

THE IMPACT OF THE HST ON REAL ESTATE LAWYERS

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Harmonized Sales Tax (HST) - origins

Single tax originally to be called “Blended Sales Tax”

Name changed before enacted in mid 1990s

Reason: from federal Hansard, February 6, 1997

“Bill Gilmour: Today we are debating Bill C-70, the harmonized sales tax bill or, as many have called it, the blended sales tax bill. I gather that is what the Liberals were going to call it, but shortened down it became the BS tax...I believe the term BS tax came a little close to the truth, so the Liberals decided to call it the harmonized tax instead”



Harmonized Sales Tax (HST) across Canada

HST: one value-added tax that combines and replaces provincial PST and federal GST

Different rates exist across Canada:

- **Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan and Yukon: 5% GST**
- **British Columbia: 12% HST**
- **New Brunswick, Newfoundland and Labrador, and Ontario: 13% HST**
- **Nova Scotia: 15% HST**
- **Quebec administers the GST/HST itself**

Primary focus today: 20 real estate issues and concerns



Definitions

PST = Provincial Sales Tax (ended June 30, 2010 in Ontario and BC)

GST = 5% federal Goods and Services Tax (as of July 1, 2010, the 5% federal component of the HST in Ontario and BC)

HST = 13% federal and provincial tax in Ontario, 12% in BC (start date: July 1, 2010)

ONTARIO HST = 8% Ontario component of the 13% HST (start date: July 1, 2010)



Definitions

BC HST = 7% British Columbia component of the 12% HST (start date: July 1, 2010)

ETA = Excise Tax Act

CRA = Canada Revenue Agency

ITC = Input Tax Credit (offset of GST/HST paid on purchases against GST/HST collected on sales)



Harmonized Sales Tax (HST) across Canada

Harmonized Sales Tax is not a “harmonizing” sales tax

“Harmonize” implies one new tax would retain uniqueness of individual components

HST is more like a “steamroller” tax:

- **GST “net” is broader than PST (GST taxes goods AND services), and**
- **GST rules to prevail as HST in almost all situations where differences exist between GST and PST**

HST – A New Tax For: (Ontario and BC)



- Professional Services – lawyer/accountant/agent
 - Personal Services – hair/manicures/pedicures/dry cleaning
 - Maintenance/Repairs/Renovations/Snow Removal
 - Domestic Travel Originating in province – air/train/bus
 - Magazines
 - Electricity and Heating Costs
 - Gym and Athletic Membership Fees/Green Fees for Golf
 - Hockey, Soccer, Ballet Lessons
 - Rental Fees - Hockey Rinks and Halls
 - Ontario only: gasoline/internet access/taxis/Ontario hydro debt retirement charge
 - BC only: local telephone service/newspapers, snacks
 - Both: tobacco /Nicotine Replacement Products
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HST and Real Estate



Nothing underscores differences between GST and PST more than real estate

- **Much of real estate involves supply of services (PST exempt but Ontario/BC HST taxable)**
- **Ontario/BC HST rate – higher than previous embedded PST rate**

So Ontario/BC HST – a new tax for much of real estate

No segment of the economy to be hit harder by the Ontario/BC HST than real estate



3 General Rules for HST and Real Estate

1) Ontario/BC HST – a virtual clone of the GST

“The definitions in the ETA that relate to real property and the CRA’s current policies regarding the application of the GST to sales of real property would generally apply under the HST”

Key differences: tax rates, rebate rates, and monetary thresholds for rebates

2) Sales of real estate in Canada, and services provided that involve Canadian real estate, are subject to 13/12% HST in Ontario/BC, unless specifically exempted

3 General Rules for HST and Real Estate



3) Never assume that a particular transaction is an “exempt supply” for HST purposes

Must always ensure a transaction satisfies the criteria for an exemption, and obtain the requisite proof

Consequences of making an erroneous assumption is costly – a 13% mistake today

3 Types of Supplies: GST and Ontario/BC HST



TAXABLE – seller collects GST on sales, claims ITCs paid on purchases

ZERO-RATED – seller collects 0% GST on sales, but still claims ITCs paid on purchases (examples: groceries, prescription drugs and medical devices)

EXEMPT – seller does not charge GST on sales, and cannot claim ITCs paid on purchases (examples: many health /dental services; condominium maintenance fees; long-term residential rents; domestic financial services; and childcare services)

Same rules apply to Ontario/BC HST



Commercial Purchases

No change for most purchases of commercial (industrial/retail/office) and non-residential real estate

Were commercial deals GST-exempt? NO; sale was taxable, but with no GST consequences in most cases

With GST, mandatory for buyer of commercial real estate to “self-assess” GST, if buyer was a GST registrant providing taxable or zero-rated supplies; buyer got full and immediate ITC to offset GST payable

No need for buyer to pay GST, and no need for seller to collect GST from buyer and remit it; same under HST

Commercial Tenancies



Same basic approach applies – no net impact of HST to most commercial tenants (i.e. lawyers)

Until June 30, 2010, 5% GST paid to landlord

Offsetting ITC if commercial tenant is GST registrant providing taxable or zero-rated supplies

The same under Ontario/BC HST starting July 1, 2010, except 13%/12% HST not 5% GST

Issues and Concerns – 1



Commercial transactions – in what “supply” category is the buyer?

If the buyer of a commercial property was an “exempt supplier”, buyer had to pay GST without ability to self-assess/no ITC

Same for commercial tenants who provided an exempt supply

HST continues this arrangement

Buyer “supply” category determines obligation to pay HST

Issues and Concerns – 2



“Straddling” commercial real estate purchases

No Ontario/BC HST if either ownership or possession changed hands before July 1, 2010

But Ontario/BC HST payable if ownership and possession transferred after June 30, 2010, regardless when contract signed i.e. even before HST announced; no grandfather rule based on date of deal

But: self-assess rule applies; buyer can offset Ontario/BC HST with immediate ITC if (a) buyer is an HST registrant and (b) buyer not providing an exempt supply; again, buyer “supply” category is critical



Issues and Concern – 3

Commercial deals – HST status of “the other side”

Buyers are prima facie responsible for paying HST

Sellers are obligated to collect and remit HST

Result: both buyers and sellers are potentially on hook for HST; lawyers must be concerned about HST status of the “other side”

