

HARMONIZED SALES TAX AND BC FIRST NATIONS

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THE HST SYSTEM

What is the HST?

Currently, many goods and services purchased in British Columbia are subject to two separate consumption taxes, a provincial sales tax (PST) and a federal goods and services tax (GST). Subject to the approval of the Legislature of British Columbia and the Parliament of Canada, the harmonized sales tax (HST) will replace the PST and GST in British Columbia as of July 1, 2010 with a combined rate of tax of 12%.

Will the HST apply to the same goods and services as the GST?

The proposed HST will tax the same goods and services currently subject to the GST. Certain exceptions in relation to the BC HST point of sale rebate are proposed. This means, in essence, that most goods and services that are taxable under the GST will be taxable under the HST. Similarly, the goods or services not currently subject to GST will likely be exempted from HST.

There are a few goods that are currently subject to GST that will be granted a point of sale rebate of the 7 per cent provincial portion of the HST. These consist of books, children's sized clothing and footwear, children's car seats and booster seats, feminine hygiene products and diapers, and motor fuels such as gasoline and diesel fuels used in motor vehicles. This point of sale rebate is an instant rebate of tax at the time of purchase. The vendor will not charge the purchaser the provincial portion of the tax on the item.

In addition, it is proposed that municipalities and charities and non-profit organizations which receive rebates under the GST will receive a rebate of the provincial portion of the HST.

IMPACT ON INDIVIDUALS AND BUSINESSES IN BC

If the HST tax rate is 12% and the combined rate of tax under the current system of GST and PST is 12%, why change to an HST system?

Under GST legislation, businesses are able to claim input tax credits (ITCs) for the GST they pay on items they purchase to run their business, which in effect allows them to recover the tax they pay on "business inputs". This means that businesses that sell taxable goods or services, called "taxable supplies" under the GST legislation, can deduct the amount of GST they have paid from the amount that they have collected and only remit the net amount to the government. The intended result is that the end-user

consumer of the supplies pays the GST on the supply that has travelled through the economy and little or no GST is embedded (or passed on to consumers) in the selling price of their products where it would be taxed a second time in the hands of the end-user consumer.

The HST rules are designed to operate in a similar fashion to the GST and allow businesses to claim ITCs for supplies they use in their business.

Under the current system, PST is embedded in the cost of goods and services because businesses are not able to deduct the amount of PST paid on inputs from the amount they have collected. This embedded PST makes goods and services more expensive. Hence, in theory, under an HST system, the cost to a business in producing a good or service should be less than the cost to produce that good or service under a PST system, assuming the same rate of tax.

Are there goods and services that are not currently subject to PST but will be subject to HST?

GST and PST currently apply to slightly different goods and services. HST has the same tax base as the GST and therefore various goods and services will be subject to a tax rate of 12% under the HST rather than 5% GST currently required. Restaurant meals are but one example of a good or service that is currently only subject to GST (at a rate of tax of 5%) but will be subject to the proposed HST (at a rate of tax of 12%). Whether this will result in higher costs for the consumer is unclear. This results because restaurants and its suppliers will be able to deduct the HST they pay on the many goods and services they purchase to operate their restaurant from the HST they collect and need to remit to the government which in theory should result in lower pre tax prices on the menu. Whether or to what extent these "savings" incurred by restaurants will be passed on to the consumer is unknown.

New housing is another item for which only GST currently applies but which will be subject to HST. In order to offset some of this extra expense to the consumer, BC proposes to implement a new housing rebate such that purchasers of new homes up to \$400,000 will not pay any more provincial tax due to the introduction of the HST than is currently embedded as PST in the price of a new home. For homes in excess of \$400,000, a maximum rebate of \$20,000 is available. This means that the price of new homes above \$400,000 will attract more tax.

Further, exemptions from PST for energy efficient products and renewable energy equipment are not exempt under the proposed HST. As a result such products and equipment will be subject to tax at a rate of 12%.

Are there any tax credits available to help offset the impact of the HST on those with low incomes?

The province proposes to offset the impact of the HST for those with low incomes by providing a new BC HST Credit to be paid with the GST credit. For individuals with incomes up to \$20,000, the maximum credit would be \$230; for families with incomes up to \$25,000, the maximum credit would be \$230 per family member.

IMPACT ON FIRST NATIONS

Does the introduction of the HST affect the exemptions from tax provided under the *Indian Act*?

Indians and Indian Bands as defined in the *Indian Act* (“First Nations”) are exempt from tax on personal property and real property situated on reserve. As a result, in general taxable goods and services purchased by First Nations on a reserve with the services being performed on the reserve are currently not subject to GST and will not be subject to HST (but may be subject to FNGST or FNT, if a First Nation has implemented either tax system on the First Nation lands in question, as discussed below).

Because corporations are considered to be separate legal persons, taxable goods and services purchased by corporations owned by First Nations are currently subject to GST and will be subject to HST. However, as is currently the case with respect to GST, HST should not apply where an incorporated business owned by a First Nation purchases goods for use in band management activities or services bought for band management activities or real property on reserve.

In summary, goods and services purchased by First Nations in BC will receive similar treatment under the HST system as under the GST system. If the good or service was exempt from GST under the *Indian Act*, it will be exempt from HST on the same basis.

Will the HST have an impact on the First Nations Goods and Services Tax (FNGST) or the First Nations Tax?

The First Nations goods and services tax (FNGST) is a 5% tax on taxable supplies of goods and services imposed on certain First Nation lands when a band council or other governing body of a First Nation passes its own law imposing the tax.

The FNGST has the same basic operating rules as the GST/HST. On lands where the FNGST applies, the rate of tax imposed on taxable goods and services is the federal portion of the HST (i.e. 5%) which everyone has to pay. When FNGST applies to a taxable good or service, the GST and the federal part of the HST should not. There is an outstanding question as to what happens with the provincial portion of the HST. CRA has indicated in verbal communications with our office that the details have not yet been worked out. However, we were told that where the purchaser of a taxable good or service is not exempt pursuant to section 87 of the *Indian Act* in relation to a purchase on First Nation lands, the good or service will be subject to the provincial portion of the HST.

The First Nations Tax (FNT) is a tax on the supply of listed products on lands of a First Nation that has passed a by-law imposing this tax. A listed product refers to alcoholic beverages, fuel and tobacco products specifically mentioned in the band’s by-law. On lands where the FNT applies, everyone has to pay the FNT on taxable goods and services. The tax rate for FNT is 5%, the same as GST, FNGST and the federal part of HST. When FNT applies to a listed product, then GST, the federal part of the HST and the FNGST should not apply.

SUMMARY

In summary, goods and services purchased by First Nations in BC will receive similar treatment under the HST system as under the GST system. If the good or service is subject to GST, then it will be subject to HST unless it qualifies for a BC point of sale rebate. If the item is exempt from GST as a result of section 87 of the *Indian Act*, it will be exempt from HST on the same basis.