



CANASA

Canadian Security Association
L'Association canadienne de la sécurité

January 29, 2010

To the members of the Canadian Security Association:

Beginning July 1, 2010, Ontario will no longer have the Ontario retail sales tax ("RST"), and will instead be adopting a harmonized sales tax ("HST"), which will parallel the GST at the provincial level. The HST rate will be 13% -- 5% of the HST is the existing GST component and 8% will be the Ontario provincial portion. To date, the federal and Ontario governments have issued some publications dealing with the application of the new HST, but many details remain under discussion. While the necessary legislation has been passed, it also is still subject to possible change, and many questions remain about how it will be applied. Therefore, the information contained in this letter may be subject to modification as well. In addition, this letter is based on general information published to date, but every situation must be evaluated in light of its unique facts.

The Ontario HST transition involves three important dates:

- Transition date – October 14, 2009;
- Pre-collection date – May 1, 2010; and
- Implementation date – July 1, 2010.

These dates will be especially important when dealing with transactions straddling the July 1, 2010 implementation date. Some of the transition problems common to members of CANASA are considered in this letter, but the common issue is whether the new 13% HST must be charged, or only the 5% GST.

This letter addresses the following issues of concern to members of CANASA:

- GST/HST as it applies to revenue for services which are performed partly before and partly after July 1, 2010
- GST/HST as it applies to sales of goods ordered before July 1, 2010 but delivered after July 1, 2010
- GST/HST as it applies to the supply and installation of fixtures
- GST/HST as it applies to 'bundled' sales consisting of products, together with services, sold as a package for a single price
- Transitional rules relating to leased equipment
- Self-assessment requirements under the HST rules
- Restricted input tax credits for "large businesses"
- Transitional rules with respect to Ontario RST

The following comments are general in nature only. In each specific case, the impact of the GST, HST and RST transitional rules can vary greatly depending on the particular circumstances of the vendor and the customer. Therefore, the following comments are offered as general guidance, but each vendor must seek specific advice from its tax advisors as to how the impending changes will affect it both in the transition to the July 1, 2010 implementation date, and thereafter.



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1. *GST/HST on revenue for services which are performed partly before and partly after July 1, 2010*

Contracts for the provision of security vary, and each contract must be reviewed separately, since some will provide for the provision of a service, and others for the sale or lease of fixed assets. These different types of sales are generally treated differently under the existing Ontario RST rules, so the relevant transitional rules may vary too. Generally, services performed after July 1, 2010 will bear HST. (There is an exception for situations in which 90% of the relevant work was performed before July 2010, but the service is invoiced after July 1, 2010: in such cases, only GST is to be charged.) When payments for services become due, or are paid without having become due, before May 2010, the vendor will generally only have to charge GST, including for the portion related to services to be performed after July 1, 2010. However, certain purchasers will be required to self-assess for the Ontario portion of the HST to the extent those services are performed after July 1, 2010 (see heading 6 below).

When payment for services becomes due, or is made without becoming due, between May 1, 2010 and June 30, 2010, then HST must be charged by the vendor for the portion of the services to be performed after July 1, 2010 (subject to the above rule for situations in which 90% of the service is performed before July 2010). For example, if an invoice is dated May 1, 2010, for a service to be performed over the six month period from June 1, 2010 to November 30, 2010, the charges must be pro-rated, with 5% GST applied to one month (June 2010), and 13% HST applied to the remaining five months (July-November 2010). However, if the invoice provides that the payment for the service is due before May 2010, or if the consideration is paid without having become due before May 2010, the vendor only has to charge GST on the invoice amount, although the purchaser may be required to self-assess for the Ontario portion of the HST.

2. *GST/HST as it applies to sales of goods ordered before, but delivered after, July 1, 2010*

Generally, HST will apply to sales of goods in Ontario, where both delivery and transfer of ownership occur on or after July 1, 2010. The rules applying to prepayments for goods are similar to the rules relating to prepayments for services. If the consideration for the goods becomes due, or is paid without becoming due, **before May 2010**, the vendor only has to charge GST, but the purchaser may have to self-assess for the Ontario portion of HST (see heading 6 below). However, if the consideration becomes due, or is paid without becoming due, **between May 1, 2010 and June 30, 2010**, the vendor must charge HST only if delivery and transfer of ownership are to occur on or after July 1, 2010.

3. *GST/HST as it applies to the supply and installation of fixtures*

The Ontario RST rules distinguished between contracts for the supply and installation of fixtures, and the sale of tangible personal property (TPP). ('Fixtures' generally includes items which are permanently affixed to the land, and which remain with the building at the time of sale; as opposed to items simply resting on a surface by their own weight. Examples of fixtures might include security monitors mounted on a wall or ceiling by being bolted into the surface, or automatic motion detectors embedded in a wall. However, many items are difficult to classify as either fixtures or TPP, and in such cases, expert advice is always necessary.) Generally, RST was not charged on the supply and installation of fixtures. Instead, RST was paid by the vendor and 'embedded' in the cost for the materials charged by the vendor to the customer. However, the HST rules do not make this distinction. Where before July 1, 2010, GST was



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charged, HST will now be charged. Therefore, contracts for the supply and installation of fixtures which previously were generally subject only to 5% GST will now be subject to 13% HST. However, under the existing RST rules, contractors who supply and install fixtures generally must pay 8% RST on the purchase of goods bought to fulfill their supply-and-install contracts, and this 8% RST is embedded in the materials cost passed on by the vendor to the contractor's customer. Under the HST rules, most vendors will be entitled to a full input tax credit (ITC) of the 13% HST paid to its supplier, so the materials cost passed on to its customer under the contract will in effect be lower by the amount of the Ontario RST, (though the final charge to the purchaser will now include the full 13% HST). The purchaser may or may not be entitled to recover some or all of that 13% HST as an ITC, depending on its own HST registration status.

