

# Ontario Sales Tax Harmonization with the Federal Goods and Services Tax

*On March 26, 2009, the Ontario Minister of Finance announced, as part of the annual Budget, that the Ontario Retail Sales Tax (ORST) would be eliminated, effective July 1, 2010, in favour of an additional 8% provincial component to the existing federal Goods and Services Tax (GST). The province of British Columbia followed shortly with an announcement that they would similarly harmonize their 7% provincial sales tax with the federal GST, also effective July 1, 2010. This publication provides details as to the transitional and ongoing rules associated with the Harmonized Sales Tax (HST) in Ontario. At the time of writing this publication, draft legislation is still forthcoming. For this reason, readers are cautioned to seek out updates to this information as the implementation date draws near.*

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## Introduction

This new tax is referred to as the Harmonized Sales Tax (HST) and will apply at the rate of 13% on supplies of taxable goods and services made in the province of Ontario and 12% on supplies of taxable goods and services made in the province of British Columbia. The tax will consist of a federal component (CVAT) of 5% and a provincial component (PVAT) of 8% in Ontario and 7% in British Columbia.

This publication will provide an overview as to the application of the new HST in Ontario. Please keep in mind that at the time of writing this publication, many questions remain to be answered as to the exact rules that will be implemented. It is entirely possible, and in fact, quite likely, that changes will be made to the application of the HST prior to its implementation date in July of 2010. As a result, readers are cautioned to seek out updates to this information as the implementation date draws near.

## Status of the Legislation

The Ontario legislation and related Federal legislation, received Royal assent on December 15, 2009. Unfortunately, many operational details remain to be prescribed by regulations at a later date.

## Rationale for this Value-Added Tax Structure

The current ORST applies at the rate of 8% on the

purchase of many goods and services consumed by businesses. Investments in computers, equipment, furniture, vehicles, material incorporated into buildings, and telecommunication services, to name a few, are currently subject to the 8% ORST. Under the current system, businesses cannot recover this tax, and it becomes a cost to the business -- presumably leading to higher prices for the goods and services being sold by those businesses.

The new HST is based on the GST's value-added tax structure. This means that most businesses will be able to claim Input Tax Credits (ITC's) with respect to the 13% HST that they pay on their business inputs.

Ontario is not the first province to harmonize its sales tax with the GST. In April 1997, the provinces of Newfoundland, New Brunswick and Nova Scotia harmonized their provincial sales taxes with the GST. Quebec also has turned their sales tax into a value added tax that is almost identical to the GST. Ontario, then, becomes the fifth Canadian province to create a single sales tax jurisdiction. Studies undertaken after the Atlantic Provinces harmonized their sales taxes with the GST indicated that the elimination of the provincial sales tax quickly lead to lower pre-tax product prices for consumers.

A major benefit of the HST is that goods manufactured or produced in Ontario will be able to leave the province completely free of embedded sales tax, making these exports more competitive on the national and world markets.

## The Tax Base

For the most part, the tax base for the HST will be identical to the tax base for the GST. As a result, HST will apply to items that previously escaped the direct application of ORST such as new housing, sales and leases of commercial real estate, home renovation contracts, personal services such as haircuts and gym memberships as well as utilities such as hydro and natural gas.

For items that were previously subject to ORST, such as the purchase of automobiles, car repairs, telephone bills, clothing and furniture, the overall tax rate will be identical, but will simply be shown as one 13% HST rather than the separate 5% GST and 8% ORST.

In order to make the HST more palatable to Ontario consumers, the Ontario government has negotiated point-of-sale rebates in respect of a select list of items, including: books, children's clothing and footwear, children's car seats and car booster seats, diapers, feminine hygiene products, printed newspapers and prepared meals and beverages under \$4. As a result, only the 5% GST will apply to these items. Please see the appendix for further details.

Items that are currently zero-rated or exempt for GST

purposes will continue to be zero-rated or exempt under the HST. Zero-rated items include such things as basic groceries, prescription medicines, exports from the taxing jurisdiction, and certain agricultural supplies and equipment. Tax exempt items include residential rents, sales of used housing, financial services, health care, educational and daycare services.

## Administration of the HST

The HST will be administered by Canada Revenue Agency. No new registration for the HST is required. If an organization is registered for the GST, this registration will apply for the HST as well. In fact, if you look at your current GST return, you will see that it is referred to as a GST/HST return. There will be no need to separate the provincial component from the federal component of the HST collected on the return. All amounts collected will simply be reported on "GHT/HST collected" line, much as it is right now when we collect HST from the Maritime Provinces. Input tax credits will be reported on one line as well.

## Winding Down the RST

Once the final ORST return is filed, it is presumed that the ORST registration will be cancelled and no more Ontario returns will be required. Ontario will continue to audit those returns for some time after the July 2010 transition to the HST.

The final RST return will generally be required to be filed on or before July 23, 2010 for the period ended June 30, 2010. Where an amount is collected after June 2010, a supplemental return will have to be filed by the 23rd of the following month. All supplemental returns will have to be filed by November 23, 2010.

Any applicable RST not otherwise payable before October 31, 2010 would become payable on October 31, 2010. Where RST-included pricing is used, the consideration for which becomes due or is paid after October 14, 2009 and before May 2010, and where the seller does not disclose in writing to the purchaser the amount, if any of RST in the stated price, the stated price is deemed to include RST if the RST would have applied to the sale.

## Small Supplier Threshold

The existing \$30,000 small supplier threshold (\$50,000 for public service bodies) for GST purposes will apply to HST as well. As a result, many small businesses that had to register to collect the ORST on the first dollar of sales will be able to avoid registering for the HST and will no longer have to collect any sales tax.

## Electronic Filing Requirements

The federal government has announced new electronic filing requirements for GST/HST registrants with greater

than \$1.5 million in annual taxable supplies (except for charities), as well as for all registrants subject to restricted ITC claims in Ontario or British Columbia, and for builders affected by the transitional housing measures. These registrants will be required to file their GST/HST returns electronically. Others are encouraged to use electronic services but it is not mandatory for them.

## Support for Small Businesses

Under the ORST, registered vendors were compensated up to \$1,500 per year for collecting the ORST. This compensation will cease for any returns filed for periods ending after March 31, 2010.

To ease any financial burden associated with switching systems to accommodate the new HST, a one-time transitional credit of up to \$1,000 per registrant will be paid. To qualify for the credit, the business must have annual revenues of less than \$2 million. Please see the appendix for further details.

## Reporting and Calculations

The filing frequencies for the HST will be the same as they are for GST. As a result, registrants with taxable sales in excess of \$6 million must file monthly returns. Those with taxable sales under \$1.5 million may file an annual return with quarterly tax instalments if taxes owing for the previous year were greater than \$3,000. All other businesses are eligible for quarterly filing of returns. A quarterly or annual filer can always elect to file on a more frequent basis if so desired.

Any restrictions that currently exist with respect to the claiming of ITC's for GST will also apply for HST. For example, no ITC's can be claimed for club dues and a 50% restriction exists for meals and entertainment expenses.

## Input Tax Credit Restriction for Large Businesses

Presumably in an attempt to avoid a significant revenue loss to the Provincial coffers, the harmonization process will see a restriction placed on large businesses (those with annual taxable sales calculated on an associated basis in excess of \$10 million) as to their ability to claim ITC's on certain expenses. For the first five years of the new tax (up until July 1, 2015) no input tax credits can be claimed by large businesses for the 8% provincial component of the HST on the following expenses:

- Energy (hydro, natural gas, etc) except where purchased by farms or used to produce goods for sale.
- Telecommunication services (other than internet access or toll-free numbers)
- Road vehicles weighing less than 3,000 kilograms (and parts and certain services) and fuel to power those vehicles.
- Food, beverages and entertainment.

After the first five years, full input tax credits will be phased in over a three-year period. As a result, it would appear that full ITC's will not be available until July 2018 for large businesses.

The restrictions will not apply to items acquired for use in farming activities by a person whose chief source of income is "farming", as that term is defined in the Canadian Income Tax Act. The restrictions will also not apply to public service bodies as defined in the Excise Tax Act (ie school authorities, hospital authorities, public colleges, universities, municipalities, charities and non-profit organizations).

