



INDIRECT TAX

FEI Southern Golden Horseshoe Chapter

# Ontario Harmonized Sales Tax Did You Get it Right?

Jane Adams, FCMA – Associate Partner  
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TAX

# Ontario HST – Did You Get It Right?

- Effective July 1, 2010
- 13% Harmonized Sales Tax (HST) in Ontario
  - 5% federal component and 8% provincial component
- Generally, same rules and tax base as GST

## HST is not charged on:

Basic groceries

Prescription drugs

Residential rent

Most educational programs

Condo fees

Certain medical devices

Childcare

Municipal public transit

Most financial services

Most healthcare services

# Ontario HST – Did You Get It Right?

- Some differences

Ontario HST Model	Issues
<b>Point-of-sale rebates</b>	These rebates extend to purchases by businesses and public sector bodies; special rules for Aboriginal sales effective September 1, 2010
<b>MUSH partial rebates - Different rates</b>	How to track and claim adds administrative complexity!
<b>New ITC recapture for Large Businesses</b>	PSBs and farming businesses are not subject to this recapture.
<b>New housing rebates</b>	Different thresholds create challenges for new housing construction.

# Ontario HST – Did You Get It Right?

- Issues arising from HST
  - New place of supply rules effective May 1, 2010
  - 12%, 13% and 15% HST rates
  - HST transitional rules
  - New provincial rebates for public sector bodies
  - New recaptured input tax credit requirements
  - New point-of-sale rebates
  - New electronic reporting requirements
  - Sales to B.C. and Ontario governments
  - New GST/HST pension plan rules

# Ontario HST – Did You Get It Right?

- Other issues arising from HST
  - B.C. and Ontario PST wind-down rules
  - Basic tax content and change of use
  - Taxable benefits
  - Employee and partner rebates
  - Employee's allowances and reimbursements
  - Coupons and manufacturers' rebates
  - Forfeiture
  - Bad debts
  - Refunds or adjustments of tax
  - Imported supplies – Self-assessment requirements

