

British Columbia and Ontario announce transitional rules for harmonized sales tax October 19, 2009

It is proposed that, effective July 1, 2010, both British Columbia's and Ontario's Provincial Sales Tax (PST) will be replaced with a new Harmonized Sales Tax (HST) regime. Specific place of supply rules will determine which rate of tax to charge. Subject to these place of supply rules, the HST will generally apply at a rate of 12% in British Columbia and 13% in Ontario. On October 14, the governments of both provinces released the HST transitional rules. The purpose of these rules is to determine whether the existing PST or the new HST will apply to transactions that straddle the July 1, 2010 implementation date for the HST. The rules also illustrate how the old PST system will be wound down. Unless indicated otherwise, the rules in both provinces are substantially the same.

Summary of the key transitional rules

The general rule is that the HST will apply to the sale of goods where ownership is transferred after June 2010 and to the provision of a service performed after June 2010. Where services straddle July 1, 2010, the tax charged for the service may have to be split between the pre-July 2010 and post-June 2010 periods. As an exception to this rule, the HST will generally not apply to a service if all or substantially all (90% or more) of the service is performed before July 2010. Supplies of intangible property (e.g., goodwill, intellectual property or contractual rights) will be subject to the HST where the consideration becomes due or is paid without having become due after June 2010.

Where the supply of goods and services are involved, four key timelines are important. These timelines are all based on the earlier of the time the consideration is either due¹ or is paid without having come due¹. If consideration is due or paid:

1. Before October 15, 2009, HST will generally not apply.
2. From October 15, 2009 to April 30, 2010, certain businesses and public services bodies that are not entitled to recover all of their GST/HST paid as an input tax credit (ITC) may be required to self-assess the provincial component of the HST with respect to goods or services supplied after June 30, 2010. A person required to self-assess under this rule will generally account for the tax either in the GST/HST return for the reporting period that includes July 1, 2010 provided the return is due before November 2010 or in a prescribed form before November 2010.

The self-assessment rules will also apply to selected listed financial institutions using the special attribution method or organizations using simplified procedures to calculate their net tax. Self-assessment is also required for those supplies acquired by large businesses exclusively for commercial activities and restricted under the proposed ITC restrictions. The rules will not apply to individuals purchasing the goods or service for their personal use.

Example: In February 2010, a company making both taxable and exempt supplies is invoiced for the supply of a snow removal and landscaping service where 40% of the service will be performed after June 2010. The company must self-assess the provincial component of the HST with respect to the part of the service to be performed after June 2010. Assuming the business has a calendar year-end and quarterly reporting period, it would be required to account for the provincial component of the HST in its return for the period ending in September, due October 31, 2010 (i.e., for the reporting period that includes July 1, 2010). It will also be able to claim any allowable ITC with respect to the supply on this same return.

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In general, an amount is due for a supply on the date of the invoice (assuming no undue delay) or the day required to be paid pursuant to a written agreement.

3. From May 1, 2010 to June 30, 2010, HST will generally apply for property or services supplied after June 30, 2010. The supplier is required to account for the provincial component of HST in the return for the reporting period that includes July 1, 2010.

Example: In June 2010, an individual purchases a new computer but it will not be delivered, and ownership will not be transferred, until July 2010. The HST will apply to the sale and the vendor will have to account for the provincial component of the HST in the GST/HST reporting period of the vendor that includes July 1, 2010.

4. After June 30, 2010, HST will generally apply. An exception to this rule would be where ownership of the property is transferred before July 2010 or the invoice relates to services provided before July 2010.

In addition to the above general rules, special rules will apply to a number of situations, some of which are addressed below.

Memberships

The supply of a membership in a club, organization or association is deemed to be a supply of a service for purposes of the transitional rules. HST will apply to the extent that the service is performed after June 30, 2010. Special rules apply to lifetime memberships where consideration becomes due or is paid without having become due after October 14, 2009, and before July 2010 where the supplier may be required to account for the provincial component of the HST.

Example: On May 1, 2010, a person purchases an annual membership in a club. GST will be payable in respect of the two months of May and June 2010 and HST will be payable in respect of the ten months of July 2010 to April 2011. Onus will be on the vendor to collect the correct amount of tax.

Admissions

The supply of an admission to a place of amusement, a seminar, an event or an activity is deemed to be a supply of a service for purposes of the transitional rules. HST will apply to the extent that the admission is provided after June 30, 2010.

Newspaper and magazine subscriptions

Notwithstanding the general rules, HST will not apply for a subscription to a newspaper, magazine, or other periodical publication where consideration is paid before July 1, 2010.

Leases and licences

Where a lease or licence of goods, intangible property, transient accommodation and non-residential real property straddles the implementation date, HST will generally apply to lease intervals or payment periods on or after July 1, 2010. The general rules as described above for the key timelines will apply. However, where a lease interval begins before July 2010 and ends before July 31, 2010, an exception is made and that particular lease payment is not subject to HST. Ontario or British Columbia retail sales tax will apply to that payment if the lease is subject to PST.

Example: Payments for leased computer equipment are made on the 15th of each month. HST will not apply to the payment for the period from June 15, 2010 to July 15, 2010.

Real property (other than residential property)

HST is due where both possession and ownership of non-residential property occurs on or after July 1, 2010.

For leases of non-residential property, the transitional rules will mirror the general rules for leases and licenses.

A supply of a commercial parking pass to a non-consumer will be treated as a supply of non-residential real property. Special disclosure for tax-included pricing may apply.