Businesses subject to the restriction will be required to file their GST/HST returns electronically. The restricted ITCs will be required to be reported on a "gross" basis before applying any of the restriction rules. A separate information field will be provided to "recapture" the restricted portion of the ITC. Expanded details concerning the ITC restrictions for large businesses can be found in the Appendix.

#### *Impact on Consumers*

There is no question that the new HST will apply to a broader range of goods and services than does the current ORST. As a result, Ontario consumers will be paying more direct tax than they do under the current system. Time will tell if manufacturers and retailers will be able to lower the pre-tax prices of goods and services being sold in Ontario as a result of eliminating the taxes on their business inputs through the ITC mechanism.

In order to make the transition to the new HST more appealing for consumers, the Ontario government will be paying a "one time only" benefit to most residents. The maximum benefit would be \$1,000 to a family with a combined family income of \$160,000 or less. The benefit will be split into three cheques of approximately \$335 each payable June 2010, December 2010 and June 2011. Single individuals aged 18 or over with an income of \$80,000 or less can receive a maximum benefit of \$300 payable in three instalments of \$100. The eligibility for the two cheques in 2010 is based on income reported on the 2009 income tax returns. The eligibility for the final instalment in 2011 is based on income reported on the 2010 personal income tax return.

In addition to this one-time credit, there will be an ongoing sales tax credit designed to help low to middle income earners with the sales taxes they pay. The sales tax credit will be refundable and will be paid quarterly starting in July 2010. For further details please see the Appendix.

#### *Impact on Businesses*

Businesses that are registered for the GST and are engaged exclusively in commercial activities (all of their sales are taxable or zero-rated) will find that the HST should reduce their costs.

Businesses that are engaged in the making of exempt

supplies, such as doctors and dentists, residential landlords and those operating in the financial services sector will likely see their costs rise. For example, residential landlords will now be paying the 13% HST on electricity and natural gas and ITCs will not be available for the HST paid on these expenses.

Businesses that sell goods or services to consumers that were not subject to the ORST but are subject to the HST may see their customers rationalizing the spending decision. Time will tell, for example, whether the 13% HST will cause individuals to delay getting their hair cut and whether home owners will have to scale back the renovation plans for their houses.

Please see the Appendix for examples of how business costs will be impacted by the HST.

#### *Impact on Public Service Bodies*

Under the existing GST, public service bodies (municipalities, hospitals, universities, colleges, school boards, charities and "substantially government funded" non-profit organizations) are able to claim a partial rebate of the 5% GST where they are not able to claim 100% ITC's for the GST paid. A similar rebate will be available under the HST for the 8% provincial component of the tax. The rebate percentages are as follows:

Municipalities	78%
Universities and Colleges	78%
School Boards	93%
Hospitals	87%
Charities and Qualifying NPO's	82%

As a result of these rebates, it would appear that the introduction of the HST should have a limited impact on the budgets of these organizations.

#### *Impact on the New Housing Industry*

As is the case under the GST, "used housing" (housing that has previously been occupied for residential purposes) will not be subject to the HST. New housing, however, will be subject to the 13% HST.

It is estimated that under the current system, the amount of ORST that is embedded in the selling price of a new home in Ontario is between 2% and 3%, depending on the value of the home, and where the home is located. Although this indirect tax will be eliminated under the HST, the purchaser of a new home in Ontario will have to pay the 13% HST on the purchase price of a new home after July 1, 2010. Given that the provincial portion of the HST is 8%, this means that the cost of a new home in Ontario could rise by 6%. On a \$500,000 home, this would represent a possible additional cost of \$30,000.

In order to keep modestly priced homes affordable, a rebate of up to \$24,000 will be available to the purchaser of a new home in Ontario. The rebate is calculated as 75% of the 8% provincial component of the HST to a maximum of \$24,000 which is reached with a home

whose value is \$400,000. This will effectively reduce the provincial component of the HST to 2% -- which is the approximate ORST content in a new home sold under the existing rules.

Unlike the ongoing GST New Housing Rebate, which is reduced from its maximum value of \$6,300 for homes worth \$350,000 to \$0 for homes worth \$450,000 or more, this rebate is also available for homes valued over \$400,000 but it will be capped at the \$24,000 amount.

## Miscellaneous Taxes

### *Impact on Hotel Room Tax*

The current 5% ORST on hotel rooms will be replaced with the 8% provincial component of the HST. The Ontario government has committed to allocating approximately \$40 million to destination marketing in Ontario tourism regions, once these are established, to help support tourism development and job creation.

### *Private Transfers of Motor Vehicles*

Currently, GST does not apply to the sale of a used vehicle by an individual who is not a GST registrant. ORST does apply, however, on private sales when the vehicle is registered with the Ontario department of transportation. Upon introduction of the HST, a 13% tax will apply on private transfers of used vehicles. This measure should help to ensure a level playing field between used vehicles sold privately and those sold through car dealerships.

### *Insurance Taxes*

Insurance premiums are exempt of the 5% GST. Ontario has, for some time, maintained an 8% tax on some types of insurance such as group insurance. After harmonization, Ontario will continue to levy an 8% tax on the same types of insurance premiums that are currently taxed under the ORST. Insurance premiums for automobiles will continue to be exempt of any sales tax.

### *Alcohol Taxes*

The current ORST is collected at the rate of 10% on sales of alcoholic beverages sold in restaurants and bars. The rate of tax on sales through retail outlets is currently 12%. Under the HST, this tax rate will drop to the regular provincial component of 8%.

To maintain social responsibility and existing revenue, Ontario has to made adjustments to other current alcohol fees, levies and charges to make up the difference in the tax rates.

## Transitional Rules

As of the date of publication of this document, no regulations with respect to transitional rules for the HST have been released. Although there are transitional rules set out in the Excise Tax Act (ETA), these rules were written in 1997 to deal with the implementation of the HST for the three participating provinces of

Newfoundland, Nova Scotia and New Brunswick. Although it is very likely that many of the rules will stay the same for Ontario's transition, there is no guarantee at this point which rules will apply.

Below is a summary of information notices from the Ministry of Ontario and the Canada Revenue Agency (CRA) with respect to transitional rules for the HST in Ontario. Given that these notices do not constitute legislation, readers are cautioned to seek professional advice for any specific transaction you are concerned about.

### *Important Dates*

- July 1, 2010 – Implementation date for HST. HST will generally apply for property and services provided on or after July 1, 2010.
- May 1, 2010 – HST will generally apply if consideration for a taxable supply is paid or is payable after this date for property and services provided on or after July 1, 2010. In other words, registrants will be required to collect the tax on any consideration that is or paid on or after May 1, 2010 if the transaction is in respect of property or services provided on or after July 1, 2010. Amounts collected and paid with respect to the provincial portion of the HST during the period of May 1, 2010 to June 30, 2010 will have to be tracked separately and reported on the GST/HST return for the reporting period that includes July 1, 2010.
- October 14, 2009 – self assessment date for prepaid goods and services paid or payable after this date and before May, 2010 for certain businesses and public service bodies. See below under the heading entitled “persons required to self-assess the provincial portion of the HST” for further details.
- October 31, 2010 – any remaining outstanding ORST becomes payable.
- June 18, 2009 – residential property grandparented agreement date. (See section entitled “Sale of Residential Units” for further details.)
- November 1, 2010 – HST applies to all amounts billed on or after this date with respect to the sale of tangible personal property. This is referred to as the “four month rule”. Although this rule has not been mentioned in any of the current communications by either Ontario or CRA, the rule does exist in the legislation as part of the original transitional rules from 1997. Many experts believe that this rule will be invoked as part of the transition to the HST in Ontario and British Columbia.

*Persons Required to Self-assess the Provincial Portion of the HST* - Certain businesses and public service bodies will be required to self assess the provincial portion of the HST for transactions where consideration was due

or paid between the period of October 14, 2009 to April 30, 2010 for property or service provided on or after July 1, 2010 (in other words, transactions subject to the HST where the transaction date is prior to the date where vendors are required to collect the tax).

