

Notice of Change January 30, 2002

GST/HST Memorandum 19.3.5, *Rebate to Owner of Land Leased for Residential Use*

The electronic version of GST/HST Memorandum 19.3.5, *Rebate to Owner of Land Leased for Residential Use* is being changed to reflect legislative amendments to section 256.1 of the *Excise Tax Act*.

Section 256.1 provides a rebate of tax in particular circumstances to an owner or lessee of land where tax was paid by the owner or lessee in purchasing or improving the land.

One of the amendments to subsection 256.1(1) ensures that this rebate is available in situations where a lessor of the land who is required to self-assess tax assigns the lease, as opposed to entering into a sub-lease.

This amendment is effective on January 1, 1991.

Accordingly, the overview paragraph, which summarizes the Memorandum, and the beginning of paragraph 1 have been revised.

The revised overview paragraph now reads:

“A person who supplies residential land by way of lease, licence or similar arrangement may apply, under certain conditions, for a rebate of GST/HST payable by the person in purchasing or improving the land. Generally, the rebate is available where the land has been supplied by way of lease, licence or similar arrangement under exempt conditions to a person who will be required to self-assess tax if the use of the land is for residential purposes. The rebate is also available where a lessor of the land who is required to self-assess tax supplies the land by assigning the lease. The rebate prevents double taxation of the property.”

The revised beginning to paragraph 1 now reads:

“1. The rebate provided under section 256.1 applies to situations where a person supplies land by way of lease, licence or similar arrangement or by assignment to a person who is acquiring the land: ...”

There are other amendments to subsection 256.1(1) that affect the formula for calculating the rebate. An amendment to the description of element A of the formula clarifies that the rebate is available for tax on improvements only if the improvements were used in the course of improving the property before the time at which the deemed supply of the complex is made and the requirement for the lessee or sub-lessee to self-assess tax arises. The amended wording of element B is consequential to the change in element A.

The amendments to elements A and B of the formula also remove the phrase "total tax charged in respect of the land" to clarify that tax on improvements is included in the calculation of the rebate. Amended subsection 256.1(1) simply refers to "all tax".

The amendments to the formula apply for the purpose of determining any rebate under section 256.1 for which the Minister of National Revenue on or after December 10, 1998 receives an application.

Consequently, paragraph 5 of the Memorandum has been revised as follows:

5. Effective December 10, 1998, an eligible claimant (herein called “the landlord”) is entitled to recover the tax according to the formula:

A – B

where

A = the total of all tax that was payable by the landlord before the time at which the deemed supply of the land is made and the lessee’s or sub-lessee’s requirement to self-supply arises. Total tax includes:

- tax that was payable by the landlord in respect of the last acquisition of the land, including tax that would have become payable but for section 167⁴, and
- tax that was payable by the landlord in respect of improvements to the land that were acquired, imported or brought into a participating province⁵ by the landlord after that last acquisition of the land and that were used in the course of improving the property that includes the land before the time of the lessee’s or sub-lessee’s deemed supply.

B = the total of all other rebates and ITCs that the landlord was entitled to claim in respect of any amount included in the total for A.

Prior to December 10, 1998, an eligible claimant was entitled to recover the tax according to the formula:

A – B

where

A = the “total tax charged” for the land (for example, the total tax payable by the person who supplies the land on the last acquisition of the land and the tax payable on improvements to the land since that last acquisition), and

B = the sum of all other rebates and ITCs which the person was entitled to claim in respect of **A**.

Footnotes:

4. Under the provisions of section 167, an otherwise taxable sale of a business can generally be made without tax applying if both parties to the transaction so elect (form GST 44). When calculating the rebate, even though tax had not applied to the last acquisition of the property because an election had been in effect, the amount of tax that would have been payable if the election had not been made is included.

5. The participating provinces are the provinces that have chosen to harmonize their sales tax with the federal GST, producing the harmonized sales tax (HST). Schedule VIII to the Act sets out the participating provinces under the HST and the tax rate for each of them. The participating provinces are Nova Scotia, New Brunswick and Newfoundland, and the Nova Scotia and Newfoundland offshore areas to the extent that offshore activities are carried out in these areas.