

Commercial Leases: HST Transitional Rules

November 10, 2009

The following is a summary of the Ontario HST transitional rules affecting commercial leases.

GST (5%) will continue to apply as usual to non-residential leases subject to available exemptions. GST will become included in HST as it commences to apply. GST registration will automatically extend to HST.

HST (13%) will commence to apply to any lease payment that becomes due or is paid after April 2010 and relates to all or part of a lease period that begins after June 2010.

Exception – HST does not apply to a lease period that begins before July 1, 2010, and ends before July 31, 2010.

Landlord must first account for HST on GST/HST return for the reporting period including July 1, 2010, even if the HST relates to an earlier reporting period.

Non-consumer tenants must self-assess HST in respect of lease payments due or paid after October 14, 2009, and before May 2010 if:

1. the leased premises are not used 90% or more in a commercial activity of the tenant
2. tenant's input tax credits are subject to restrictions or recapture
3. tenant is using any simplified method to calculate net tax
4. tenant is a selected financial institution using special attribution method to determine net tax

Tenant must account for self-assessed HST on the GST/HST return for the reporting period including July 1, 2010, but in no event later than October 31, 2010.

Exemptions under GST will generally extend to HST.

Input tax credits for registrants will generally follow existing GST treatment.

Information contained in this publication is strictly of a general nature and readers should not act on the information without seeking specific advice on the particular matters which are of concern to them. WeirFoulds LLP will be pleased to provide additional information on request and to discuss any specific matters.



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