***The requirement to self-assess will apply to:***

- non-consumers acquiring the property or service for consumption, use or supply otherwise than exclusively in the course of their commercial activities (e.g., a business, such as a financial institution, residential landlord or NPO that is acquiring the property or service to make GST/HST-exempt supplies;
- non-consumers acquiring the property for consumption, use or supply exclusively in the course of their commercial activities but in circumstances where the property would be subject to an ITC restriction or recapture (e.g., leased passenger vehicles where the monthly lease payment exceeds \$800, restricted ITC rule for large businesses);
- non-consumers that use simplified procedures available under the ETA for calculating their net tax (e.g., certain charities, public service bodies, and small businesses); and
- selected listed financial institutions, which use a special attribution method in determining their net tax.

A person who is required to self-assess in these circumstances would be required to account for the tax either: (i) if they are a GST/HST registrant in the GST/HST return of the person for the reporting period that includes July 1, 2010, or (ii) in any other case, (ie not registered for GST/HST) in prescribed form and before November 2010.

For a definition of consumer and non consumer, please refer to the Appendix.

***Sale of Real Property other than Residential Units***

If ownership or possession is transferred prior to July 1, 2010, HST will not apply to the transaction. HST will apply, however, if ownership and possession are transferred on or after July 1, 2010.

***Sale of Residential Units***

An exception to this rule will be the sale of a residential unit (single family home, or residential condo unit, etc.) where the agreement of purchase and sale was entered into prior to June 18, 2009. Under these circumstances, the sale will not be subject to HST even if possession and ownership is transferred on or after July 1, 2010. Although the vendor of such units will be entitled to claim ITCs with respect to the provincial component of the costs associated with the development of the unit incurred on or after July 1, 2010, a transitional tax adjustment will apply based on the percentage of completion of the home on June 30, 2010. Please see the Appendix for further details.

***Supplies of Tangible Personal Property***

HST will not apply to the sale of tangible personal property (e.g. furniture, equipment, etc.) if the property is delivered or ownership of the property is transferred to the purchaser prior to July 1, 2010 – as long as the invoice is dated prior to October 31, 2010.

If delivery and ownership of the property takes place on or after July 1, 2010, then HST will generally apply to all payments for that property. (However, if the invoice is dated prior to May 1, 2010, the vendor would not collect the HST but the purchaser may be required to self assess the HST if the invoice is dated after October 14, 2009 and before May 1, 2010. Please see transitional rules in the Appendix for further information)

***Subscriptions***

HST will not apply to any payment made before July 1, 2010 for a subscription to a newspaper, magazine or other periodical, regardless of how long a period the subscription is for.

***Supplies of Services***

A supply of a service (other than a lifetime membership or a freight or passenger transportation service) that is all or substantially all performed prior to July 1, 2010 will not be subject to HST as long as the consideration is paid before November 1, 2010.

The consideration for such a service that is partly, but not all or substantially all, performed prior to July 1, 2010 will not be subject to the HST to the extent that the consideration relates to any part of the service that was performed prior to July 1, 2010.

***Memberships***

A supply of a membership in a club, organization or association will be deemed to be a supply of a service for the purposes of the transitional rules. Thus, HST will apply to the membership to the extent that the membership period occurs on or after July 1, 2010.

Example: In June 2010, a person purchases a four-month membership in a fitness club for the months of June through September 2010. The HST would be payable with respect to three of the four months of the membership (i.e., on 75% of the total consideration)

***Admissions***

A supply of an admission to a place of amusement, a seminar, an event or an activity will be deemed to be a supply of a service for the purposes of the transitional rules. Thus, HST will apply to the admission to the extent that the event or activity to which the admission relates occurs on or after July 1, 2010.

Example: In May 2010, a vendor sells tickets to a professional hockey game that will take place in October 2010. The HST will apply to this sale.

***Other Supplies***

More specific rules have been released dealing with

the transitional application of the HST to combined supplies, services of a representative, trustee, receiver or liquidator, passenger transportation services, freight transportation services, funeral arrangements, direct sellers etc. These rules are detailed in the Ontario Ministry of Revenue document entitled "Information Notice No. 3 - General Transition Rules for Ontario HST" dated October 14, 2009. A copy of the document can be found at:

<http://www.rev.gov.on.ca/en/notices/hst/03.html>.

### **ORST Inventory Rebate**

An ORST rebate is available to real property contractors for the ORST 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 will apply. This rebate does not apply to materials held in inventory for commercial property contracts. More details on the rebate are still forthcoming.

## **Place of Supply Rules**

It will now be incumbent on all GST/HST registrants to determine exactly where the supply they are providing (be it real property, intangible property, goods, or services) is being made. Only if the supply is made in a participating province (Ontario, British Columbia, Newfoundland, Nova Scotia, or New Brunswick) will the HST apply. HST will not apply to supplies made outside of one of these five provinces even if the vendor is located in Ontario.

Rules exist to help a vendor determine exactly where a supply is made. The rules are relatively straightforward for the supply of goods or real property, but get much more complex for services and intangible property. A quick summary of the rules for tangible personal property and services follows. Special rules also exist to determine the place of supply for intangible personal property, real property, transportation services, postage, telecommunication services and certain other supplies. Please see the Appendix for further details.

### **Tangible Personal Property**

A supply of goods by way of sale will be deemed to be made in the province to which the supplier delivers the property or makes it available to the recipient. For example, if an Ontario vendor delivers taxable goods to a customer in Ontario, British Columbia (or one of the three harmonized Atlantic Provinces) then HST will apply. If, however, the goods are delivered to Alberta, then the provincial component of the HST will not apply.

### **Services**

A supply of a service will be made in Ontario if all or substantially all of the service is performed in Ontario. If it is not the case that all or substantially all of the service is performed in Ontario, but the contract for the service is negotiated in Ontario and it is not the case that all or substantially all of the service is performed outside

of Ontario, then Ontario will still be deemed to be the place of supply – even where up to 90% of the service is performed outside of Ontario.

### **Importing Goods into Ontario from another Province**

As with any well structured tax legislation, rules will exist to ensure that the Ontario portion of the HST is not avoided simply by buying goods or services outside of Ontario when the intention is to consume them in Ontario. Self assessment provisions will exist to ensure that the recipient of many such imported supplies is subjected to the provincial portion of the HST.

## **Planning**

The following is a list of points one might wish to consider when planning for the upcoming HST in Ontario:

- Impact on budgets and cash flow

There may be some budget and/or cash flow implications depending on the type of organization one would be involved with. For example, if there is a lag between the time one bills ones customers and the time that payment is received, financing requirements may have to be adjusted in order to make up a possible cash flow deficit.

- Any required system changes

Cash registers and accounting software are examples of systems that will require some changes for the new tax regime.

- Pricing strategies

Certain items will be more attractive to buyers after July 1, 2010, for example, equipment purchased by businesses for which they will be able to claim input tax credits on HST paid. Thus, a seller of equipment may consider offering price incentives so that customers will be less inclined to delay equipment purchases.

- Inventory levels

It may be advantageous to allow certain inventory levels to deplete before July 2010, for instance, inventory of paper supplies which are currently subject to non recoverable ORST.

- Major equipment purchases

It may be advantageous to put off the purchase of expensive equipment given that most businesses will be receive an additional 8% ITC for purchases made after June 30, 2010.

- Lease vs. buy

For equipment purchases that cannot be put off, it may be worthwhile leasing the equipment for the period up to June 30, 2010 and then purchasing the equipment on or

after July 1, 2010.

- Contracts

Review all contracts to ensure any references to sales taxes do not have a detrimental effect.

- Training of A/P staff

Ensure that A/P staff are well informed of and understand the new rules.

- System changes

Ensure the accounting system can handle the complexities of the restricted ITC rules if applicable. Also be aware of any adjustments that may have to occur in the system to correctly account for the rules on insurance and the sale of used vehicles. (ie ITCs not allowed for taxes on these items)

- Doing business (customers) in more than one province
- Analyze your requirements in each province

Ensure you are aware of your responsibility with respect to each province in which you have customers

- Adjustments to simplified and quick method remittance rates

Ensure your system is updated to reflect the new rates.

