

BUDGET 2016: REPORTING OF "GRANDFATHERED" NEW HOME SALES

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Historically, builders have found themselves in situations where they enter into agreements of purchase and sale in respect of new homes and, subsequent to entering into the agreements, but prior to the close of the transactions, the government announces that the relevant provincial sales tax will be harmonized with the GST or that there will be an increase in the HST rate. Where such proposed HST changes are implemented prior to the close of the new home sales, the sales are generally relieved from either the provincial component of the HST, or the HST rate increase, as applicable ("**Grandfathered Sales**").

Currently, builders are required to report certain information relating to Grandfathered Sales on their electronic GST/HST returns in cases where the purchaser was not entitled to a GST New Housing Rebate or a GST New Residential Rental Property Rebate (the "**Rebate**"). Failure to report this information on a return could result in the imposition of penalties against the builder.

To simplify the reporting obligations of builders, Budget 2016 proposes to limit the information reporting requirements of builders to Grandfathered Sales with a purchase price of \$450,000 or more (i.e., those sales with a purchase price that exceeds the threshold for receiving a Rebate). This measure will apply in respect of any reporting period that ends after March 22, 2016 (the "**Budget Day**"). In addition, builders will also be permitted, for a limited period of time, to correct certain past reporting errors, by making an election (the "**Election**") that will apply to Grandfathered Sales that occurred before Budget Day and, in limited circumstances, after Budget Day. By making the Election, Budget 2016 gives builders the opportunity to correct past reporting errors relating to Grandfathered Sales of \$450,000 or more without the imposition of penalties.

To correct past reporting errors, builders will generally have to make the Election and report the required information on a current GST/HST return for a reporting period ending on or after May 1, 2016 and before 2017. The required Election is to be completed on the prescribed form and filed with the Canada Revenue Agency on or after May 1, 2016, but no later than the due date for filing the GST/HST return for the particular reporting period. The Election will apply to Grandfathered Sales in respect of which the federal component of HST became payable on or after July 1, 2010, but before the end of the particular reporting period.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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