Status of one party can affect the other’s tax liability

- **Buyer can’t claim ITC if seller used stolen HST number [identity theft] (Comtronics Computers – 2010)**
-



Issues and Concerns – 3

- **Buyer ITC disallowed if seller not a valid HST registrant (Systematix Technology Consultants – 2007)**
- **Seller must pay HST if buyer's number was invalid/ cancelled (Lee Hutton – 2004)**
- **Seller must pay HST if offer said HST was included in purchase price for commercial property (Bumac – 2000)**

(GST account number is now the HST account number)

Issues and Concerns – 3



Simple solution to eliminate these risks

Free GST/HST online registry exists to validate HST status/number of other side

Go to CRA website: www.cra-arc.gc.ca ; click English; type “Registry” in the “Search The Site” box; click on “Welcome to the GST/HST Registry”

What’s needed: business name (as provided to CRA), GST/HST number, and search date

Info available – “as up-to-date as CRA records”



Issues and Concerns – 4

Long-term residential rents (more than 30 days)

An exempt supply; residential landlords could not collect GST from residential tenants, and could not claim ITCs for GST paid on expenses; same with HST

Many services that were PST-exempt are now Ontario /BC HST-taxable: i.e. maintenance and service contracts; repairs; property management; electricity and heating

Federation of Rental-Housing Providers of Ontario: residential rents should jump 2.5% to 3% due to HST

Ontario HST ONLY and Residential Tenancies



For new tenants, landlords can pass on extra costs due to HST in setting new rent

For existing tenants, can landlords apply to Landlord and Tenant Board for increase above guideline?

No – per O.Reg 256/10; for applications after July 1, 2010, utility costs cannot include PST or HST

For more revenue, landlords must (a) rely on Rent Increase Guideline (2010: 2.1%; 2011: just 0.7%), or (b) wait for impact of HST on Consumer Price Index

Hard to pass-on HST costs to existing tenants in Ontario

Commercial Condominium Maintenance Fees



Similar rules to commercial tenancies

**Were subject to GST, as not specifically exempt;
now subject to HST**

But: offsetting ITCs for full amount of HST paid (13% in Ontario; 12% in BC) is available to owners of commercial condos, if they are (a) HST registrants and (b) providing taxable or zero-rated supplies.

For owners of commercial condominiums who provide exempt supplies, their maintenance costs spiked by 8% in Ontario/7% in BC on July 1, 2010 with introduction of HST



Residential Condominium Maintenance Fees

An exempt supply, so no GST was charged

Does not mean residential condo maintenance fees are unaffected by Ontario/BC HST

Impact is indirect rather than direct

Owners face sizeable hike in maintenance, as operating costs to soar under Ontario/BC HST (maintenance and service contracts, repairs; property management; electricity and heating; cleaning; landscaping and snow removal; professional fees – industry estimate: 6.5%)

Residential Condominium Maintenance Fees



Ontario/BC HST impacts both (a) ongoing maintenance charge and (b) the condominium's reserve fund

“Most reserve fund items are quoted and invoiced on a contract basis which in the past has been subject to GST only. As such, engineers have estimated future costs for many reserve items based on 5% GST. Condos have saved for future repairs and replacement based on these estimates. However, beginning July 1, 2010 the total cost of these major projects will now include the 13% HST (in Ontario). This may result in a significant shortfall of reserve funds for future major expenses”

Apartment (Multi-Unit) Buildings



GST Rules:

New construction:

- **builder paid GST under self-supply rules on fair market value of building when rented**
- **builder claimed ITCs on construction costs**

Existing building:

- **GST a non-issue on subsequent sale**
- **no GST payable, as GST paid under self-supply rule, or building pre-dated 1991 introduction of GST**

No change with Ontario/BC HST

Farmland



Generally means land regularly used to produce income from a farming business

Sale of farmland alone by an individual – usually taxable

But if farmland included when farming business sold to arms length third party, seller and buyer could often jointly elect to have no GST payable on the sale (special election needed – using Form GST44)

Same applies under Ontario/BC HST

Issues and Concerns – 5



Existing Personal-Use Property (Cottages/Ski Chalets/ Vacation Properties/Recreational Properties)

Tax treatment of existing personal-use property – complex

Whether GST (and now Ontario/BC HST) is payable depends on:

- (a) status of seller**
- (b) how property was used prior to sale, and**
- (c) circumstances in which property is being sold**

Different HST consequences possible for same property, or two adjoining properties, depending on answers

Issues and Concerns – 5



Sale of personal-use property by individual or personal trust – generally HST-exempt

Sale of same property – not HST-exempt if sold by corporation or partnership

Sale of personal-use property – not HST-exempt if property sold is capital property used primarily in a business “with a reasonable expectation of profit”

Sale of personal-use property – not HST-exempt if sold by a seller (including an individual or a personal trust) in the course of a business

Issues and Concerns – 6



Impact of renting personal-use property

If personal-use property rented occasionally for periods of less than 30 days – HST exempt

If rented over 50% of the time: HST payable on sale

Result: most existing vacation properties placed in rental pools are HST-taxable on sale

Further inquiries needed at pre-contract stage when acting for clients buying “personal-use property”, so client won’t be saddled with unexpected tax liability (a 13% mistake)

Issues and Concerns – 7



Vacant land

Normal GST rules re vacant land apply under Ontario/BC HST

Similar to personal-use property rules

Most sales of vacant land by individuals are HST exempt, provided certain criteria are met (including: seller is sole beneficial owner; sale not in course of a business; no residential complex on property)

Need to check facts/get proper documents from seller

Issues and Concerns – 8



Condominium Parking Spaces

Sale of residential condo parking space is HST exempt if included with sale of residential condo unit (i.e. as part of a resale transaction)

But separate sale of a residential condo parking space – subject to Ontario/BC HST

Issues and Concerns – 9



“Substantially Renovated” Property

Sale of resale home – generally exempt from HST unless it has been “substantially renovated”

Definition from ETA: “substantial renovation” means the renovation or alteration of a building to such an extent that all or substantially all of the building that existed immediately before the renovation or alteration was begun, other than the foundation, external walls, interior supporting walls, floors, roof and staircases, has been removed or replaced where, after completion of the renovation or alteration, the building is, or forms part of, a residential complex”



