



Bob Aaron bob@aaron.ca

November 3, 2007

Federal tax cut already in effect

New homes bought since Oct. 30, 2007 eligible for 5 per cent GST rate

While the GST officially won't drop from 6 per cent to 5 per cent until Jan. 1, 2008, the new rate is already in effect for buyers of newly constructed houses and condominiums.

Here's how the new GST rules affect purchases of new homes as of Finance Minister Jim Flaherty's announcements on Tuesday:

If an agreement was signed with a builder after May 2, 2006 but before Oct. 30, 2007, and ownership or possession is transferred before Jan. 1, 2008, the GST is calculated at 6 per cent and there is no transitional rebate.

If an agreement is signed with a builder after Oct. 30, 2007, and both ownership and possession are transferred to the buyer on or after Jan. 1, 2008, the rate is 5 per cent.

Special rules apply if the agreement of purchase and sale is signed on or before Oct. 30, 2007, and both ownership and possession are transferred on or after Jan. 1, 2008.

For residential sales where the agreement of purchase and sale was signed on or before Oct. 30, 2007 but after May 2, 2006, the 6 per cent rate applies to the purchase price.

For residential sales where the agreement was signed on or before May 2, 2006, the 7 per cent rate applies.

In both of these cases, however, the buyer is entitled to file a claim directly with the Canada Revenue Agency to collect a GST transitional rebate that reflects the GST rate reduction to 5 per cent.

The transitional rebate is applied to the net GST after deducting the new home or rental residential rebate to which a buyer may be entitled.

Where an agreement is signed after May 2, 2006 and ownership or possession is transferred before Jan. 1, 2008, the GST is 6 per cent and there is no transitional rebate.

Unlike the regular GST new housing rebates, the builder will not be allowed to pay or credit the transitional rebate against tax owing by the purchaser and then claim it as a deduction from net tax.

The intention is that the benefit of the transitional rebate flows to the purchaser and not the builder. More information is available at <http://www.fin.gc.ca/ec2007/ec/eca1e.html> (See excerpt of relevant sections below.)

Bob Aaron is a Toronto real estate lawyer.

He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818.

Visit the column archives at www.aaron.ca/columns/toronto-star-index.cfm.

GST Transitional rules for New Homes

The following tables illustrate the transitional rules for purchases of new or substantially renovated residential complexes from a builder.

Purchase and sale agreement entered into before May 3, 2006

Ownership transferred	Possession transferred	Rate of tax	2006 transitional rebate	2008 transitional rebate
Before July 1, 2006	Before July 1, 2006	7%	No	No
Before July 1, 2006	After June 30, 2006	7%	No	No
After June 30, 2006	Before July 1, 2006	7%	No	No
After June 30, 2006 and before January 1, 2008	After June 30, 2006 and before January 1, 2008	7%	Yes	No
After June 30, 2006 and before January 1, 2008	After December 31, 2007	7%	Yes	No
After December 31, 2007	After June 30, 2006 and before January 1, 2008	7%	Yes	No
After December 31, 2007	After December 31, 2007	7%	Yes	Yes

Purchase and sale agreement entered into after May 2, 2006 and before October 31, 2007

Ownership transferred	Possession transferred	Rate of tax	2006 transitional rebate	2008 transitional rebate
Before July 1, 2006	Before July 1, 2006	7%	No	No
Before July 1, 2006	After June 30, 2006	7%	No	No
After June 30, 2006	Before July 1, 2006	7%	No	No
After June 30, 2006 and before January 1, 2008	After June 30, 2006 and before January 1, 2008	6%	No	No
After June 30, 2006 and before January 1, 2008	After December 31, 2007	6%	No	No
After December 31, 2007	After June 30, 2006 and before	6%	No	No

After December 31, 2007	January 1, 2008	6%	No	No
After December 31, 2007	After December 31, 2007	6%	No	Yes

Purchase and sale agreement entered into after October 30, 2007

Ownership transferred	Possession transferred	Rate of tax	2006 transitional rebate	2008 transitional rebate
Before January 1, 2008	Before January 1, 2008	6%	No	No
Before January 1, 2008	After December 31, 2007	6%	No	No
After December 31, 2007	Before January 1, 2008	6%	No	No
After December 31, 2007	After December 31, 2007	5%	No	No

Sales and Excise Tax Measures

Cutting the GST to 5 per cent

The goods and services tax/harmonized sales tax (GST/HST) is a **consumption tax** that applies to the majority of goods and services consumed in Canada. GST is imposed under the *Excise Tax Act* at the rate of 6 per cent, and in the harmonized provinces (Nova Scotia, New Brunswick and Newfoundland and Labrador), as the 6 per cent federal component of the combined 14 per cent federal-provincial HST. Subsequent references to the GST should be read as also referring to the federal component of the HST.

