GST/HST Memoranda Series

Notice of Change: 19.2.4, Residential Real Property – Special Issues, paragraphs 12, 13 and 14
December 12, 2001

19.2.4 Residential Real Property — Special Issues

June 1998

Overview

This section of Chapter 19, *Special Sectors: Real Property* examines the GST/HST treatment of:

- cooperative housing corporations,
- the movement of a building that previously formed part of a residential complex, and
- timeshares.

Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax 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 a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency 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.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

Cooperative housing corporations

New or used?

1. When a cooperative housing corporation (the "co-op") which is defined in section 123(1) acquires legal title to a residential complex, the GST/HST implications with respect to the acquisition depend on whether the residential complex has been occupied or whether it is newly constructed.

Used: acquisition exempt
Sch V, Part I, s 2

2. Generally, if the residential complex acquired by the co-op has been occupied, the acquisition is exempt provided the supplier has not claimed input tax credits (ITCs) in respect of the last acquisition or improvement to the complex. If the complex has not been occupied or if it has been substantially renovated, generally GST/HST applies. The way that GST/HST applies depends on whether the co-op is the builder of the complex or if the co-op purchased the residential complex from a builder.

Canada

New purchase by co-op from builder: taxable, no ITCs

3. If the co-op purchased the previously unoccupied and newly constructed or substantially renovated residential complex from a builder, the supply to the co-op is taxable. Since the co-op has acquired the complex for exempt purposes (making exempt supplies of financial services and residential accommodation by way of lease, licence or similar arrangement), GST/HST paid or payable by the co-op is not eligible for ITCs. Provided the co-op is not considered a builder in this situation, the self-supply rules under section 191 are not triggered when the first unit is occupied. (For an explanation of the self-supply rules for builders of residential real property, see Section 19.2.3, *Residential Real Property—Deemed Supplies.*)

If co-op is builder

4. If the co-op is the builder of the complex, the GST/HST situation is different. The self-supply rules under section 191 are usually triggered and the co-op is deemed to have sold and repurchased the residential complex at fair market value, (in other words, the co-op has made a taxable supply to itself). This deemed taxable supply means that the co-op is engaged in a "commercial activity" (i.e., the deemed taxable sale of a new residential complex) and GST/HST applies to the deemed sale whether the co-op is registered or not.

Small suppliers
ss 148(2)

5. The deemed sale alone does not cause the co-op to exceed the small supplier threshold since the residential complex is capital property of the co-op and, therefore, not taken into consideration for the small supplier threshold. However, while not obligated to do so, the co-op may choose to register voluntarily.

Self-supply ends ITCs
Sch V, Part I, s 6

6. If the co-op is registered, and if it is considered to be a builder engaged in a commercial activity, it is eligible to claim ITCs for the GST/HST paid or payable for the building materials and services relating to the construction of the residential complex. However, once the section 191 self-supply rule is triggered (generally when the first residential unit is first occupied) the co-op is no longer considered to be engaged in commercial activity and is considered to be making supplies of residential accommodation by way of lease, licence or similar arrangement that are exempt by virtue of section 6 of Part I of Schedule V (exempt residential leases). As a result, the co-op is not entitled to claim ITCs for the GST/HST paid or payable with respect to self-supply or for property or services relating to the supply of exempt residential leases. If it has no ongoing commercial activities, the co-op can deregister. Otherwise, if registration is no longer required, the Department, after giving written notice, may cancel the registration.

Deregistration
ss 171(3)

7. In general, a tax liability arises when a person ceases to be a registrant where the capital property was used in commercial activities. However, the ITCs that the co-op could claim in respect of building materials and services were in effect recaptured at the time of the self-supply. Consequently, as noted in paragraph 6, tax paid by virtue of the self-supply cannot be claimed as an ITC as the property is being used in the course of making exempt supplies. As a result, there are no ITCs in respect of building materials and services relating to the self-supply to recapture upon deregistration. For information on cancelling registration, see Chapter 2, *Registration.*

Rebate
s 257

8. If the co-op was not registered under the GST/HST, a rebate of GST/HST related to acquisition of the land and construction costs may be claimed at the time of self-supply. See Section 19.3.6, *Rebate on Non-Registrant's Sale of Real Property.*

Rebate on co-op share
s 255

9. Since the non-creditable tax is incorporated in the price of a share of the co-op, a purchaser of a share of the co-op may be entitled to a GST/HST new housing rebate under section 255. For details, see Section 19.3.3, *Rebate for Cooperative Housing*.