Issues and Concerns – 10

Certificate/Information from Seller re Use of Property

Section 194 ETA inquiry by buyer and response from seller re status of transaction - more important than ever due to higher tax rate

Designed to protect buyers who make proper inquiry, are told sale is HST-exempt, and then learn sale is HST-taxable

If seller incorrectly states or certifies that sale is an exempt supply, HST liability shifts from buyer to seller unless buyer “knows or ought to know” that supply is not an exempt supply (constructive notice)

Issues and Concerns – 11



Cost of Living increases due to Ontario HST

- From provincial Ministry of Finance: *“increase in typical electricity bill is about \$100 each year, increase in typical natural gas bill is about \$125 each year”*
- From NDP (based on Statistics Canada model): average family to pay \$232 more in taxes on gasoline
- Higher unquantified costs for: repairs, maintenance, replacement purchases, snow removal, service contracts, trades, insurance, cable TV, internet access, landscaping



Issues and Concerns – 12

Cost of Living increases across Canada

**Investment fund management fees (i.e. on mutual funds)
– subject to HST**

**“Blended” rate of tax likely, reflecting value of assets
and where investors live; result: everyone in fund pays
same HST rate on management fees, regardless where
they live**

Most affected: Alberta investors

**Lower net return likely for mutual funds, registered
pension plans and deferred profit sharing plans**

Real Estate Services



Real estate commissions, legal fees/disbursements, surveyor charges, appraisal fees, home inspections, home energy audits – now subject to Ontario/BC HST

Ontario Real Estate Association estimate on February 11, 2010: Ontario HST to add \$1,513 new taxes to closing costs (based on average Ontario MLS price: \$318,366)

Sellers of commercial properties can claim full offsetting ITC for HST on commission and other expenses if GST registrants and not exempt suppliers

Individuals selling a principal residence/personal use property now pay 13%/12% HST, with no ITC set-off



Issues and Concerns – 13

Real estate commission on “straddling” deals

Typical residential purchase/sale transaction

- Listing Agreement signed May 25, 2010
- APS signed June 25, 2010
- Closing on August 25, 2010

Transitional issue – what tax rate on commission?
5% GST? 13% HST in Ontario (12% in BC)? Something
in between?

Issues and Concerns – 13



2 schools of thought

a) When Services Provided

“The (Ontario) HST would generally not apply to a supply of a service if all or substantially all (90 per cent or more) of the service is performed before July 2010”; just 5% GST payable (see General Transitional Rule (Ontario Information Notice 3 – October 2009))

In BC, see Ministry of Finance Tax Information Notice (HST Notice 1), issued October 14, 2009 to same effect

Issues and Concerns – 13



Otherwise, Ontario/BC HST to reflect services provided before/after July 1, 2010 (i.e. if 2/3 before July 1, 2010 and 1/3 afterwards, then 5% GST on 2/3 and 13%/12% HST on other 1/3)

Problems:

- **Who determines if 90% threshold is met?**
- **What are the consequences if mistake made?**
- **What leverage does buyer have, if deposit exceeds commission?**

Issues and Concerns – 13



b) Contra: GST/HST NOTICE 226 (December 2007)

Issued when GST cut from 6 % to 5%

Q&A 40: “The rate of tax in respect of (commissions) in relation to real property is dependent on when the payment becomes due or is made”

Listing agreements also say seller is only obligated to pay commission after successful closing

If so, 13% HST would apply (12% in BC)

Issues and Concerns – 13



**Also see 1986 Supreme Court of Canada decision –
H.W. Liebig & Company v. Leading Investments
[1986] 1 S.C.R. 70**

Quotes Lord Denning in 1968 case *Jaques v. Lloyd D. George & Partners*:

“When an estate agent is employed to find a purchaser for a business or a house, the ordinary understanding of mankind is that the commission is payable out of the purchase price when the matter is concluded”

So: final answer is uncertain



Issues and Concerns - 14

Legal fees (Ontario only) - 13% HST starting July 1, 2010

General Transitional Rule applies to lawyers' services

“If all or substantially all (90 per cent or more) of the service is performed before July 2010” – only 5% GST; otherwise – proportionate liability (like agents)

Same questions with no answers: who determines 90% threshold? What are consequences if mistake made?

Be careful – if bill now for services rendered pre-July 1, billing is income even if not paid, and GST is payable even if funds not received



Issues and Concerns – 15

Client Disbursements - GST/HST Policy Statement P-209R

2 categories of disbursements: *“incurred as agent”* and *“not incurred as agent”*

“incurred as agent” – no need to collect GST from clients (application fees, registration fees, LTT)

“not incurred as agent” – must collect GST from clients (title search, municipal search and utility search fees; and other government search fees)

If error made – not just a 5% mistake, but a 13%/12% mistake starting July 1, 2010

Issues and Concerns - 16



Insurance in general: per Insurance Bureau of Canada: operating expenses for insurers due to HST up \$34 Million in 2010, plus \$83 Million more in claims costs – “*the equivalent of a large catastrophic loss*”

Who to pay \$127 Million? Ultimately – consumers

LawPRO (errors and omissions insurer for Ontario lawyers): proposed a \$450 special levy in September 2009 due to 13% HST (vs 5% GST) on lawyer and adjuster fees; would even apply to pre-HST claims

Special levy deferred until premium set for 2011 insurance program; what then?