## Appendix

### HST Point-of-Sale Rebates

As announced in the 2009 Budget, Ontario proposes to provide targeted relief from the eight per cent Ontario component of the HST on many items important to Ontario families by providing point-of-sale rebates of the Ontario component of the HST for books, children's clothing, children's footwear, children's car seats and children's car booster seats, diapers and feminine hygiene products.

In addition to the point-of-sale rebates proposed in the 2009 Budget, Ontario proposes to provide further targeted sales tax relief. Additional point-of-sale rebates of the Ontario component of the HST are proposed for print newspapers and qualifying prepared foods and beverages sold for a total of \$4.00 or less.

Generally, purchasers will not be required to take any steps in order to take advantage of these point-of-sale rebates. Where a person purchases a designated item at a retail establishment, the retailer will automatically provide the purchaser with the point-of-sale rebate, crediting the Ontario component of the HST and only collecting the five per cent federal component of the HST on that item. Crediting purchasers in this manner will not affect a retailer's ability to claim ITCs on its

business inputs. Also, there will be no requirement for the retailer to indicate the point-of-sale rebate on its invoices or to indicate the point-of-sale rebate amounts credited to the purchaser in its GST/HST return. In the event that a purchaser does pay the Ontario component of the HST on the purchase of a designated item (i.e., the retailer did not credit the Ontario component of the HST to the purchaser), the purchaser will be entitled to apply to the CRA, within four years of the day that the tax became payable, for a rebate of the Ontario component of the HST paid.

The point-of-sale rebate of the Ontario component of the HST will not only be available to purchasers at retail establishments located in Ontario, but will also be available on Internet purchases of designated items. Further, the point-of-sale rebates will be available on supplies of designated items made at any point in the distribution chain, including supplies made by producers, wholesalers and distributors. In other words, the point-of-sale rebate of the Ontario component of the HST will be available on any supply of a designated item where the Ontario component of the HST applies.

In addition, persons importing a designated item into Ontario, or bringing a designated item into Ontario from another province, will not be required to pay the Ontario component of the HST. The current GST treatment will continue to apply for the five per cent federal component of the HST in respect of an importation.

The CRA will administer these point-of-sale rebates on behalf of the Province of Ontario. The following information provides additional details for consumers and retailers:

- Books, including a printed book or an update of a printed book, an audio book (i.e., a spoken reading of a printed book), a bound or unbound printed version of scripture of any religion, a printed book and a read-only medium (such as a CD-ROM) whose content is related and integrated with the content of the book and when sold together as a single package, and a printed book and a read-only medium and/or a right to access a website when sold together as a single package and if specifically designed for students enrolled in a qualifying course, such as educational courses of elementary or secondary schools. The point-of-sale rebate for books is expected to provide a benefit to consumers of approximately \$125 million per year.
- The following items, including anything having the following items as its main component, will not qualify as a printed book for the purpose of the point-of-sale rebate of the Ontario component of the HST:
  - a magazine or periodical, unless it is purchased by subscription and the printed space of the magazine or periodical devoted to advertising is not more than five per cent of the total printed space;
  - a brochure or pamphlet;
  - a sales catalogue, a price list or advertising material;

- a warranty booklet or an owner's manual;
  - a book designed primarily for writing on;
  - a colouring book or a book designed primarily for drawing on or affixing thereto, or inserting therein, items such as clippings, pictures, coins, stamps or stickers;
  - a cut-out book or a press-out book;
  - a program relating to an event or performance;
  - an agenda, calendar, syllabus or timetable;
  - an assemblage of charts or an assemblage of street or road maps, but not including a guidebook or an atlas that consists in whole or in part of maps other than street or road maps;
  - a rate book;
  - a newspaper (qualifying newspapers will be eligible for their own point-of-sale rebate);
  - an assemblage of blueprints, patterns or stencils;
  - an assemblage or a collection of, or any item similar to, the above items.
- Children's clothing designed for babies, girls and boys up to and including girls' Canada Standard Size 16 and boys' Canada Standard Size 20, or clothing designated for girls and boys in sizes small, medium or large if the clothing does not have a designated Canada Standard Size. Children's clothing eligible for the rebate will not include costumes or clothing such as sports protective equipment. The point-of-sale rebate for children's clothing is expected to provide a benefit to consumers of approximately \$150 million per year.
  - Children's footwear designed for babies, girls and boys up to and including girls' size 6 and boys' size 6, including footwear without a numerical size that is designated for boys or girls in sizes small, medium or large. Children's footwear eligible for the rebate will not include skates, rollerblades, ski-boots, footwear that has cleats, or similar footwear. The point-of-sale rebate for children's footwear is expected to provide a benefit to consumers of approximately \$35 million per year.
  - Children's car seats and children's car booster seats that are restraint systems or booster cushions that conform with Transport Canada's safety requirements for Standards 213, 213.1, 213.2 and 213.5 as described under the federal Motor Vehicle Safety Act. The point-of-sale rebate for children's car seats and booster seats is expected to provide a benefit to consumers of approximately \$5 million per year.
  - Diapers, including cloth and disposable diapers designed for babies and children, and diaper inserts and liners, rubber pants and training pants. Incontinence products will be zero-rated under HST, in accordance with the current GST rules. The point-of-sale rebate for diapers is expected to provide a benefit to consumers of approximately \$20 million per year.
  - Feminine hygiene products, including sanitary

napkins, tampons, sanitary belts or other products marketed exclusively for purposes similar to the purposes for which sanitary napkins, tampons and sanitary belts are marketed. This point-of-sale rebate is expected to provide a benefit to consumers of approximately \$15 million per year.

Additional point-of-sale rebates from the eight per cent provincial component of the HST are proposed for the following:

- Print newspapers that contain news, editorials, feature stories or other information of interest to the general public, and that are published at regular intervals, typically on a daily, weekly or monthly basis, but not flyers, inserts, magazines, periodicals and shoppers. The point-of-sale rebate for newspapers is expected to provide a benefit to consumers of approximately \$65 million per year.
- Qualifying prepared food and beverages that are ready for immediate consumption if the total price for all qualifying items purchased, excluding HST, is not more than \$4.00. Qualifying items include:
  - food or beverages heated for consumption;
  - salads;
  - sandwiches and similar products;
  - platters of cheese, cold cuts, fruit or vegetables and other arrangements of prepared food;
  - cakes, muffins, pies, pastries, tarts, cookies, doughnuts, brownies, croissants with sweetened filling or coating, or similar products where they are not prepackaged for sale to consumers and are sold as single servings in quantities of less than six;
  - ice cream, ice milk, sherbet, frozen yoghurt or frozen pudding, non-dairy substitutes for any of the foregoing, or any product that contains any of the foregoing, when hand-scooped or machine dispensed and sold in single servings;
  - other food items that are excluded from zero-rated GST/HST treatment as basic groceries solely by virtue of the types of sales made at the establishment where they are sold, such as the sale of a bagel or a plain croissant in a restaurant;
  - non-carbonated beverages, when dispensed at the place they are sold; or
  - when sold with a qualifying food item listed above: other beverages except if the cans, bottles or other primary containers in which they are sold contain a quantity exceeding a single serving; cakes, muffins, pies, pastries, tarts, cookies, doughnuts, brownies, croissants with sweetened filling or coating, or similar products where they are prepackaged for sale to consumers in quantities of less than six items each of which is a single serving; ice cream, ice milk, sherbet, frozen yoghurt or frozen pudding, non-dairy substitutes for any of the foregoing, or any product that contains any of the foregoing, when packaged and sold in single servings; or other snack foods (Other snack foods will be items excluded from basic groceries under paragraphs (e) to (j))

and (l) in Part III of Schedule VI to the federal Excise Tax Act.), such as chips, salted nuts, popcorn, candies, fruit bars, granola bars, etc.

- Wine, spirits, beer, malt liquor or other alcoholic beverages will not qualify for the purpose of the point-of-sale rebate of the Ontario component of the HST.

