



Ontario and British Columbia: Transition to the Harmonized Sales Tax — Direct Sellers and Independent Sales Contractors

The Government of Ontario and the Government of British Columbia have each proposed a harmonized sales tax (HST) that would come into effect on July 1, 2010.

The HST rate in Ontario will be 13% of which 5% will represent the federal part and 8% the provincial part.

The Government of British Columbia has proposed that the HST rate would be 12% of which 5% would represent the federal part and 7% the provincial part.

This info sheet reflects proposed tax changes announced in:

- the 2009 Ontario Budget and in the Information Notice No. 3, *General Transitional Rules for Ontario HST*, released by the Government of Ontario on October 14, 2009; and
- the News Release issued by the Government of British Columbia on July 23, 2009 and the Tax Information Notice – HST Notice #1, *General Transitional Rules for British Columbia HST*, released by the Government of British Columbia on October 14, 2009.

Any commentary in this info sheet should not be taken as a statement by the Canada Revenue Agency (CRA) that the proposed transitional rules will be enacted in their current form.

This info sheet explains whether the goods and services tax (GST) or the HST applies to sales of exclusive products made by direct sellers and independent sales contractors (ISCs) in Ontario and British Columbia during the period that includes July 1, 2010. It also explains the requirement for direct sellers and distributors to self-assess the provincial part of the HST on:

- exclusive products that ISCs have in inventory on July 1, 2010; and
- certain exclusive products delivered to ISCs on or after July 1, 2010.

The transitional rules explained in this info sheet apply only where a direct seller has been approved

to use the Alternate Collection Method (ACM) and that approval is in effect on July 1, 2010. They apply only to sales of exclusive products that are taxable (other than zero-rated products).

This info sheet does not explain the ACM rules. The following info sheets will provide general information on the ACM:

- *Direct Selling Industry – The Alternate Collection Method for Direct Sellers and Distributors*; and
- *Direct Selling Industry – The Alternate Collection Method for Independent Sales Contractors*.

Note: In each example in this info sheet, the ISC and the purchaser are located in the same province as the direct seller or approved distributor

Meaning of significant terms used in this info sheet

“Distributor” is an ISC that sells exclusive products to other ISCs or to purchasers. In this info sheet, we use the expression “approved distributor” to mean a distributor that has been approved to use the ACM.

“Exclusive products” means any personal property that a direct seller acquires, manufactures, or produces for sale to ISCs who ultimately sell, or intend to sell, the property to purchasers.

“Independent sales contractor” (ISC) means a person that:

- is not an agent or an employee of a direct seller or of a distributor. For information on agents, refer to GST/HST Info Sheet *Agents* (GI-012);

- has an agreement to purchase a direct seller's exclusive products from the direct seller or a distributor;
- purchases a direct seller's exclusive products for resale to other ISCs of the direct seller or to purchasers who are not acquiring the products for resale; and
- does not solicit sales or sell a direct seller's exclusive products primarily (more than 50%) at a fixed place of business, except if it is the person's home.

In this info sheet, an ISC includes a distributor that is not an approved distributor.

“Purchaser” means an individual, business or organization that purchases an exclusive product of a direct seller and does not intend to resell it.

Sales of exclusive products during the period that includes July 1, 2010

The ACM rules continue to apply to sales of exclusive products made by direct sellers or approved distributors in Ontario and British Columbia during the period that includes July 1, 2010. Under the ACM, direct sellers or approved distributors charge the tax on the suggested retail price of exclusive products they sell to ISCs.

To determine whether they charge GST or HST during the period that includes July 1, 2010, they have to consider:

- when the exclusive product is delivered to the ISC;
- when ownership of the product is transferred to the ISC;
- when an amount for the product becomes due; and
- whether an amount for the product is paid without having become due.

The Appendix to this info sheet contains information on when an amount becomes due and when an amount is paid without having become due.

When a product is delivered or ownership is transferred before July 2010

Regardless of when an amount for an exclusive product becomes due or is paid without having become due, GST applies on the suggested retail price of the product when the product is delivered, **or** ownership is transferred, to an ISC before July 2010. The direct seller or approved distributor accounts for the GST according to the ACM rules.

In addition, the direct seller or approved distributor has to self-assess the provincial part of the HST if:

- an ISC still has the exclusive product in inventory on July 1, 2010; and
- the product is intended for sale to a purchaser in Ontario or in British Columbia.

The provincial part of the HST is calculated on the suggested retail price that the direct seller or approved distributor used to calculate the GST when the product was sold to an ISC.

The direct seller or approved distributor accounts for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010.

Example 1

A direct seller in Ontario issues an invoice dated May 31, 2010, for the sale of an exclusive product to an ISC. The product is paid for on June 10, 2010, and is delivered to the ISC on June 15, 2010. On July 1, 2010, the ISC still has the product in inventory. The ISC intends to sell it to a purchaser in Ontario.

Because the product is delivered before July 2010, the direct seller charges the GST on the suggested retail price of the product and accounts for the tax in its GST/HST return for the reporting period that includes May 31, 2010.

In addition, because the ISC still has the product in inventory on July 1, 2010, the direct seller must self-assess the 8% provincial part of the HST calculated on the suggested retail price it used to calculate the GST on May 31, 2010. The direct seller accounts for the 8% provincial part of HST in its GST/HST return for the reporting period that includes July 1, 2010.

Example 2

An approved distributor in British Columbia sells an exclusive product to an ISC and issues an invoice dated June 25, 2010. The product is delivered to the ISC on June 28, 2010. The ISC delivers the product to a purchaser on July 5, 2010.