Mortgage Broker fees



Mortgage brokers are part of the Financial Services industry under ETA

Services are an exempt supply under the GST

Mortgage brokers can't claim ITC's for GST paid on expenses; same with HST (must absorb the HST)

HST will not be charged on mortgage broker fees

But their fees may go up, as cost of doing business increases

Title Insurance premiums



Title insurers are financial institutions under ETA, providing an exempt supply

Title insurers can't claim ITC's for GST paid on expenses now, or HST paid in the future (i.e. must absorb additional HST cost)

No GST payable now on title insurance premiums; no HST after July 1, 2010 either (but old 8% Ontario tax on insurance premiums still being levied)

Due to increased cost of doing business, higher title insurance premiums possible

SOME GOOD NEWS, FINALLY



Still exempt from GST and Ontario/BC HST are:

- ❑ **Purchases of resale homes**
- ❑ **Purchases of builder's personal residence****
- ❑ **Purchases from builder of home/condo subject to the “self-supply” rule****
- ❑ **Purchases of “personal use property”****

**** (if specified conditions already in place for GST apply)**

Ontario/BC HST and New Homes/Condos



Greatest impact of Ontario/BC HST on real estate: new homes/new condos/substantially renovated homes

GST was levied directly, but a PST component was also buried in price of new homes/condos – an indirect tax

PST was paid on building materials – i.e. bricks, drywall, wood, cement, cabinets, toilets, flooring

Per CMHC: on average, 2-3% of price of new home/condo was “embedded” or hidden PST (therefore, effective rate of PST on new homes/condos during GST days: about 2%)

Ontario/BC HST and New Homes/Condos



Tax rate on the purchase price of a new home/ condo is 13% in Ontario (5% federal, 8% provincial), and 12% in BC (5% federal, 7% provincial) subject to any rebates (federal or provincial)

Federal GST New Housing Rebate is 36% of GST payable on first \$350,000 [maximum \$6,300]; phased out between \$350,000 and \$450,000; totally eliminated over \$450,000; no change in numbers since 1991

If no provincial rebate, prices would jump by 5 - 8%

So Ontario and BC HST new housing rebates introduced, in addition to existing GST New Housing Rebate

Ontario: Two Rates—(a) up to \$400,000 (net of tax)



Ontario HST New Housing Rebate: 75% of Ontario HST payable (or 6% of purchase price) on first \$400,000**

FOR PRICES UP TO \$400,000, NET ONTARIO HST IS 2% (COMPARABLE TO EMBEDDED PST)

Maximum Ontario rebate of \$24,000 reached at \$400,000, when net Ontario HST is \$8,000

Like GST - resale homes exempt from Ontario HST

****Rebate is available to most, but not all, buyers**

Ontario: Two Rates—(b) over \$400,000 (net of tax)



FOR PRICES OVER \$400,000: NET ONTARIO HST IS 2% ON FIRST \$400,000 OF PRICE, REGARDLESS OF PRICE, AND 8% ON THE BALANCE (NO PHASE-OUT)**

Over \$400,000 – 8% Ontario HST with flat rebate of \$24,000

Example: on \$500,000 purchase, total net Ontario HST is \$16,000 (down from \$40,000 due to Ontario rebate)

- **2% on first \$400,000 [or \$8,000]**
- **8% on remaining \$100,000 [or \$8,000]**

And Ontario rebate is \$24,000 (6% of first \$400,000)

****Rebate is available to most, but not all, buyers**

BC: Two Rates—(a) up to \$525,000 (net of tax)



BC HST New Housing Rebate: 5/7ths of BC HST payable (or 5% of purchase price) on first \$525,000**

**FOR PRICES UP TO \$525,000, NET BC HST IS 2%
(COMPARABLE TO EMBEDDED PST)**

Maximum rebate of \$26,250 reached at \$525,000, when net BC HST is \$10,500

Like GST - resale homes exempt from BC HST

****Rebate is available to most, but not all, buyers**

BC: Two Rates—(b) over \$525,000 (net of tax)



FOR PRICES OVER \$525,000: NET BC HST IS 2% ON FIRST \$525,000 OF PRICE, REGARDLESS OF PRICE, AND 7% ON BALANCE (NO PHASE-OUT)**

Over \$525,000: 7% BC HST with flat rebate of \$26,250

Example: on \$600,000 purchase, total net BC HST is \$15,750 (down from \$42,000 due to BC HST rebate)

- **2% on first \$525,000 of price [or \$10,500], and**
- **7% on remaining \$75,000 [or \$5,250]**

And BC rebate is \$26,250 (5% of first \$525,000)

****Rebate is available to most, but not all, buyers**

Issues and Concerns – 17



Ontario/BC New Housing Rebate – not for everyone

With GST – new home/condo must be buyer’s “primary place of residence”; otherwise, full GST payable with no GST New Housing Rebate

Same with Ontario /BC HST – if new home/condo is buyer’s secondary place of residence – full HST payable; no rebate

If primary residence exists elsewhere, 13%/12% HST on **NEW cottage/ski chalet/vacation condo/recreational property on full purchase price (no rebates)**

Issues and Concerns – 17



What is a “primary place of residence”? See GST/HST Policy Statement P-228

“Where an individual has more than one place of residence, the place of residence that is not first in order of importance to that individual would be that individual’s secondary place of residence as it would be subordinate to the primary place of residence (e.g. it is used mainly for recreational purposes or it is occupied less than another).”

Policy Statement includes “Criteria Indicative of a Primary Place of Residence”

Two Rates For New Homes/Condos (Ontario)



In short, 2 rates of Ontario HST for new homes/condos

- **up to \$400,000: 2% net Ontario HST**
- **over \$400,000:**
 - (a) **2% net Ontario HST on first \$400,000 (i.e. \$8,000), and**
 - (b) **8% Ontario HST on portion over \$400,000**

(This assumes buyer qualifies for Ontario HST New Housing Rebate)

Two Rates For New Homes/Condos (BC)



In short, 2 rates of BC HST for new homes/condos

- **up to \$525,000: 2% net BC HST**
- **over \$525,000:**
 - (a) **2% net BC HST on first \$525,000 (i.e. \$10,500), and**
 - (b) **7% BC HST on portion over \$525,000**

(This assumes buyer qualifies for BC HST New Housing Rebate)

Different Thresholds for Different Rebates - Ontario



FORMER SYSTEM – 5% GST	
PRICE (excluding GST)	REBATE
Less than \$350,000	Full GST New Housing Rebate (36% of 5% of price)
From \$350,000 to \$450,000	Phase-out of GST New Housing Rebate
Over \$450,000	No GST New Housing Rebate
AS OF JULY 1, 2010 – 13% HST (FEDERAL: 5%; PROVINCIAL : 8%)	
Less than \$350,000	Full GST New Housing Rebate (36% of 5% of price); plus full Ontario HST New Housing Rebate (75% of 8% of price) (tax is 2% net)
From \$350,000 to \$400,000	Phase-out of GST New Housing Rebate, plus full Ontario HST New Housing Rebate (75% of 8% of price) (tax is 2% net)
Over \$400,000 to \$450,000	Phase-out of GST New Housing Rebate, plus flat \$24,000 Ontario HST New Housing Rebate
Over \$450,000	No GST New Housing Rebate, plus flat \$24,000 Ontario HST New Housing Rebate

