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TaxNewsFlash Canada

New Brunswick — Transitional Rules for Upcoming HST Increase to 15%

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New Brunswick has released general descriptions of the transitional rules for its proposed upcoming increase of the HST to 15% (from 13%) in New Brunswick on July 1, 2016. Businesses across Canada, as well as non-resident businesses that are registered for GST/HST, should review these new rules, particularly if they are required to collect New Brunswick HST on their sales or if they are subject to special rules for financial institutions. Businesses and other organizations must ensure that their systems and processes are adjusted to reflect the upcoming HST rate increase.

According to New Brunswick, suppliers would generally be required to collect 15% HST on the consideration that becomes due without having been paid, or is paid without having become due, on or after July 1, 2016 for supplies of taxable property or services. The 13% HST would generally apply to any consideration that becomes due or is paid before July 1, 2016.

In general, the consideration for a supply becomes due on the earliest of:

- The day the supplier first issues an invoice for the supply
- The date on the invoice
- The day the supplier would have, but for an undue delay, issued an invoice for the supply
- The day the purchaser is required to pay that consideration pursuant to a written agreement.

New Brunswick also proposes special transitional rules for new housing builders and the financial industry, among others.

The federal government has not yet released any related details, such as related notices or draft regulations to the *Excise Tax Act.*

Background
The 2016 New Brunswick budget proposed to increase the HST to 15% (from 13%), effective July 1, 2016. For more details on the 2016 New Brunswick budget, see *TaxNewsFlash-Canada* 2016-06, "Highlights of the 2016 New Brunswick Budget".

Overview of transitional rules

In general, the transitional rules specify that 15% HST will apply to any consideration that becomes due without having been paid, or is paid without having become due, on or after July 1, 2016 where the consideration is for a supply of:

- Tangible personal property (goods) made by way of sale (including annual magazine subscriptions)
- Services including landscaping services and taxable round-trip air travel
- Leases and licenses of goods, intangible personal property and real property, such as car lease payments (New Brunswick notes that the 15% HST would apply to a lease payment that is required to be made after June 2016 unless the lease payment is made before July 1, 2016)
- Intangible personal property (IPP) made by way of sale, such as intellectual property or contractual rights, including memberships, admissions and passenger transportation passes.

In general, the 13% HST will apply to any consideration that becomes due or is paid before July 1, 2016.

Additional HST transitional rules

New Brunswick also released special transitional rules that apply to real property transactions, new housing, builder disclosure requirements and financial institutions, among others.

Real property transactions

In general, the transitional rules note that 15% HST will apply to a supply of real property made by way of sale, including sales of newly constructed or substantially renovated housing, if both ownership and possession of the property are transferred to the purchaser on or after July 1, 2016. The 13% HST will apply to a supply of real property made by way of sale if either ownership or possession of the property is transferred to the purchaser before July 1, 2016. In general, the 15% HST will also apply to deemed taxable supplies of real property by way of sales if the supply is deemed to have been made on or after July 1, 2016.

Grandparenting for new housing

New Brunswick proposes grandparenting (i.e., subject to HST at a rate of 13%) the sale by a builder of a new or substantially renovated qualifying home (i.e., a single-unit home, duplex,

mobile home, floating home or residential condominium) if the agreement was entered into on or before March 30, 2016. The land portion of the housing must be supplied by the builder together with the sale of the building portion under the same agreement.

In general, grandparenting will not apply to sales of traditional apartment buildings. Grandparenting will also not apply to deemed taxable supplies of real property by way of sales, such as builder-landlords that are required to self-assess HST under the self-supply rules for newly constructed housing on or after July 1, 2016, with some exceptions.

Builder disclosure requirements

The transitional rules specify that, for written agreements of purchase and sale for newly constructed or substantially renovated housing entered into after March 30, 2016 and before July 1, 2016, builders of the housing are required to disclose in the written agreement either:

- The total tax payable in respect of the sale and whether that total is net of the GST new housing rebate, if applicable, or
- The total of the rates at which tax is payable in respect of the sale (e.g. HST at a rate of 15%).

If the builder fails to disclose the information as required and ownership and possession of the housing are transferred on or after July 1, 2016, the builder will be deemed to have collected 15% HST and the purchaser will not be liable to pay any additional amount of HST on the sale.

Builders will also be subject to new reporting requirements.

Financial institutions

New Brunswick proposes special rules for financial institutions (FIs) that can vary based on the type of FIs and their reporting period and fiscal year that include July 1, 2016. Financial institutions must determine if and how the rules apply to their entities and transactions to manage the increase tax costs and, if applicable, how the rules will affect their special attribution methods (SAM) and their 2016 GST/HST returns.

SLFIs other than distributed investment plans — The transitional rules include measures for selected listed financial institutions (SLFI) other than distributed investment plans related to their SAM liability calculations. For that purpose, the provincial component of the HST for these SLFIs' reporting period that includes July 1, 2016 will generally apply at a rate of 10% based on the number days in the reporting period that are on or after July 1, 2016 and 8% based on the number of days in the reporting period before July 1, 2016. This rule should be incorporated into the SAM formula.

SLFI distributed investment plans — The transitional rules also include measures for SLFI distributed investment plans related to their SAM liability calculations. For that purpose, the provincial component of the HST for these SLFIs' reporting period that includes July 1, 2016 will generally apply at a rate of 10% based on the amount of GST or federal component of HST that is payable (or that is paid without having become payable) by the SLFI on or after July 1, 2016, and 8% based on the amount of GST or federal component of the HST that is payable (or paid without having become payable) before that date. This rule should be incorporated into the SAM formula.

Managers of investment plans that have made tax adjustment transfer elections (TATEs) with their investment plans should also review how the New Brunswick HST rate increase will affect their amount of tax to remit. Many managers with these elections use tax rates known in the industry as "blended rates" which take into consideration the tax charged and collected on their services and the amount of tax adjustments transferred from the investment plans to the managers under the elections. As such, these managers will need to review their blended rate calculations to take into account the upcoming tax rate increase of the New Brunswick HST so that they are in a position to collect and remit tax based on the new higher rate.

Other transitional rules

New Brunswick also provides various other HST transitional rules and comments, including those related to:

- Returns and exchanges
- Goods and services brought into New Brunswick
- Imports of non-commercial goods and specified motor vehicles
- Imported taxable supplies of IPP and services
- Pension plan rules for employers and pension entities
- Taxable benefits
- Streamlined accounting methods and the various remittances rates
- Construction services.

The current GST/HST anti-avoidance rules will apply to transactions subject to these transitional rules but it appears that other anti-avoidance rules could be implemented if required.

We can help

Your KPMG adviser can help you assess the effect of the HST changes in this year's New Brunswick budget. We can also keep you abreast of the progress of these proposals as they make their way into law.

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