a strategy for communicating with clients and future clients on the impact of harmonization. Finally, REALTORS® should plan for significant purchases during transition to reduce unrecoverable sales tax (e.g., deferring PST taxable purchases).

C. HST Application to Real Estate Transactions

Question 11 - What is the general impact of HST on real estate transactions?

Answer

The HST treatment of real estate transactions will generally follow the current GST treatment of real estate transactions.

Sales of new residential housing will be subject to HST and will qualify for GST, HST, and transitional rebates (subject to certain thresholds and maximum amounts). Sales and rentals of commercial real property will be subject to HST.

On the other hand, sales of used residential housing and long-term rentals of residential housing will be exempt for HST purposes.

Question 12 - How will the HST apply to leases and licenses of real property, other than long term residential rents during transition?

Answer

Ontario and BC released general transitional rules for HST. The transitional rules generally work in the same fashion for both provinces.

The HST will generally apply to a supply of real property by way of lease, license or similar arrangement to the extent, expressed as a percentage, the amount paid relates to a period (e.g., lease period) that occurs on or after July 1, 2010. However, periods that begin before July 2010 and end before July 31, 2010 will not be subject to HST.

For example, a lease payment is due on July 1, 2010 for the period July 1 to July 31, 2010. HST will be applicable on the entire lease payment.

In another case, a lease payment is payable on June 1, 2010 for the 3 month period of June 1 to August 31. In this case, GST will apply to the portion of the payment relating to June (i.e., one third) and HST will apply to the portion of the payment relating to July and August (i.e., two thirds).

Question 13 - How will the HST apply to sales of real property, other than residential housing, during the transitional period?

Answer

Ontario and BC released general transitional rules for HST. The transitional rules work in the same fashion for both provinces.

The HST will generally apply to a sale of real property (other than residential housing) if both ownership and possession are transferred on or after July 1, 2010.

Question 14 - How does the HST apply to sales of new residential housing during the transitional period?

Answer

On June 18, 2009 Ontario released transitional rules for the application of the Ontario HST to sales of residential housing. BC followed suit on July 23, 2009.

The HST in Ontario and BC will not apply to used residential housing. As a result, the following discussion applies to sales of new residential housing in Ontario and BC. The HST will generally apply to sales of new residential housing if both ownership and possession are transferred on or after July 1, 2010.

However, grand parenting is generally provided for sales of new residential housing where an agreement for the purchase and sale of the housing was entered into on or before June 18, 2009 in Ontario and on or before November 18, 2009 in BC. Generally, grand parented sales of new residential housing are not subject to the HST regardless of when ownership and possession pass. Builders of grand parented homes may be required to pay a Transitional Tax Adjustment.

Grand parenting would not apply to sales of traditional apartment buildings, duplexes, mobile homes and floating homes.

Where a purchaser of a grand parented home assigns the agreement to another purchaser and the assignee purchaser receives ownership and possession of the home after June 2010, the sale from the original builder to the assignee purchaser would be grand parented if:

- there is no novation of the agreement;
- the purchaser and builder are not associated; and
- the builder does not acquire any beneficial interest in the home.

Full or partial relief of the HST may also be available on a taxable resale of a grand parented home.

Question 15 - What is the transitional tax adjustment relating to sales of new housing?

Answer

For grand parented sales of newly constructed or substantially renovated single detached homes, semi-detached homes and attached homes in Ontario and BC, the builder would generally be required to pay a transitional tax adjustment where the home is completed in full or in part after June 2010. The transitional tax adjustment for these homes would be calculated on the total purchase price of the home, as established for GST purposes, based on the extent of construction or substantial renovation completed as of July 1, 2010, as follows:

- 100% of the transitional tax adjustment rate of 2%, where the home is less than 10% completed on July 1, 2010;

- 75% of the transitional tax adjustment rate of 2%, where the home is 10% or more and less than 25% completed on July 1, 2010;
- 50% of the transitional tax adjustment rate of 2%, where the home is 25% or more and less than 50% completed on July 1, 2010;
- 25% of the transitional tax adjustment rate of 2%, where the home is 50% or more and less than 75% completed on July 1, 2010;
- 10% of the transitional tax adjustment rate of 2%, where the home is 75% or more and less than 90% completed on July 1, 2010; or
- 0% where the home is 90% or more completed on July 1, 2010.