Chart assumes buyer qualifies for GST and Ontario rebates



Different Thresholds for Different Rebates - BC

FORMER SYSTEM – 5% GST	
PRICE (excluding GST)	REBATE
Less than \$350,000	GST New Housing Rebate (36% of 5% of price)
From \$350,000 to \$450,000	Phase-out of GST New Housing Rebate
Over \$450,000	No GST New Housing Rebate

AS OF JULY 1, 2010 – 12% HST (FEDERAL: 5%; PROVINCIAL: 7%)	
Less than \$350,000	Full GST New Housing Rebate (36% of 5% of price); plus full BC HST New Housing Rebate (5% of price) (net tax is 2%)
From \$350,000 to \$450,000	Phase-out of GST New Housing Rebate; plus full BC HST New Housing Rebate (5% of price) (net tax is 2%)
From \$450,000 to \$525,000	No GST New Housing Rebate, plus full BC HST New Housing Rebate (5% of price) (net tax is 2%)
Over \$525,000	No GST New Housing Rebate, plus flat \$26,250 BC HST New Housing Rebate

This assumes buyer qualifies for GST and BC Rebates

Rebate for Investors



Original GST New Housing Rebate – limited to individuals buying new home/condo as primary place of residence (owner-occupants)

Rules changed in 2001 when GST New Residential Rental Property Rebate (aka GST investor rebate) introduced

Separate Ontario/BC HST rebate available for investors who buy/build new residential housing

Ontario/BC HST investor rebate has same monetary thresholds, tax rates, maximum rebate as Ontario/BC HST New Housing Rebate



Why a Separate Rebate for Investors?

GST investor rebate has two 1-year qualifying conditions (same for Ontario/BC HST investor rebate):

- (a) landlord owns property for a year; and**
- (b) first tenant “reasonably expected” to occupy for a year**

That’s why builders could not credit investor/buyers with GST investor rebate on closing

Landlords had to pay “lost rebate” on closing as a surcharge, and apply to CRA after closing to claim GST investor rebate; same with Ontario/BC HST investor rebate

Qualifying Properties for Rebate



Properties eligible for GST New Housing Rebate and the GST investor rebate also qualify for Ontario/BC HST New Housing Rebate and the Ontario/BC HST investor rebate

Includes what you expect: (detached and semi-detached homes, condo units, townhouses, units in co-operative housing corporations, duplexes, owner-built homes, substantially renovated homes, housing on leased land, mobile homes and modular homes, plus up to ½ hectare (1.23 acres) surrounding land)

Upgrades



Tax treatment of upgrades under Ontario/BC HST depends on what is being requested

If upgrades simply modify existing APS, contract date determines tax (and rate) applicable to deal

But if upgrades significantly alter APS to the point a new APS is created, new contract date determines Ontario/BC HST consequences

Change of lot – considered as a new APS



Transitional Rules – New Homes/New Condos

For deals that straddle July 1, 2010; apply equally to owner-occupants and investors

Very important to existing clients, but complicated

Transitional rules announced June 18, 2009 in Ontario (November 18, 2009 in BC);

Closed door on further “grandparent” deals

So no opportunity to knowingly use grandparent rules; that status was attained by luck, rather than choice

Transitional Rules – New Homes/New Condos



3 criteria determine obligation to pay Ontario/BC HST:

- a) when contract entered into (key date in Ontario: June 18, 2009; key date in BC: November 18, 2009)**
- b) when occupancy or ownership transferred (key date: July 1, 2010) (occupancy = ownership under HST)**
- c) what is being bought (new home vs. new condo)**

Equating occupancy and ownership recognizes condo 2 step closing process

Transitional Rules – New Homes/New Condos



4 scenarios (apply to both owner-occupants and investors)

For contracts entered into before June 19, 2009 in Ontario (November 19, 2009 in BC)

If either occupancy or ownership of new home/condo transferred before July 1, 2010, deal not subject to Ontario/BC HST, based on occupancy/closing date

If both occupancy and ownership of new home/condo transferred after June 30, 2010, deal not subject to Ontario/BC HST, based on grandparent exemption (only time grandparenting applies)

Transitional Rules – New Homes/Condos



For contracts entered into after June 18, 2009 in Ontario (November 18, 2009 in BC)

If either occupancy or ownership of new home/condo is transferred before July 1, 2010, deal not subject to Ontario/BC HST, based on occupancy/closing date

If both occupancy and ownership of new home/condo transferred after June 30, 2010, deal is subject to Ontario/BC HST; no occupancy/closing date or grandparent exemption; but possible entitlement to PST Transitional Housing Rebate



PST Transitional Housing Rebate

New homes/condos closing after June 2010 could have PST embedded in price

PST Transitional Housing Rebate - to prevent double taxation (Ontario/BC HST plus PST embedded in home)

Reflects estimated embedded PST based on state of construction on July 1, 2010; rebate is based on sale price net of taxes and rebates

Two ways to calculate: floor space method (\$45 per square metre in Ontario and \$60 per square metre in BC) or selling price method (2% of new home sale price)

PST Transitional Housing Rebate



% COMPLETE AS OF JULY 1, 2010	% OF ESTIMATED PST CONTENT
Less than 10%	0%
10% or more, but less than 25%	25%
25% or more, but less than 50%	50%
50% or more, but less than 75%	75%
75% or more, but less than 90%	90%
90% or more	100%

Minimum 10% completion on July 1, 2010 to qualify for rebate; only available if Ontario/BC HST paid on closing

Claiming this rebate does not affect claiming Ontario/BC New Housing Rebate or investor rebate

PST Transitional Housing Rebate in action - Ontario



New home: \$350,000; closing July 15, 2010; not exempt

95% complete July 1, 2010; estimated PST content: 100%

\$7,000 Ontario HST due on closing (2% net Ontario HST)

Using selling price method, estimated embedded PST (and PST Transitional Housing Rebate) is 100% of 2% of the \$350,000 price, or \$7,000

PST Transitional Housing Rebate of \$7,000 offsets \$7,000 Ontario HST due on closing

No net impact of Ontario HST on buyer - IF...

