

HST/GST New Housing Rebate - Statutory Conditions

Author : admin

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Ho v The Queen, [2015 TCC 10](#)

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This is a sad, common scenario. An individual or family decides to purchase a new home but, after running into financial difficulty, ask for help from a friend or relatives to complete the purchase. However, the help is implemented in a way that leaves the purchasers ineligible for the new housing rebate.

Advisors and realtors need to be aware of the conditions in the [Excise Tax Act](#) ("ETA") that need to be satisfied so that a purchaser is eligible for the rebate. Failure to be aware of these conditions, and failure to advise your client appropriately is, in my opinion, negligent.

Although this case does not deal with novel facts or alter the law, it does provide a very good review of the relevant conditions. Briefly, the conditions are:

1. The builder of the single-unit residential complex must make a taxable supply to one or more persons (ETA 254(1), 262(3));
2. At the time the person or group became liable to purchase the unit, their intention must have been to use the complex as the primary place of residence of the person or each and every member of the group (ETA 254(b), 263; see *Goyer v. The Queen*, [2010 TCC 511](#));
3. The total consideration paid by the person or group for the unit must be less than \$450,000 (ETA 254(c))
4. Where there is a group, the group must actually have paid the HST/GST on the purchase (ETA 245(d))
5. Ownership of the unit must be transferred, after substantial completion, to the person or group (ETA 254(e));
6. After substantial completion, but before the transfer to the person or group, the unit must be occupied by any individual as a place of residence or lodging (ETA 254(2)(f));
7. The first individual to occupy the unit after substantial completion must be the person, all of the group of persons, or persons related to the person or to all persons in the group (ETA 254(2)(g)(i)(A), 263)- *NOTE: in Hamel v. The Queen*, [2004 TCC 315](#), all members of the group occupied or intended to occupy the unit at the time of the rebate application

COMMENT

For a comment on how the application of the first condition results in an absurd result - see [HERE](#).

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