Fees
Sch. V, Part 1, s 13.1

10. The supply by a co-op of a property or service is exempt if it is made to a person who is a shareholder of the co-op or a lessee or sub-lessee of a shareholder of the co-op and if it relates to the occupancy or use of a residential unit in the residential complex that is managed or owned by the co-op.

Movement of a building that previously formed part of a residential complex

Tangible personal property
Policy statement P-154
ss 123(1), and
Sch V, Part I

11. The sale of a residential building without land (other than a mobile home or a floating home) that is being moved to a new location is not considered to be the sale of a residential complex since a residential complex as defined in subsection 123(1) includes land. Moreover, in provinces other than Quebec, a building that is separated from the land is not considered to be real property but rather tangible personal property, unless it is being relocated within the same legal description. In Quebec, the treatment is different and a building without land continues to be regarded as real property no matter where it is being relocated, although for GST/HST purposes the building is still not considered to be a residential complex since it does not satisfy the definition in subsection 123(1).

Supply of a building

12. Generally, outside Quebec, the sale of a building that is being relocated to a new legal description is treated under the provisions affecting tangible personal property rather than real property. Accordingly, the following considerations apply:

Commercial activity
paras 123(1)(a) and (b)

- If a person were to sell a building that is being relocated to another legal description, the sale is made in the course of commercial activities if the building is sold in the course of a business carried on by the person or as an adventure or concern in the nature of trade of the person. Since a taxable supply is by definition a supply made in the course of a commercial activity, this sale would be taxable. However, GST/HST may not apply if the vendor is not a registrant (i.e., if the vendor is a small supplier).

  Note that if the person selling the building is an individual, a personal trust or a partnership, all the members of which are individuals, the business or the adventure or concern in the nature of trade must be carried on or engaged in with a reasonable expectation of profit for the sale to be a commercial activity.

Taxable supply
ss 123(1)

- If a person were to sell a building that is being relocated to another legal description, the sale is made otherwise than in the course of commercial activities if the sale is not made in the course of a business carried on by the person nor as an adventure or concern in the nature of trade of the person. In this case, the sale would not be a taxable supply.

Notional ITCs
s 176

13. In Quebec, and in any province where the building is relocated within the same legal description, the supply is not a supply of a residential complex but may be that of real property and, therefore, may be an exempt supply of real property under section 9 (sale of real property by an individual or a personal trust) of Part I of Schedule V. (For more information about section 9 of Part I of Schedule V, see GST/HST Memorandum 19.5, *Land and Associated Real Property*.)

14. (deleted)

GST/HST status of supplies of relocated houses

15. Where a house (other than a mobile home or floating home) is severed from the underlying real property and relocated to a new legal description, the relocation of the house on the new lot is considered by the Department to be the construction of a residential complex. Consequently, the GST/HST provisions in respect of taxable supplies, self-supply, rebates, and exemptions apply to subsequent supplies of such a complex as if it were the supply of a newly constructed residential complex.

16. Where GST/HST applies to a sale of the relocated house, an individual purchaser is entitled to claim a GST/HST new housing rebate if the criteria for the appropriate rebate provision are met. Similarly, an individual who relocates his or her existing house by moving it to a new legal description may claim a GST/HST new housing rebate under subsection 256(2) (rebate for owner-built homes) in respect of the GST/HST paid on the acquisition of the land and the GST/HST costs related to relocating the house to the extent that such costs are considered improvements to the land and if the criteria of subsection 256(2) are met. This rebate is available whether or not the existing house was substantially renovated. If, however, the house is moved within the same legal description, the GST/HST new housing rebate under section 256 would only be available if the house has been substantially renovated or if there is a major addition that is considered to be the construction of a new residential complex. For more information on rebates under section 256, see Section 19.3.4, *Rebate for Owner-built Homes.*