PST Transitional Housing Rebate in action - Ontario



New home: \$500,000; closing July 15, 2010; not exempt

95% complete July 1, 2010; estimated PST content: 100%

\$16,000 Ontario HST due on closing (\$8,000 on the first \$400,000 of price [2% net Ontario HST], and \$8,000 on the remaining \$100,000 [8% Ontario HST])

Using selling price method, estimated embedded PST (and PST Transitional Housing Rebate) is 100% of 2% of the \$500,000 price, or \$10,000

PST Transitional Housing Rebate of \$10,000 cuts overall provincial tax bill from \$16,000 to \$6,000 – IF...

PST Transitional Housing Rebate in action - BC



New home: \$500,000; closing July 15, 2010; not exempt

**95% complete July 1, 2010; estimated PST content:
100%**

\$10,000 BC HST due on closing (2% net BC HST)

**Using selling price method, estimated embedded PST
(and PST Transitional Housing Rebate) is 100% of 2% of
the \$500,000 price, or \$10,000**

**Under \$525,000, PST Transitional Housing Rebate
eliminates overall provincial tax bill – IF...**



Issues and Concerns – 18

Limits on PST Transitional Housing Rebate

PST Transitional Housing Rebate is available (a) from builder as closing adjustment or (b) applying to CRA (until July 1, 2014) if Ontario/BC HST paid

If (b), need prescribed certificate from builder stating percentage of completion as of July 1, 2010

But: not mandatory for builder to provide certificate, and few APS provide for it to be delivered

Result: many qualified buyers will not receive PST Transitional Housing Rebate

Issues and Concerns – 18



In addition, not everyone who should receive the PST Transitional Housing Rebate is eligible:

- **Buyers of new/substantially renovated homes – yes**
- **Builders/investors of new/substantially renovated homes – yes**
- **Buyers/investors of new condos – NO; rebate is only available to builders of new condos (not buyers)**

Result: even fewer qualified buyers will receive PST Transitional Housing Rebate

Another issue, limited to Ontario new condominiums



Could increase in monthly maintenance due to Ontario HST trigger “material change” rescission clause in new condo APS?

Concern expressed by condo lawyer Harry Herskowitz:

- ❑ **Rule of thumb: 10% annual increase for maintenance in condo under construction – not a material change**
- ❑ **If maintenance spikes more than 10% (3% normal budget increase; 8% Ontario HST), could buyers walk?**
- ❑ **Per Herskowitz: “I think if it went to court, judges would most likely favour buyers”**



Owner-Built Housing

Maximum Ontario/BC new housing rebate for owner-built homes depends on whether Ontario/BC HST paid on land where house built

If Ontario/BC HST paid on the land, new housing rebate is 75% of provincial HST paid (maximum \$24,000 in Ontario, \$26,250 in BC - normal arrangement)

If Ontario/BC HST not paid on land, new housing rebate is 75% of provincial HST paid (maximum \$16,080 in Ontario, \$17,588 in BC - 67% of normal arrangement)

Possible PST Transitional Housing Rebate, too, if construction straddles July 1, 2010

Other HST Rules For New Homes/Condos



Builder contracts after June 18, 2009 (November 18, 2010 in BC) must disclose

- a) If deal is subject to Ontario/BC HST**
- b) If so, does price include Ontario/BC HST net of the Ontario/BC HST New Housing Rebate?**

Inadequate (or no) disclosure? Price is deemed to include Ontario/BC HST (i.e. builder pays it)

Designed to provide certainty for buyers and builders



“Stated Price Net of Rebate”

Most new homes/condos under GST were sold for one gross “all-inclusive” price (included GST and GST New Housing Rebate); government calls it: “stated price net of rebate”

Easier to market new homes/condos for one all-in price than “price plus GST”

Same with Ontario/BC HST; one gross price can reflect GST, GST New Housing Rebate, Ontario/BC HST, and Ontario/BC HST new housing rebate; builder earns “net price”

Only available to owner-occupant buyers

“Stated Price Net of Rebate”



With stated price net of rebate: gross price before 8% Ontario HST kicks-in: \$424,850 (net amount to builder: \$400,000)

With stated price net of rebate: gross price before 7% BC HST kicks-in: \$561,750 (net amount to builder: \$525,000)

Single rebate application forms now available

Other HST Rules For New Homes/Condos



Separate transitional rules govern:

- Purchases of new homes and leased land
- Purchases of new mobile homes/new floating homes
- Purchases of qualifying shares in a housing co-op
- Purchases of land only
- Construction of long-term residential care facilities
- Assignments and flips (sales by “resellers”)

Issues and Concerns – 19



Assignments and Flips (Sales by “Resellers”)

Separate GST/HST Info Sheet (GI-097) for certain flips, where HST does not apply

Only applies to:

- Grandparented deals only (original contract before June 19, 2009 in Ontario [November 19, 2009 in BC])
- “Flip” (sale by original buyer) before July 1, 2010
- Possession and ownership change hands after June 30, 2010

Issues and Concerns – 19



If property is flipped and original builder transfers ownership and possession to assignee after June 2010, deal still grandfathered (i.e. GST only, no HST) if:

- **No novation of original offer**
- **Original buyer and original builder deal at arm's length**
- **Original builder does not reacquire property**
- **All assignee buyers are individuals (if not a condo)**

Note: price paid for assignment is taxable; it is subject to GST (and HST if signed after June 30, 2010), and possibly even income tax (capital gains)

Issues and Concerns – 20



What about PST on chattels purchased in real estate transaction (Ontario only)?

No HST to be collected on chattels (same as with GST), and no PST to be collected either

Reference to PST to be eliminated from e-reg documents

In interim, lawyers to declare value of chattels purchased on LTT statement, but no PST to be collected (unclear if LTT to be charged in lieu)

Impact of Ontario HST on Land Transfer Taxes



**** How does Ontario HST “mesh” with Land Transfer Tax (LTT) and Toronto’s Land Transfer Tax (TLTT)?**

Info Bulletin 1-2010 – “LTT is not exigible on HST paid”

GST and Ontario HST, both net of rebate, are stripped from value of consideration in calculating LTT; LTT only paid on “net price”, to avoid paying tax (LTT) on tax (GST and Ontario HST)

TLTT follows provincial lead re Information Bulletins

So GST and Ontario HST, net of rebates, are removed from value of consideration in calculating TLTT

Impact of BC HST on Property Transfer Tax



How does BC HST “mesh” with BC’s Transfer Tax (PTT) ?