This point-of-sale rebate is expected to provide a benefit to consumers of approximately \$260 million per year. The Province is working with the federal government to refine the above estimates based on the most currently available data.

## Restricted Input Tax Credits

The 2009 Budget announced proposed temporary restrictions on ITCs that will apply to certain items used by large businesses, including certain financial institutions, in the course of their commercial activities (i.e., the making of taxable supplies, including zero-rated supplies). The restrictions will be temporary during the initial implementation of the HST and will only apply to the provincial portion of the tax. The restrictions will be similar to those currently in place in Quebec for large businesses.

### *Phase-in of Input Tax Credits on Restricted Items*

After the first five years of HST implementation, ITCs relating to restricted items will be phased in over a three-year period. Accordingly:

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

The restrictions will generally apply to restricted items acquired or brought into Ontario for consumption or use in Ontario, but not to restricted items acquired or brought in for resale or resupply.

Restricted items acquired outside Ontario for consumption or use inside Ontario will generally be subject to the restrictions. Conversely, restricted items acquired in Ontario for consumption or use outside Ontario will generally not be subject to the restrictions.

### *Definition of Large Business*

The following rules will apply in determining who is a “large business” subject to the ITC restrictions:

- A person who is a registrant for GST/HST

purposes, regardless of whether or not the person has a permanent establishment in Ontario, will be considered to be a “large business” if:

- the total consideration for taxable supplies (including zero-rated supplies) made in Canada by the person, or by associates of the person, that was paid or payable in the previous fiscal year exceeded \$10 million, or
  - the person is one of the following financial institutions, or a person related to one of the following financial institutions: banks, trust companies, credit unions, insurers, segregated funds of insurers, and investment plans. Specific rules will apply to financial institutions that are selected listed financial institutions for purposes of the Excise Tax Act (ETA).
- In calculating the \$10 million threshold, amounts attributable to consideration for the following supplies will not be included in the amount of consideration: supplies of financial services, exempt supplies (e.g., residential rents), supplies of real property that is capital property and supplies of the goodwill of a business in situations where GST is not payable on those supplies.
  - In calculating the \$10 million threshold, amounts attributable to consideration for the following supplies will be included in the amount of consideration: supplies of zero-rated exports, supplies made outside Canada through a permanent establishment in Canada, and supplies deemed to have been made for nil consideration pursuant to a joint election made by specified members of a qualifying group.
  - The \$10 million threshold will be adjusted for fiscal years that are shorter than 365 days. There will also be special rules dealing with acquisitions of control, amalgamations and other forms of business reorganizations.

To support Ontario farmers, the restrictions will not apply to items acquired for use in farming activities by a person whose chief source of income is “farming,” as that term is defined in the Income Tax Act (Canada) (ITA).

### *Public Service Bodies*

To further support public service bodies (PSBs), these temporary restrictions will not apply to persons that are PSBs for purposes of the ETA (i.e., school authorities, hospital authorities, public colleges, universities, municipalities, charities and non-profit organizations).

### *Partnerships and Joint Ventures*

Where the ITC restrictions apply to a partnership (because the partnership is a large business), a member of the partnership (other than an individual) that acquires or brings into Ontario restricted items for consumption or use in the activities of the partnership will be considered to be a large business for the purposes of that acquisition or bringing in.

Where a participant in a joint venture is a large business that has made a joint-venture election with the operator of the joint venture, and the operator acquires or brings into Ontario a restricted item on behalf of the participant, the operator will be considered to be a large business for the purposes of that acquisition or bringing in.

#### *Description of Restricted Items*

The restrictions will generally apply to the following property and services:

- Electricity, gas, combustibles (other than motive fuels acquired to power a propulsion engine) or steam (energy). However, energy used as an integral part of a process of producing tangible personal property for sale, or for the design or production of equipment used in the production of tangible personal property, will generally not be subject to the restrictions. Energy used for air conditioning, lighting, heating or ventilation of the production site will generally be subject to the restrictions.
- Telecommunication services, such as telephone services, voice mail, conference calls and long distance calls. Many of these services are already subject to Ontario's RST. However, Internet access and toll-free numbers will not be subject to the restrictions. Web hosting, which is not considered a telecommunication service for purposes of the ETA, will also not be subject to the ITC restrictions.
- Road vehicles weighing less than 3,000 kilograms that are required to be registered for use on public highways. Such vehicles include most cars, minivans and pick-up trucks, but not trailers and semi-trailers. For example, a large business will be subject to ITC restrictions with respect to the acquisition of a fleet of cars to be used by its employees.
- Fuel (other than diesel fuel) to power a vehicle weighing less than 3,000 kilograms that is required to be registered for use on public highways will also be subject to ITC restrictions. Similarly, parts and services for such a vehicle will also generally be subject to the ITC restrictions for the first 12 months following the date of acquisition of the particular vehicle (other than parts and services acquired in the course of routine maintenance of a road vehicle).
- Food, beverages and entertainment that are only 50 per cent deductible for purposes of the ITA. Such expenses will otherwise only give rise to a 50 per cent ITC under current GST rules. The food, beverages and entertainment targeted by this measure include items that are generally considered employee or client perks. This restriction will not apply to food or beverages that form a part of the inventory of a business, such as food purchased by a restaurant for the purpose of being resold.

Additional details regarding restricted ITCs will be released in an upcoming information notice.

## Public Service Bodies

### *Public Service Body Rebates*

As announced in the 2009 Budget, under the HST, Ontario's PSBs (i.e., municipalities, hospital authorities, universities, public colleges, school authorities, charities and qualifying non-profit organizations) will be able to claim rebates for a percentage of the provincial portion of the HST they pay for their inputs used in their exempt activities. Ontario's PSB rebates were calculated to ensure that, as a whole, each sector will remain fiscally neutral relative to the amount of ORST it currently pays.

Table 2 sets out the proposed PSB rebate rates.

A PSB that is a GST registrant could recover the HST paid or payable on purchases made and expenses incurred to make taxable supplies by claiming ITCs. The PSB rebate will be available to partially recover the HST paid or payable by a PSB on eligible purchases that were not recoverable through an ITC. A PSB does not have to be a registrant to be eligible for the rebate. As previously stated, PSBs will not be subject to temporarily restricted ITCs.

Similar to under the GST, Ontario's PSBs will generally be eligible to take advantage of the following simplified rules to further ease their compliance requirements.

### *Special Quick Method of Accounting for PSBs (other than charities)*

Under the GST, registrants must generally track the tax they pay on inputs for taxable and exempt supplies separately. However, to reduce the compliance requirements, the Special Quick Method (SQM) of accounting is available to most PSBs other than charities, and will be available under the proposed HST.

Public service bodies that qualify and elect to use the SQM do not separately track the tax paid on most inputs for taxable or exempt supplies. Instead, the specified PSB remittance rate will apply to these inputs. The SQM acts as a proxy for the value of ITCs and allows the PSB to retain a portion of HST collected on taxable sales in lieu of claiming ITCs.

When a PSB uses the SQM, the PSB will still collect the 13 per cent HST on its taxable supplies of goods or services. However, to calculate the amount of the HST to remit, the PSB will multiply the amount of HST-included supplies for the reporting period by the remittance rate(s) that apply (see Table 1).

The SQM remittance rates are less than the 13 per cent rate of tax that a PSB collects. This means that the PSB will remit only a part of the tax it collects. The part of the tax that the PSB keeps accounts for the approximate value of the ITCs it normally will have claimed since it cannot claim ITCs on most of its purchases when using this method. The following sets out the proposed Ontario SQM rates:

**Table 1: Special Quick Method Remittance Rates (Per Cent)**

	Supply Made in a Non-HST Province	Supply Made in an HST Province (with an 8% provincial HST rate)
PSB location	Ontario (proposed)	Ontario (proposed)
Specified Facility Operator, Qualifying NPO, Designated Charity <sup>1</sup>	3.0	9.9
Municipalities	4.3	11.1
Universities and Public Colleges <sup>2</sup>	3.3	10.2
Universities and Public Colleges <sup>3</sup>	3.9	10.7
School Authorities	4.2	11.0
Hospital Authority, External Supplier, or Facility Operator	4.2	11.0
<p><sup>1</sup> "Designated charity" refers to a charity that provides employment assistance to individuals with disabilities, supplies services that are performed by such individuals to clients, and has been approved by the Minister of National Revenue to make its supplies of these services taxable when provided to a GST/HST registrant.</p>		
<p><sup>2</sup> These rates must be used if vending-machine sales (and certain other retail sales) are at least 25 per cent of an amount determined by a formula set out in the regulations.</p>		
<p><sup>3</sup> These rates must be used if vending-machine sales (and certain other retail sales) are less than 25 per cent of an amount determined by a formula set out in the regulations.</p>		

### *Special Net Tax Calculation for Charities*

The GST framework provides a separate Special Net Tax Calculation for charities. This method will also be used by charities under the proposed HST. Charities are generally required to use this method, but they may elect not to use it if they make supplies outside Canada or zero-rated supplies in the ordinary course of their business, or if 90 per cent or more of their supplies are taxable.