This Economic Statement proposes to reduce the GST rate by one percentage point, from 6 to 5 per cent, effective January 1, 2008. This Economic Statement also proposes to maintain the **GST credit** at current levels for low- and modest-income Canadians and to retain the existing **GST rebate** rates for new housing and purchases made by public service bodies.

To facilitate the transition to the lower rate, this Economic Statement proposes transitional rules for determining the GST rate applicable to transactions that straddle the January 1, 2008 implementation date. These rules, which are outlined below, will provide certainty for suppliers and consumers and are intended to minimize the compliance and administrative costs of changing to the new 5 per cent rate. Other proposed changes associated with the rate reduction are also outlined below. In general, they are the same as those implemented when the GST was reduced from 7 to 6 per cent on July 1, 2006.

Amendments to the relevant GST/HST regulations, in order to implement the change to a 5 per cent rate of GST, will be proposed following Royal Assent of the rate change.

Transitional Rules

The general transitional rule to determine whether the rate of 6 per cent or the rate of 5 per cent will apply, which will be based upon the time at which the GST in respect of a transaction becomes payable, is outlined below:

- If GST becomes payable, or is paid without having become payable, before January 1, 2008, the rate of 6 per cent will apply.
- If GST becomes payable on or after January 1, 2008, without having been paid before that day, the rate of 5 per cent will apply.
- If GST is paid on or after January 1, 2008, without having become payable before that day, the rate of 5 per cent will apply.

The *Excise Tax Act* has a number of existing provisions that will be relevant in determining when GST becomes payable.

In general, the GST on consideration for a supply is payable on the earlier of the day payment is made and the day the supplier issues an invoice. Further, if either the date of an invoice, or the payment date under a written agreement, is earlier than the day the invoice is issued, GST becomes payable on the earlier date.

Provisions of the *Excise Tax Act* that normally determine when GST is payable will apply to determine the appropriate rate of tax. For example, in the case of a lease, GST becomes payable on the earlier of the day the payment is made and the day it is required to be made under the lease agreement.

Specific Transitional Rules

In addition to the application of the general transitional rule described above, certain types of transactions will have specific transitional rules described below.

(a) Sales of Real Property

Under the proposed measures, the following specific transitional rules will apply in respect of sales of real property to determine whether the rate of 6 per cent or the rate of 5 per cent will apply.

Ownership or Possession Transferred before January 1, 2008: Generally, the 6 per cent rate will apply to all of the consideration for a supply by way of sale of real property if ownership of the property, or possession of it under the agreement of purchase and sale, is transferred to the buyer before January 1, 2008.

Ownership and Possession Transferred on or after January 1, 2008: The 5 per cent rate will apply to all of the consideration for a supply by way of sale of real property if both ownership of the property and possession of it under the agreement are transferred to the buyer on or after January 1, 2008. Note the special transitional rule for new residential housing below.

Sales of New Housing under Written Agreements Entered into on or before October 30, 2007 Where Both Ownership and Possession Transferred on or after January 1, 2008. The Following Rules Apply:

- For sales of houses, apartment buildings and other residential complexes made pursuant to an agreement, evidenced in writing, entered into on or before October 30, 2007 but after May 2, 2006, the 6 per cent rate will apply to all of the consideration.
- For sales of houses, apartment buildings and other residential complexes made pursuant to an agreement, evidenced in writing, entered into on or before May 2, 2006, the 7 per cent rate will apply to all of the consideration.
- In both of these circumstances, the purchaser of the residential complex will be entitled to file a claim directly with the Canada Revenue Agency to be paid a Transitional Rebate that reflects the GST rate reduction to 5 per cent, net of any corresponding rebate adjustment. Unlike the regular GST New Housing Rebates, the builder will not be allowed to pay or credit the Transitional Rebate against tax owing by the purchaser and then claim it as a deduction from net tax.

Table A.4
Application of Transitional Rules to New Housing

Situation	Tax Included Price (\$200,000 house)	Tax Remitted (GST less New Housing Rebate)	Transitional Rebate	Net GST Paid by Buyer
Agreement of purchase and sale was signed after May 2, 2006 and, ownership or possession is transferred before January 1, 2008: GST at 6%	\$207,680	\$7,680 ¹	N/A	\$7,680
Agreement of purchase and sale is signed after October 30, 2007 and ownership and possession are transferred on or after January 1, 2008: GST at 5%	\$206,400	\$6,400 ²	N/A	\$6,400
Agreement of purchase and sale was signed after May 2, 2006 but on or before October 30, 2007 and ownership and possession are transferred on or after January 1, 2008: GST at 6%	\$207,680	\$7,680 ³	(\$1,280) ⁴	\$6,400 ⁵
Agreement of purchase and sale was signed on or before May 2, 2006 and ownership and possession are transferred on or after January 1, 2008: GST at 7%	\$208,960	\$8,960 ⁶	(\$2,560) ⁷	\$6,400 ⁸

¹ \$7,680 = GST at 6 per cent (\$12,000) less GST New Housing Rebate of \$4,320 (36% of \$12,000).