PTT is paid on fair market value (FMV) of property being transferred

GST and BC HST, both net of rebate, are stripped from FMV in calculating PTT

PTT only paid on “net price” of new home/new condo

Reason: to avoid paying tax (PTT) on tax (GST and BC HST)



ONTARIO HST TRANSITIONAL RULES CHART

DESCRIPTION	NEW HOME	NEW CONDO UNIT
PREPARED BY ALAN G. SILVERSTEIN OF TELUS ASSYST REAL ESTATE		
Contract before June 19, 2009; either occupancy or closing before July 1, 2010	Ontario HST does NOT apply (based on occupancy/closing date)	Ontario HST does NOT apply (based on occupancy/closing date)
Contract before June 19, 2009; both occupancy and closing after June 30, 2010	Ontario HST does NOT apply (grandparented)	Ontario HST does NOT apply (grandparented)
Contract after June 18, 2009; either occupancy or closing before July 1, 2010	Ontario HST does NOT apply (based on occupancy/closing date)	Ontario HST does NOT apply (based on occupancy/closing date)
Contract after June 18, 2009; both occupancy and closing after June 30, 2010	Ontario HST applies No occupancy/closing date or grandparent exemption Buyer MAY BE eligible for PST Transitional Housing Rebate	Ontario HST applies No occupancy/closing date or grandparent exemption; Buyer NOT eligible for PST Transitional Housing Rebate

BC HST TRANSITIONAL RULES CHART



DESCRIPTION	NEW HOME	NEW CONDO UNIT
Contract on or before November 18, 2009; either occupancy or closing before July 1, 2010	BC HST does NOT apply (based on occupancy/closing date)	BC HST does NOT apply (based on occupancy/closing date)
Contract on or before November 18, 2009; both occupancy and closing after June 30, 2010	BC HST does NOT apply (grandparented)	BC HST does NOT apply (grandparented)
Contract after November 18, 2009; occupancy or closing before July 1, 2010	BC HST does NOT apply (based on occupancy/closing date)	BC HST does NOT apply (based on occupancy/closing date)
Contract after November 18, 2009; both occupancy and closing after June 30, 2010	BC HST applies; no occupancy/closing date or grandparent exemption; buyer MAY BE eligible for PST Transitional Housing Rebate	BC HST applies; no occupancy/closing date or grandparent exemption; buyer NOT eligible for PST Transitional Housing Rebate

What's Next – Short-Term



Fine-tuning of the system

- **More transitional rules being developed by CRA**
- **Further bulletins being issued**
- **Existing bulletins being updated**
- **New forms being prepared**
- **Old forms being amended**

Ongoing learning curve for lawyers and their staff

What's Next – Long-Term – Tax-included prices?



Under GST, most goods/services were provided “plus PST and GST”

Canada – only country with a value-added tax that does not have tax-included prices (with limited exceptions)

With introduction of HST in Ontario and BC, conditions now exist for tax-included prices (residents of HST-provinces exceed 51% of the population) – sections 364 to 368 of ETA (unproclaimed)

If implemented: ~~\$1,000 legal account + tax~~
\$1,130 legal account including tax

Will We Go Full Circle?



GST introduced in 1991 to replace FST (Federal Sales Tax) – a hidden federal sales tax on manufacturers

Goal of GST – make federal sales taxes more visible

Problem: sticker shock for consumers when GST added to PST (originally 15% combined in Ontario)

Move to tax-included pricing under HST would return Canada to era of hidden sales taxes

“Everything old is new again”



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**MORTGAGE
TRANSACTIONS
SIMPLIFIED**

**Presented by:
Alan Silverstein**

assyst
Real Estate

 **TELUS**
the future is friendly®

Wouldn't it be nice



- To make your office more efficient and productive?
- To lower the level of stress in your practice?
- To eliminate non-billable time re-faxing reports?
- To lower the cost of processing a mortgage deal?
- To recoup lost refi business?
- All at no additional cost to you or your clients?

Lawyers and lenders face the same problems



Mortgage deals - labour-intensive and paper-intensive

Same data - entered by different people at different times in different places; prone to mistakes

Despite our love-affair with paper, both lawyers and lenders are drowning in it

The need to move data (not documents) is compelling

Dealing with Change



***“To cope with change is to survive;
to benefit from change is to succeed”***



To benefit from change and become more efficient, lawyers must take full advantage of technology

Goal: to securely automate manual paper processes and go “paperless”

Other professions have done this; now is the time for real estate lawyers

What counts – what you say, not how you say it



Your report/opinion is paramount

Lenders must be able to rely on its content of alone

Paper enclosures support report/opinion, but have no impact on legal status of registered document

If a registered document is not inherently valid as a first mortgage, no amount of paper accompanying the final report/opinion will change that

What ultimately matters is the message (report/opinion), not how it's delivered (paper is just one option)

Assyst Real Estate: it's about time



**THE PAPERLESS
MORTGAGE
TRANSACTION IS A
REALITY TODAY, WITH
ASSYST REAL ESTATE
FROM TELUS**

Assyst Real Estate drastically reduces the amount of time spent processing a mortgage file

Assyst Real Estate has carefully examined every step of a mortgage transaction, eliminating bottlenecks and snags while adding creative ideas

Welcome to Assyst Real Estate



Developed by Emergis, a Canadian IT leader focusing on the financial service and health sectors

For over 20 years, Emergis securely automated paper processes for businesses and professions

January 2008, Emergis was acquired by TELUS (another Canadian company)—enhanced market presence, financial strength and lender relationships

Assyst Real Estate is now the industry standard in Canada for legal professionals processing mortgage transactions electronically



***BUT ASSYST REAL ESTATE
IS MORE THAN JUST SOFTWARE***



***IT'S A PROCESS THAT
SIMPLIFIES AND STREAMLINES HOW
MORTGAGE TRANSACTIONS ARE
INSTRUCTED, COMPLETED AND
REPORTED***

How Assyst Real Estate will benefit your practice



Electronic highway links your office and lender when processing mortgage deals

What moves between you and the lender: data, not paper

Mortgage instructions sent to you online; NO FAXES; email also sent, advising of new instructions

