



# GST/HST Memoranda Series

## 19.4.1 Commercial Real Property—Sales and Rentals

August 1999

**Overview**

This memorandum examines the application of the Goods and Services Tax/Harmonized Sales Tax (GST/HST) to sales and rentals of commercial real property by persons other than public service bodies (PSBs). For information on supplies of real property by PSBs, see GST/HST Memorandum 19.6, *Real Property and Public Service Bodies*.

Sales of commercial real property.....	2
Assignment of commercial lease .....	3
Registration requirements and sales of real property .....	4
Non-taxable sales .....	5
Rentals of commercial real property .....	7
Registration requirements and supplies of real property by way of lease, licence or similar arrangement.....	7
Additional rents .....	7
Lease inducements.....	8
Cancellation or breach of lease agreement .....	10
Effects of different methods of holding real property .....	11

**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.

**Note**

This memorandum includes the information from TIB B-054, *Application of the Goods and Services Tax (GST) to Lease Inducements* and updates that information to reflect the harmonized sales tax (HST) and amendments to section 232 (refund or adjustment of tax). TIB B-054 is cancelled.

**Note - HST**

Reference in this memorandum is made to supplies taxable at 7% or 15% (the rate of the HST). The 15% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the “participating provinces”). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, *Place of Supply Rules under the HST*, available from any Revenue Canada tax services office.

## Sales of commercial real property

Taxable supply,  
commercial activity  
ss 123(1)

1. The GST/HST applies to taxable supplies made in Canada. A taxable supply is a supply made in the course of a commercial activity. A commercial activity, as defined by the *Excise Tax Act* (the Act), includes

“(c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.”

Accordingly, the making of any supply by way of sale of real property, unless the supply is specifically exempted under the Act, is a commercial activity and it is taxable.

Taxable unless  
exempted

2. Most exemptions for sales of real property are provided in Part I of Schedule V. Generally, these exemptions apply to:

- sales of previously occupied residential complexes,
- sales of certain types of leased land,
- sales of farmland to related persons, and
- sales of real property made by an individual or a personal trust with certain exceptions (see paragraph 5).

3. For a discussion of sales of residential complexes, see GST/HST Memorandum 19.2.1, *Residential Real Property—Sales*. For a discussion of exempt sales of leased land, sales of land by an individual or a personal trust, and sales of farmland, see GST/HST Memorandum 19.5, *Land*.

Liability for tax, time of  
liability and ITCs

4. For information about liability for tax, time of liability and input tax credits (ITCs), see GST/HST Memorandum 19.1, *Real Property and the GST/HST*.

Exceptions to the  
exclusion

5. Generally, as noted in paragraph 2, most supplies by way of sale of real property by an individual or a personal trust are exempt. However, a supply is not exempt (i.e., is taxable) if:

Capital property  
Sch V, Part I,  
para 9(2)(a)

- immediately before the time ownership or possession of the property is transferred, the property is capital property used primarily in a business carried on by an individual or personal trust with a reasonable expectation of profit;

Sch V, Part I,  
subpara 9(2)(b)(i)

- the supply by way of sale is made in the course of a business of the individual or personal trust; or

Election: tax exempt  
supply treated as a  
taxable supply  
Sch V, Part I,  
subpara 9(2)(b)(ii)

- the supply by way of sale of real property is made in the course of an adventure or concern in the nature of trade where the individual or personal trust has elected to have the particular supply of real property treated as a taxable supply.

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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6. The election mentioned in the last point is made on form GST22, *Election to Treat the Tax Exempt Supply of Real Property By Way of Sale by an Individual or Trust as a Taxable Supply*. The form must be filed with the Department, before the supply to which it relates is made.

7. Note that a supply by way of sale is not eligible for this election if the supply is a transaction on account of capital, i.e., if the proceeds from the sale would be considered a capital gain or capital loss for income tax purposes. For the purposes of paragraph 9(2)(b) of Part I of Schedule V, such a supply is not made in the course of an adventure or concern in the nature of trade. (For more information concerning this election, see GST/HST Memorandum 19.5, *Land*.)

Taxable whether new or used

8. A supply by way of sale of commercial real property is generally a taxable supply whether the property is new or used, unlike sales of used residential complexes which are generally exempt.