Example 1

ABC Builders Ltd. acquires a house in Ontario without the land for the purpose of moving the house to a new lot and subsequently selling the house at that location. The house was acquired from a non-registered individual who had been using it as a place of residence. ABC Builders Ltd. is registered for purposes of the GST/HST. The house is not a mobile home. After the house has been relocated, ABC Builders Ltd. enters into an agreement to sell the house on the new lot to Mr. Roy.

In this case, the acquisition of the house without the land by ABC Builders Ltd. is not subject to GST/HST since the supply is the sale of tangible personal property made by a non-registrant outside the course of a business or an adventure or concern in the nature of trade. The sale of the house on the new lot by ABC Builders Ltd. to Mr. Roy is subject to the GST/HST. ABC Builders Ltd. is entitled to ITCs in respect of GST/HST incurred with respect to the sale of the relocated house on the new lot, including the acquisition of the land, costs of removal and relocation, and other costs associated with the taxable sale. Mr. Roy, as the purchaser of the relocated house, may be entitled to a new housing rebate under section 254 (rebate for residential complex purchased from a builder) provided the criteria for that rebate are satisfied.

Note that if the house had been acquired in Quebec by ABC Construction Inc., GST/HST would still not apply to the acquisition of the house as the acquisition would have been exempt under section 9 of Part I of Schedule V (sale of real property by individual or personal trust).

Example 2

Mr. Jones moves his house from the foundation on its existing lot to a new foundation on the same lot. Mr. Jones will also add a garage to the complex and replace several windows. The existing house is not being substantially renovated. The house is not a mobile home.

In this example, Mr. Jones is not entitled to a GST/HST new housing rebate in respect of costs related to the removal and relocation of the house, construction of the new foundation, garage and windows since the house is being moved within the same lot on which it was previously situated and the house has not been substantially renovated.

Example 3

Due to recent construction directly across the street from his house, resulting in the creation of a large subdivision, Mr. Jones now wishes to move his house to a new lot elsewhere in the community. Mr. Jones' residence is not a mobile home. Mr. Jones will be the first person to occupy the house and he will be using it as his primary place of residence. The fair market value of the house and lot, after relocation, will be less than $350,000.

Mr. Jones is entitled to a GST/HST new housing rebate under subsection 256(2) in respect of the GST/HST paid on costs incurred for the land and relocating the house to the extent that such costs are considered improvements to the land. This would include removal costs, replacement costs, the construction of a new foundation and other costs that form part of the adjusted cost base of the residential complex to the purchaser.

Timeshares

Factors
Policy statement P-064

17. The application of the GST/HST to timeshares depends upon the following factors:

- the nature of the timeshare arrangement;
- the manner in which the timeshare is being supplied (sale vs. lease);
- whether the timeshare is a residential complex or other real property;
- the use of the timeshare (personal vs. business);
- the status of the supplier (builder vs. non-builder).

Analysis

18. Based on these factors, the application of GST/HST to timeshare units that involve supplies of real property interests (without any membership or share rights) is as follows:

GST/HST and timeshares

If the timeshare unit is supplied by way of	**and** the timeshare unit is	**then** the supply is	**unless**
sale	a residential complex	taxable	exempt under Sch V, Part I, s 2, 3, 4 or 5[1].
sale	not a residential complex	taxable	exempt under Sch V, Part I, s 9[2].
lease, licence or similar arrangement	a residential complex	taxable	exempt under Sch V, Part I, s 6[3].
lease, licence or similar arrangement	not a residential complex	taxable.	

Fees
Sch V, Part I, s 13 and s 13.1

19. Fees charged by the builder/operator of the units for the maintenance of the complex, unit and ancillary services are subject to GST/HST under the normal rules, unless a specific exemption applies. An exemption may apply under section 13 of Part I of Schedule V where such fees are in relation to supplies made by a condominium corporation to the owner or lessee of a residential condominium unit and they relate to the occupancy or use of the unit. Similarly, section 13.1 exempts amounts charged by a cooperative housing corporation in respect of the occupancy of a residential unit managed or owned by the corporation.

