

HST LAW PRACTICE FAQ

The following information is based on course materials created by Rosemary J. Anderson and Terry G. Barnett of Thorsteinsons LLP and David D. Robertson of Fasken Martineau DuMoulin LLP for the CLEBC course Harmonized Sales Tax in BC held on May 11, 2010. Many thanks to David Owen of CLEBC for adapting the materials.

Our law firm is already registered for GST purposes. Do we need to register for HST as well?

No new registration is required; your existing GST registration number also applies to HST collection and remittance.

Does our law firm file HST returns in the same way as we filed our GST returns?

If your law firm has annual revenues of greater than \$1.5 million, you will be required to file your GST/HST returns electronically. This requirement applies for reporting periods ending on or after July 1, 2010.

What law firm account do we use to remit GST and HST collected from clients?

GST and HST collected from clients are not remitted from your trust account. Rather, GST and HST should be transferred to your general account (along with fees associated with the client matter if they have been properly billed). GST and HST are then paid from your general account.

When does our law firm start collecting HST?

There were various transition dates for the new HST system. On October 14, 2009, the exempt sector was required to begin self-assessing HST on pre-paid amounts; on November 18, 2009, certain rules on HST and new housing became effective; and on May 1, 2010, suppliers were required to begin collecting HST on prepayments for goods and services available after July 1, 2010. But generally, these would not apply to law firms.

On July 1, 2010, the new HST system comes into full force and billings for legal services performed on or after July 1 are subject to HST.

Are there transition periods and transition rules for the old PST system?

Final PST returns are due on July 23, 2010, although some law firms may continue to collect and remit PST until the final payment deadline on December 31, 2010.

Transition rules for PST vary for goods, services, leases, and intangible personal property. For legal services, the application of PST and HST depends on when the service was performed. If 90% or more of the legal services are performed before July 1, 2010, no HST applies but PST may

apply. If the legal services are less than 90% performed by July 1, PST and HST may both apply but are pro-rated based on performance before and after July 1. It is expected that a new regulation will address contingency fee legal services which are subject to PST but cannot be billed by December 31, 2010.

What will happen to the commission currently paid to our law firm for collecting and remitting PST?

No commission will be paid for collecting GST/HST from your clients.

Our firm has been charging GST and PST on some disbursements when billing clients. Do the same rules apply under the HST system?

The application of GST/HST to disbursements will depend on whether you incurred the expense as agent for your client. Consult Canada Revenue Agency Policy [P-209R](#), Lawyer's Disbursements, for further information.

Our law firm has income of over \$10 million per year. Are rights to claim full input tax credits for GST/HST paid on our expenses affected under the new HST system?

The new HST legislation contains a definition of "large business" based on certain types of gross revenues. If your firm is a "large business", it will be required to recapture BC and Ontario HST portions of the GST/HST paid out on some types of expenses (expected to be energy, telecommunication services, meals and entertainment, and some types of vehicles). Consult your tax advisor or accountant on whether your firm is considered a "large business" as defined, any resulting implications, and recapture procedures.

Our firm provides services to the provincial government and provincial crown agencies but doesn't charge GST. Is this tax exemption the same under the HST system?

Under the HST system, you must now charge GST/HST to the B.C. provincial government and provincial crown agencies, as well as to the federal government and federal crown agencies. As Alberta has not "harmonized", you do not charge GST/HST when performing services for the Alberta government and Alberta crown agencies.

In addition to the existing 5% GST, what HST rates should be used when our firm provides services to clients in other provinces?

The "harmonized" provinces and their HST rates will be: British Columbia (7%); Ontario (8%); Nova Scotia (10%, as of July 1, 2010); New Brunswick (8%); and Newfoundland (8%).

The HST rate you must charge to clients is determined under "place of supply" rules in sections 142-144.1 of the *Excise Tax Act*, in Sch. IX to the *Excise Tax Act*, and in the associated regulations. There are different rules for goods, real property, intangible personal property, and services - and there are specific rules for various types of services. Consult your tax advisor or accountant about specific place of supply questions, but generally:

- Legal services provided in connection with criminal, civil, or administrative litigation that is under the jurisdiction of a provincial court or tribunal established under the laws of a province are deemed to be "supplied" in that province.
- However, the "place of supply" for legal services rendered *before* the commencement of litigation, and for all other legal services (including actions in federal courts), is generally based on the client's address:

- Your legal services are deemed to be “supplied” in the province where, in the ordinary course of your business, you obtain an address that is the client’s home or a business address.
- If the client has multiple addresses, your legal services are deemed “supplied” in the province most closely connected with the supply, which we understand will be the address from which you are hired (e.g. the address on the letter of engagement for that particular matter).
- If you don’t obtain a home or business address, your services are deemed “supplied” in the province of the client’s address most closely connected with the supply.
- Despite the general client address rules, there are specific rules based on property location:
 - If you provide legal services in relation to tangible personal property (for example, a sale of assets), your services are “supplied” in the province where the property is situated at the time you provide your services.
 - If you provide legal services in relation to real property (for example, a sale of land), your services are “supplied” in the province where the realty is located.

Note that Saskatchewan, Manitoba, Quebec, and Prince Edward Island have not “harmonized” their taxes, so you must continue to comply with the provincial sales tax systems in those provinces.

If I am charging an out-of-province client for various matters and apply different GST/HST rates to each matter, should I show the different rates?

You are not required to show separate GST/HST amounts or rates on your invoices, however, you must show the total amount of GST/HST charged.

Do I charge HST to clients who are not resident in Canada?

The HST rules on legal services provided to non-residents will be the same as those for the application of GST. See section 23, Part V, Sch. VI, of the *Excise Tax Act*; [GST/HST Memoranda 3-3](#) on Place of Supply; and [GST/HST Memoranda Series 4-5-3](#) on Exports—Services and Intellectual Property.

What can our firm do about GST and HST if we know it will be some time, if ever, before a bill for legal services will be paid?

If you can establish that the debt is not collectible, you can write off the account for accounting and income tax purposes and claim a deduction for GST/HST on your return.

Our law firm charged PST on an outstanding bill to a client; we now consider this bill uncollectible and plan to treat it as a bad debt. What can we do about the PST?

It is not clear how the PST will be recoverable for bad debts after June 30, 2010. Accordingly, consider performing a bad debt review before this time and then adjust your final PST return to recover the appropriate amounts.

What materials should I look at in order to find out more about B.C.'s Harmonized Sales Tax?

GST/HST: *Excise Tax Act* sections 142-144.1; Schedule IX; Place of Supply (GST/HST) Regulations; Draft Place of Supply Regulations; [GST/HST Technical Information Bulletin B-103](#); Harmonized Sales Tax Place of Supply Rules; various materials available [here](#).

PST: *Social Service Tax Act*; Ministry of Finance Tax Information Notice: [General PST Transition Rules](#); various materials available [here](#).