Because the product is delivered to the ISC before July 2010, the approved distributor charges the GST on the suggested retail price of the product and accounts for the GST in its GST/HST return for the reporting period that includes June 25, 2010.

Because the ISC has the product in inventory on July 1, 2010, the approved distributor must self-assess the 7% provincial part of the HST calculated on the suggested retail price of the product it used to calculate the GST on June 25, 2010. The approved distributor accounts for the 7% provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010.

When a product is delivered and ownership is transferred on or after July 1, 2010

The following rules apply when an exclusive product is delivered **and** ownership is transferred to an ISC on or after July 1, 2010.

When the amount for the exclusive product becomes due or is paid without having become due before July 2010, the direct seller or approved distributor:

- charges the GST on the suggested retail price of the exclusive product and accounts for the GST according to the ACM rules; and
- self-assesses the provincial part of HST if the amount for the product becomes due or is paid without having become due after October 14, 2009.

The provincial part of the HST is calculated on the suggested retail price that the direct seller or approved distributor used to calculate the GST when the product was sold to the ISC.

The direct seller or approved distributor accounts for the provincial part of the HST in its GST/HST return for the reporting period that includes July 1, 2010.

When the amount for the exclusive product becomes due or is paid without having become due on or after July 1, 2010, HST applies on the suggested retail price of the exclusive product.

Example 3

On May 20, 2010, an ISC orders an exclusive product from a direct seller in British Columbia. The direct seller issues an invoice dated May 22, 2010. However, the direct seller is temporarily out of stock of this exclusive product. The product is delivered and ownership is transferred to the ISC on July 8, 2010.

Because the amount for the product becomes due before July 2010, the direct seller charges the GST on the suggested retail price of the product and accounts for the GST in its GST/HST return for the reporting period that includes May 22, 2010.

In addition, the direct seller self-assesses the 7% provincial part of the HST calculated on the suggested retail price of the product and accounts for that amount of tax in its GST/HST return for the reporting period that includes July 1, 2010.

Sales of exclusive products to purchasers

The following rules apply when an ISC sells an exclusive product to a purchaser. The ISC charges:

- the GST when the product is delivered **or** ownership is transferred to the purchaser before July 2010; or
- the HST when the product is delivered **and** ownership is transferred to the purchaser on or after July 1, 2010.

However, the ISC does not account for the tax collected from the purchaser because, when the ACM is in effect, the direct seller or approved distributor is the person responsible for accounting for the tax.

Example 4

On June 20, 2010, an ISC accepts an order for an exclusive product from a purchaser. The ISC orders the product from the approved distributor in Ontario who issues an invoice on June 25, 2010. The product is delivered to the ISC on July 5, 2010. The ISC delivers the product to the purchaser on July 10, 2010.

Because the product is delivered and ownership is transferred to the purchaser on or after July 1, 2010, the ISC charges the 13% HST on the amount paid by the purchaser. The ISC does not account for the tax because it has been accounted for by the approved distributor.

This info sheet does not replace the law found in *the Excise Tax Act* (the 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 any CRA GST/HST rulings office for additional information. A ruling should be requested for certainty in respect of any particular GST/HST matter. Pamphlet RC4405, *GST/HST Rulings – Experts in GST/HST Legislation*, explains how to obtain a ruling and lists the GST/HST rulings offices. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec by calling 1-800-567-4692. You may also visit their Web site at www.revenu.gouv.qc.ca to obtain general information.

All technical publications related to GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthstech.

Appendix — When an amount becomes due or is paid without having become due

The following rules explain when an amount becomes due and when an amount is paid without having become due. These rules apply to services and supplies of tangible and intangible personal property.

Amount becomes due

An amount for a supply becomes due on the earliest of the following days:

- the date of an invoice for that amount for the supply;
- the day the supplier first issues that invoice for the amount;
- if there is an undue delay in issuing that invoice, the day the supplier would have issued the invoice; and
- the day the client is required to pay that amount under a written agreement.

For information on what is a written agreement for GST/HST purposes, refer to GST Memorandum 300-6-4, *Agreements in Writing*.

Example 1

A supplier enters into a written agreement with a client. Under the agreement, the client is required to pay the total amount on April 30. The supplier issues an invoice dated April 15.

The amount becomes due on April 15 because it is the earliest of the date of the invoice, the day the invoice was issued, and the day the client is required to pay an amount under a written agreement.

Amount is paid without having become due

An amount is paid without having become due when a client pays an amount due for a supply:

- before the date of an invoice, or before a supplier issues, or would have issued, the invoice; or
- before the client is required to pay the amount under a written agreement and no invoice has been issued.

Example 2

A supplier enters into a written agreement with a client. Under the agreement, the client is required to pay the total amount due on April 30. No invoice is issued. The client pays the amount due on April 15. In this case, April 30 is the day the amount becomes due and April 15 is the day the amount is paid without having become due.

More than one invoice or payment

Sometimes, more than one amount becomes due or is paid without having become due. This could happen when, for example, a supplier issues more than one invoice or when the client is required to make more than one payment under a written agreement. In this case, for each amount, the supplier must determine whether GST or HST applies. The supplier cannot, for example, just apply the HST on the final amount or on the total amount payable for the supply.

Example 3

A supplier enters into a written agreement with a client for a supply. Under the agreement, the client is required to make two payments. The supplier has to consider each payment separately to determine whether GST or HST applies to the amount paid.