Footnote 1

Section 2 of Part I of Schedule V exempts the sale of a residential complex or an addition to a multiple unit residential complex or an interest therein by a person who is not the builder of the complex or addition, unless the person has claimed an input tax credit in respect of the last acquisition of the complex or an improvement to the complex or addition acquired, imported or brought into a participating province after the last acquisition of the complex.

Sections 3, 4 and 5 of Part I of Schedule V provide that if a builder has previously paid tax in respect of a residential complex (for instance, under the self-supply rules in section 191), a subsequent sale of the complex by the builder is exempt.

Footnote 2

Section 9 of Part I of Schedule V exempts the sale of real property by an individual or a personal trust.

Footnote 3

Section 6 of Part I of Schedule V exempts long-term residential leases and supplies of residential accommodation by way of lease or licence where the consideration does not exceed $20 per day. In order for a long-term lease of a residential complex or unit to be exempt, it must be occupied by the same individual for a period of at least one month.

Example 1

A company supplies a timeshare unit to an individual in a timeshare complex located in Ontario. The person participating in the plan acquires a right to use a particular residential unit for specific or determinable periods of time. No membership or share rights are supplied. The timeshare participant does not acquire an ownership interest in the property. The right to the use of the timeshare unit is for 40 years for a two-week period each year. The agreement stipulates that the timeshare unit is to be used for residential purposes only.

The supply of this particular timeshare is a supply by way of lease, licence or similar arrangement since it is a supply of a specific residential unit where the timeshare participant has no legal title to the timeshare unit and does not acquire an interest through membership or share rights. The property may or may not be a residential complex depending on whether the building, or part of the building, is considered to be a hotel or similar premises and whether all or substantially all of the leases, licences or similar arrangements under which residential units in that part of the building are supplied for periods of continuous possession or use of less than 60 days. Whether or not the property is a residential complex, the supply of the timeshare unit is taxable since the supply is not for a period of continuous occupancy of one month or more (even though the two-week arrangement is for 40 years).

Example 2

A company is offering to supply timeshare units in a timeshare plan in B.C. by way of sale of the residential unit without any membership or share rights. The use of the timeshare units is with respect to particular time intervals in specific newly constructed residential units in a building recently constructed by the company. The purchaser receives legal title to a specific one-week time interval in the specific residential unit contained in the building. The unit is to be used for residential purposes.

The supply of the timeshare unit is a sale of real property since there is a transfer of legal title for a specific interval in a specific residential unit. The property is a "residential complex". The paragraph in the definition of "residential complex" that excludes premises supplying residential units by way of lease, licence or similar arrangement for periods of continuous possession or use of less than 60 days does not apply because the timeshare unit is sold, not leased. Since the company is the builder of this residential complex and the units have never been occupied, the supply of the timeshare is a taxable supply. The GST/HST new housing rebate would not be available since the one week period of ownership means that the unit could not be the owner's primary place of residence.

If the purchaser of the timeshare personally uses the timeshare, and subsequently resells it, the sale is a supply of an interest in a residential complex by someone other than a builder, and is exempt under section 2 of Part I of Schedule V.

"Short-term accommodation" ss 123(1)

If the purchaser of the unit is a registrant who leases the one-week interval timeshare interest to different individuals each year at more than $20 per day, the rentals are taxable short-term accommodation and subject to GST/HST. For timeshare agreements entered into on or after April 23, 1996, GST/HST paid on the acquisition of a timeshare right is not eligible for a non-resident's rebate under sections 252.1 or 252.4.

The resale of the unit may be exempt, provided the purchaser has not claimed ITCs with respect to the last acquisition or subsequent improvements thereto. For example, if the purchaser claimed ITCs with respect to the GST/HST paid to the builder at acquisition, the resale is taxable.