² \$6,400 = GST at 5 per cent (\$10,000) less GST New Housing Rebate of \$3,600 (36% of \$10,000).

³ \$7,680 = GST at 6 per cent (\$12,000) less GST New Housing Rebate of \$4,320 (36% of \$12,000).

⁴ \$1,280 = GST at 1 per cent (\$2,000) less GST New Housing Rebate adjustment of \$720 (36% of \$2,000).

⁵ \$6,400 = GST at 6 per cent (\$12,000) less GST New Housing Rebate of \$4,320 (36% of \$12,000) less Transitional Rebate of \$1,280.

⁶ \$8,960 = GST at 7 per cent (\$14,000) less GST New Housing Rebate of \$5,040 (36% of \$14,000).

⁷ \$2,560 = GST at 2 per cent (\$4,000) less GST New Housing Rebate adjustment of \$1,440 (36% of \$4,000).

⁸ \$6,400 = GST at 7 per cent (\$14,000) less GST New Housing Rebate of \$5,040 (36% of \$14,000) less Transitional Rebate of \$2,560.

Real Property

-Excerpted from <http://www.cra-arc.gc.ca/E/pub/gi/notice226/notice226-e.pdf>

General

1. Do the new rates of tax (5% GST or 13% HST) apply to real property purchased before January 1, 2008?

For purchases of real property (other than a residential complex where a written agreement of purchase and sale was entered into on or before October 30, 2007):

- The new rates of tax (5% GST or 13% HST) apply to a taxable purchase of real property made before January 1, 2008 if both ownership and possession are transferred on or after January 1, 2008.
- For taxable purchases of real property made after June 30, 2006, 6% GST or 14% HST will apply if either ownership or possession of the real property is transferred before January 1, 2008.
- For taxable purchases of real property made before July 1, 2006, 7% GST or 15% HST will apply if either ownership or possession of the real property is transferred before July 1, 2006.
- For taxable purchases of real property made before July 1, 2006, 6% GST or 14% HST will apply if both ownership and possession of the real property are transferred after June 30, 2006, and either ownership or possession of the real property is transferred before January 1, 2008.

Refer to question number 7 for the exception to the general rule for the purchase of a new or substantially renovated residential complex.

2. Does the GST rate change affect the rate of HST payable in respect of a taxable supply of real property made in a participating province?

Yes, a taxable supply of real property (other than a residential complex where a written agreement of purchase and sale was entered into on or before October 30, 2007) made in a participating province, where both ownership and possession of the property are transferred on or after January 1, 2008, will be subject to HST at a rate of 13%.

3. A GST/HST registrant purchases a commercial building that is fully leased to retail tenants. The registrant entered into the agreement of purchase and sale in September 2007. Ownership and possession will be transferred in January 2008. At what tax rate is the registrant required to report and pay the tax payable on the purchase?

The taxable purchase of the commercial building is subject to 5% GST or 13% HST since both ownership and possession will be transferred on or after January 1, 2008.

If either ownership or possession of the commercial building is transferred before January 1, 2008, the taxable purchase of the commercial building is subject to 6% GST or 14% HST.

4. A GST/HST registrant purchases a residential apartment building that is already fully occupied and is leased to tenants on a long-term basis. Is the registrant required to pay GST/HST if ownership and possession will be transferred after January 1, 2008?

Generally, the supply of a residential apartment building in these circumstances is exempt pursuant to Part I of Schedule V to the Act. There are no changes where the supply of the real property is exempt.

5. A GST/HST registrant paid the GST that was payable at the rate of 6% on the purchase of a commercial building. If the return for the reporting period in which tax becomes payable is due after January 1, 2008, can the registrant still claim an ITC at the 6% rate or are they restricted to 5%?

Since GST was payable at the rate of 6%, the registrant may claim an ITC for the GST paid at 6%, provided that the conditions for claiming the ITC are met. If the commercial building was located in a participating province and HST was payable at 14%, the registrant would claim an ITC for the tax payable at 14%, provided that the conditions for claiming the ITC are met.

6. What are the rules for determining when GST/HST is payable on a holdback amount, and what rate of tax will apply?

If a purchaser retains part of a payment as a holdback amount pursuant to federal or provincial legislation or pursuant to a written agreement for the construction, renovation or repair of real property, GST/HST calculated on the holdback amount is payable on the earlier of the day the holdback is paid by the purchaser and the day the holdback becomes due under the agreement or pursuant to the legislation.

