

# Tax memo

Canadian tax updates



## Returning to B.C.'s Provincial Sales Tax: Transitional rules for new housing

*Outlines transitional rules for new housing, to address the move from the HST to the PST.*

*February 19, 2012*

On February 17, 2012, British Columbia announced transitional rules to mitigate potential double taxation on new housing, because of the return to the 7% Provincial Sales Tax (PST) on April 1, 2013. Purchasers, vendors and builders could be affected significantly.

The transitional rules stem from the August 26, 2011 provincial referendum, which caused British Columbia to commit to revoke the Harmonized Sales Tax (HST) and reinstate its PST. They await legislative approval. This *Tax memo* outlines the details.

### ***Rules for real property***

Under the transitional rules, the B.C. provincial component of the HST generally will cease to apply to sales of real property (including new residential housing) if ownership and possession transfer after March 31, 2013. This will be the case, regardless of whether:

- the agreement of purchase and sale was entered into before April 1, 2013; or
- construction of the newly built home began before April 1, 2013.

In general, PST will not apply to sales of real property. However, PST will apply if:

- at the time of purchase, the housing is tangible personal property (e.g., a mobile home not affixed to land); and
- possession transfers after March 31, 2013.

The PST will also apply to construction materials that are used to improve real property after March 31, 2013.

### ***Temporary transition tax and transition rebate***

British Columbia intends to impose a new 2% temporary transition tax on certain sales of newly constructed or substantially renovated housing when:

- the B.C. HST does not apply to the sale (i.e., if the Goods and Services Tax (GST) applies);
- the construction or substantial renovation of the new housing is 10% or more completed as of April 1, 2013; and
- ownership or possession of the new housing transfers, or a deemed sale of the new housing occurs (as is the case in a self-supply), before April 1, 2015. Special timing rules apply to residential condominium units.

The new transition tax will be payable by the purchaser and collectible by the builder. The builder must remit it to the Canada Revenue Agency (CRA).

Housing that is subject to the B.C. transition tax may also be eligible for a transition rebate, which will be based on the total consideration payable for the housing and the degree of completion on April 1, 2013. Builders that are required to self-assess and pay the B.C. transition tax on their self-supply of housing after March 31, 2013, must calculate the transition rebate:

- on the fair market value under the self-supply rules; and
- based on the degree of completion on April 1, 2013.

Transition rebates will not be available for sales of mobile homes, floating homes and homes built by owners for their personal use. Builders claiming the transition rebate must certify that they paid PST on substantially all of the materials incorporated after March 31, 2013, and must keep receipts for audit purposes.

The temporary housing transition tax and the temporary housing transition rebates will be administered by the CRA. These measures are intended to be in place for two years, until March 31, 2015.

## ***Grandparented sales of new housing***

Under the July 1, 2010 B.C. HST transitional rules, sales of single-unit homes (including residential condominiums) were subject to the GST and not the HST (i.e., grandparented) if the written agreement of purchase and sale was entered into before November 19, 2009.

With the introduction of the HST on July 1, 2010, builders of grandparented new housing became subject to a transitional tax adjustment and builders of residential condominiums were also eligible for a PST transitional new housing rebate. However, the transitional tax adjustment and the PST transitional new housing rebate generally will not apply when

both ownership and possession of grandparented housing transfer after March 31, 2013.

Effective April 1, 2013, a new 2% transition tax will apply to these housing sales if:

- the agreement of purchase and sale was entered before November 19, 2009; and
- both ownership and possession transfer under the agreement after March 31, 2013.

For this purpose, the contracted purchase price for the grandparented housing will be deemed to include the 2% transition tax. Therefore, the transition tax equals  $2/102$  (approximately 1.9608%) of the consideration established for GST purposes at the time the agreement was entered into.

Builders will also be eligible for a new B.C. transition rebate on the consideration established for GST divided by 1.02 (approximately 98.04%) to take into account the transitional tax payable by the purchaser. The rebate will be adjusted to exclude any PST new transitional rebate that the builder claimed on the introduction of the HST.

## ***Non-grandparented sales of new housing***

The PST transitional new housing rebate was available on sales of newly constructed or substantially renovated homes:

- under a written agreement of purchase and sale entered into after November 18, 2009;
- when 10% or more was completed by July 1, 2010; and
- that were subject to the 12% HST.

However, effective April 1, 2013, the 5% GST will apply and the PST transitional new housing rebate generally will not be available for sales of these homes if both ownership and possession transfer after March 31, 2013.

In addition, a new temporary 2% transition tax is intended to apply to these housing sales when:

- construction began before July 1, 2010; and

- ownership and possession of the housing both transfer after March 31, 2013.

However, this transition tax will not apply if construction was substantially completed before July 1, 2010, and the July 2010 PST transitional new housing rebate had not been claimed as of February 17, 2012.

Builders will be eligible for a new B.C. transition rebate based on the degree of completion at July 1, 2010, subject to an adjustment to exclude any PST transitional new housing rebate previously claimed.

## *Disclosure requirements for builders*

To help purchasers understand how the various taxes apply, builders of newly constructed or substantially renovated housing will be required to make certain disclosures in the written agreement of purchase and sale and at the time the written statement of adjustments is made.

As well, builders will be required to disclose certain information to the CRA. The extent and nature of the disclosure will depend on whether the purchase and sale agreement is entered into:

- before February 18, 2012, when the transition tax applies; or
- after February 17, 2012, and before April 1, 2015.

Notably, the contracted price in agreements signed after February 17, 2012, must not be **inclusive** of the 2% B.C. transition tax. The builder must disclose in the agreement of purchase and sale that the contracted price is **exclusive** of any B.C. transition tax and the associated B.C. transition rebate that may apply.

## *Penalties for inadequate disclosure*

Builders could face the following penalties for inadequate disclosure:

- for failing to fully and accurately disclose the required information: up to 1% of the home's price, to a maximum of \$10,000 per home.
- for knowingly, or under circumstances of gross negligence, making or participating in making a false statement or failing to fully and accurately disclose the required information: up to 4% of the home's price, to a maximum of \$40,000 per home.

## *Enhanced new housing rebates*

The threshold for B.C. HST new-housing rebates will rise from \$525,000 to \$850,000, increasing the maximum rebate from \$26,250 to \$42,500. This rebate applies to newly constructed or substantially renovated homes purchased or constructed as a primary residence if the 12% HST is payable after March 31, 2012, and before April 1, 2013.

## *Managing the transition*

These transitional rules and disclosures could significantly affect purchasers, vendors and builders. Any new agreement should address these rules, along with the required disclosures and transactions that may straddle the implementation period. Existing agreements should also be reviewed to ensure that any potential price implications are properly incorporated.

Builders and developers may need new procedures and systems modifications to determine whether GST/HST or PST apply and to ensure that purchase and sale agreements and statements of adjustments reflect the correct application of the taxes. Organizations that will pay PST or are required to self-assess must implement adequate policies and procedures to deal with these requirements.

PwC has the experience and expertise to help you identify potential issues for your organization and develop strategies to ensure a seamless transition to the re-instatement of the PST. Please contact any of the individuals on page 4 for more help.

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