Where the fair market value of the grand parented home as of July 1, 2010 is greater than the actual purchase price for the sale of the home, the purchase price for purposes of the transitional tax adjustment is deemed to be equal to the fair market value on July 1, 2010.

Question 16 - Will there be a HST rebate for new housing?

Answer

Yes. Purchasers of new homes in Ontario will be eligible for a rebate of 75% of the provincial component (i.e., 8%) of the HST paid to a maximum of \$24,000. Sales of new homes above \$400,000 will remain eligible for a maximum rebate of \$24,000 (i.e., a rebate on the first \$400,000 value).

Purchasers of new homes in BC will be eligible for a rebate of 5/7, or 71.43% of the provincial component (i.e., 7%) of the HST paid to a maximum of \$26,250. Sales of new homes above \$525,000 will remain eligible for a maximum rebate of \$26,250 (i.e., a rebate on the first \$525,000 value). The rebate will be available whether the new home is to be owner occupied or rented.

These rebates are in addition to the GST rebate that currently applies to sales of new housing.

Question 17 - In addition to the GST and HST rebates available to purchasers of new homes, are other rebates available?

Answer

Yes. The following describes two other rebate programs relating to real estate during the transitional period.

a) Ontario and BC Transitional New Housing Rebate

A Transitional New Housing Rebate would be available to individuals purchasing a new home or to builders who first rent a home, as the case may be, after June 2010. The rebate would only be available when the HST would apply. It is not available for grand parented homes. Generally, the rebate would be calculated as a proportion of the estimated embedded PST in the home, based on the degree of completion of the home as of July 1, 2010.

Eligible applicants would be permitted to calculate the estimated embedded PST by choosing one of the following two methods:

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- Estimated PST content calculated at a prescribed amount per square metre of floor space in the home ("floor space method"); or
- Estimated PST content based on the selling price of the home, calculated at two per cent of the total price established for GST purposes ("selling price method").

The rebate would be calculated using the selling price method as follows:

The rebate would be calculated using the floor space method as follows:

- \$45 per square meter of floor space in a home in Ontario and \$60 per square meter of floor space in a home in BC.

The rebate would be calculated using the selling price method as follows:

Ontario:

- 100% of the embedded PST rate of 2%, where the home is more than 90% completed on July 1, 2010;
- 75% of the embedded PST rate of 2%, where the home is 75% or more and less than 90% completed on July 1, 2010;
- 50% of the embedded PST rate of 2%, where the home is 50% or more and less than 75% completed on July 1, 2010;
- 25% of the embedded PST rate of 2%, where the home is 25% or more and less than 50% completed on July 1, 2010;
- 10% of the embedded PST rate of 2%, where the home is 10% or more and less than 25% completed on July 1, 2010; or
- 0% where the home is 10% or less completed on July 1, 2010.

British Columbia:

- 100% of the embedded PST rate of 2%, where the home is more than 90% completed on July 1, 2010;
- 90% of the embedded PST rate of 2%, where the home is 75% or more and less than 90% completed on July 1, 2010;
- 75% of the embedded PST rate of 2%, where the home is 50% or more and less than 75% completed on July 1, 2010;
- 50% of the embedded PST rate of 2%, where the home is 25% or more and less than 50% completed on July 1, 2010;
- 25% of the embedded PST rate of 2%, where the home is 10% or more and less than 25% completed on July 1, 2010; or
- 0% where the home is 10% or less completed on July 1, 2010.

Where the rebate calculation is based on the floor space method, application for a rebate can be made anytime on or after July 1, 2010. Where the rebate calculation is based on the selling price, an application for a refund on the day the HST was payable.

b) Ontario and BC Inventory Rebate for Contractors

A Provincial Sales Tax (PST) Inventory rebate is available in respect of the PST embedded in construction materials used in residential real property contracts that are subject to the HST. This rebate is available to contractors for the PST paid on construction materials that are purchased or produced for the contractor's own use, held in inventory at the end of the day on June 30, 2010 and used in a residential real property contract to which the HST applies.

Question 18 - How do the GST, HST, GST New Housing Rebate, HST New Housing Rebate, RST Transitional Adjustment, and/or RST Transitional Housing Rebate apply to sales of new homes in Ontario?