If the purchaser pays the holdback amount in 2007, 6% GST or 14% HST will apply. If the holdback amount becomes due under the agreement or pursuant to the legislation in 2007, 6% GST or 14% HST will apply. If the holdback amount becomes due under the agreement or pursuant to the legislation on or after January 1, 2008, and the purchaser does not pay the holdback amount before January 1, 2008, 5% GST or 13% HST will apply.

New housing

Tables illustrating the transition rules for purchases of new or substantially renovated residential complexes from a builder are included in the Appendix.

7. Do the new rates of tax (5% GST or 13% HST) apply to the purchase of a new or substantially renovated residential complex where a written purchase and sale agreement was entered into after May 2, 2006, and on or before October 30, 2007?

No, if a written agreement of purchase and sale was entered into after May 2, 2006 and on or before October 30, 2007, 6% GST or 14% HST will apply.

If both ownership and possession are transferred on or after January 1, 2008, a GST/HST 2008 transitional rebate will be available to the purchaser to account for the 2006 rate reduction. If either ownership or possession is transferred before January 1, 2008, the purchaser will not be entitled to claim a 2008 transitional rebate.

8. Do the new rates of tax apply to the purchase of a new or substantially renovated residential complex where a written purchase and sale agreement was entered into before May 3, 2006?

No, if a written agreement of purchase and sale was entered into before May 3, 2006, 7% GST or 15% HST will apply.

If both ownership and possession are transferred on or after January 1, 2008, a GST/HST 2006 transitional rebate will be available to the purchaser to account for the 2006 rate reduction, and a GST/HST 2008 transitional rebate will be available to account for the 2008 rate reduction.

If both ownership and possession are transferred after June 30, 2006, and either ownership or possession is transferred before January 1, 2008, 7% GST or 15% HST will apply and the purchaser will only be entitled to claim a GST/HST 2006 transitional rebate to account for the 2006 rate reduction.

9. Do the new rates of tax apply to new or substantially renovated housing purchased after October 30, 2007?

Where an agreement of purchase and sale is entered into after October 30, 2007, the 5% GST or 13% HST will apply provided both ownership and possession are transferred on or after January 1, 2008.

If either ownership or possession is transferred before January 1, 2008, 6% GST or 14% HST will apply and the purchaser will not be entitled to claim a GST/HST 2008 transitional rebate.

10. A purchaser entered into a written agreement of purchase and sale in November 2005 to purchase a new residential complex. Both ownership and possession will be transferred in February 2008. What rate of tax is applicable?

The purchase of a new residential complex under a written agreement of purchase and sale entered into on or before May 2, 2006 is subject to 7% GST or 15% HST.

Since both ownership and possession of the complex will be transferred on or after January 1, 2008, the purchaser will be entitled to claim a GST/HST 2006 transitional rebate to account for the rate reduction in 2006 and a GST/HST 2008 transitional rebate to account for the rate reduction in 2008.

11. A purchaser entered into an agreement of purchase and sale in September 2006 to purchase a new residential complex. Ownership of the complex will be transferred to the purchaser in December 2007, but possession will only be transferred in March 2008. What rate of GST/HST is applicable?

The 6% GST or 14% HST rate will apply, since ownership of the residential complex will be transferred before January 1, 2008, even though possession will be transferred after January 1, 2008.

In this case, the purchaser will not be entitled to claim a GST/HST transitional rebate since ownership will be transferred before January 1, 2008.

12. A purchaser entered into an agreement of purchase and sale in August 2006 to purchase a new residential condominium unit. Possession of the condominium unit will be transferred in December 2007, but ownership will only be transferred in April 2008. What rate of GST/HST is applicable?

The 6% GST or 14% HST rate will apply, since possession of the residential condominium unit will be transferred before January 1, 2008, even though ownership will be transferred after January 1, 2008.

In this case, the purchaser will not be entitled to claim a GST/HST transitional rebate since possession will be transferred before January 1, 2008.

13. After entering into a written agreement of purchase and sale in September 2007 for a new residential complex, the purchaser requests in November 2007 that additional upgrades be made to the complex. Do the new rates of tax apply to the additional amount payable for the upgrades?

Upgrades to a residential complex will generally result in modifications to the existing agreement, such that the upgrades form part of the agreement of purchase and sale for the complex. In this case, the tax rate applicable to the purchase of the complex will prevail. Since a written agreement of purchase and sale was entered into after May 2, 2006 and on or before October 30, 2007, 6% GST or 14% HST will apply to the total amount payable for the complex, including the amount payable for the upgrades.

If both ownership and possession of the complex are transferred on or after January 1, 2008, a GST/HST 2008 transitional rebate will be available to the purchaser to account for the rate reduction based on the total amount payable for the complex, including the amount payable for the upgrades. If either ownership or possession is transferred before January 1, 2008, the purchaser will not be entitled to claim a transitional rebate.