Progress payment and holdbacks

HST will apply to progress payments and holdbacks attributed to property delivered or services provided on or after July 1, 2010. These payments will relate to contracts to construct, renovate, alter or repair real property or ships or other vessels. For such payments due after October 14, 2009 and before May 2010, the supplier will be required to account for the provincial component of the HST in the reporting period that includes July 1, 2010. Special rules will apply for construction substantially complete on June 1, 2010. Progress payments for newly constructed or substantially renovated homes will be subject to the rules for new residential housing.

Transportation

Notwithstanding the transitional rules for services, HST will not apply to a passenger transportation service performed on or after July 1, 2010 if it is part of a continuous journey that begins before July 2010.

Example: On June 29, 2010, a person pays for a round trip train ticket from Montreal to Toronto, returning to Montreal on July 2, 2010. HST will not apply.

For passenger transportation passes, HST will apply to the extent the pass period is after June 30, 2010, if the pass becomes due or is paid after October 14, 2010. HST will not apply for a pass period beginning before July 2010 and ending before August 2010.

HST will not apply to a freight transportation service that is part of a continuous freight movement of goods that begins before July 2010.

Prepaid funeral and cemetery services

HST will not apply for funeral or cemetery services performed on or after July 1, 2010, if the service is supplied pursuant to a prepaid arrangement in writing entered into before July 2010. HST will also not apply to property relating to the funeral, burial or cremation of an individual if the property is provided under that arrangement in writing.

Continuous supplies

Property or services provided on a continuous basis such as electricity, gas, cable TV, and cell phone will be subject to the HST for supplies provided after June 2010. If the supplier cannot reasonably determine when the property or service is supplied, the consideration will be pro-rated into equal parts according to the number of days in the period to which the consideration is attributable.

Combined supplies

Special rules apply where property and/or services are supplied together as a single supply and one of the items is property where ownership or possession is given before July 2010. If HST would not have applied to the property if it was supplied separately, then the property is deemed to be a separate supply for purposes of the general rules. The combined supply rule will not apply to newly constructed or substantially renovated homes.

Winding-down the British Columbia and Ontario PST

As of July 1, 2010, PST in British Columbia and Ontario will generally not apply to:

- the sale of goods where ownership transfers after June 30, 2010;
- the supply of services to the extent performed after June 30, 2010;
- the supply of property by way of lease, license or similar arrangement for the lease interval that begins after June 30, 2010. Lease intervals that begin before July 1, 2010 and end before July 31, 2010 may still be subject to PST;
- the supply of a continuous transmission or continuous supply of a service such as natural gas or cable television where the property or service is made available after June 30, 2010;
- the sale of an admission or ticket for entry to a place of amusement after June 30, 2010; and
- the importation of goods after June 30, 2010.

Notwithstanding the general wind-down rules, PST will apply where consideration for the sale of goods, services or admissions becomes due, or is paid on or before October 14, 2010.

Implementation of the HST also requires elimination of the Hotel Room Tax (HRT) in British Columbia. The HRT will not apply to the part of the lease interval that begins after June 30, 2010, unless the lease interval begins before July 2010 and ends before July 31, 2010. The additional 2% HRT applied in certain communities will continue to apply until June 30, 2011. The future of this tax is undergoing consultation.

Example: A family books a two week Whistler vacation including hotel accommodations from June 25, 2010 through July 8, 2010. The HRT will apply to the total amount of consideration paid for the hotel accommodation.

Final PST returns

In British Columbia and Ontario, final PST returns for the month of June 2010 are to be filed on or before July 23, 2010. Supplemental PST returns will be required for each month after June 30, 2010, where PST becomes collectible. All supplemental returns for Ontario must be filed by November 23, 2010, as all Ontario PST amounts not otherwise payable will become payable on October 31, 2010. British Columbia has not specified a final return date.

Refunds of tax paid in error

Refunds of tax paid in error will continue to be available under the existing time limits, with the final expiry date of June 30, 2014.

Tax-included pricing

For tax-included sales where the consideration becomes due or is paid after October 14, 2009 and before May 2010, the stated price will be deemed to include PST if the PST would have applied to the sale notwithstanding any other transitional rule that may apply.

Transitional PST inventory rebate for residential real property contracts

This rebate will be available to a real property contractor for the PST 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.

Contractors will be able to file an application for the rebate directly with the province. The application for the rebate will be required to be filed on or before December 31, 2010.

Returns and exchanges

The following rules will generally apply where a person purchases property before July 2010 that is subject to PST, but returns it on or after July 1, 2010 and before November 2010:

- if the property is returned and a full refund is given, the PST will be refunded;
- if an exchange is made resulting in neither a refund nor an additional payment, there will be no PST refund and the provincial component of the HST will not be payable;
- if an exchange is made resulting in a partial refund, the provincial component of the HST will generally not be payable on the replacement property and the purchaser will be entitled to recover the PST applicable to the amount refunded; and
- if an exchange is made resulting in an additional payment, no PST will apply but the HST will apply to the additional payment.

Future release of information

The above discussion provides a brief summary of the general transitional rules. The announcements provide further information in regards to imported supplies, direct seller and budget payment arrangements. The government will also continue to develop additional transitional rules for the HST.

British Columbia will provide additional information in respect of:

- tax on multi-jurisdictional vehicles;
- the Innovative Clean Energy levy;
- the battery levy;
- the short-term vehicle rental tax;
- the provincially administered rebate for residential energy; and
- the provincial tax on the private sales of used vehicles, boats and aircraft.