4. *GST/HST as it applies to 'bundled' sales consisting of products, together with services, sold as a package for a single price*

Vendors often sell a combination of property plus services as a single supply, such as the above-mentioned contracts for the supply and installation of fixtures, which typically provide for a single price for the combined supply. After July 1, 2010, the entire price for the supply will be subject to 13% HST. However, transitional problems will arise in situations where the supply of the fixture occurs before July 1, 2010, but the related service occurs after that date. For example, if a security system is sold in June 2010, consisting partly of fixture property and partly of installation service, then if the system is delivered to the customer on June 30, 2010 and installed on July 2, 2010, only GST will apply to the portion of the price which relates to the sale of the equipment, (with the RST embedded in the cost since it is a fixture), but HST will apply to the portion of the price which relates to the post-June 2010 installation cost.

5. *Transitional rules relating to leased equipment*

There are transitional rules which will apply to vendors which are leasing equipment to the customer, in situations where the lease period under the contract straddles the July 1, 2010 implementation date. Lease payments for leases which straddle the implementation date of July 1, 2010 will follow the general transitional rules. Thus, where consideration for the lease period becomes due, or is paid without becoming due, from May 1, 2010 to June 30, 2010, then HST will apply to the part of the lease period after July 1, 2010. However, if the consideration becomes due, or is paid without becoming due, before May 1, 2010, the vendor will only have to charge GST, even if part of the consideration relates to a lease period after June 2010, (although certain purchasers may have to self-assess for the Ontario portion of HST.) There is one important exception to the above rule. HST will not apply to any part of a lease payment for lease periods starting before July 2010 and ending before July 31, 2010 (i.e. for lease periods which do not parallel the calendar month).

6. *Self-assessment requirements under the HST rules*

When payments for services become due, or are paid without becoming due, before May 2010, then to the extent these payments are for services to be performed after July 1, 2010, they will not bear HST when the purchaser is an individual consumer, but non-consumers (e.g. businesses) may have to self-assess for the 8% provincial portion of the HST in certain circumstances. Persons which may be required to self-assess will include businesses making exempt supplies (such as financial institutions,



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medical practitioners, etc.), and certain charities and public service bodies. Therefore, members will be required to include only GST, not HST, on invoices rendered before May 2010. However, for invoices rendered during May-June 2010, HST must be charged for services to be rendered after June 2010.

7. Restricted input tax credits for "large businesses"

There will be temporary restrictions on the 8% provincial portion of the HST for 'large businesses', (i.e. entities with taxable annual sales over \$10,000,000). These restrictions will apply to energy (except for manufacturers and farmers); telecommunication costs (except for internet and 1-800 connections); road vehicles under 3,000 kg; and any food, beverage and entertainment costs already subject to the 50% add-back under the income tax rules. Therefore, members with annual sales over \$10,000,000 will have to track these expenses separately and not claim ITC's for the Ontario portion of the HST. This would be relevant, for example, to members which are 'large businesses', and which were planning to buy road vehicles under 3,000 kg after June 2010. Many businesses eligible for ITC's will consider deferring capital purchases till after June 2010, since the sale price until then will bear RST, but after that date, although there will be 13% HST, it will all generally be eligible for an ITC. However, since the provincial portion of the HST will be denied as an ITC to a 'large business' on this purchase, the business will no longer have any reason to defer buying such vehicles until after June 2010.

8. Transitional rules with respect to Ontario RST

Generally, existing Ontario RST will no longer apply to sales of goods where delivery and transfer of ownership both occur after June 2010. Nor will RST generally apply to taxable sales of services after June 2010. After June 2010, HST at 13% will apply to the sale of goods or services. However, the following RST transitional rules will apply to situations in which payment has been made in advance for goods or services to be delivered after July 1, 2010:

- For payments that became due, or were made without becoming due, on or before October 14, 2009, for taxable sales of goods or services to be delivered after June 2010, RST will continue to apply, even for delivery and service periods after June 2010.
- For payments that become due, or are paid without becoming due, after October 14, 2009 and before May 2010, for sales of goods or services with delivery and ownership transfer both to be after June 2010, no RST will be applied *if* the purchaser either will be using the goods or services for exclusively commercial purposes, or must self-assess for the Ontario portion of HST (see heading 6 above).

Notice to Readers: The above is a general discussion based on published proposals for Ontario HST harmonization. These proposals depend on the enactment of enabling legislation. To the extent changes or modifications arise, the comments in this letter would be subject to modification as well. This letter is therefore not a substitute for professional advice. You should review these points of discussion with your professional advisor, who should be fully informed of your particular circumstances, before taking any significant action.