14. A written agreement of purchase and sale entered into in September 2007 for a new residential complex provides for standard kitchen cabinets. The purchaser negotiates with the builder for an upgrade to deluxe cabinets in November 2007. Do the new rates of tax apply to the additional amount payable for the upgrade?

The additional amount the builder charges for the upgrade is an additional amount payable for the residential complex. The purchaser is not considered to have entered into a new agreement as a result of the upgrade and there is no impact on the application of the transitional rules. Since the agreement was entered into after May 2, 2006 and on or before October 30, 2007, 6% GST or 14% HST will apply on the total amount payable for the residential complex, including the amount payable for the upgrade.

If both ownership and possession of the complex are transferred on or after January 1, 2008, the purchaser may claim a GST/HST 2008 transitional rebate. When determining the amount of the transitional rebate, the total amount paid for the complex includes the additional amount paid for the upgrade. A transitional rebate is not available if either ownership or possession is transferred before January 1, 2008.

15. After entering into a written agreement of purchase and sale for a residential complex in September 2007, the purchaser requests that the builder upgrade the flooring on the main level to hardwood. The amount payable for the upgrade is not included in the written agreement of purchase and sale, nor is an addendum to that agreement made in respect of the upgrade. The builder issues a separate invoice for the upgrade on February 12, 2008, and the purchaser pays the amount directly to the builder on the following day. Both ownership and possession of the residential complex will be transferred in April 2008. Do the new rates of tax apply to the additional amount payable for the upgrade?

The additional amount the builder charges for the upgrade is an additional amount payable for the residential complex. Although the purchase and sale agreement is not actually modified, the upgrade nonetheless forms part of the single supply of the residential complex made by the builder, as the builder is not making a separate supply of hardwood flooring. Since the written agreement of purchase and sale was entered into after May 2, 2006, and on or before October 30, 2007, 6% GST or 14% HST will apply on the total amount payable for the residential complex, including the amount payable for the upgrade.

Where both ownership and possession are transferred on or after January 1, 2008, the purchaser may claim a GST/HST 2008 transitional rebate. When determining the amount of the transitional rebate, the total amount paid for the complex includes the additional amount paid for the upgrade. A transitional rebate is not available if either ownership or possession is transferred before January 1, 2008.

16. What happens if the purchaser of a new residential complex replaces a previous purchaser in the agreement of purchase and sale?

It must be determined whether the agreement has been modified, varied or otherwise materially altered to the extent that a new agreement is entered into and, as a result, whether novation (i.e., a new agreement) has occurred. If novation has occurred, the application of the transitional rule for sales of new housing will be based on the date the new agreement is entered into, as well as the dates that possession and ownership are transferred under that new agreement. Refer to GST/HST Policy Statement P-249, *Agreements and Novation*. If novation has not occurred, the application of the transitional rule will be based on the date that the agreement was entered into as well as the dates that ownership and possession are transferred under that agreement. Generally, however, a change in the purchaser (i.e., the person liable to pay for the supply under the agreement) would result in a novation.

17. A written agreement of purchase and sale was entered into in September 2007 for a new residential complex where both ownership and possession will be transferred in December 2007. The purchaser and builder renegotiate the terms of the agreement and enter into a new agreement in November 2007. Both ownership and possession under the new agreement will be transferred in February 2008. Do the new rates of tax apply to this transaction?

Where the builder and purchaser renegotiate the terms of agreement to purchase a new residential complex and enter into a new agreement of purchase and sale, the transitional rule will apply to the new agreement. Since the new agreement is entered into after October 30, 2007, and both ownership and possession under the new agreement will be transferred on or after January 1, 2008, 5% GST or 13% HST will apply.

GST/HST transitional rebate

18. On November 5, 2007, a builder enters into a written agreement of purchase and sale for a new house. The total amount payable under the agreement is \$300,000, including GST/HST, and is net of the new housing rebate that the builder will credit the purchaser. The amount is the same amount charged under a written agreement of purchase and sale entered into with another purchaser on October 30, 2007, for a similar house, where 6% GST or 14% HST is applied. In both cases, ownership and possession will be transferred in January 2008. The builder has indicated that he has not increased the price upon which the GST/HST is calculated. Can the builder pay or credit an amount to the purchaser to reflect the fact that the agreement entered into on November 5, 2007 should include 5% GST or 13% HST?

Since the written agreement of purchase and sale was entered into after October 30, 2007, and both ownership and possession will be transferred after January 1, 2008, 5% GST or 13% HST will apply. The builder can adjust the total amount payable to reflect the fact that the tax included in the amount payable under the written agreement (entered into on November 5, 2007) should be at the new rate. Or, the builder can refund the excess amount of tax charged to the purchaser. Where the builder has accounted for 6% GST or 14% HST in determining its net tax, the builder can deduct the amount of the adjustment or refund in determining its net tax provided that the conditions for making the deduction are met (e.g., a credit note containing the required information is issued by the builder).

