

# Blakes Bulletin

## Tax

### Ontario and British Columbia Announce HST Transitional Rules

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The governments of Ontario and British Columbia recently released transitional rules that will apply for transactions that straddle the July 1, 2010 implementation date for the new harmonized sales tax (HST). The rules will determine whether the existing provincial sales tax (PST) or HST will apply. The Ontario HST rate will be 13% (5% federal component and an 8% provincial component); the B.C. HST rate will be 12% (5% federal component and a 7% provincial component). The transitional rules for both provinces are substantially the same to help facilitate a smooth transition.

#### TANGIBLE PERSONAL PROPERTY

With respect to supplies of goods by way of sale, the HST generally applies to consideration that becomes due or is paid on or after July 1, 2010 to the extent that the goods are delivered, and ownership of the goods is transferred on or after July 1, 2010. HST also generally applies to consideration due or paid on or after May 1, 2010 and before July 1, 2010, to the extent that the consideration is for goods that are delivered, and ownership is transferred, on or after July 1, 2010. In this situation, the supplier must account for the provincial portion of the HST in the supplier's GST/HST reporting period that includes July 1, 2010, and the recipient would be able to claim input tax credits respecting the provincial portion of the HST in the GST/HST reporting period of the recipient that includes July 1, 2010.

#### SERVICES

For supplies of services, the HST generally applies to consideration that is due or paid on or after July 1, 2010 to the extent that the service is performed on or after July 1, 2010. The general rule is operational unless all or substantially all (90% or more) of the service is performed before July 1, 2010. In that case, the HST would not apply.

The general rule also applies to situations where the consideration is due or paid on or after May 1, 2010 but

before July 2010. However, in that situation, the supplier must account for the provincial portion of the HST in the GST/HST reporting period that includes July 1, 2010, e.g., if a person pays for services in May 2010, 50% of which will be performed after June 2010, HST would apply to that 50% of the consideration and the supplier would have to account for the provincial portion of the HST relating to that amount. The recipient of the service would be entitled to claim available input tax credits with respect to the provincial portion of HST in the GST/HST reporting period of the recipient that includes July 1, 2010.

Specific transitional rules apply for funeral and cemetery services, passenger transportation services and freight transportation services (see chart below).

#### LEASES AND LICENCES

Property such as goods, intangible personal property, non-residential real property and commercial real property that is supplied by way of a lease, licence or similar arrangement and which is paid for by way of rent, royalties or similar payments is subject to the general rules respecting leases and licences. The HST generally applies to payments corresponding to the part of the lease interval that occurs on or after July 1, 2010. However, if the interval begins before July 2010 and ends before July 31, 2010, the HST would not apply to the property in question regardless of when the payment was made.

As with tangible property and services, the timing of the consideration becoming due or being paid is important. In situations where the consideration is due or paid on or after July 1, 2010, the general rule that is stated above applies. The same rule applies if the consideration is due or paid on or after May 1, 2010 but before July 2010. However, in that situation, the supplier must account for the provincial portion of the HST in the GST/HST reporting period that includes July 1, 2010. The person who received the property by way of lease or licence would be entitled to claim available input tax credits with respect to the provincial portion of HST in the GST/HST reporting period of the person that includes July 1, 2010.

Specific rules apply for commercial parking spaces (see chart below).

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### SELF-ASSESSMENT OF HST

Certain businesses (e.g., listed financial institutions) and public service bodies (e.g., charities) engaged in GST-exempt activity may be required to self-assess the provincial portion of the HST on consideration that is due or paid after October 14, 2009 and before May 1, 2010 to the extent that the consideration is for: (i) goods that are delivered and for which ownership is transferred on or after July 1, 2010; (ii) services that are performed on or after July 1, 2010; and (iii) a supply of property by way of lease, licence or similar arrangement that becomes due or is paid on or after July 1, 2010. The self-assessed amount would have to be accounted for in the GST/HST return of the person for the reporting period that includes July 1, 2010 if that return is due before November 2010. Otherwise, the amount would be accounted for in prescribed form that must be filed before November 2010.

### INTANGIBLE PERSONAL PROPERTY

Sale of intangible property such as intellectual property or contractual rights would be subject to the HST when the consideration becomes due or is paid without becoming due on or after July 1, 2010.