Mixed use - separate supplies ss 136(2)

9. If real property is used partly for commercial purposes and partly for residential purposes and if this property is supplied by way of sale, or lease, licence or similar arrangement, the supply of the property is treated as two separate supplies: the supply of the real property that forms part of the residential complex and the supply of that part which is used for commercial purposes. The supply of only that portion of the property that is commercial real property is subject to the provisions outlined in this memorandum.

Example

In the case of a sale of a apartment building with a first-floor shopping mall, the first floor (along with any land used in the commercial activities of the mall) is considered to be a separate supply from the supply of the remaining floors (along with any land that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals).

10. For further information concerning supplies of mixed-use real property, see GST/HST Memorandum 19.1, *Real Property and the GST/HST*, and GST/HST Memorandum 19.2.1, *Residential Real Property—Sales*.

### Assignment of commercial lease

Leasehold interest is real property

11. A leasehold interest is real property and may be held or supplied in a number of ways. For example, a building owner leases the building to a person and under the terms of the lease the person is entitled to assign the leasehold interest to a third party for consideration. Such an assignment is considered to be a sale of real property since a lessee that transfers its leasehold interest to a third party is transferring the ownership of the real property (that is, the ownership of the leasehold interest) and therefore is making a sale of real property. The assignor in such a case is subject to the same provisions in respect of GST/HST obligations and entitlements that govern any other sale of real property.

Registered purchaser remits ss 221(2)

12. The sale of a commercial leasehold interest is generally taxable. As with other real property sales, the supplier of the leasehold interest is not required to collect tax on the sale if the purchaser is registered; in such a case, the purchaser is required to self-assess and remit tax on the sale.

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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### Registration requirements and sales of real property

General rule  
ss 240(1)

13. Generally, every person who makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada must register for the GST/HST, except where:

- the person is a small supplier (see paragraph 15);
- the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business; or
- the person is a non-resident person who does not carry on any business in Canada.

14. As noted in the second point of the preceding paragraph, if the only commercial activity of a person is a supply by way of sale of real property and if this supply is not made in the course of a business, the person is not required to register even if as a result of this sale, the person is no longer a small supplier.

Example

A doctor's practice consists of making exempt supplies of health care services. The doctor decides on a one-time basis to buy land which includes a commercial building as the doctor has heard that there will be an increase in demand for this type of property in the next six months. The doctor sells the land and building for a profit after holding it for seven months. The land and building sell for \$200,000.

Normally, a supply by way of sale of real property by an individual is an exempt supply under subsection 9(2) of Part I of Schedule V. However, if this sale by the doctor is made in the course of an adventure or concern in the nature of trade, the doctor is entitled to file an election under subparagraph 9(2)(b)(ii) of Part I of Schedule V to treat this sale as a taxable supply. With this election in place, this supply is now taxable and thus a commercial activity. GST/HST must be collected on the sale. (See GST/HST Memorandum 19.5, *Land*, for a discussion of the criteria used to determine if a sale is made in the course of a business or in the course of an adventure or concern in the nature of trade.)

Under the provisions of section 148, the consideration for taxable supplies by way of sale of real property that is not capital property of the person must be included in computing the small supplier's threshold. Given the amount of consideration for this sale (i.e., \$200,000), the doctor has exceeded the small supplier's threshold. However, under the provisions of subsection 240(1), the doctor is not required to register since the only commercial activity of the doctor is this supply by way of sale of real property which is made in the course of an adventure or concern in the nature of trade and not in the course of a business. Note that the doctor could register voluntarily with respect to this commercial activity pursuant to subsection 240(3).

15. For further information on registration requirements and small suppliers, see GST/HST Memorandum 2.2, *Small Suppliers*.

### Non-taxable sales

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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Sale  
ss 123(1)

16. The definition of a sale in the Act says that a sale “in respect of property, includes any transfer of the ownership of the property and a transfer of the possession of the property under an agreement to transfer ownership of the property”. As noted in paragraph 1, any sale of real property such as a transfer of the ownership of commercial real property is taxable unless specifically exempted. However, certain sections of the Act deem a transfer of the ownership of real property to either not be a supply or to be a supply made for no consideration. Since under section 165 (imposition of tax), GST/HST is calculated as a percentage of the consideration for the supply, if there is no supply or no consideration for the supply, there is no tax.

Amalgamations  
s 271

17. The transfer of the ownership of real property pursuant to a merger or amalgamation of corporations can result in a non-taxable sale of real property.

