

This information is valid as of December 17, 2012 and is supplied from the BCREA website. Note that policies might change from time to time but you **MUST** be familiar with these Transition rules to properly advise your clients. Having your clients seek professional tax advice is always good advice as well.

Frequently Asked Questions - PST Transition Rules

1. Why are transition rules necessary?

Transition rules determine whether 12% HST or 5% GST will apply to new housing contracts that start before April 1, 2013, but conclude on or after this date. Both the federal and provincial governments administer their own set of transition rules.

2. When does HST apply, and when does GST apply?

HST applies if tax becomes payable before April 1, 2013.

GST applies where tax becomes payable after March 31, 2013. In addition, the BC transition tax may then apply where construction or substantial renovation is at least 10% complete on April 1, 2013.

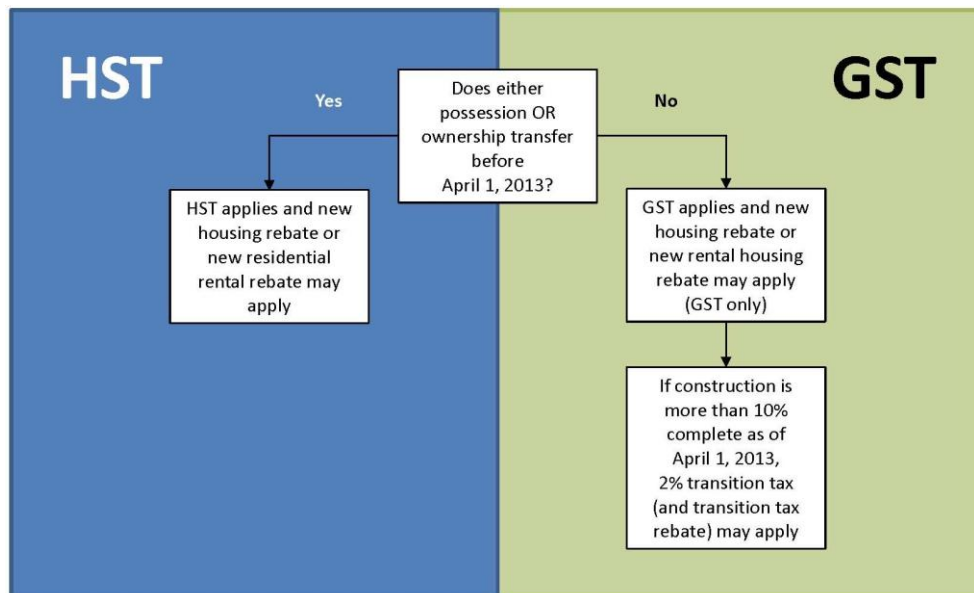
3. Generally, when does the tax become payable?

Except for the sale of certain residential strata units, the tax is payable on the earlier of the following dates:

- when the seller transfers ownership (also known as the completion date) of the new home to the buyer, **OR**
- when the seller transfers possession of the new home to the buyer under the Contract of Purchase and Sale.

In summary:

The 12% HST applies if the seller transfers either possession or ownership of a new home to the buyer <u>before April 1, 2013</u> .	The 5% GST applies if the seller transfers both possession and ownership of a new home <u>on, or after, April 1, 2013</u> .
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4. Generally, when does the tax become payable when the transaction involves a strata unit?

The general tax payable rule will apply for stratas except where the strata plan hasn't been registered as a condominium by the date possession is transferred. The tax payable is then based on the earlier of the following dates:

- when the seller transfers ownership (also known as the completion date), **OR**
- 60 days following the date the strata plan is registered.

5. Who will be responsible for paying the GST?

As was the case prior to the implementation of the HST, the seller is responsible for charging GST on the sale to the buyer, and must then collect and remit the tax to the Canada Revenue Agency (CRA).