Specific transitional rules apply for memberships, admissions and passenger transportation passes (see chart below).

### REAL PROPERTY

For supply of real property other than residential housing, HST generally applies if ownership and possession of the property are transferred to the purchaser on or after July 1, 2010.

Transitional rules for new residential housing in Ontario were released on June 18, 2009. The transitional rules provide guidance for Ontario homebuyers and builders in situations involving new housing transactions that straddle the July 1, 2010 implementation date. Builders' sales of newly constructed or substantially renovated homes in Ontario would be subject to the HST when ownership and possession of the home are transferred on or after July 1, 2010. Builders of newly constructed or substantially renovated single homes or condominiums who rent the dwellings and are required to pay GST on self-supply after June 2010 would be required to pay the Ontario portion of the HST on self-supply. Purchasers/landlords of such properties would generally be required to pay the Ontario portion of the HST when both ownership and possession of the home are transferred after June 2010.

The Ontario Ministry of Revenue has also provided grandparenting rules that would apply to sales of newly constructed or substantially renovated homes. Generally, sales of such homes under written agreements of purchase and sale entered into on or before June 18, 2009 would be grandparented. This means that homes sold before that date would not be subject to the Ontario portion of the HST where both ownership and possession are transferred after June 2010. The Ontario Ministry of Revenue will be providing a transitional housing rebate in respect of new homes that are subject to the Ontario portion of HST after June 2010. This rebate will apply to sales of non-grandparented single homes, condominiums and traditional apartment buildings, as well as grandparented condominiums for which the transitional tax adjustment is payable.

British Columbia has not yet released the HST transitional rules for new residential housing. They are expected to be finalized and issued in the coming months.

### WINDING DOWN OF PST

The information notices released by Ontario and B.C. also provide general rules for the winding down of PST (and the Hotel Room Tax in B.C.). Final PST returns will generally be required to be filed with the Ontario Ministry of Revenue and B.C. Ministry of Finance on or before July 23, 2010. Supplemental PST returns must also be filed on or before the 23<sup>rd</sup> day of the following month for amounts collected or payable on account of PST after June, 2010. All supplemental PST returns must be filed no later than November 23, 2010 in Ontario.

### TRANSITIONAL PST INVENTORY REBATE

PST rebates will also be available to provide relief from PST embedded in construction materials used in residential real property contracts that are subject to HST. The rebate applies to construction materials purchased before July 1, 2010 but used in residential property contracts on or after July 1, 2010.

A chart on the Specific HST Transitional Rules follows.

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Specific HST Transitional Rules	
Item	Transitional Rule
1. <b>Prepaid Funeral and Cemetery Services</b>	HST does not apply for part of a funeral or cemetery service that is performed on or after July 1, 2010 if the agreement is entered into before July 2010 and part of the consideration would reasonably be expected to be paid before the service is performed.
2. <b>Passenger Transportation Services</b>	HST does not apply for part of a passenger transportation service that is performed on or after July 1, 2010 if the passenger transportation service is part of a continuous journey that begins before July 2010.
3. <b>Freight Transportation Services</b>	HST does not apply for part of a freight transportation service that is performed on or after July 1, 2010 if the service is part of a continuous journey that begins before July 2010.
4. <b>Commercial Parking Passes</b>	Treated as a supply of non-residential real property by way of lease, licence or similar arrangement for purposes of applying HST transitional rules.
5. <b>Membership in a Club, Organization or Association</b>	Deemed to be a supply of a service for the purpose of the HST transitional rules and subject to the general transitional rules for services.
6. <b>Lifetime Memberships</b>	Any amount in excess of 25% of the total consideration for the lifetime membership that becomes due, or is paid, after October 14, 2009 and before July 2010 is subject to HST.
7. <b>Admission to Place of Amusement, Seminar, Event or Activity</b>	Deemed to be a supply of a service for the purpose of the HST transitional rules and subject to the general transitional rules for services.
8. <b>Subscriptions to Newspapers, Magazines and Periodicals</b>	HST does not apply to consideration that is paid before July 2010 for such subscriptions.
9. <b>Passenger Transportation Passes</b>	HST applies to consideration that becomes due, or is paid, after October 14, 2009 to the extent that the consideration is for the part of the pass period that occurs on or after July 1, 2010.  <u>Exception:</u> HST does not apply if the pass period begins before July 2010 and ends before August 2010.
10. <b>Direct Sellers</b> (or approved distributor) using alternative collection method on July 1, 2010	If independent sales contractors (ISCs) of the direct seller hold exclusive products in their inventory at the beginning of July 1, 2010 that are intended for sale in Ontario or B.C., the direct seller is deemed to have made a supply of the products to the ISCs on July 1, 2010 and is required to account for the applicable provincial component of the HST on the suggested retail price of the products.  A direct seller is also required to account for the provincial component of the HST on the suggested retail price of exclusive products supplied to an ISC for which consideration becomes due, or is paid, after October 14, 2009 and before July 2010, to the extent that the products have not yet been delivered to the ISC as of July 1, 2010.
11. <b>Continuous Supplies</b> (by wire, pipeline, satellite or other telecommunications facility, e.g., natural gas, electricity, cable TV, cellular telephone service)	HST applies to the extent that consideration for such supplies of property or services are delivered, performed or made available on or after July 1, 2010.  If the supplier cannot reasonably determine when the property or services are delivered, performed or made available, the consideration for the supply is prorated in equal parts according to the number of days in the period to which the consideration is attributable.

