

## **Update from Linley Welwood LLP – December 2012**

### **New Housing Transition Tax and Rebate Act**

The BC New Housing Transition Tax and Rebate Act came into force on December 1, 2012. This new Act was born to provide law surrounding the transitioning in BC from HST back to GST/PST.

As of April 1, 2013, HST will no longer apply in BC. With regards to the sale of a new home (Please Note: this does not apply to the sale of a bare lot), if either closing or possession occurs before April 1, 2013, then regular HST rules apply. If both closing and possession occur on or after April 1, 2013, then we go back to the old GST rules (i.e. 5% GST minus whatever GST rebate the purchaser may qualify for) plus the rules of this new Act come into play.

The new Act has over 90 sections, and while there are several sections that specifically deal with unusual scenarios, the highlights of the Act that would apply to most new home builders are as follows:

Section 19: After April 1, 2013, in addition to the GST payable, the purchaser of a new home must pay a Transition Tax to the BC government equal to 2% of the consideration paid for the home. The consideration is the value of the home excluding any GST or Transition Tax.

Section 21: This section deals with the Transition Tax rebate. Essentially if, on April 1, 2013 the new home was:

91-100% complete, then the builder cannot claim any rebate of the Transition Tax;

75-90% complete, then the builder can claim a Transition Tax rebate of 0.2% of the consideration paid;

50-74% complete, then the builder can claim a Transition Tax rebate of 0.5% of the consideration paid;

25-49% complete, then the builder can claim a Transition Tax rebate of 1% of the consideration paid; and

0-24% complete, then the builder can claim a Transition Tax rebate of 1.5% of the consideration paid.

Section 30(1): If the builder enters into a contract between December 1, 2012 and April 1, 2015 to sell a new home and the closing date is after April 1, 2013, then the builder must provide the purchaser with the following information in the purchase agreement:

- a) The consideration being paid for the home (i.e. the price excluding GST or Transition Tax);
- b) A statement as to whether the “Purchase Price” in the contract includes any GST or Transition Tax;
- c) If the “Purchase Price” is inclusive of any tax, a statement indicating the rate and amount of each tax;
- d) If a GST Rebate or Transition Tax Rebate has been taken into account in determining the “Purchase Price”, a statement identifying each rebate and setting out the amount of each rebate taken into account; and
- e) A statement stating whether the builder is a “foreign supplier”. If the builder is not a foreign supplier, then the following statement must be included in the contract:

**NOTICE TO PURCHASER**

***If (a) both ownership and possession of newly constructed or substantially renovated housing, or an interest in such housing, transfer on or after April 1, 2013 and (b) either ownership or possession of the housing or interest transfers before April 1, 2015, then***

- (i) The 7% provincial component of the HST and the BC HST new housing rebate for primary places of residence generally will not apply,***
- (ii) The 2% BC transition tax may be payable by the purchaser, and***
- (iii) The supplier may be eligible for a BC transition rebate in respect of the housing.***

Section 30(2): If the builder entered into a contract between February 17, 2012 and November 30, 2012 to sell a new home and the closing date is after December 31, 2012, then the builder must by January 2, 2013 provide the purchaser with an addendum signed by the builder/seller (NB: the addendum does not need to be signed by the purchaser) that contains the same information as required under Section 30(1) above.

Section 30(3): If the closing date for a new home is on or after April 1, 2013 and before April 1, 2015 and the new home was at least 10% built on April 1, 2013, then the builder/seller must ensure that the following information is stated separately in the Purchaser's Statement of Adjustments (or some other document provided to the Purchaser on or before the closing date):

- a) The consideration being paid for the home (i.e. the price excluding GST or Transition Tax);
- b) A statement as to whether GST is payable, and the amount of GST payable;
- c) A statement as to whether Transition Tax is payable, and the amount of Transition Tax payable;
- d) The percentage of construction completion of the new home as of:
  - (i) July 1, 2010 (if applicable);
  - (ii) April 1, 2013; and
  - (iii) the closing date;
- e) The amount of any Transition Tax rebate that the builder is entitled to claim;
- f) The amount of any GST rebate that the builder has agreed to credit to the purchaser; and
- g) A statement whether the builder/seller is a foreign supplier.