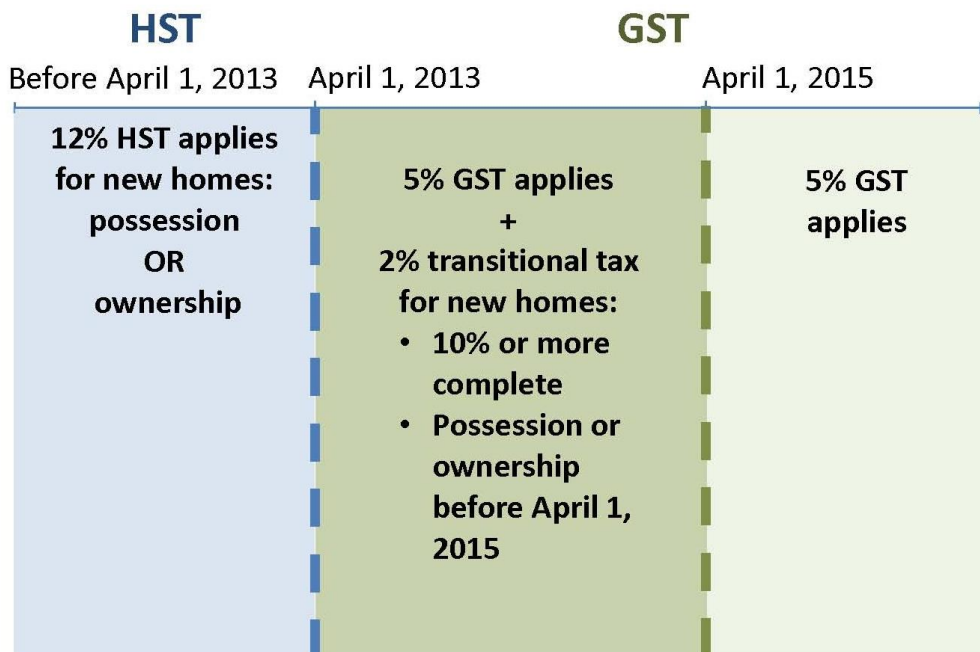
6. Will the PST apply to real property?

No. HST will generally cease to apply on the purchase of new housing as of April 1, 2013, even if the Contract of Purchase and Sale was signed or new home construction started before April 1, 2013, provided neither possession nor ownership transfer before April 1, 2013. However, the provincial government may collect a temporary transition tax of 2% if certain conditions are met.

7. How will the temporary transition tax work?

The provincial government may, in certain circumstances, collect a temporary transition tax of 2% on the purchase price of a new home where:

- HST does not apply to the sale (that is, GST applies because tax is payable on or after April 1, 2013), the construction or substantial renovation of the new housing is at least 10% complete before April 1, 2013, and
- either ownership or possession of the new housing transfers, or a deemed sale of the new housing (for example, a self-supply of an owner-built rental unit) transfers before April 1, 2015.



8.

Who pays the temporary transition tax?

The BC transition tax will be payable by the buyer and collected by the seller on the same date the GST becomes payable. The seller is responsible to collect and remit the tax to the CRA. Buyers may wish to ensure that an appropriate allocation of the BC transition tax and BC transition rebate is factored into negotiations between the buyer and seller.

9. How will the temporary transition tax work when the transaction involves a strata unit?

The general temporary transition tax conditions are applicable to sales of strata units; that is, HST doesn't apply, construction is 10% or more complete before April 1, 2013 and possession or ownership transfers before April 1, 2015.

Again, if the strata plan is not registered by the date possession is transferred, the temporary transition tax is payable on the earlier of the following dates:

- when the seller transfers ownership (also known as the completion date), **OR**
- 60 days following the date the strata plan is registered.

10. Are there any rebates for sellers related to the temporary transition tax?

Yes, the BC government has introduced a transition rebate to recognize that a seller will not be able to claim input tax credits on PST paid on construction materials acquired after March 31, 2013. The rebate is available where both conditions are met:

- The BC transition tax applies to the sale of new housing, **AND**
- Construction or substantial renovation is at least 10%, but not more than 90%, complete, before April 1, 2013.

The transition tax rebate for new housing will be calculated on the degree of completion of the housing as of April 1, 2013:

Degree of construction complete as of April 1, 2013	Transition tax rebate as a percentage of consideration or fair market value
Less than 10 per cent	Not applicable
10 per cent ≤ and < 25 per cent	1.5 per cent
25 per cent ≤ and < 50 per cent	1.0 per cent
50 per cent ≤ and < 75 per cent	0.5 per cent
75 per cent ≤ and < 90 per cent	0.2 per cent
90 per cent or greater	0.0 per cent

11. How will the transition affect the way I prepare or counter a standard form Contract of Purchase and Sale?

The BC government has introduced disclosure requirements for builders (i.e., sellers) during the transition period to clarify the taxes and rebates that are included in the sale price stated in the Contract of Purchase and Sale.

Agreements entered into from December 1, 2012 to March 31, 2015 must contain the following prescribed information:

- the value of consideration (i.e., purchase price), disclosure of whether tax is inclusive or exclusive of the price, and a breakdown identifying the amount and rate of each tax and/or rebate where applicable;
- a statement that discloses whether or not the seller is a foreign supplier (essentially, a “foreign supplier” is not resident of Canada); and
- if the seller is not a foreign supplier, then the following Notice to Purchaser “If (a) both ownership and possession of newly constructed or substantially renovated housing transfer on or after April 1, 2013 and (b) either ownership or possession of the housing transfer before April 1, 2015, then
 - the 7% provincial component of the HST and the BC HST new housing rebate for primary places of residences will not apply,

- the 2% BC transition tax may be payable by the buyer, and
- the supplier may be eligible for a BC transition rebate in respect of the housing.