# Ontario HST – Did You Get It Right?

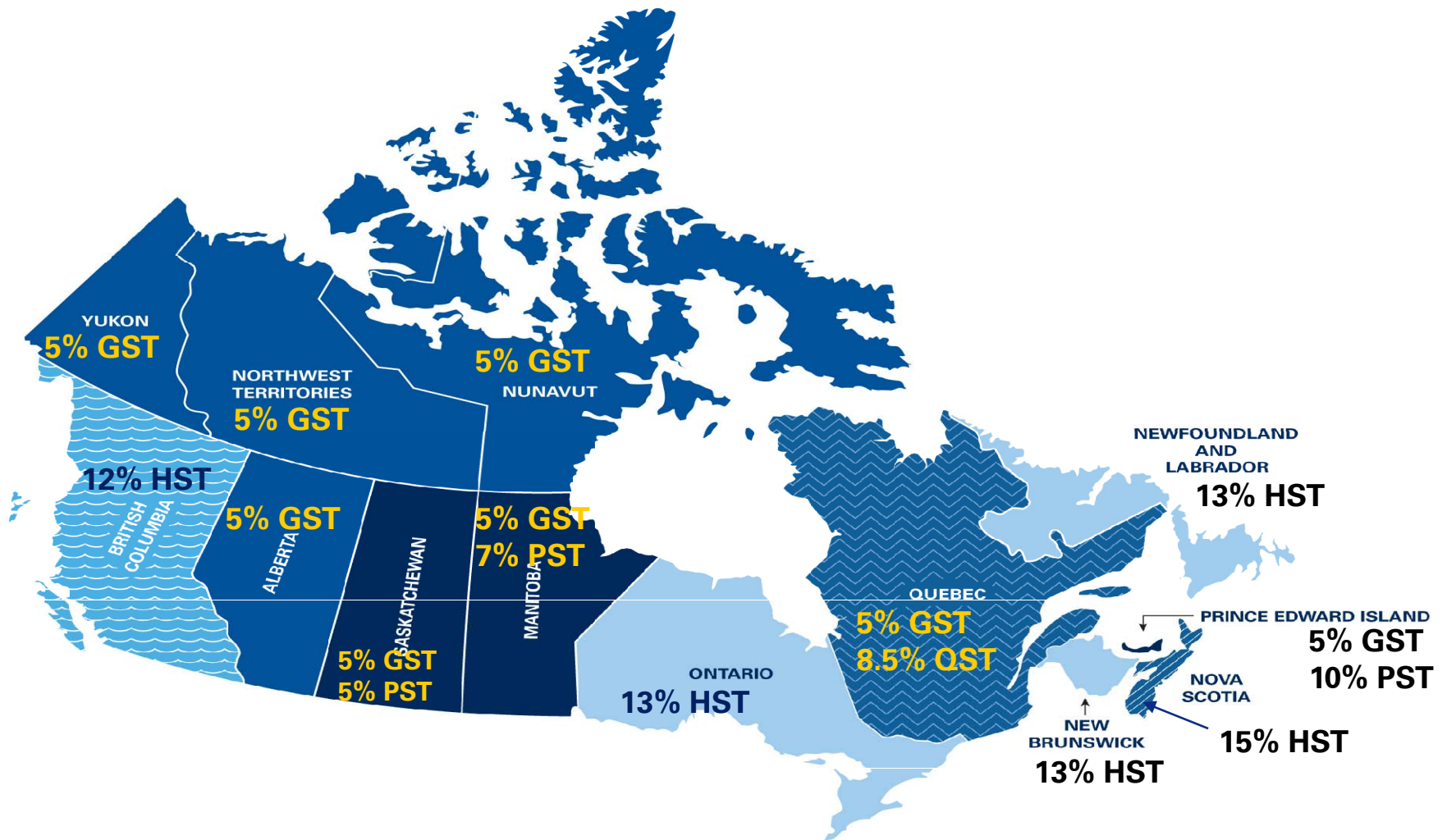
## Place of supply

- Why are the HST place of supply rules important?
- Rules for determining the tax rate the supplier must charge
  - All GST registrants are HST registrants and must charge HST if applicable
  - Sales made in an HST province attract HST at the applicable rate regardless of the location of the supplier
- Many non-resident suppliers did not get it right
  - Non-resident importers (5% at customs vs. 13%)
  - Vendors in non-harmonized provinces charging wrong rate



