

# Update

## Tax Law

October 20, 2009

### Ontario HST Transition Rules Announced

The British Columbia and Ontario governments have each released a general description of transition rules for the upcoming replacement of the provincial sales tax in those provinces (“PST”) with a sales tax (the “HST”) harmonized with the federal GST. The General Transition Rules for the implementation of HST released by each province are nearly parallel. This update will focus on the Ontario rules.

#### Important Dates

**July 1, 2010:** As previously announced, the HST will be fully implemented in B.C. and Ontario. Goods or services received after this date will generally be subject to HST and not PST.

**May 1, 2010:** Suppliers will have to collect any applicable HST on amounts that are paid or payable on or after May 1, 2010 for goods or services delivered or provided on or after July 1, 2010.

**October 14, 2009:** Certain businesses and public service bodies (see below) may be required to self-assess the provincial component of the HST on amounts paid or payable by them after October 14, 2009 and before May 2010 for goods or services to be received after July 1, 2010.

**October 31, 2010:** All outstanding PST becomes payable under the transition rules to facilitate the wind-down of the PST regime.

#### Self-Assessment of HST

Certain persons may be required to self-assess the provincial component of the HST on amounts paid or payable by them after October 14, 2009 and before May 2010 for goods or services to be received after July 1, 2010.

This requirement to self-assess generally applies only to:

- Non-consumers acquiring the goods or services for consumption or use otherwise than in the course of a commercial activity (that is, persons whose business includes making GST-exempt supplies, such as financial services or health care services).
- Non-consumers that use the simplified accounting procedures under the GST legislation (such as certain charities, public service bodies, and small businesses).
- Selected listed financial institutions.
- Non-consumers acquiring the goods or services for use or consumption in their commercial activities where a restriction on input tax credit availability would apply (for example, certain entertainment expenses are subject to 50 percent input tax credit recapture; also, the 2009 Ontario budget proposed temporary restrictions on large businesses’ ability to claim input tax credits on the provincial component of the HST payable on certain supplies, such as energy and telecommunications services).

Persons having to self-assess this tax will be required to account for it in their GST/HST return for the reporting period that includes July 1, 2010, if that return is due before November 2010; or, in any other case, in a special prescribed return due before November 2010.

#### Rules for Specific Types of Supplies

The General Transition Rules include a description of how the HST will apply to transactions that straddle the July 1, 2010 implementation

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date (for instance, payment for a supply is made before implementation, but delivery is made afterward) which work in tandem with rules announced for the wind-down of the PST regime. The following summarizes the application of both HST and PST to such transactions.

The general rules described under “Important Dates”, above, apply to determine HST payment, collection or self-assessment obligations in respect of the following specific supplies.

## **Tangible Personal Property**

- PST will generally apply to the taxable sale of goods if possession or ownership of the goods is transferred to the purchaser before July 1, 2010.
- HST will generally apply to goods if possession and ownership of the goods is transferred to the purchaser on or after July 1, 2010.
- Notwithstanding the general rules above, goods purchased by consumers will remain subject to PST, regardless of when delivered, if the consideration for the goods is paid before May 1, 2010.
- The general rules described under “Important Dates”, above, apply to determine HST payment, collection or self-assessment obligations in respect of the foregoing supplies.

## **Services, Memberships and Admissions**

- PST will generally apply to the portion of taxable services performed before July 1, 2010.
- HST will generally apply to the portion of services performed on or after July 1, 2010. Where a part of the service is performed before July 1, 2010, no HST is payable on that part (even if the consideration is paid after that date). Furthermore, if 90% or more of the service has been performed before July 2010, no HST (only PST) will apply to the service (even if the consideration is paid after July 1, 2010).
- With the exception of lifetime memberships, for which special rules apply, memberships

are treated in the same manner as services under the transition rules. Accordingly, the portion of a membership that is applicable to the period commencing July 1, 2010 and thereafter is subject to HST.

- Admissions to places of entertainment, seminars or events that take place on or after July 1, 2010, are subject to HST.
- Notwithstanding the general rules above, taxable services and admissions purchased by consumers will remain subject to PST, regardless of when delivered, if the consideration for the supplies is paid before May 1, 2010.
- The general rules described under “Important Dates”, above, apply to determine HST payment, collection or self-assessment obligations in respect of the foregoing supplies.
- The General Transition Rules include special rules for funeral and cemetery services, passenger and freight transportation services, and subscriptions to newspapers, magazines and other periodicals.

## **Leases and Licenses**

- PST will continue to apply to a supply of taxable goods by way of lease, licence or similar arrangement for the part of a lease interval that occurs before July 1, 2010.
- HST applies to the portion of a lease interval that occurs after July 1, 2010 (with the exception of a lease interval that begins before July 2010 and ends before July 31, 2010, in respect of which PST, but not HST, will apply).
- The general rules described under “Important Dates”, above, apply to determine HST payment, collection or self-assessment obligations in respect of the foregoing supplies.

## **Real Property Other than Residential Housing**

HST will apply to a supply of real property (other than residential housing) by way of sale in Ontario if both ownership and possession of the property are transferred to the purchaser on or after July 1, 2010.

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The General Transition Rules do not contain rules pertaining to residential housing. Transition rules for new residential housing are included in the Ontario government's Information Notice No.2, dated June 18, 2009.

## Other Specific Transition Rules

The following supplies and circumstances are subject to special transition rules:

- Supplies by, and inventory of, direct sellers and their independent sales contractors.
- Continuous supplies made by wire, pipeline, satellite or telecommunications facility.
- Budget payment arrangements (such as equal billing plans for utilities).
- Combined supplies (where a portion of a single supply would be subject to HST under the transition rules, but another portion would not be).
- Progress payments.
- Goods and services brought into the province.
- Imported goods and imported taxable supplies.
- Returns and exchanges of goods.
- PST paid on construction materials that are held in inventory on June 30, 2010.

## Additional Rules Regarding the Wind-Down of PST

The Ontario and B.C. General Transition Rules differ somewhat in the specific details of the wind-down of PST. The Ontario rules are described below.

- On July 1, 2010, the existing PST will generally cease to apply.
- Final PST returns are required to be filed by

July 23, 2010.

- Any PST collected after June 2010 is required to be accounted for in a supplemental PST return to be filed the following month.
- All such supplemental PST returns must be filed no later than November 23, 2010, as all uncollected PST becomes payable on October 31, 2010.

This summary presents the details of the General Transition Rules that will be applicable to clients in most circumstances. If you would like more information on how the transition rules will specifically affect you or your business, please contact Glenn Ernst, David Veneziano, or any other member of our tax group:

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