

July 2016

## New simplified rules for home builders reporting sales of grandparented housing

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In Budget 2016, the Department of Finance announced changes to simplify the special reporting requirements for home builders, with taxable sales of new or substantially renovated housing that are “grandparented” under the transitional Harmonized Sales Tax (HST) rules (i.e. when a province joins the HST or increases the provincial component of the HST).

### What are grandparented housing sales?

Grandparenting of housing sales is a transitional measure intended to ensure that the provincial component of the HST or the HST rate increase does not apply to certain taxable housing sales. Grandparenting applies where the purchase and sale agreement (PSA) is entered into prior to the announcement of the transitional rules, and when both ownership and possession of the housing are transferred on or after the HST start date or the date the HST rate increase came into effect.

### Former reporting requirements

Following the implementation of the HST in Ontario, British Columbia, and Prince Edward Island and the HST rate increase in Nova Scotia, builders were subject to special reporting requirements if they made grandparented housing sales and the purchaser was not entitled to a GST New Housing Rebate or a GST New Residential Rental Property Rebate.

One of the difficulties with this reporting requirement was that builders might not have been aware that purchasers were entitled to claim one of these GST rebates. Generally, a builder would be aware that a purchaser is entitled to claim the GST New Housing Rebate since builders commonly pay or credit the rebate to the

purchaser at the time of closing. However, a builder might not be aware of a purchaser’s entitlement to claim the GST Residential Rental Property Rebate, since the builder would not be privy to the rental agreement entered into between the purchaser and a third-party tenant.

### New simplified reporting requirements

Changes were enacted to the Electronic Filing and Provision of Information (GST/HST) Regulations on June 3, 2016. For reporting periods ending after Budget Day (March 22, 2016), builders with grandparented housing sales are required to report only those grandparented housing sales that meet the new definition of “specified housing supply” where the total consideration<sup>1</sup> is \$450,000 or more. For each of these reporting periods where the GST becomes payable for one or more specified housing supplies, builders must report the sum of the total consideration for the specified housing supplies, as well as the number of units that are specified housing supplies.

### Election to correct past misreporting

In addition, builders are given the opportunity to correct past misreporting (including not reporting, under-reporting or over-reporting), by electing to report all of their specified housing

1. Often, the stated price in a PSA includes the GST/HST and, where applicable, is net of the GST/HST New Housing Rebate. As a result, determining the “total consideration” for reporting specified housing supplies may require the use of a rebate factor to derive the “total consideration.” Further, included in the “total consideration” for reporting specified housing supplies, is the consideration payable for any other taxable supply of an interest in the grandparented housing, made to the recipient of the grandparented housing sale.

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supplies in British Columbia, Nova Scotia, Ontario or Prince Edward Island using the new simplified rules, where the GST or the federal part of the HST became payable after June 2010 and before May 2016. The election must be filed in respect of a particular reporting period that ends on or after May 1, 2016, and before 2017 using Form RC4617. Under the election, the specific housing supplies are reported on a calendar-year basis.

### An opportunity to avoid or eliminate significant penalties

A builder's misreporting of grandparented housing sales is subject to an automatic penalty of five per cent of the total consideration for those grandparented housing sales and one per cent for each month (up to a maximum of five months) until either the misreporting is voluntarily corrected or the CRA sends a notice of assessment taking into account the misreporting. Such penalties can be significant – up to ten per cent of the total consideration.

While the new simplified reporting rules do not change the penalty rates, they do reduce the risk of misreporting and provide builders a time-limited opportunity to confirm whether they have misreported grandparented housing sales in the prior reporting periods covered by the election and, if necessary, to make corrections without the risk of the CRA applying significant penalties. Any past misreporting that occurred under the former rules and is reported correctly under the new simplified rules will not be subject to penalties, provided the builder uses a valid election. In such cases, any penalties previously applied by the CRA will be eliminated.

### What the new rules mean for builders

In many cases, builders might not have fully understood their obligation to report grandparented housing sales, or they may not have realized the significance of the penalties for misreporting. Although this reporting requirement does not affect a builder's net tax, this information is required for the proper allocation of revenues under the Comprehensive Integrated Tax Coordination Agreements between the federal government and the HST provinces.

In addition, the avoidance or elimination of penalties for past misreporting under these new rules does not require the builder to meet the conditions of the CRA's Voluntary Disclosure Program or any other conditions for the administrative relief of penalties.

Builders should take care to consider the risk of being assessed by the CRA under the former rules (where the requirements of filing a valid election are not met) or under the new simplified rules, and the potential magnitude of the penalties. Contact your Collins Barrow advisor for help in managing this potentially tricky situation.

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