19. How does a person claim a GST/HST transitional rebate?

To claim a GST/HST transitional rebate for the 2008 GST/HST rate reduction, the 2006 GST/HST rate reduction, or both, the person purchasing a new or substantially renovated residential complex must send a completed application form together with a copy of the agreement of purchase and sale, the Statement of Adjustments and, if applicable, a copy of the GST/HST new housing rebate or new residential rental property rebate to the CRA.

If a GST/HST new housing rebate is available in respect of the purchase, the individual who claimed the new housing rebate is the individual who claims the transitional rebate. Refer to question 26 if an amount was paid or credited by the builder to the purchaser in respect of the new housing rebate.

Form GST193, *GST/HST Transitional Rebate Application for Purchasers of New Housing*, can be used to claim the transitional rebate in respect of the 2006 GST/HST rate reduction. This application form will be revised to also include the transitional rebate for the 2008 GST/HST rate reduction. The revised application form will be available on the CRA Web site or by calling 1-800-959-2221.

20. When can a person claim the GST/HST 2008 transitional rebate?

The GST/HST 2008 transitional rebate can only be claimed in 2008 after all of the conditions for claiming it are met. For example, a person may only claim a transitional rebate after both ownership and possession of a new residential complex are transferred to the person.

Generally, a transitional rebate application and the required documents must be sent to the CRA within two years after the day ownership of the residential complex is transferred to the person.

21. An individual is not entitled to claim a GST/HST new housing rebate for their house because the purchase price of the house is \$500,000. Can the individual claim a GST/HST transitional rebate?

Yes. The GST/HST transitional rebate is not conditional on receiving a new housing rebate, nor is it subject to any maximum purchase or fair market value limitation.

- If the agreement of purchase and sale was entered into before May 3, 2006, the amount of the 2006 transitional rebate is \$5,000 (1% of \$500,000) if both ownership and possession are transferred on or after July 1, 2006 and before January 1, 2008. In this case, a 2008 transitional rebate is not available.
- If the agreement of purchase and sale was entered into before May 3, 2006, the amount of the 2006 transitional rebate is \$5,000 (1% of \$500,000) and the amount of the 2008 transitional rebate is \$5,000 (1% of \$500,000) if both ownership and possession are

transferred on or after January 1, 2008.

- If the agreement of purchase and sale was entered into after May 2, 2006 and on or before October 30, 2007, the amount of the 2008 transitional rebate is \$5,000 (1% of \$500,000) if both ownership and possession are transferred on or after January 1, 2008. In this case, a 2006 transitional rebate is not available.

22. Are there any restrictions on the type of property for which a GST/HST transitional rebate may be claimed?

The GST/HST transitional rebate may only be claimed in respect of a taxable purchase of a new or substantially renovated residential complex. In certain circumstances, the transitional rebate may also be claimed in respect of a deemed supply under section 191 of the Act. A transitional rebate is not available in respect of an owner-built home.

23. In April 2006, an individual and their spouse entered into a written agreement of purchase and sale for a new residential complex located in a non-participating province. Both ownership and possession of the complex will be transferred in February 2008. The total consideration payable for the complex is \$300,000. The individual will claim the GST/HST new housing rebate. Is the individual and their spouse entitled to claim the GST/HST 2006 transitional rebate and the 2008 transitional rebate? If so, can the spouse file the rebate claim?

Yes, both the GST/HST 2006 and 2008 transitional rebates are available where a written agreement of purchase and sale for a new residential complex was entered into before May 3, 2006, and both ownership and possession of the complex will be transferred on or after January 1, 2008.

Where a GST/HST new housing rebate is also available, the individual claiming the new housing rebate must claim the GST/HST transitional rebate.

If a GST/HST new housing rebate is not available, either the individual or their spouse can complete the application for the GST/HST transitional rebate and the CRA will issue a cheque for the amount of the transitional rebate in the name of both individuals. The cheque will be sent to the address of the individual who signs the application form.

24. An individual purchased a new residential complex for \$350,000 and claimed a GST/HST new housing rebate of \$7,560. The individual is entitled to claim a GST/HST 2008 transitional rebate as the complex was purchased under a written agreement of purchase and sale entered into in September 2007 and both ownership and possession will be transferred in January 2008. What effect will the new housing rebate claim of \$7,560 have on the calculation of the transitional rebate?

The GST/HST 2008 transitional rebate reflects the reduction in tax rates (now 5% GST and 13% HST), net of any adjustments for other corresponding rebate (e.g., a GST/HST new housing rebate).