Any changes to existing mortgage instructions sent to you online; email also sent, advising of changes

How Assyst Real Estate will benefit your practice



**ALWAYS
UP
TO
DATE**

Onscreen information is always up-to-date (fewer calls to lenders)

The reason: “single-source inputting”—data inputted only once, by lender (it controls flow of data)

No need to wade through reams of paper seeking data – saves time

No need to manually input data – saves time

Fewer inputting mistakes - saves time

How Assyst Real Estate will benefit your practice



Special instructions appear onscreen (credit cards to pay off/mortgages to discharge/collateral security)

Loan-specific data (principal, interest rate, maturity date, payment) appears onscreen, pre-populated by lender and locked-in (i.e. unalterable), ready to use

“Raw” lender data can be overridden in 3 areas—names; property address; legal description

How Assyst Real Estate will benefit your practice



Up-to-date lender forms appear onscreen; no need to shuffle in and out of websites – saves time

Ensures proper forms always used (no mistakes) – saves time

Electronic forms pre-populated – saves time

Easy to review/approve content of forms

Documents only printed when needed – no print/shred

Your forms used for non-lender documents

How Assyst Real Estate will benefit your practice



Digital signature – your ID validated at outset; your status verified during transaction

All reports submitted to lender electronically

Immediate confirmation of receipt by lender; no need to refax documents to lender

FULLY AUTOMATED AND PAPERLESS

NO FAXES/NO SCANNING/NO UPLOADING DOCUMENTS

NO CLOSING PACKAGE TO ASSEMBLE

How Assyst Real Estate will benefit your practice



Can report to lender immediately after closing

System access any time/real time/anywhere

Standard process applies to all participating lenders

Client belongs to you; no impact on fees

Mortgage deals can be processed easier/cheaper

Significant time saved at every stage of transaction

**ASSYST REAL ESTATE DOESN'T HANDLE PAPER;
ASSYST REAL ESTATE ELIMINATES PAPER**

How Assyst Real Estate will benefit your practice



"THE FREEZE"

Exclusive to Assyst Real Estate; creative feature designed to eliminate last-minute stress

Allows you to freeze loan-specific data days before closing and stop last-minute changes

Recommended timetable: request freeze 3 business days before document signing; effective 1 business day later

Example: Closing Friday, June 30; signing documents Thursday, June 29; request freeze Monday, June 26; takes effect Tuesday, June 27

Assyst Real Estate – the value for you



Designed by Canadian lawyers for Canadian lawyers, to provide real estate lawyers with the tools needed:

- **To compete effectively against external forces**
- **To process rush deals on time, and profitably**
- **To recoup lost refi business**
- **To help boost their bottom line, without raising fees (by lowering costs instead)**

TELUS does not process mortgage refi transactions

TELUS does not compete for your business

Assyst Real Estate – a Proven Solution



Canada's most popular online mortgage processing software for real estate bar

More mortgages processed by lawyers/notaries in Canada than any other software (more than 930,000 since 2002)

Preferred by more dedicated lawyers/notaries (over 3,250) than any other similar program

Two national lenders –  and 

Only Assyst Real Estate is bilingual, available coast-to-coast, and paperless

Strong “buy-in” from legal community



Assyst Real Estate partners with leading companies and organizations servicing Canadian lawyers:

- **Canadian Bar Association and its provincial branches (exclusive preferred supplier)**
- **Document software companies (including “The Conveyancer” from Do Process Software)**
- **Certification authorities for digital signatures (including Juricert), and electronic search and registration companies (including BC online)**

Assyst Real Estate champions the vital role lawyers perform in real estate conveyancing – part of our heritage

Assyst Real Estate is cost-effective



**For lawyer to enroll as a user of Assyst Real Estate
– FREE**

**For lawyer to obtain digital signature to sign reports
– FREE**

Installation, activation and training – FREE

dx





Assyst Real Estate is cost-effective

**Assyst Real Estate lowers client disbursements
(paper/fax/photocopy/courier/postage/long-distance)**

**Transaction-based fee: \$29/file for CBA members; billable
as client disbursement**

**By offsetting Assyst Real Estate charge against lower
client disbursements, net cost to you and your client is nil**

But the time saved belongs to you

***Bottom line: you can benefit from Assyst Real Estate's
exciting unique features AND save valuable time for your
practice, at no additional cost to you or your client***



Benefits Exclusive to Assyst Real Estate

Environmentally friendly

- Paperless from end to end (no faxes)
- Only generate documents as needed (no print/shred)

Greater office efficiency/productivity

- Streamlined/simplified process
- Onscreen data is always up-to-date

Neutral

- Integrates with current workflow
- No interference with client selection of a lawyer

Last-minute changes/needless stress – eliminated

Benefits Exclusive to Assyst Real Estate



Cost effective

- All the benefits, no extra costs

Significant time savings each mortgage file



- No manual data input/no time consuming mistakes
- All lender forms/schedules appear in program
- Pre-populated mortgage forms
- Reports submitted online; no closing package
- Confirmation of receipt
- No time wasted re-faxing reports

Testimonials



“Documents for execution by clients can be produced in less than half the time it takes for the paper process” (15-20 minutes)

“With Assyst Real Estate, the final report is submitted by a click of the mouse on the appropriate prompt”

“Clients can have their loans processed in a short time to meet their lending needs”

“Assyst Real Estate puts us back in the refinancing business, which we’ve been out of for many years”

Protection for YOU against fraud



**Globe And Mail, July 23, 2009:
“Fraudster Stole Lawyers' Identity In
Mortgage Scam”**

**Fraudster cloned innocent lawyer's
office; scammed over \$1 Million
through trust account**

**Assyst Real Estate would have thwarted fraud— as
fraudster also had to clone lawyer's digital signature to
sign Request for Funds to get funds**

**Only Assyst Real Estate provides additional layer of
protection against fraud unavailable in paper process**

For more information:



Visit:

www.telus.AssystRealEstate.com



Or contact:

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TELUS | backed by Emergis

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**RESOURCE MATERIAL FOR
HARMONIZED SALES TAX IN ONTARIO AND BRITISH COLUMBIA
As of August 10, 2010
Prepared by Alan G. Silverstein**

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