# Ontario HST – Did You Get It Right?

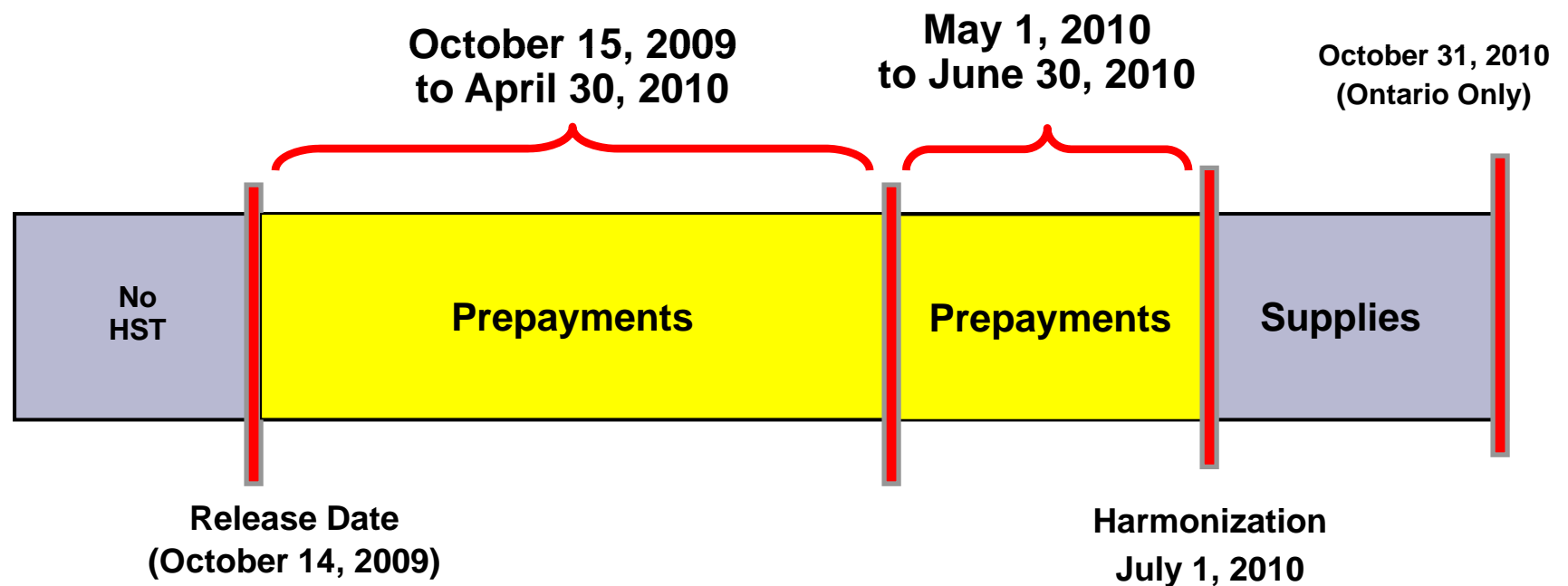
## Canadian Sales Tax Landscape



# Ontario HST – Did You Get It Right?

## Transitional rules

- General timeline of the HST transitional rules and the PST wind-down rules





# Ontario HST – Did You Get It Right?

## Transitional rules

- Transitional rules varied depending upon nature of supply:
  - Tangible personal property (goods)
  - Services (including admissions & memberships)
  - Intangible personal property
  - Leases, licences & similar arrangements
  - Freight
  - Continuous supplies (e.g. utilities)
  - Subscriptions
  - Lifetime memberships
- Confusion sometimes occurred:
  - Supply of extended warranty vs. service contract
  - Due dates vs. date of payment

# Ontario HST – Did You Get It Right?

## Transitional rules

- Ontario transitional issues
  - Ministry of Revenue (MoR) conducting many final comprehensive PST audits
  - Overpayments of PST on many transitional service contracts
    - Some PST refund claims denied in error
    - MoR has recently provided clarification to its refund unit and is updating its 'Frequently Asked Questions' section of their website
  - S.167 elections and vehicle licensing – Ministry of Transportation has been charging the 13% provincial sales tax erroneously
  - Still some possible overlap on insurance premiums/fees that is being addressed
  - MoR announced in spring 2010 retroactive broadened policy for PST exemptions for patient care equipment purchased by hospitals (4 year window)

# Ontario HST – Did You Get It Right?

## New provincial rebates for PSBs

- Provincial HST rebates of 7%, 8% and 10% provincial component
- Challenges with implementing multiple rebate rates along with input tax credit claims and training staff

Entities	Federal Rebate	HST Provincial Rebates				
		BC	Ontario	Nova Scotia	New Brunswick	Newfoundland
Municipalities	100%	75%	78%	57.14%	57.14%	0%
Universities	67%	75%	78%	67%	0%	0%
Public Colleges	67%	75%	78%	67%	0%	0%
School Authorities	68%	87%	93%	68%	0%	0%
Public Hospitals	83%	58%	87%	83%	0%	0%
Registered Charities	50%	57%	82%	50%	0%	0%

# Ontario HST – Did You Get It Right?

## ITC recapture for large businesses

- “Large Businesses” subject to new ITC recapture in Ontario and BC for provincial component on:
  - Energy, exception for farms or used to produce TPP for sale
  - Telecommunication services other than internet or toll-free numbers
  - Vehicles (less than 3,000 kg), parts, certain services, fuel to power
  - Food, beverages, entertainment
- “Large Businesses” – Annual taxable sales exceeding \$10M
  - Threshold includes associated persons
- Full recapture for first 5 years, phased out over subsequent 3 years
- Issues:
  - Many businesses were unaware and did not report recaptured amounts (CRA outreach program)
  - “Associated persons” rule often overlooked by taxpayers
  - Missed deadlines for filing proxies for energy and telecommunications
  - Confusion with federal restrictions vs. provincial recapture rules and calculations (e.g. meals, vehicle leases)

# Ontario HST – Did You Get It Right?

## Electronic filing

- Electronic filing required by the following:
  - GST/HST registrants with greater than \$1.5 million in annual taxable supplies
  - Large businesses required to recapture input tax credits for the provincial portion of the HST on certain purchases
- Options may include Netfile, Telefile, GIFT (Internet File Transfer) or EDI (Electronic Data Interchange)
- Electronic filing obligation took effect with all reporting periods ending on or after July 1, 2010
- Rebate application must still be filed in paper form
- Registrants that fail to file an electronic GST/HST return in the correct format may be subject to penalties



# Ontario HST – Did You Get It Right?

## Sales to provinces

- Previously, Ontario and B.C. governments and most provincial bodies were not subject to GST but were required to collect GST on any taxable supplies made
- Effective July 1, 2010 — Subject to HST
- Issues for suppliers
  - Determining tax status of supplies made to government bodies
    - Sole suppliers
    - Tax inclusive contracts
    - Consideration or grant
- Issues for government bodies
  - Claiming rebates if on Schedule A to Reciprocal Taxation Agreement
  - Tax status of supplies

