

LATHEM'S LEGALS

Real Estate Law Series of Newsletters

HST AND NEW HOMES AND CONDOMINIUMS

The only Real Estate that is exempt from HST is used residential properties. The sale and purchase of all other types of Real Estate are subject to HST. The purpose of this newsletter is to deal with the HST as it applies to the purchase of New Homes and Condominiums. The treatment of both are identical.

HST is applicable in the sale of all new homes & condominiums and it is not as simple as "its included", as it is often advertised. Both are sold to buyers on the assumption that they will move into it as their principal residence. So it is included "net of rebates", or at a reduced amount of HST. Where the buyer does not qualify because they are not purchasing it as a "primary residence" for themselves or an immediate family member then the builder must collect the full amount of HST and remit it to CRA.

A simple rule of thumb is that the "discount" in HST is approximately 8%, below \$450,000.00, or a flat \$24,000.00 over \$450,000.00. So if the person does not qualify and the purchase price is under \$450,000.00, I would recommend using 8% as a rough estimate. If it is over \$450,000.00 it is \$24,000.00. These are not exact figures.

The other HST rules that one needs to be aware of is:

1. If the property is a rental, the additional HST will be returned by CRA if within 1 year of closing the buyer submits an application with proof that it was rental property including a 1 year lease.
2. The "primary residence" requirement does permit additional personal use properties, so in theory secondary residences such as weekend or vacation homes do not qualify.
3. Properties that are flipped are typically not entitled to rebates, meaning that even rental properties sold within 1 year do not qualify.
4. The full HST applies to all contracts entered into after June 18, 2009.

HST ON ASSIGNMENT OF NEW HOMES AND CONDOMINIUMS

I have noticed plenty of advertisement by Real Estate Agents advertising that buyers can avoid having to pay the additional HST by assigning investment contracts prior to closing. This information is incorrect. There has been GST on new home and condominium contracts since its inception about 1990, however, the collection and enforcement prior to the HST when the amounts were small was non-existent.

With the introduction of HST the amounts of money involved has become substantial and worth the CRA auditing every file.

There is an HST bulletin issued by CRA in July of 2011. Prior to 2000 most assignment contracts seem to have been drawn by lawyers who describe the purchase price as the amount the buyer was receiving for the assignment price as profit. Sometime during after the 2000s, Real Estate Agents began modifying the current OREA forms to turn purchase agreement through heavy modifications into assignment contracts and describing the

purchase price as the total amount the buyer was paying for the unit adding all the payment to the party assigning and the builder together. This creates a very serious tax problem and this particular deficiency is incorporated into the current OREA forms.

For example if Susan buys a condominium from a builder for \$200,000.00, then assigns it for \$100,000.00, the typical lawyer would write an assignment contract for \$100,000.00, while the Real Estate Agent using the OREA form would describe the purchase price as being \$300,000.00. According to CRA assignment transaction would be subject to HST, or in the case of a the \$100,000 purchase price drawn by the Lawyer this would be \$13,000, whereas using the current OREA form this would be described as \$300,000 with HST owing of \$36,000.00.

While the OREA form is otherwise fairly comprehensive, we recommend modifying it to make the purchase price the amount of profit the buyer is receiving or markup and that this figure should not include the original purchase price or reimbursement of the deposits to the builder.

CRA INVESTIGATIONS

In a typical new home or condominium transaction the GTA the amount of the HST rebate averages \$24,000.00 and since the introduction of HST CRA audits virtually every file for compliance.

What we have discovered is the with every application CRA compares the homeowner claimants paperwork to their income tax records, the land records, driver licences etc., to see if they actually qualify. They have been known to go even so far as to check people's marital or family status to see if the claims are credible.

They will also review in considerable detail any property sold approximately 1 year following its purchase for HST and other issues.

Improper HST claims are often a source for further investigation to other real estate related tax issues, such as flipping in which the sale of property is subjected to a higher level of taxation than rental property upon sale.

SUMMARY

It is important to remember that HST applies to the purchase and sale of all real estate except used residential real estate. It is important that you use either a real estate agent who is experienced in HST issues, or better yet have the lawyer review the agreement for HST implications.

Unless you intend to purchase a new home to move into as your principal residence there will always be HST issues. It is not as simple as the sales people may say it is.

RESOURCES

I can recommend our firm website for resources:

www.lathemlaw.com

We also have a Youtube Website covering many of these same topics.

<https://www.youtube.com/channel/UCh4ob4Ez3juWpypYI9KX1yA>

CRA July 2011 Bulletin on HST and Assignment Contracts

<http://www.cra-arc.gc.ca/E/pub/gi/gi-120/gi-120-e.pdf>

The Law Society of Upper Canada

https://www.youtube.com/watch?v=AB_KwRCX5qw