

Implied Time Limit for GST Rebate on Owner-Built Homes

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Solanko v The Queen, [2014 TCC 100](#)

The taxpayer has built a home with the intention to use the home as his primary residence. The MNR denied the GST rebate under the [Excise Tax Act](#) subsection 256(3), and the taxpayer appealed.

The taxpayer, in this case, had built the home 8 years before retirement, with the intention of using the home after retirement as his primary residence.

The Court noted that, although the [ETA](#) does not require immediate use of the newly-constructed home as the taxpayer's primary residence, the legislation cannot have been intended (by parliament) to provide a rebate to persons "based on self-interested statements as to their intentions far into the future" (paras 12-13). Rather, Justice Woods held that (para 13):

The requirement in the legislation that the residence is constructed for use as a primary residence contemplates that the taxpayer has an intention to use the property as a primary residence closer in time to the construction than is in the case in this appeal.

This statement, reasonably interpreted in light of the other statements by Justice Woods, appears to require time periods and circumstances that would be capable of objectively proving the intention to occupy the newly-constructed home as the taxpayer's primary residence after the construction of substantial-renovation of the home. This interpretation appears to provide a balance between constraining the benefit and providing flexibility for reasonable life events - taking account of the truism "there's many a slip between a cup and a lip".

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