NOTE: *An alternate Notice to Purchaser is required where the seller is a foreign supplier.*

Buyers may wish to ensure that an appropriate allocation of the temporary transition tax and transition tax rebate is factored into negotiations between the buyer and seller.

To facilitate the disclosure of this required information, as of December 1, 2012, REALTORS® have available through WEBForms® four new addendums for use with the Contract of Purchase and Sale (CPS) during the transition period:

- CPS New Home Addendum – For contracts entered into on or after February 17, 2012 and before December 1, 2012, and ownership or possession transfers after December 31, 2012, and the seller is not a “foreign supplier” [to be signed by seller only and delivered to the buyer].
- CPS New Home Addendum – For contracts entered into on or after February 17, 2012 and before December 1, 2012, and ownership or possession transfers after December 31, 2012, and the seller is a “foreign supplier” [to be signed by seller only and delivered to the buyer].
- CPS New Home Addendum – For contracts entered into on or after December 1, 2012 and before April 1, 2015, and the seller is not a “foreign supplier” [to be signed by both buyer and seller].
- CPS New Home Addendum – For contracts entered into on or after December 1, 2012 and before April 1, 2015, and the seller is a “foreign supplier” [to be signed by both buyer and seller].

NOTE: *Special rules apply where agreements were entered into prior to November 18, 2009 and/or construction/substantial renovation of homes began before July 2010 and ownership and possession will transfer after April 1, 2013.*

12. If a Contract of Purchase and Sale for a new home was signed on or after February 17, 2012 and before December 1, 2012, and included an addendum containing required information, is any further action needed?

Yes. Where the CPS was signed on or after February 17, 2012 and before December 1, 2012, and neither ownership nor possession transfer on or before December 31, 2012, then a new addendum (available through WEBForms®) must be provided to the buyer by January 2, 2013. While the addendum must be signed by the seller, it doesn’t have to be signed by the buyer.

If a sale is subject to transition tax (that is, tax becomes payable after March 31, 2013 and before April 1, 2015, and substantial renovation or construction is at least 10% complete before April 1, 2013), the seller must ensure that the statement of adjustments (or other document issued at the time tax is payable) contains the information in the addendum, plus disclose the completion percentage as at immediately before April 1, 2013, and as at the date tax is payable.

13. What methods can be used to provide the buyer with the addendum?

There are four acceptable delivery methods:

- in person,
- courier or registered mail,
- fax, or
- any other means, including email, if written confirmation of receipt by the buyer or the buyer's agent is obtained.

14. Is there a penalty for builders who don't make the required disclosures during the transition period?

Yes. A penalty of up to \$10,000 per home (or one per cent of the purchase price) can be imposed on a builder who fails to fully and accurately disclose the required information. In the case of a builder who knowingly makes a false statement, a penalty of up to four per cent of the purchase price may be imposed, to a maximum of \$40,000 per home.

15. Will the PST apply to real estate commissions?

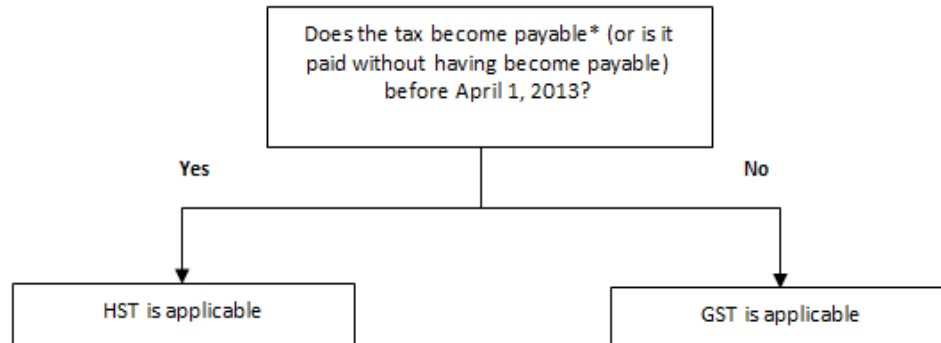
No. If the commission is payable before April 1, 2013, then it is subject to 12% HST. Conversely, if the commission is payable on or after April 1, 2013, then the 5% GST applies.

This change to the sales tax applicable to real estate commissions affects all real estate commissions, whether earned in connection with the sale of new homes, bare land or previously occupied residential property.

16. When does commission become payable?

The standard Multiple Listing Contract provides that a commission is payable on the earlier of the following:

- completion date under the Contract of Purchase and Sale, **OR**
- the actual date that the sale completes.



17. Are there any special rules for commercial property?

No. For general application of the GST/HST to commercial real property sales and rentals, see this document: www.cra-arc.gc.ca/E/pub/gm/19-4-1/19-4-1-e.pdf.