Answer

The following examples and tables set out the implications of the introduction of the HST on sales of new homes in Ontario, based on certain assumptions.

It is assumed that the sale price is on a tax-included basis. Each table includes the amount of GST and HST payable, the GST New Housing Rebate and the HST New Housing Rebate, as well as the RST Transitional Adjustment, and/or RST Transitional Housing Rebate. The rebates are assigned to the builder. Finally each table indicates the cash available to the builder after taxes and rebates.

The tables illustrate the GST/HST application depending on various prices. Also, the tables illustrate the GST/HST application depending on whether the agreement of purchase and sale was entered into before June 19, 2009 (grandparented) or on or after June 19, 2009 (not grandparented)

Further, examples 1 to 3 assume that the home is 50% to 74% completed at June 30, 2010.

Example 1: \$300,000 selling price (GST/HST included)

	Grandparented	Not Grandparented
GST/HST Payable	\$14,535	\$37,608
GST Rebate	\$5,233	\$5,207
HST Rebate	\$0	\$17,358
RST Transitional Housing Rebate	\$0	\$4,339
Total	\$300,000	\$300,000
Transitional Tax Adjustment (payable by builder)	\$1,453	\$0
Cash Payable to Builder	\$289,245	\$289,296

Example 2: \$400,000 selling price (GST/HST included)

	Grandparented	Not Grandparented
GST/HST Payable	\$19,243	\$49,808
GST Rebate	\$4,103	\$4,212
HST Rebate	\$0	\$22,988
RST Transitional Housing Rebate	\$0	\$5,747
Total	\$400,000	\$400,000.00
Transitional Tax Adjustment (payable by builder)	\$1,924	\$0.00
Cash Payable to Builder	\$382,936	\$383,139

Example 3: \$500,000 selling price (GST/HST included)

	Grandparented	Not Grandparented
GST/HST Payable	\$23,810	\$61,094
GST Rebate	\$0	\$0
HST Rebate	\$0	\$24,000
RST Transitional Housing Rebate	\$0	\$7,049
Total	\$500,000	\$500,000
Transitional Tax Adjustment (payable by builder)	\$2,380	\$0
Cash Payable to Builder	\$473,810	\$469,955

The next group of examples and tables contrast the GST and HST application to sales of new homes in Ontario that are either fully constructed and sold before July 1, 2010 or fully constructed and sold after June 30, 2010 as well as the cash available to the builder after taxes and rebates

It is assumed that the sale price is on a tax-included basis. Each table includes the amount of GST/HST payable, the GST New Housing Rebate and the HST New Housing Rebate available for the sale of new homes. The rebates are assigned to the builder.

Example 4: \$300,000 selling price (GST/HST included)

	Before July 1, 2010	After June 30, 2010
GST/HST Payable	\$14,535	\$37,072
GST Rebate	\$5,233	\$5,133
HST Rebate	\$0	\$17,110
Total	\$300,000	\$300,000
Cash Payable to Builder	\$290,698	\$285,171

Example 5: \$400,000 selling price (GST/HST included)

	Before July 1, 2010	After June 30, 2010
GST/HST Payable	\$19,243	\$49,149
GST Rebate	\$4,104	\$4,532
HST Rebate	\$0	\$22,684
Total	\$400,000	\$400,000
Cash Payable to Builder	\$384,861	\$378,067

Example 6: \$500,000 selling price (GST/HST included)

	Before July 1, 2010	After June 30, 2010
GST/HST Payable	\$23,810	\$60,284
GST Rebate	\$0	\$0
HST Rebate	\$0	\$24,000
Total	\$500,000	\$500,000
Cash Payable to Builder	\$476,190	\$463,716

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The answers to the questions are based on notices released by the tax authorities to March 19, 2010. All of the legislation relating to sales tax harmonization has not been released and the rules discussed above are not complete. As such, the rules are subject to change.

The Canada Real Estate Association ("CREA") cannot guarantee that all the information contained in the answers to the questions is accurate, complete or up-to-date and CREA makes no representations to that effect. In particular, the information contained in the answers should not be relied upon or construed as legal, tax and/or accounting advice. REALTORS® and any other person involved in real estate transactions are urged to seek professional advice on the specific issues affecting them.