Where a new housing rebate is available, the following formula will apply to determine the amount of the 2008 transitional rebate: $A [0.01 \frac{B}{A}]$ divided by 6]

where A = Total consideration paid for the residential complex B = Total amount of any available rebate such as the new housing rebate

In the example above, the 2008 transitional rebate would be equal to \$2,240, as follows:

$$\$350,000 [0.01 \frac{\$7,560}{\$350,000}] \text{divided by } 6]$$

$$= \$350,000 [0.01 \frac{0.0216}{1} \text{divided by } 6]$$

$$= \$350,000 [0.01 \frac{0.0036}{1}]$$

$$= \$2,240$$

25. Is the GST/HST transitional rebate only available to individuals?

No, any person purchasing a new or substantially renovated residential complex may be eligible to claim a GST/HST transitional rebate unless the person was entitled to claim an ITC in respect of the purchase. The amount of the transitional rebate takes into account any rebate that the person may be entitled to claim (e.g., a GST/HST new housing rebate or public service bodies rebate).

26. Can the GST/HST transitional rebates available for new housing purchasers be assigned or transferred to a builder?

No, there is no provision for a new housing purchaser to assign, to a builder or to any other person, the GST/HST transitional rebate. The purchaser must complete a separate application for the transitional rebate and submit it to the Summerside Tax Centre. Where the purchaser qualifies for a transitional rebate, the CRA will pay the amount to the purchaser only.

It should be noted that, while new housing rebates also cannot be assigned to the builder or any other person, the Act includes mechanisms to allow builders to pay or credit the amount of certain new housing rebates to a purchaser and to deduct the amount paid or credited in determining the builder's net tax, where certain conditions have been met (such as when the completed rebate application signed by the purchaser has been transmitted to the CRA). However, such mechanisms are not available for the transitional rebate. As a result, it is not possible for a builder to pay or credit an amount to the purchaser in respect of the transitional rebate.

27. A person claimed a full ITC on the purchase of a new residential complex as it is used exclusively in commercial activities.

Is the person entitled to claim a GST/HST transitional rebate?

No, where an ITC is available in respect of the purchase of a residential complex, a GST/HST transitional rebate is not available.

GST/HST new housing rebates

28. Will there be any changes to the rules for claiming a GST/HST new housing rebate for builder-built housing?

There will be a reduction of the maximum rebate amount from \$7,560 to \$6,300 to account for the reduction in the GST/HST rates. There will also be changes to the applicable rebate factor used to calculate the consideration, tax payable, and the new housing rebate when the amount payable for the purchase of new housing includes the tax payable and is net of the new housing rebate. Refer to GST/HST Memoranda 19.3.1.2, *Stated Price Net of Rebate*

GST at 5%, and 19.3.8.1, *New Housing Rebates and the HST at 13%*, which will be available on the CRA Web site.

29. In November 2007, an individual and a builder enter into a written agreement of purchase and sale for a newly constructed house for use as the individual's primary place of residence. The purchase price is \$320,000 plus GST and the GST/HST new housing rebate is not paid or credited to the individual by the builder. Is the individual entitled to claim a new housing rebate? If so, what is the amount of the rebate?

Individuals who purchase a house for use as their primary place of residence will continue to be entitled to claim a GST/HST new housing rebate for part of the GST (or federal component of the HST) they pay on their purchase. Where the GST is payable at 6%, the maximum rebate amount is equal to the lesser of 36% of the GST paid and \$7,560. Where GST is payable at 5%, the maximum rebate amount is equal to the lesser of 36% of the GST paid and \$6,300.

Therefore, in this example, if either ownership or possession is transferred before January 1, 2008, GST is payable at the rate of 6% and the amount of the new housing rebate would be equal to \$6,912 (i.e., the lesser of \$7,560 and 36% of the 6% GST paid on the purchase of the house).

If both ownership and possession are transferred on or after January 1, 2008, GST is payable at the rate of 5% and the amount of the new housing rebate would be \$5,760 (i.e., the lesser of \$6,300 and 36% of the 5% GST paid on the purchase of the house).

30. Will the GST/HST rate reduction have any effect on the GST/HST new housing rebate in respect of the provincial component of the HST available for a residential complex that is located in Nova Scotia?

There will be no changes to the Nova Scotia housing rebate that is in respect of the provincial component of the HST for a residential complex that is located in Nova Scotia.

31. Will there be any changes to the rules for claiming a GST/HST new housing rebate for owner-built housing?

There will be a reduction of the maximum rebate amount from \$7,560 to \$6,300. If all or substantially all of the GST was paid at the rate of 5% (or 13% HST), the maximum rebate amount will be \$6,300. However, if all or substantially all of the GST was paid at the rate of 6% (or 14% HST), the maximum rebate amount will remain at \$7,560.

In any other case, where the owner incurs eligible expenses that are subject to GST at 7%, 6% and 5% (or HST at 15%, 14% and 13%), or any combination thereof, the claimant will be required to determine the extent to which tax was paid at each rate to determine the maximum rebate amount that is available.