Under the charity-specific net tax calculation, charities are not required to track the GST paid on inputs to most taxable supplies. The general rule is that charities remit 60 per cent of the tax collected on their taxable supplies and keep the remaining 40 per cent in lieu of claiming ITCs (there are certain exceptions, such as for real property and capital property, where ITCs may be claimed). The GST paid is eligible for the charity-specific PSB rebate (the Ontario proposed charity rate is 82 per cent).

Ontario will adopt the 60 per cent Special Net Tax Calculation rate for use by certain charities.

### *Public Service Body Rebate for Hospital-Like Services*

Ontario will parallel the GST treatment of charities and qualifying non-profit organizations that provide eligible services traditionally performed in hospitals by allowing them to claim a rebate of the provincial part of HST on inputs to these services at the proposed 87 per cent hospital rate, using the same rules and definitions that apply for the GST.

## **Transitional Rules**

### *Definition of consumer*

Consumer of property or a service means a particular individual who acquires or imports the property or service for the particular individual's personal consumption, use or enjoyment or the personal consumption, use or enjoyment of any other individual at the particular individual's expense, but does not include an individual who acquires or imports the property or service for consumption, use or supply in the course of commercial activities of the individual or other activities in the course of which the individual makes exempt supplies;

**Table 2: Public Service Bodies – Partial Rebates**

Entities:	Existing GST Rebate Rates	Proposed Ontario HST Rebate Rates	Effective Rebate Rate in Ontario	Effective Tax Rate in Ontario
Municipalities	100%	78%	86.46%	1.76%
Universities and Colleges	67%	78%	73.77%	3.41%
Schools	68%	93%	83.38%	2.16%
Hospitals	83%	87%	85.46%	1.89%
Charities and Qualifying NPOs	50%	82%	69.69%	3.94%

**Persons required to self-assess**

- Non-consumers (for example businesses and public service bodies) acquiring the goods and services for consumption, use or supply otherwise than exclusively in the course of their commercial activities (ie an exempt business)
- Non consumers who will be subject to the ITC restrictions for large businesses
- Non consumers who use simplified procedures available under the ETA for calculating their net tax (ie quick method for small businesses, net tax method for charities etc)
- A person required to self-assess will report the tax on either the return for the reporting period that includes July, 2010 if the return is due before November 2010 or in prescribed form and before November 2010.

**Tangible Personal Property**

HST will apply if goods are delivered and ownership is transferred on or after July 1, 2010.

The vendor must collect HST if the invoice is paid or payable on or after May 1, 2010.

Certain purchasers will be required to self assess the tax if the invoice is paid or payable after October 14, 2009 but before May 1, 2010.

HST will not apply if goods are delivered or ownership is transferred before July 1, 2010.

**Example 1**

On April 10, 2010, an automobile dealer accepts a deposit from a customer of \$500 towards the purchase of an automobile. The customer will take ownership and possession of the car on July 5, 2010. The HST will apply to the full purchase price of the automobile because ownership and possession take place on or after July 1, 2010.

**Example 2**

On May 3, 2010 a charity places an order for a case of photocopy paper. The paper is delivered the next day, the invoice is dated May 4, 2010 but the charity does not pay for the paper until July 15, 2010. The HST will not apply because the goods were delivered before July 1, 2010.

**Example 2a**

Same as example 2 but the invoice is dated November 1, 2010. The HST will apply because the invoice is dated four months after the implementation date.

**Example 3**

On May 3, 2010, Mr. Green purchases a computer from Joe's Computer Shop. He pays for it on May 3 even though it won't be available for delivery until July 15, 2010. The HST will apply to the sale and Joe's Computer Shop will be obliged to collect the HST from Mr. Green on May 3, 2010.

Joe's Computer Shop is a monthly filer for GST/HST purposes. The federal portion of the HST will be reported on Joe's May GST/HST return and the provincial portion of the HST will be reported on Joe's July GST/HST return.

**Example 4**

On January 3, 2010, Dr. Black purchased new office furniture for his thriving medical practice. The furniture will not be delivered until August 1, 2010. Hoping to avoid the new HST Dr. Black pays for the furniture on January 3, 2010.

The transaction will be subject to 13% HST. Dr. Black will pay 5% federal portion of the HST on January 3, 2010 and he will have to self assess the 8% provincial portion of the HST in prescribed form before November 10, 2010. CRA has indicated that more information about the prescribed form will be available in the coming months.

### *Services*

HST will not apply if all or substantially all (90% or more) of the service is performed prior to July, 2010. Conversely, HST will apply to all services performed on or after July 1, 2010.

The vendor must collect tax on any payments received on or after May 1, 2010 if they relate to services rendered on or after July 1, 2010.

Certain purchasers will have to self-assess the provincial component of the HST for payments made between October 14, 2009 and May 1, 2010 on account of services rendered on or after July 1, 2010.

#### **Example:**

A retail store hires an accounting firm to perform a year end review and prepare their corporate tax return. The service is performed during the summer of 2010. The invoice for the service is received and paid in August, 2010. One third of the service is performed in each of the months, June, July and August, 2010. The HST will apply to the consideration that is for the part of the service performed in July and August (i.e. two-thirds of the consideration).

### *Leases and Licences*

The HST will apply to a supply of property by way of lease, licence or similar arrangement for part of the lease interval that occurs on or after July 1, 2010 unless the lease interval begins before July 2010 and ends before July 31, 2010. This is the case even if the payment was made on or after May 1, 2010 and before July 1, 2010.

Certain purchasers must self assess for any payments made after October 14, 2009 and before May 1, 2010 to the extent that the payment is for part of the lease interval that occurs on or after July 1, 2010 unless the lease interval begins before July 2010 and ends before July 31, 2010.

#### **Example:**

A person makes a car lease payment for the lease interval from June 15, 2010 to July 14, 2010. The HST would not apply to the lease payment (regardless of when the payment was made).

### *Intangible Personal Property*

The general rule is that the HST will generally apply to consideration that becomes due, or is paid without having become due, on or after July 1, 2010 for the supply of intangible personal property (like a patent) by way of sale.

#### **Example:**

In June 2010, a person pays a lump sum for the right to reproduce certain portions of a book. The HST would not apply to the payment.

### *Real Property (Other Than Residential Housing)*

The HST will generally apply to a taxable supply of real property (other than residential housing) by way of

sale in Ontario if both ownership and possession of the property are transferred to the purchaser on or after July 1, 2010.

#### **Example:**

In January 2010, a corporation enters into an agreement to sell a small shopping mall to an individual. Ownership and possession of the mall will transfer to the individual in August 2010. The HST would apply to the sale of the mall.

### *Progress Payments/Holdbacks*

HST will generally apply to progress payments on contracts to construct, renovate, alter or repair real property to the extent that the progress payment can reasonably be attributed to property delivered or services performed on or after July 1, 2010.

#### **Example:**

A contract to construct a small commercial mall with a value of \$1,500,000 is complete on May 25, 2010. Three progress payments in the amount of \$500,000 each have been made on the fifteenth of May, June and July, 2010. HST will not apply because the progress payments can reasonably be attributed to property delivered or services performed before July 1, 2010.