18. Specifically, if two or more corporations (the predecessor corporations) are merged or amalgamated to form one corporation (the new corporation) other than by the purchase of property by one corporation or the wind-up of one corporation, the transfer of property by a predecessor corporation to the new corporation as a result of the merger or amalgamation is deemed not to be a supply. Accordingly, GST/HST does not apply to the transfer.

19. The new corporation that results from an amalgamation is generally treated for GST/HST purposes as being a person separate from each of the predecessor corporations. However, the new corporation is considered to be the same corporation as, and a continuation of each, of the predecessor corporations with respect to the real property acquired by a predecessor (e.g., the basic tax content of the predecessor’s real property immediately prior to the amalgamation becomes the basic tax content of the new corporation’s real property immediately after the amalgamation.)

Winding up  
s 272

20. A non-taxable transfer of real property can result when a subsidiary is wound up into its parent corporation. The transfer of the subsidiary’s real property to the parent is deemed not to be a supply if the parent company owns at least 90% of the issued shares of each class of the capital stock of the subsidiary. Since the transfer is deemed not to be a supply, GST/HST does not apply. With respect to such property, the parent corporation is treated as being the same corporation as, and a continuation of, the subsidiary corporation.

Election: sale of assets  
of a business  
ss 167(1)

21. A non-taxable sale of real property can also result if the real property is being supplied to a registrant as part of the supply of a business and an election under subsection 167(1) is in effect. Under the terms of this election, an otherwise taxable supply of the property which is included in the supply of a business can be made without tax being payable if both parties to the transaction so elect. The supplier and the recipient of the assets of the business qualify to make this election if:

- the supplier makes a supply of the business or part of the business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier, and

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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- the recipient acquires, under the terms of the agreement with the supplier, ownership, possession or use of all or substantially all of the property that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or part of the business as a business.

22. The election may not be made, however, where the vendor is a registrant (and therefore eligible to claim ITCs) and the recipient is a non-registrant (and therefore not eligible to claim ITCs and not subject to the change-in-use rules with respect to capital property). For information on the change-in-use rules and commercial real property, see GST/HST Memorandum 19.4.2, *Commercial Real Property—Deemed Supplies*.

23. Furthermore, if real property is supplied to the recipient under the terms of this election, GST/HST will be payable if:

subpara 167(1.1)(a)(ii)

- the supply of real property is a taxable supply by way of lease, licence or similar arrangement; or

subpara 167(1.1)(a)(iii)

- the supply of real property is a taxable supply by way of sale and the recipient is not a registrant.

24. To make the election under subsection 167(1), the recipient must file form GST44, *Election Concerning the Acquisition of a Business or Part of a Business* with the Department. (This election will be discussed in greater detail in a forthcoming memorandum in Chapter 3, *Tax on Supplies*.)

Supply of business  
assets of deceased  
ss 167(2)

25. A non-taxable supply of real property can also result if the real property being supplied is part of the supply of the business assets of a deceased individual. This tax-free roll-over of business assets of a deceased individual occurs if:

- immediately before the individual died, the individual held the property for consumption, use or supply in the course of a business carried on immediately before the individual's death,
- the estate of the deceased individual makes the supply in accordance with the individual's will or the laws relating to the succession of property on death,
- the recipient of the supply is an individual who is a beneficiary of the estate and a registrant,
- the property is received for consumption, use or supply in the course of commercial activities of the recipient individual, and
- the estate and the recipient jointly elect to not have tax payable in respect of the supply.

26. In these circumstances, the recipient individual is deemed to have acquired the property for use exclusively in commercial activities of the individual.

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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27. To make this election under subsection 167(2), the records of the estate and the registrant beneficiary must reflect that the parties have jointly elected not to have tax payable in respect of the supply and the parties must act in a manner consistent with having made this election. (This election will be discussed in greater detail in a forthcoming memorandum in Chapter 3, *Tax on Supplies*.)

### Rentals of commercial real property

Commercial lease taxable

28. A lease, licence or similar arrangement in respect of commercial real property is a taxable supply unless specifically exempted, e.g., certain supplies by way of lease made by a public service body (PSB). (For more information on supplies of real property by public service bodies, see GST/HST Memorandum 19.6, *Real Property and Public Service Bodies*.)