32. An individual is building a new house. Does the individual have to keep track of the invoices for purchases that are taxed at the different rates? How does the individual calculate the maximum new housing rebate for which they are eligible?

Yes, the individual must keep track of all invoices for purchases that are taxed at the different rates, as the maximum new housing rebate amount will be determined on a proportionate basis. The maximum rebate amount is equal to the lesser of:

- \$8,750, and
- \$6,300 plus the extent (expressed as a percentage) to which tax was paid at 6% multiplied by \$1,260 and plus the extent (expressed as a percentage) to which tax was paid at 7% multiplied by \$2,520.

If all or substantially all of the GST was paid at the rate of 5% (or 13% HST), the maximum rebate amount will be \$6,300.

If all or substantially all of the GST was paid at the rate of 6% (or 14% HST), the maximum rebate amount will be \$7,560.

For example, if 10% of the individual's tax paid was at the rate of 7%, 30% was paid at the rate of 6% and 60% was paid at the rate of 5%, the maximum rebate amount will be:

$$= \$6,300 + (30\% \$1,260) + (10\% \$2,520)$$

$$= \$6,300 + \$378 + \$252$$

$$= \$6,930$$

Note: the above amounts reflect the maximum rebate amount available for an owner-built home. The amount of the owner-built home

rebate is dependent on the actual amount of tax paid and the fair market value of the home.

33. What effect will the GST/HST rate reduction have on the cooperative housing rebate?

The maximum amount of a cooperative housing rebate will be reduced to account for the reduction in the GST/HST rate. The thresholds for the total consideration will be reduced from \$477,000 to \$472,500 and the amount at which the phase-out begins to apply will be reduced from \$371,000 to \$367,500.

34. Will the GST/HST rate reduction have any effect on the GST/HST new residential rental property rebate?

As with the GST/HST new housing rebate, there will be a reduction of the maximum rebate amount from \$7,560 to \$6,300.

.....

Services and real property

38. An individual purchases a parcel of land. In September 2007, the individual enters into an agreement for the construction of a house that is to be used as that individual's primary place of residence once it is completed. The individual makes progress payments to the company constructing the house. The house is completed in May 2008. What rate of tax applies to the progress payments? What effect will the change in the GST/HST rates have for payments made on or after January 1, 2008, in respect of services performed before that date?

For progress payments made under a construction contract, the tax is payable on the value of each payment on the earlier of the day on which the payment is made and the day on which the payment becomes due. All progress payments that become due on or after January 1, 2008, and that are not paid before January 1, 2008, are subject to 5% GST or 13% HST. Progress payments that are made or that become due before January 1, 2008 are subject to

Appendix Transitional rules

The following tables illustrate the transitional rules for purchases of new or substantially renovated residential complexes from a builder.

Purchase and sale agreement entered into before May 3, 2006

Ownership transferred	Possession transferred	Rate of tax	2006 transitional rebate	2008 transitional rebate
Before July 1, 2006	Before July 1, 2006	7%	No	No
Before July 1, 2006	After June 30, 2006	7%	No	No
After June 30, 2006	Before July 1, 2006	7%	No	No
After June 30, 2006 and before January 1, 2008	After June 30, 2006 and before January 1, 2008	7%	Yes	No
After June 30, 2006 and before January 1, 2008	After December 31, 2007	7%	Yes	No
After December 31, 2007	After June 30, 2006 and before January 1, 2008	7%	Yes	No
After December 31, 2007	After December 31, 2007	7%	Yes	Yes

Purchase and sale agreement entered into after May 2, 2006 and before October 31, 2007

Ownership transferred	Possession transferred	Rate of tax	2006 transitional rebate	2008 transitional rebate
Before July 1, 2006	Before July 1, 2006	7%	No	No
Before July 1, 2006	After June 30, 2006	7%	No	No
After June 30, 2006	Before July 1, 2006	7%	No	No
After June 30, 2006 and before January 1, 2008	After June 30, 2006 and before January 1, 2008	6%	No	No
After June 30, 2006 and before January 1, 2008	After December 31, 2007	6%	No	No
After December 31, 2007	After June 30, 2006 and before January 1, 2008	6%	No	No
After December 31, 2007	After December 31, 2007	6%	No	Yes

2007

2007

0/0

100

100

Purchase and sale agreement entered into after October 30, 2007

Ownership transferred	Possession transferred	Rate of tax	2006 transitional rebate	2008 transitional rebate
Before January 1, 2008	Before January 1, 2008	6%	No	No
Before January 1, 2008	After December 31, 2007	6%	No	No
After December 31, 2007	Before January 1, 2008	6%	No	No
After December 31, 2007	After December 31, 2007	5%	No	No

Bob Aaron is a Toronto real estate lawyer. www.aaron.ca ©Aaron & Aaron. All Rights Reserved.