# New GST/HST Pension Plan Rules

- New pension plan rules apply to employers for fiscal years commencing after September 22, 2009
  - 2010 generally first year of application for most employers/pension plans
  - Rules as originally announced modified with implementation of HST
  - HST increases costs to pension plans with members in Ontario or B.C.
  - Pension plans with members (current or retired) in both HST and non-GST provinces now subject to special attribution method

# New GST/HST Pension Plan Rules Employer

- Employer deemed to have made taxable supply to pension plan on last day of fiscal year of employer
- Deemed supply includes value of both internal and external inputs (excluding certain types of costs)
  - Employer can claim ITC for GST/HST incurred on external costs
  - Employer must remit GST on deemed supply
  - Where active employees resident in HST province, employer must also remit provincial portion of HST (PVAT) on deemed supply
    - PVAT based on contributions and number of active members (current employees) in each HST province

# New GST/HST Pension Plan Rules

## Pension Plan

- Pension plan can claim rebate of 33% of:
  - GST paid/payable by the pension plan and GST deemed paid on deemed supply by employer
  - PVAT paid/payable by the pension plan and deemed PVAT paid on deemed supply by employer – Provided pension plan does not have members in both HST and non-HST provinces (or in multiple HST province)
- No rebate claimable by pension plan where listed FI makes more than 10% contributions to pension plan
- Rebate may be assigned to employer
  - Generally neutral where employer engaged exclusively in commercial activity
  - Beneficial where no rebate claimable by pension plan (due to listed FI contributions)
  - May not be advisable where employer not eligible for full ITC

# New GST/HST Pension Plan Rules Special Attribution Method (SAM)

- SAM applicable to selected listed financial institutions (SLFI)
  - Not applicable to small investment plans (\$10k unrecoverable GST de minimis rule)
- Pension plans are SLFI if members (active and retired) in both HST and non-HST provinces (or in multiple HST provinces)
- Objective of SAM to “true up” PVAT liability so net PVAT cost the same regardless of where pension plan located
- SAM formula for pension plans:

## **[Net GST x Prov Attribution x Prov Gross Up] – PVAT +/- Adjustments**

- Provincial attribution based on ratio of actuarial liabilities (defined benefit) / assets (defined contribution) attributable to pension plan members resident in HST province to total pension plan members
- Adjustments comprise 15 pages of regulations



# New GST/HST Pension Plan Rules

## Summary of Issues – All Pension Plans

- Quantify deemed supply by employer(s)
- Determine GST and PVAT (where applicable) to be remitted by the employer
  - Calculation for each HST province
- Determine amount of eligible pension plan rebate for pension plan
  - Determine tax paid and deemed paid by pension plan
- Determine whether pension plan should claim rebate or assign to employer(s)
  - If multiple employers, determine amount assigned to each

# New GST/HST Pension Plan Rules

## Summary of Issues – SLFI Pension Plans

- For SLFI pension plans:
  - Determine which elections to make
  - SAM formula applicable for first time
  - Determine provincial attribution (generally September 30 of prior year)
  - Provincial attribution required for reporting to mutual funds and other investment plans
    - Requests for 2010 information
    - Risk of significant penalties for non-compliance

# Ontario HST – Did You Get It Right? HST Post-Implementation Review

- What is it?
  - An assessment of the HST solutions implemented
- Why do it?
  - To detect HST systematic errors early and fix them
  - To validate the accuracy of the HST solutions implemented
  - Provide additional support for CRA audit of HST implementation

# Ontario HST – Did You Get It Right?

## HST Post-Implementation Review

- Why should you consider an HST-post implementation review?
  - Many new rules to digest to get a proper understanding of HST over a short period of time
  - Many changes to operations, systems, and processes required over a short period of time
  - Broadened tax base equates to greater responsibility as a greater amount of GST/HST dollars will flow through your organization
  - CRA audits will likely include HST implementation reviews
  - CRA sample error rate/ extrapolation results are unpredictable and difficult to challenge
  - **A unique opportunity to ensure you got it right from the start!**



**Thank You**





## Presenter's contact details

**Jane Adams, FCMA  
Associate Partner  
Indirect Tax, KPMG Canada  
(519) 747-8230  
janeadams@kpmg.ca**

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