

# ***GST/HST issues affecting the real estate and construction industries***

*May 2, 2014*

## ***In brief***

This *Tax Insights* highlights Goods and Services Tax/Harmonized Sales Tax (GST/HST) issues relevant to the real estate and construction industries relating to:

- the Retail Sales Tax (RST) Transitional New Housing Rebate
- GST/HST reporting (including Canada Revenue Agency (CRA) Notice 284)
- partnerships
- documentary requirements to claim input tax credits (ITCs)

## ***In detail***

### ***RST Transitional New Housing Rebate***

The Transitional New Housing Rebate (the Rebate) is designed to refund to the purchaser or builder the provincial RST included in eligible pre-July 1, 2010 housing construction costs.

#### ***Eligibility***

To be eligible for the Rebate, the construction must have been at least 10% complete as of July 1, 2010. The builder must also obtain a Letter of Good Standing from the provincial government.

For freehold homes, the purchaser is eligible for the Rebate when HST applies on the

purchase price. The purchaser can assign the Rebate to the builder or apply directly to the CRA for the Rebate.

For condominium units, the builder is eligible if either HST applies on the sale or the Transitional Tax Adjustment (TTA) is paid.

#### ***Calculating the Rebate***

The Rebate is the product of:

- the 'Estimated RST Content,' calculated using the floor space method or selling price method, and
- a factor based on the degree of completion at July 1, 2010

#### ***Claiming the Rebate***

The timing for claiming the Rebate is shown in the following table:

	<b>Floor space method</b>	<b>Selling price method</b>
<b>After</b>	July 1, 2010	HST becomes payable
<b>Before</b>	July 1, 2014	

Purchasers and builders must ensure that Rebate applications are filed with the CRA by the June 30, 2014, deadline.

It is important that condominium builders who have determined that the selling price method results in a larger Rebate for their units nevertheless use the floor space method when applying for the Rebate with respect to eligible units that remain unsold close

to the filing deadline, even if this results in a smaller Rebate.

### **GST/HST reporting**

#### **Joint venture election**

Under the general GST/HST rules, a joint venture is not a 'person.' Therefore, unless a joint venture election is in place, all participants in a joint venture must account separately for their prorated share of the GST/HST collectible on any sales, as well as the GST/HST paid on the joint venture purchases.

The joint venture election under the *Excise Tax Act* (the Act) provides flexibility in the reporting of the GST/HST for certain prescribed joint ventures. For GST/HST purposes, the participants in a joint venture may elect to have an operator report all of the GST/HST on behalf of the joint venture. This greatly simplifies compliance responsibilities.

The elected operator must be:

- a member that contributed resources and takes a share of revenue or losses, or
- a manager of the joint venture

The joint venture election is currently available for most oil and gas joint ventures and in various prescribed cases, which include:

- undertaking the construction of real property, or
- joint ventures whose purpose is to derive revenue from real property by way of sale, lease, licence or similar arrangement

However, the CRA takes the position that the election applies only to post-acquisition conduct and, in the case of real property, not to the acquisition of that property. Consequently, each participant should:

- register for GST/HST on or before the acquisition date of real property acquired in connection with a commercial activity
- claim any available ITC for its share of the GST/HST on pre-acquisition costs, and
- if a self-assessment is required on the purchase of the real property, report its respective share of the GST/HST and claim any available corresponding ITC

Subsequently, the joint venture participants can elect to have an operator account for the GST/HST on post-acquisition activities related to the real property.

#### **2014 federal budget**

The 2014 federal budget proposes to allow more commercial joint ventures and their participants to rely on the joint venture election. While the details of these proposed changes have yet to be announced, it is hoped that the election will be expanded to encompass the type of pre-acquisition conduct described above.

#### **CRA Notice 284**

For joint ventures that elected to have a bare trust act as the operator for GST/HST reporting, recently released CRA Notice No. 284 reiterates the CRA's concerns with these practices, while also announcing a temporary assessment reprieve. See our *Tax Insights* 'Bare trusts, nominees and joint ventures: Temporary administrative leniency' at [www.pwc.com/ca/taxinsights](http://www.pwc.com/ca/taxinsights) for more information.

#### **Partnerships**

A partnership is considered a separate 'person' for GST/HST purposes. If carrying on a commercial activity, the partnership must be registered for and report the GST/HST on its

activities. A partnership cannot designate a partner, in an equivalent manner to the operator under a joint venture election, to handle all the GST/HST accounting for the partnership.

If someone other than the partnership has reported the GST/HST transactions on behalf of the partnership, then an assessment may be issued relating to:

- the partnership for the non-reporting of GST/HST collected, or
- the person that is claiming ITCs on expenses incurred by the partnership

There may also be an issue with respect to the partnership's eligibility to claim ITCs for GST/HST paid, whether because the partnership was not GST/HST registered when the GST/HST was incurred or because the time to claim the ITC has lapsed.

#### **Documentary requirements to claim ITCs**

The recipient of a taxable supply can claim ITCs only if it:

- is GST/HST registrant
- is engaged in a commercial activity, and
- has sufficient evidence

The ITC Information (GST/HST) Regulations to the Act state that this evidence must include:

- the supplier's:
  - name, and
  - GST/HST Registration Number
- the recipient's name or the name:
  - under which it carries on business, or
  - of its agent or representative

Supporting documentation includes invoices, receipts, credit card receipts, debit notes, books or ledgers of account and written contracts or agreements.

These documentary requirements affect the ITCs claimed by joint ventures and partnerships because supplier invoices must be made out to the proper project using the correct legal name. To verify the GST number of a supplier, the CRA Web-based GST/HST Registry should be consulted.

**GST/HST should not be paid if the supplier is not registered and/or the supplier has not provided sufficient documentation to support an ITC claim by the recipient.**

### ***Let's talk***

For a deeper discussion on what these GST/HST issues mean for your business, please contact your PwC advisor or:

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