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<b>Specific HST Transitional Rules</b>	
<b>Item</b>	<b>Transitional Rule</b>
<p><b>12. Budget Payment Arrangements</b> (e.g., natural gas supplied under equal billing plan)</p>	<p>If property or services are supplied under a budget payment arrangement during a period that straddles July 1, 2010, and the reconciliation of payments for that period of the budget payment arrangement occurs prior to July 2011, the supplier is required to adjust for the proper amount of the provincial component of the HST that is payable.</p>
<p><b>13. Combined Supplies</b></p>	<p>If property that is supplied with services is transferred to the recipient before July 2010 and would not be subject to HST under the general transitional rules if it were supplied separately, then the supply of that property is deemed to be a separate supply (e.g., a dishwasher that is delivered, and possession transfers, in June 2010 and is installed in July 2010; HST applies on the service of installing the dishwasher only).</p>
<p><b>14. Progress Payments/Holdbacks</b></p>	<p>HST applies to progress payments on contracts to construct, renovate, alter or repair real property or ships or vessels to the extent that the progress payments can reasonably be attributed to property delivered or services performed on or after July 1, 2010.</p> <p>A holdback from a progress payment is considered to be part of the progress payment from which it was held back and, therefore, subject to the same allocation under the progress payment rules.</p>
<p><b>15. Property and Services Brought into Ontario or B.C.</b></p>	<p>The provincial component of the HST applies to goods brought into Ontario or B.C. on or after July 1, 2010; it also applies to property brought into Ontario or B.C. before July 2010 by a carrier if the property is delivered in Ontario or B.C. to a consignee on or after July 1, 2010.</p> <p>The provincial component of the HST generally applies to consideration that becomes due, or is paid, after October 14, 2009 for the part of a service performed on or after July 1, 2010 (unless 90% or more of the service is performed before July 2010), if the service is supplied in a non-participating province to a resident of Ontario or B.C. who acquires the service for consumption, use or supply primarily in the participating provinces. This rule only applies to non-consumers for consideration that becomes due, or is paid, after October 14, 2009 and before May 2010.</p>
<p><b>16. Imported Goods</b></p>	<p>The provincial component of the HST applies to non-commercial goods that are imported by a resident of Ontario or B.C. on or after July 1, 2010.</p> <p>The Ontario or B.C. component of the HST would generally not apply to property and services that are brought into Ontario or B.C. if they are acquired by a GST/HST registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant.</p>
<p><b>17. Imported Taxable Supplies</b></p>	<p>The provincial component of the HST applies to consideration for an imported taxable supply of goods made to a resident of Ontario or B.C., or a GST/HST registrant to whom the goods are delivered or made available, or physical possession of the goods is transferred, in Ontario or B.C., to the extent that the consideration is for goods that are delivered or made available, or the physical possession of which is transferred, on or after July 1, 2010.</p> <p>The provincial component of the HST applies to consideration for an imported taxable supply of a service made to a resident of Ontario or B.C. who acquires the service for consumption, use or supply primarily in the participating provinces, to the extent that the consideration is for the part of the service that is performed on or after July 1, 2010.</p>

## Tax

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