### Registration requirements and supplies of real property by way of lease, licence or similar arrangement

Requirement to register ss 148(1)

29. A person who makes taxable supplies of real property in Canada by way of lease, licence or similar arrangement is required to register and collect GST/HST if the person is not a small supplier. If the person is a small supplier and thus is not required to register, notwithstanding the taxable nature of the lease, licence or similar arrangement, the person is not required to collect GST/HST, provided the person has chosen not to register voluntarily. In general, a person (other than a PSB) is a small supplier if the worldwide taxable supplies, including zero-rated supplies, (other than supplies of financial services and supplies by way of sale of capital property) of the person and any associated person do not exceed \$30,000 per year.<sup>1</sup> Detailed information on who is a small supplier and how to calculate the small supplier threshold is given in GST/HST Memorandum 2.2, *Small Suppliers*.

### Additional rents

30. Standard commercial lease agreements commonly provides for the payment of amounts known as “additional rents” as well as basic rent. Examples of amounts that might be included in a lease agreement as additional rents are percentage rents, common area expenses and certain cost reimbursements such as property taxes.

• Percentage rents

31. The term “percentage rents” refers to a specified percentage of a lessee’s retail sales or revenues in excess of a base amount. This percentage amount forms part of the rent. Percentage rents are often found in retail leases such as the lease for a unit in a shopping centre. Percentage rents are taxed the same as the basic rent.

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Footnote<sup>1</sup>

Note that this can be different from the requirements affecting a supplier whose only commercial activity is the making of a supply of real property by way of sale. A vendor of real property may not be required to register even if the amount of the sale exceeds the threshold for small suppliers. See paragraphs 13 to 15.

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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- Property and business taxes

32. Property and business taxes paid by the property owner to the municipality are generally not subject to GST/HST. The property owner includes an amount that represents a recovery of such taxes from the lessee either as part of the basic rent or as an additional rent in the lease agreement. Where a separate amount is paid by a lessee on account of property and business taxes, this amount is part of the consideration for the rental of the property, even if the lessee pays the amount directly to the municipality. Since the lessee's payment is part of the consideration for a taxable supply, it is subject to GST/HST in the same way as the basic rent payable by the lessee. However, if the lessee is directly liable to the municipality or other entity for the payment of any such amount the GST/HST will not apply.

33. While the lessee is generally not considered to be responsible for paying property taxes, the lessee is liable for the payment of the rent. This relationship between a lessee and a landlord exists whether the lease agreement is specific or silent with respect to the recovery of property and business taxes as additional rent.

- Some amounts not necessarily taxable

34. A landlord may include a number of other payments in the lease agreement under the heading of additional rent. Their inclusion gives the landlord the same legal recourse to collect these other payments from the lessee as the landlord has in respect of the basic rent. These amounts may or may not be taxable. The GST/HST status of an amount depends upon whether or not the amount is consideration for a taxable supply or whether or not the landlord is making a supply that is separate from the lease of the real property.

For example, interest on overdue rent might be included in the lease agreement as additional rent. However, if the interest is separately disclosed from the rental payments, it is not consideration for a taxable supply. Rather, it is consideration for a supply of a financial service provided by the landlord. Supplies of financial services are generally included in Schedule V and are exempt.

- Penalty clauses

35. Penalty clauses may treat a damage payment as additional rent. In this case, the payment of a penalty that results from a breach of the agreement may be subject to special rules (see paragraphs 47 to 51).

### Lease inducements

- Several types

36. Sometimes lease inducements are used for leases of taxable commercial property. The GST/HST consequences vary according to the circumstances of the lease inducement. Examples of the most commonly used lease inducements—rent-free period, reduction of rent, cash payment and leasehold improvements—are discussed below. Note that all examples assume an arm's length relationship between the landlord and lessee.

- Rent-free period

37. If a registrant landlord offers a rent-free period to a lessee, the landlord is considered to be making a supply of real property to the lessee for no consideration for the duration of the rent-free period. If there is no consideration paid or payable, the landlord is not required to collect GST/HST.



## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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- Reduction of rent 38. Similar to situations involving a rent-free period are situations involving rent reductions. If a registrant landlord offers a rent reduction to a lessee, the consideration for the supply of real property to the lessee is the reduced amount. GST/HST is calculated on the reduced amount.
- Credit/debit notes  
s 232 39. Subject to documentary and eligibility requirements, the amount of GST/HST payable by the lessee can be adjusted through the issuance of a credit note from the landlord or a debit note from the lessee. For GST/HST purposes, a credit/debit note is a means of adjusting the GST/HST payable in situations where *either* the GST/HST was charged but not collected *or* where the excess was collected and is to be refunded or credited.
- ss 232(3) 40. If the landlord issues a credit note to the lessee, provided the landlord has satisfied the documentary and eligibility requirements for a credit note, the landlord is entitled to deduct the amount of the tax credited when determining the net tax for the reporting period in which the credit note is issued to the lessee. This deduction is allowed to the extent that the amount has been included in determining the net tax for that reporting period or a preceding reporting period of the landlord. The lessee is required to add the amount of the tax credited by the landlord when determining the lessee's net tax for the reporting period in which the credit note is received to the extent that the amount has been included in determining an ITC in a return filed for the reporting period or a preceding reporting period of the lessee.
41. Conversely, the lessee could issue a debit note to the landlord. If the lessee issues a debit note to the landlord, provided the lessee has satisfied the documentary and eligibility requirements for a debit note, the lessee must add the amount of the tax debited when determining net tax for the reporting period in which the debit note is issued to the landlord to the extent that the amount has been included in determining an ITC for the reporting period or a preceding reporting period. The landlord is entitled to deduct the amount of the tax debited by the lessee when determining the landlord's net tax for the reporting period in which the debit note is received.
- Documentary  
requirements  
para 232(3)(a) 42. Information that must be included on credit or debit notes is prescribed under the *Credit Note Information Regulations*, as amended by the proposed *Credit Note and Debit Note Information (GST/HST) Regulations*.
- Cash payment 43. If the landlord makes a cash payment to the lessee as an inducement to enter into the lease, the lessee is considered to have made a taxable supply to the landlord. The taxable supply is the service of entering into the lease. The lessee, if a GST/HST registrant, must collect and account for the GST/HST on this supply. The landlord, if a GST/HST registrant, may claim an ITC with respect to the GST/HST paid or payable to the lessee.

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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Leasehold improvements

44. Frequently, leasehold improvements are used as lease inducements. The GST/HST treatment of leasehold improvements depends on the nature of the transaction. Two of the most common situations are:

- the landlord pays for the improvements, or
- the landlord provides cash inducements for the lessee to carry out the improvements.

45. If the landlord pays for the improvements, the landlord, if a registrant, may claim ITCs for the GST/HST paid on goods and services purchased to make the improvements. There are no GST/HST implications in this situation for the lessee.

46. If the landlord provides a cash inducement for the lessee to carry out improvements, the lessee is considered to have made a taxable supply of the construction inputs (i.e., construction services and building materials) used to improve the leased property to the landlord for which the payment is consideration. The lessee, if a GST/HST registrant, must charge and collect GST/HST on the payment received from the landlord. The landlord, if a GST/HST registrant, may claim an ITC with respect to the GST/HST paid or payable on the cash inducement to the lessee. Moreover, the lessee could claim ITCs with respect to the GST/HST paid or payable on purchases used to improve the property.

### Cancellation or breach of lease agreement

Deemed supply, tax included  
ss 182(1)

47. If an amount that is not consideration for the supply is paid or forfeited by the lessee to a registrant landlord as the result of the lessee's breach, modification or termination of a lease agreement for a taxable supply of property in Canada and if the lease payments under this agreement would have attracted tax at the rates of 7% or 15% if the agreement had been completed, the amount that is paid or forfeited by the lessee to landlord is deemed under the provisions of section 182 to be a tax-included payment for the supply.

Debt reduced or extinguished  
ss 182(1)

48. Similarly, if a debt or other obligation of the registrant landlord is reduced or extinguished and this reduction or extinguishment arises from the breach, modification or termination of a lease agreement for a taxable supply of property in Canada and if the lease payments under this agreement would have attracted tax at the rates of 7% or 15% if the agreement had been completed, the lessee is deemed to have paid and the landlord is deemed to have collected as consideration for the supply an amount equal to the amount of the forgiven debt. This amount is deemed to be tax-included.

49. If the lessee is a GST/HST registrant and if the leased property was being used in a commercial activity, the lessee is entitled to claim an ITC in respect of the tax deemed to have been paid, if the other eligibility requirements for claiming ITCs are met. Note that these provisions arising under section 182 apply to situations where an agreement exists between the landlord and the lessee for the making of a taxable supply.

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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50. Amounts paid or becoming due as consideration for the lease, e.g., the application of a lessee's deposit to the last month's rent, are subject to the usual rules applied to amounts paid as consideration for the lease and generally require the landlord to account for tax on the consideration.

