

GST/HST Info Sheet

Sales of Vacant Land by Individuals

August 2004

This information sheet explains the application of the GST/HST to sales of vacant land by individuals. It focuses on sales of personal use land rather than land sold in a business and provides examples of how the GST/HST applies to common situations involving these sales. For GST/HST purposes, the term “individual(s)” does not include a partnership consisting of individuals. Therefore, the information in this information sheet does not apply to land held by a partnership although it may apply to land held by individuals in joint tenancy or tenancy in common.

In this document, “taxable” means subject to the GST/HST and “exempt” means not subject to the GST/HST.

Where a sale of vacant land includes a residence or house, the sale is viewed as two separate sales:

- (i) the portion that includes the house plus the land that is necessary for the use and enjoyment of the house, and
- (ii) the remaining portion of land.

This Info Sheet applies to the sale of the remaining vacant land.

Sales of used houses are usually exempt although there are circumstances when they may be taxable. For additional information on sales of used houses refer to GST/HST Info Sheet, *Sales by Individuals of Owner-Occupied Homes* and GST/HST Memorandum 19.2.1, *Residential Real Property – Sales*.

Sales of farmland are usually taxable although there are limited circumstances when they may be exempt. For additional information on farmland refer to GST/HST Info Sheet, *Sales of Farmland by Individuals*.

Most sales of vacant land by individuals are exempt. Examples of exempt sales are:

- the sale of land that had been kept for personal use; or
- the sale to a relative (or to a former spouse or common-law partner) for their personal use of a parcel of land created by subdividing another parcel.

However, there are situations when sales of land by individuals may be taxable. Examples of taxable sales include:

- the sale of land that is capital property that had been used primarily in a business;
- the sale of land in the course of a business; or
- the sale of a parcel of land created by subdividing another parcel into more than two parts.

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La version française de ce document est intitulée *Ventes par des particuliers — terrains vacants*.

Canada

Question

I own a parcel of vacant land that I wish to subdivide into parts in order to sell the parts separately. Does the GST/HST apply to these sales?

Answer

If you have never previously subdivided or severed your parcel of vacant land from another that you owned and you subdivide the parcel into only two parts, the sale of either of those parts is exempt from the GST/HST. If you subdivide the parcel into more than two parts, the sale of the parts is taxable. However, if you sell any part to a relative (or to a former spouse or common-law partner) for their personal use, that particular part is not taxable. The part sold to a relative would not be taxable even if the parcel of land had been previously severed from another parcel or even if the parcel is subdivided and severed into more than two parts.

If, when you bought the land, you intended to resell it in the course of an adventure or concern in the nature of trade (either as one parcel or subdivided into two parts), you may elect to charge tax on the sale(s). In this case, you must provide a completed form GST22, *Real Property – Election to Make Certain Sales Taxable* to the nearest tax services office prior to the sale. You do not need to register for the GST/HST in order to file the GST22 election form.

A non-registrant who makes a taxable sale of real property is entitled to a rebate for the GST/HST paid on the purchase of the property that would not have otherwise been recoverable. The rebate is based on a basic tax content calculation (i.e., a formula that takes into account the tax the non-registrant paid on the purchase of the property plus any tax paid on improvements). For more information refer to the GST/HST Memorandum 19.3.6, *Rebate on Non-Registrant's Sale of Real Property*.

Question

After my father died I inherited a parcel of land from his estate and I now want to sell all of it (i.e., the entire parcel) to a local developer. The land was not used for any commercial or business purpose by me or before I acquired it. Do I have to charge the GST/HST?

Answer

No, you are not required to charge the GST/HST on the sale of the vacant land since it was not capital property used primarily in a business and it is not being sold in the course of a business.

Also, since you did not buy the land with the intention of reselling it but rather you inherited it from your father, you are not considered to be selling the land in the course of an adventure or concern in the nature of trade. Therefore, you do not have the choice of electing to charge tax on the sale to the developer. An intention of resale from the time you acquired the land to the time you sell it is normally required for the resale to have been made as an adventure or concern in the nature of trade.

Question

I have severed a portion of land that previously formed part of the parcel of land on which my house is located. I have never previously severed any portion of the land nor have I ever leased any portion of the land or used it for other commercial purposes. Would GST/HST apply to the sale of the severed portion?

Answer

The sale of the severed portion of vacant land would not be subject to GST/HST since it is not capital property used primarily (more than 50%) in a business and it is not being sold in the course of a business. However, if the land was subdivided into more than two parts, sales of the severed portions are not exempt unless the portion is sold to a relative (or to a former spouse or common-law partner) for their personal use.

Question

I own a parcel of vacant land that I have never previously subdivided or severed. I had always used it for my personal use and I now intend to sell it for retirement income. I subdivided the vacant land into six lots and I am selling a lot to each of my two children, one lot to a friend and the remaining three lots to a developer. My children are acquiring their lots for their personal use. Does the GST/HST apply to these sales?

Answer

The GST/HST does not apply to sales of the lots to your children even though the parcel is severed into more than two parts. However, the GST/HST applies to the sales of all of the remaining four lots (one to a friend and three to a developer.)

Question

I owned a parcel of land, which, in 1992, I subdivided into two separate lots, selling off one of the lots at that time. Since the parcel of land was subdivided or severed into only two parts and since the parcel of land had never previously been subdivided or severed from another parcel, the sale of the lot in 1992 was not taxable. I have now subdivided my remaining lot, which I had been using for my personal use, into two lots and I am selling the lots to people who are not related to me. Does GST/HST apply to the sale of those two lots?

Answer

Yes, the GST/HST applies to the sale of the two lots because, even though there was a gap in time between the first subdivision and the second, these two lots were created by the further subdivision of a lot which had itself been subdivided from the original parcel. In this example, if the particular lot created in 1992 by the first subdivision had not been sold at that time,

and instead sold now with the other two lots, the sale of that particular lot would still not be taxable while the other two lots would remain taxable. This is because it had been created by subdividing the original parcel of land into only two parts and because the original parcel had not been previously subdivided from another parcel.

GST/HST forms

If you are selling taxable land, you are required to collect the GST/HST unless you are selling your taxable land to a GST/HST registrant. In this case, the registered purchaser is required to remit the tax directly. You are not required to collect the tax as the purchaser has to self-assess. The purchaser would remit the tax using either the GST 60, *GST/HST Return for Acquisition of Real Property* or, if using the land primarily in commercial activities, their regular GST/HST return.

If you are making a taxable sale of land to a non-registrant and that sale is your only commercial activity (and you are not in the business of selling land), you are required to remit the tax yourself using form GST62, *Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return (Non-personalized)*. You are not required to register for GST/HST purposes.

If you are a GST/HST registrant, you would remit the tax using your regular personalized GST/HST return, GST34, *Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return for Registrants*.

This Info Sheet does not replace the law found in *the Excise Tax Act* (the Act) and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate regulation, or contact any Canada Revenue Agency (CRA) GST/HST Rulings Centre for additional information. These centres are listed in the GST/HST Memorandum 1.2, *CRA GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287. A ruling should be requested for certainty in respect of any particular GST/HST matter.

If you are located in the province of Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact the Ministère du Revenu du Québec (MRQ) by calling the toll-free number 1-800-567-4692.

All GST/HST publications are available on the Internet at the CRA site <http://www.cra-arc.gc.ca/tax/technical/gsthst-e.html>.

Reference in CRA publications is made to property and services taxable at 7% or 15% (the rate of the HST). The 15% HST applies to property and services provided in Nova Scotia, New Brunswick and Newfoundland and Labrador (the “participating provinces”).