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New GST Rebate for Purpose-Built Rental Property

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As an incentive to builders to create more rental housing units, the federal government has announced the effective elimination of the goods and services tax (GST) payable on newly constructed rental housing, such as apartment buildings, student housing and senior residences built specifically for long-term rental accommodation. The draft legislation (in Bill C-56) was released on September 21, 2023.

In summary, the existing new residential rental property rebate is proposed to be increased to 100% of the GST, from the current rate of no more than 36%, that otherwise would be payable by the builder on the fair market value of the newly constructed residential units described below. There no longer will be a phase-out of the federal rebate as the value of the individual units increases from C\$350,000 to C\$450,000.

This measure will apply to projects that begin construction after September 13, 2023, but before 2031 and are substantially completed before 2036.

Conditions to Claim the Enhanced Rebate

In order to claim this enhanced rebate, the builder (or purchaser) of a new multiple-unit residential complex must qualify for the existing rebate, and the units must be “prescribed property.” This will include buildings with at least

- four private apartment units (i.e., a unit with a private kitchen, bathroom and living areas), or at least 10 private rooms or suites (i.e., a 10-unit residence for students, seniors or people with disabilities); and
- 90% of residential units designated for long-term rental.

Conversions of existing commercial real property into a residential complex will be eligible for the enhanced rebate, provided that all other conditions are met. Public service bodies, such as municipalities and charities, are also entitled to claim the enhanced rebate.

According to the [backgrounder](#) released by the Department of Finance, the following are explicitly excluded from the enhanced rebate (but will continue to qualify for the existing lower rebate if their individual value is under C\$450,000): “[individually owned] condominium units, single-unit housing, duplexes, triplexes, housing co-ops, and owned houses situated on leased land and sites in residential trailer parks.” The draft regulations to describe what will be “prescribed property” have not yet been released and until this occurs, there will be some significant uncertainty as to what precisely will qualify as prescribed property.

Provinces

Ontario

Currently, the provincial portion of the 13% Ontario harmonized sales tax (HST) can be claimed as follows: 75% of the 8% portion of HST, capped at C\$24,000 for the value of the unit, with no phase-out occurring for individual values over C\$350,000. Ontario has indicated its intent to match “as soon as possible” the federal proposal, so that all of the 8% will be eligible for rebate, and the C\$24,000 cap will no longer apply.

Québec

The Québec government has indicated that it is unlikely to adopt an enhanced rebate for Québec sales tax (QST) purposes, given related costs/benefits.

Therefore, the current QST landlord's rebate (similar to the federal rebate) is expected to remain as is so that it allows a rebate for 36% of the 9.975% QST paid to acquire or build new rental property, with a cap of C\$200,000, after which the QST rebate is phased out. The QST rebate ceases to be available where the value of the unit is C\$225,000 or more.

Other Provinces

Newfoundland and Labrador and Nova Scotia have also indicated that they intend to grant a similar enhanced rebate on the provincial portion of their 15% HST.

We understand that provinces with provincial sales tax (PST), except Saskatchewan, are currently considering the possibility of reducing PST costs for construction of purpose-built rental housing.

Caution Regarding Agency and Nominee Arrangements

The draft legislation does not rectify a defect in the existing rules. Some recent decisions, including *Garg Investments* (2023 TCC 67), suggest that a purchaser will not be entitled to the existing rebate (and, therefore, to the enhanced rebate federally and in participating provinces) if that purchaser is not named as such in the purchase agreement for the new residential unit. Accordingly, it may well be problematic to purchase new residential units through a nominee company or other agent; advice should be obtained in this regard.

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