Written agreements  
before 1991  
ss 182(2)

51. If an amount is paid or forfeited by the lessee to a registrant landlord as the result of the lessee's breach, modification or termination of a lease agreement and if:

- the agreement was entered into in writing before 1991 for a taxable supply of property in Canada,
- the lease payments under this agreement would have attracted tax at the rates of 7% or 15% if the agreement had been completed,
- an amount is paid or forfeited or the debt was extinguished or reduced by the lessee after 1992, and
- tax in respect of this amount was not contemplated in the agreement,

no amount is deemed to have been paid as tax by the lessee and no amount is deemed collected as tax by the landlord in respect of these amounts. Therefore, in addition to the amount that is paid or forfeited or the amount by which the debt was extinguished or reduced, the lessee is liable to pay the landlord tax on the amount. Tax applies since the amount is deemed to be consideration for the supply under subsection 182(1). This means, in non-participating provinces, that the lessee is liable to pay 7% of 100/107 of the amount as tax in addition to the amount that is paid or forfeited or the amount by which the debt was extinguished or reduced. In the participating provinces, tax is 15% of 100/115 of the amount.

### Effects of different methods of holding real property

Affects GST/HST  
liabilities

52. Commercial real property may be held or used by various persons for various purposes, e.g., by an individual as a sole proprietor, a partnership, a holding company, a trust. How a property is held can affect the treatment of the property under the GST/HST. (For a discussion of issues related to joint ventures, see section 19.4.3, *Commercial Real Property—Special Issues*.)

Sole proprietorship

53. If an individual were to acquire a property primarily (more than 50%) for the personal use and enjoyment of the individual or a relation of the individual and only partly for use in commercial activities, under the provisions of subsection 208(1), the individual would not be eligible to claim ITCs related to the GST/HST paid or payable for the acquisition of, or improvements to, the real property.

54. If part of this property that the individual was using primarily for personal use and enjoyment was being supplied by the individual by way of lease, e.g., the individual leases an office in the property to someone else, and if the annual revenues from the lease plus the individual's other revenues from commercial activities for that year exceed the \$30,000 small supplier's threshold, the individual is required to register and collect GST/HST on his or her taxable supplies, including the lease of the office.

## 19.4.1 Commercial Real Property-Sales and Rentals (continued)

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- Partnership 55. If this real property is considered to be property of a partnership rather than an individual, the same requirement to register for the GST/HST exists for the partnership (which is regarded as a person for purposes of the GST/HST) if the partnership's revenues from commercial activities exceed the small supplier threshold. However, in this case, where the partnership is a registrant, it is entitled to claim ITCs related to the GST/HST payable for an acquisition of, or improvements to, the real property to the extent that the real property is used in the commercial activities of the partnership.
- Holding company 56. Commercial real property may be owned by a holding company. If the holding company leases the property to a related operating company, it is required to register and collect GST/HST on the taxable lease payments if its revenues from taxable supplies exceed the small supplier's threshold.
- Election for nil consideration s 156 57. Certain closely related corporations, such as a holding company and one of its wholly owned subsidiaries, may make a joint election under section 156 with respect to taxable supplies made between them provided the other requirements of the provision are satisfied. Where such an election is in effect, a supply of real property by way of lease, licence or similar arrangement between these corporations will be deemed to have been made for no consideration, provided that the supply is acquired by the recipient for consumption, use or supply exclusively in the course of the recipient's commercial activities. Note that this election is not available with respect to supplies by way of sale of real property. For more information on this election see form GST25, *Election or Revocation of the Election to Deem Certain Taxable Supplies Between Closely Related Corporations to Have Been Made for Nil Consideration*.
- Election for exempt supplies ss 150(1) 58. Where one of the closely related corporations is a listed financial institution, a joint election may be filed to deem the supply of property by way of lease, licence or similar arrangement between the corporations to be a supply of a financial service (and, therefore, exempt). For more information on this election see form GST27, *Election to Deem Supplies Between Members of a Closely Related Group of Which a Listed Financial Institution is a Member to be Supplies of Financial Services* and GST/HST Memorandum 17.14, *Election for Exempt Supplies*.
- Management company 59. Management services rendered by a management company in respect of real property are generally considered to be a taxable supply, regardless of whether the supply of the real property itself is taxable or exempt.

All GST/HST memoranda and other Revenue Canada publications are available on Internet at the Revenue Canada site <http://www.rc.gc.ca/> under the heading "Technical Information" in "General Information".