For progress payments paid or due between October 14, 2009 and July 1, 2010, where HST is applicable the supplier will be required to account for the PVAT in the GST/HST reporting period that includes July 1, 2010. Similarly, ITC's can be claimed by the purchaser in that same period.

There are special rules with respect to construction contracts that can reasonably be expected to require more than three months to complete. Where the contract is 90% or more complete before June, 2010, any consideration that has not been paid or become due on or before July 31, 2010 is deemed to have become payable on that date. Any portion of that amount that relates to construction on or after July 1, 2010, will be subject to HST.

#### **Example:**

A contract to construct a small commercial mall with a value of \$1,500,000 is 90% complete on May 25, 2010, and 95% complete on June 30, 2010. Three progress payments in the amount of \$500,000 each have been made on the fifteenth of June, July and August, 2010. The August payment will be deemed to have become due on July 31, 2010. This means the tax is due on the return that includes the period of July 31, 2010.

\$75,000 of the August payment will be subject to HST. (This represents the portion of the August payment that relates to the portion of the contract that was completed after June 30, 2010)

### *Holdbacks*

A holdback from a progress payment would be considered to be part of the progress payment from

which it was held back.

**Example:**

Using the previous example, if the third progress payment was subjected to a 10% holdback, and that holdback became due on September 30, 2010, given that 15% of the third progress payment was subject to HST, 15% of the holdback would also be subject to HST.

**ORST Returns and Exchanges**

Rules apply to purchases that will take place prior to July, 2010 that were subject to ORST and returned on or after July 1, 2010 and before November, 2010. If the property is returned and a full refund is given, the ORST would be refunded.

If an exchange is made resulting in neither a refund nor an additional payment, there would be no ORST refunded and the Ontario component of the HST would not be payable.

If an exchange is made resulting in a partial refund, the Ontario component of the HST would generally not be payable on the replacement property and the purchaser would be entitled to recover the ORST applicable to the amount refunded.

If an exchange is made resulting in an additional payment, no ORST would apply but the HST would

apply to the additional payment.

If property is returned on or after November 1, 2010, no ORST adjustments would be available at the point of sale. However, the purchaser may make an application for a refund of ORST for tax paid in error.

**Price Adjustments**

Where HST has been self assessed and the consideration is subsequently reduced, the person may apply for a rebate to the extent that no ITC has been claimed for the amount.

**Deposits/Partial Payments**

A deposit is not a payment for a supply until the supplier applies it against the consideration for the supply. The transitional rules are based on timing with respect to the supply regardless of when the consideration is paid.

**Example 1:**

In May 2010, Mr. Black purchases a washer and dryer for which he will pay in six monthly installments, commencing in May 2010. The appliances will be delivered after the final payment is made. HST will apply to the sale because delivery will take place after June 30, 2010.

**Example 2:**

On June 1, 2010, Mr. Black purchases a fridge and stove

**Example: Holdbacks**

<b>August 15th amount owing:</b>	
Invoice amount	\$500,000
Less: 10% holdback	-50,000
Net amount of invoice	450,000
HST (75,000 x 90% x 13% + (450,000 – (75,000 x 90%) x 5%)	27,000
Total invoice amount	\$477,900
<b>September 30th amount owing:</b>	
Holdback amount	\$150,000
HST (\$75,000 x 10% x 13% + (\$1,500,000-\$75,000 x 10% x 5%)	8,100
Total invoice amount	\$158,100

for which he will pay in six monthly installments. The appliances are delivered to Mr. Black in June, 2010 although ownership will not transfer until after the final payment is made. HST will not apply to this sale because possession occurred prior to July 1, 2010.

#### **Bad Debts Adjustments**

Subsection 231(1) of the Excise Tax Act allows a deduction from net tax owing for bad debt written off by the supplier. The rate of tax that applies is the rate that was charged with respect to the supply. Thus, if the bad debt arose from a transaction for which the rate of 5% applied, then that would be the rate that would apply to the deduction, regardless of when the amount was written off.

#### **Example:**

On January 3, 2010, a vendor makes a sale on credit in the amount of \$105, \$5 of which was the GST. On December 31, 2010, it was apparent that the amount would never be received and the vendor wrote the receivable off. The vendor will be entitled to a reduction in the net tax owing in the amount of \$5.

## **Place of Supply**

Only supplies “made in an HST province” will be subject to HST.

The following provinces apply the HST at 13%:

- Newfoundland
- New Brunswick
- Nova Scotia
- Ontario

The following province applies the HST at 12%:

- British Columbia

The following provinces do not apply the HST but do apply the GST at 5% (and possible PST)

- Quebec
- PEI
- Manitoba
- Alberta
- Saskatchewan

As of the date of publication of this document, no new regulations with respect to place of supply rules for the HST have been released. Although there are place of supply rules set out in the Excise Tax Act (ETA), these rules were written in 1997 to deal with the implementation of the HST for the three participating provinces of Newfoundland, Nova Scotia and New Brunswick. The nature of commerce has greatly changed since 1997, the use of the internet being a major factor in that change. Thus, the expectation is that new place of supply rules will be forthcoming. For this reason, readers are cautioned to seek professional advice for any specific transaction you are concerned about.

### **Sale of Tangible Personal Property**

The following situations will cause a supply to be deemed to have been made in a province;

- In the case of a supply by way of sale of tangible personal property (TPP), the supplier delivers the property or makes it available in the province to the recipient of the supply.
- Property is deemed to be delivered in a particular province by the supplier where the supplier
  - A) Ships the property to a destination in the particular province or uses a common carrier to ship the property
  - B) Sends the property by mail or courier to an address in the particular province

#### **Example:**

In August, 2010, Dr. Black, a medical practitioner from Ottawa, purchases furniture from Ace Furniture Inc., a furniture vendor who is situated in Alberta. Ace Furniture Inc. ships the furniture to Ottawa. The supply is deemed to have been made in Ontario and the HST applies to the sale. Ace Furniture Inc., a GST/HST registrant, must collect HST in the amount of 13% on the sale.

**Supply of Tangible Personal Property Otherwise Than by Way of Sale** - In the case of a supply of TPP otherwise than by way of sale, the supply is made in the province if

- In the case of a supply where there is continuous possession or use for a period of up to three months, the supplier delivers the property or makes it available in the province to the recipient of the supply.
- In any other case, where the property is a specified motor vehicle, it is required, at the time the supply is made, to be registered under the laws of the province relating to the registration of motor vehicles; and
- where the property is not a specified motor vehicle, the ordinary location of the property, as determined at the time the supply is made, is in the province.

#### **Example:**

If a lessee moves to a non-participating province like Alberta from a participating province like Ontario at any time during the lease period, and the vehicle is subsequently required to be registered in Alberta, the remaining monthly lease payments will only be subject to tax at the 5% GST rate. Conversely, if a lessee moves to Ontario from Alberta at any time during the lease period, and the vehicle is required to be registered in Ontario, the remaining monthly lease payments will be subject to tax at the 13% HST rate.

### **Intangible Personal Property**

A supply of Intangible Personal Property (IPP) is made in a province if;

- A) in the case of property that relates to real property,

(i) 90% of the real property that is situated in Canada is situated in the province or  
 (ii) the place of negotiation is in the province and it is not the case that 90% of the real property is situated outside the province.

B) in the case of property that relates to TPP

(i) 90% of the TPP that is ordinarily located in Canada is ordinarily located in the province or  
 (ii) the place of negotiation is in the province and it is not the case that 90% of the TPP is ordinarily located outside the province.

C) in the case of property that relates to services to be performed,

(i) 90% of the services that are to be performed in Canada are performed in the province or  
 (ii) the place of negotiation is in the province and it is not the case that 90% of the services that are to be performed outside the province.

D) in any other case,

(i) all or substantially all of the Canadian rights in respect of the property can be used only in the province or  
 (ii) the place of negotiation of the supply is in the province and the property can be used otherwise than exclusively outside the province.

### *Supply of Services*

The following situations will cause a supply of a service to be deemed to have been made in a province;

#### **Test # 1:**

- 90% of the Canadian element of the service is performed in the province;

#### **Example 1:**

If a business in Saskatchewan provides a taxable service to a client located in Ontario, and 90% of the service is performed in Ontario, the supply of the service is considered to be made in Ontario and is taxable at the 13% HST rate.

#### **Example 2:**

If a business in Ontario provides a taxable service to a client in B.C., and 90% of the service is performed in B.C., the supply is considered to be made in B. C. and is taxable at the 12% HST rate.

#### **Test # 2:**

The place of negotiation of the supply is in the province and it is not the case that all or substantially all of the service is performed outside the province.

#### **Example:**

A national company has their headquarters in Ontario. They have negotiated with a high tech firm to receive technology services for all of their offices across Canada.

The services will be allocated across the provinces as follows:

- Ontario – 9%
- Alberta – 30%
- Nova Scotia – 28%
- B.C – 15%
- Manitoba – 18%

#### **Conclusion:**

Since the place of the negotiation is in Ontario but greater than 90% of the service is performed outside of Ontario, the test has failed to provide us with a place of supply and we must now look to test #3.

#### **Test # 3:**

- where the place of negotiation for the supply is located in Canada, if the Canadian element of the service is to be performed primarily in the participating provinces, the supply of the service is considered to be made in the participating province in which the greatest proportion of the Canadian element is to be performed; or
- where the place of negotiation for the supply is located outside Canada, if all or substantially all of the service is to be performed in Canada, and it is to be performed primarily in the participating provinces, the supply is considered to be made in the participating province in which the greatest proportion of the services to be performed in the participating provinces are to be performed.

#### **Example (Test #3):**

An Ontario firm contracts for accounting services with an Edmonton accounting firm. Approximately 5% of the preliminary work is to be done in Edmonton, and the remainder of the work will be done in various locations: 15% in Quebec, 20% in P.E.I., and 60% in Ontario. In this instance, the arrangements for the supply are negotiated with the Alberta office, but the greatest proportions of the service will be primarily performed in Ontario. The supply is therefore taxable at the 13% HST rate.

### *Memberships*

If a supply of a membership is made to an individual, and the membership rights can be exercised in more than one Canadian province, the place of supply will be the province where the individual resides. Non-individuals use regular IPP rules.

## Impact on Budget/Bottom Line

**Example 1: HST Impact on Computer Purchase**

	Car dealership		Medical practice		Charity	
	Current Regime	New Regime	Current Regime	New Regime	Current Regime	New Regime
Purchase of new computer - \$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
PST	\$80	-	\$80	-	\$80	-
GST/HST	\$50	\$130	\$50	\$130	\$50	\$130
Net amount including tax	\$1,130	\$1,130				
Input tax credits	(\$50)	(\$130)	-	-	-	-
Rebates (federal portion of GST/HST)					(\$25)	(\$25)
Rebates (provincial portion of HST)						(\$65.60)
Net cost to entity	\$1,080	\$1,000	\$1,130	\$1,130	\$1,105	\$1,039
Savings (cost)		\$80				\$66

### *Conclusion On Example 1:*

Under the new regime, the car dealership realizes a savings because an input tax credit can be claimed for the provincial as well as federal portion of the HST incurred whereas under the current regime, the cost of provincial sales tax is not recoverable.

In this scenario, the medical practice is unaffected by the change. The reason for this is that the provincial tax is a cost under the current system and it will be a cost under the new regime as well.

For the charity, equipment purchases such as a computer will be less costly under the new regime because a partial rebate will be available to offset the provincial portion of the HST whereas under current rules, in most cases charities must bear the cost of provincial tax on equipment.

**Example 2: HST Impact on Legal Fees**

	Car dealership		Medical practice		Charity	
	Current Regime	New Regime	Current Regime	New Regime	Current Regime	New Regime
Legal fees - \$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
PST	-	-	-	-	-	-
GST/HST	\$50	\$130	\$50	\$130	\$50	\$130
Net amount including tax	\$1,050	\$1,130	\$1,050	\$1,130	\$1,050	\$1,130
Input tax credits	(\$50)	(\$130)	-	-	-	-
Rebates (federal portion of GST/HST)					(\$25)	(\$25)
Rebates (provincial portion of HST)						(\$65.60)
Net cost to entity	\$1,000	\$1,000	\$1,050	\$1,130	\$1,025	\$1,039
Savings (cost)		\$0		(\$80)		(\$14)

**Conclusion On Example 2:**

Under the new regime, the car dealership is neutral because even though the initial outlay now includes an additional 8% of cost, that cost is recoverable in the form of an input tax credit.

The medical practice will experience higher costs on items that don't currently attract provincial sales taxes. Legal fees are an example of such an item.

The charity will have to bear an additional cost with respect to items that are not currently subject to PST such as legal fees. However, the additional cost will be offset by a partial rebate. The rebate system for public service bodies is meant to protect them from any increase in cost that the new regime might bring about.

**Small Business Transitional Tax Credit**

Total Taxable Revenues in First Full Quarter Commencing After June 30, 2010	Amount of Transition Credit
$X \leq \$15,000$	\$300
$\$15,000 > X \geq \$50,000$	2% of Taxable Revenue for that Quarter
$\$50,000 > X \geq \$500,000$	\$1,000
$X > \$500,000$	NIL
The details on the small business transition credit are still being developed.	

**Transitional Tax Adjustment**

Builders required to pay this tax on homes sold under agreements entered into before June 18, 2009 where neither ownership nor possession transfers to purchaser prior to July 1, 2010 to account for the fact that such homes are subject only to the 5% GST but ITC's are available for any construction costs incurred after June 30, 2010.

Single Homes:

Calculated on total purchase price of the home as established for GST purposes based on percentage of completion as of July 1, 2010.

Percentage Of Completion	Transitional Tax Rate
< 10%	2.00%
$10\% \leq X < 25\%$	1.50%
$25\% \leq X < 50\%$	1.00%
$50\% \leq X < 75\%$	0.50%
$75\% \leq X < 90\%$	0.20%
$\geq 90\%$	0.00%

Condominium Units:

Calculated as 2% of the total purchase price as established for GST purposes. No pro-ratio for percentage of completion on July 1, 2010.

Partially finished homes on June 30, 2010 will have some embedded ORST in the cost. A partial rebate in respect of this ORST is available for all condo and apartment units and for single units sold under agreements entered into after June 18, 2009. This rebate is in addition to the new housing rebate. Rebate claim needs to be filed by July 1, 2014.

Single Homes:

Available to individuals, either directly from CRA, or by assigning to the builder. Builder required to provide certification as to percentage of completion on July 1, 2010.

Condominiums and Apartments

Rebate is available to the builder rather than the purchaser.

Calculation

Use one of two methods to claim the rebate:

*Floor Space Method:*

- Prescribed amount per square metre of floor space
- Dollar amount yet to be prescribed

*Selling Price Method:*

Percentage Of Completion	Transitional Tax Rate
< 10%	0.00%
10% ≤ X < 25%	0.50%
25% ≤ X < 50%	1.00%
50% ≤ X < 75%	1.50%
75% ≤ X < 90%	1.80%
≥ 90%	2.00%

**Summary of June 18, 2009 Announcement Regarding Transitional Housing Rules and HST**

**Transitional Rules**

Date Agreement Entered In To	Earlier of Date Ownership Or Possession Transferred	Tax Rate	Special Considerations
On or Before June 18, 2009	On or Before June 30, 2009	5%	None
On or Before June 18, 2009	After June 30, 2009	5%	Transitional Tax Adjustment ORST Transitional Housing Rebate for Condominiums
After June 18, 2009	On or Before June 30, 2009	5%	None
After June 18, 2009	After June 30, 2009	13%	ORST Transitional Housing Rebate

Disclosure by Builder:

If agreement is entered into after June 18, 2009 and before July 1, 2010, the builder must disclose in the agreement whether the provincial portion of the HST would apply to the sale and, if so, whether the stated price includes the applicable provincial portion, net of the Ontario new housing rebate.

For more information about HST rules please contact a professional at Welch LLP or visit us at: [www.welchllp.com](http://www.welchllp.com)

***By Garth Steele, CA, Partner***

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