

# GST/HST Memoranda Series

## 19.5 Land and Associated Real Property

October 2001

### Overview

For GST/HST purposes, all supplies of land situated in Canada are taxable, unless explicitly exempted. For a detailed list of issues related to supplies of land that are discussed in this Memorandum, see the Table of Contents.

### Disclaimer

The information in this memorandum does not replace the law found in the *Excise Tax Act* and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate Regulation, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. If you wish to make a technical enquiry on the GST/HST by telephone, please call the toll-free number 1-800-959-8287.

If you are located in the Province of Quebec, please contact Revenu Québec by calling the toll-free number 1-800-567-4692 for additional information.

### Note

This section of Chapter 19 incorporates the information from and supersedes the following policy statements: P-059, *Business vs. Adventure or Concern in the Nature of Trade Relating to Sales of Real Property*; P-088 *Sale of Single Sites in a Residential Trailer Park*; P-109, *Transfer of Farmland by a Farmer, Holding Sole Title, to One or More Related Persons and Themselves as Joint Tenants*; P-121, *Sale of Land Related to a Residential Complex*, P-183 *Input Tax Credits on Farmland Acquired in Joint Tenancy*.

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La version française de ce mémorandum est intitulée  
19.5 *Fonds de terre et immeubles connexes*



Canada Customs  
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ME – 19-05-0001-E

Canada

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### Supplies of land by way of sale

Taxable unless specifically exempted Sch V, Part I

1. For GST/HST purposes, all sales of land situated in Canada are taxable, unless explicitly exempted. In general, exempt sales of land are sales of:
  - personal-use land made by an individual or a personal trust,
  - land acquired for personal use that was previously farmland,
  - leased land currently used together with a residential unit as a place of residence for individuals, and
  - a residential trailer park.
2. Most of the exemptions that apply to sales of land are listed in Part I of Schedule V to the *Excise Tax Act* (the Act). The treatment of such sales is discussed below. Additional exemptions found in Part VI of Schedule V (in particular sections 10, 25, and 28) may apply to sales of land made by a public service body. Also, exemptions found in Part V.1 of Schedule V (in particular sections 1 and 5) may apply to sales of land made by charities. For information on sales of land by public service bodies and charities, see GST/HST Memorandum 19.6, *Real Property and Public Sector Bodies*. For a discussion of the meaning of “sale” as it is used in the context of real property, see GST/HST Memorandum 19.1, *Real Property and GST/HST*.

### Sale by an individual or personal trust

Sch V, Part I, s 9

3. In general, sales of real property by an individual or a personal trust are exempt, subject to certain exceptions. These exceptions, discussed in paragraphs 5 to 19, generally restrict the exemption to supplies of personal-use land.
4. For purposes of the GST/HST, a personal trust is:
  - (a) a testamentary trust (as defined in subsection 248(1) of the *Income Tax Act*), or
  - (b) an *inter vivos* trust that is a personal trust (as defined in subsection 248(1) of the *Income Tax Act*) all the beneficiaries (other than contingent beneficiaries) of which are individuals and all the contingent beneficiaries of which, if any, are individuals, charities or public institutions.

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Further information on personal trusts will be provided in GST/HST Memorandum 3.1.3, *Trustees and Receivers*.

### Supply of capital real property held for use primarily in a business with a reasonable expectation of profit

Capital property  
Sch V, Part I, para  
9(2)(a)

5. A sale of real property made by an individual or personal trust is excluded from the exemption under section 9 if immediately before the time ownership or possession of the property is transferred, the property is capital property used primarily (more than 50%) in a business carried on by the individual or the personal trust with a reasonable expectation of profit.
6. Guidelines to use when determining if a particular property is used primarily in a business are contained in Appendix A to this Memorandum. Guidelines for determining if a business has a reasonable expectation of profit are contained in Appendix B.
7. Effective October 4, 2000, a supply by way of sale of real property made by an individual or personal trust is excluded from exemption if the real property was last used as capital property primarily in making taxable supplies by way of lease, licence or similar arrangement of that property and the individual or personal trust is a registrant. This exclusion from exemption under section 9 applies even if the property had been so supplied without a reasonable expectation of profit. The sale is also excluded from the exemption if the individual or trust is a registrant and the real property was last used as capital property primarily in a combined use of carrying on a business with a reasonable expectation of profit and of making taxable supplies by way of lease, licence or similar arrangement of that property. In these circumstances, the seller, as a registrant, would have been entitled to claim ITCs in respect of the property or improvements to it. Therefore, it is not appropriate that the subsequent sale of the property be exempt.

### Supply of real property in the course of a business

Sch V, Part I,  
subpara 9(2)(b)(i)

8. A sale of real property by an individual or personal trust is also excluded from the exemption under section 9 if the sale is made in the course of a business of the individual or the personal trust. In this regard, it is important to determine if a sale is made in the course of a business or if it is an adventure or concern in the nature of trade, or neither. Generally, a sale of real property made in the course of a business is subject to GST/HST. A sale made as an adventure or concern in the nature of trade is exempt from GST/HST (subject to paragraph 9, below) if it is made by an individual or a personal trust and if none of the other exclusions to the exemption in section 9 apply. Guidelines for determining if a supply is made in the course of a business, or if it is an adventure or concern in the nature of trade, or neither, are contained in Appendix C to this Memorandum.

### Supply of real property as an adventure or concern in the nature of trade

Election: exempt supply  
treated as a taxable  
supply  
Sch V, Part I,  
subpara 9(2)(b)(ii)

9. A sale of real property by an individual or personal trust is also excluded from the exemption under section 9 if the individual or personal trust makes an election to treat the otherwise exempt sale of real property as a taxable one. The individual or personal trust may make this election if the sale is made as an adventure or concern in the nature of trade of the individual or the trust. Neither the vendor nor the purchaser needs to be a GST/HST registrant to make this election.

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10. The individual or personal trust that sells the property must complete the prescribed form, form GST 22, *Election to Treat the Tax Exempt Supply of Real Property By Way of Sale by an Individual or Trust as a Taxable Supply* and file the form with the Canada Customs and Revenue Agency (CCRA) before the sale to which it relates is made.

### Subdivided, severed or expropriated property

Subdivided or severed property  
Sch V, Part I,  
para 9(2)(c)

11. While a sale of personal-use real property by an individual or personal trust is generally exempt under section 9 of Part I of Schedule V, the sale is excluded from the exemption under this section if the individual, the personal trust or the settlor<sup>1</sup> of the trust sells part of a parcel of land and the parcel of land has been subdivided or severed into parts by the individual, trust or settlor.

Two parts  
Sch V, Part I,  
subpara 9(2)(c)(i)

12. However, if the parcel of land is subdivided into only two parts and if that parcel has not been subdivided or severed from another, the sale of either of the two parts is exempt under section 9 of Part I of Schedule V.

Related individual or former spouse  
Sch V, Part I,  
subpara 9(2)(c)(ii)

13. Moreover, if the recipient in the sale of a part of the subdivided or severed land is a related individual, former spouse or former common-law partner of the individual or the settlor, and the related individual, former spouse or former common-law partner is acquiring the part of the parcel of land for his or her personal use and enjoyment, the sale of that part is exempt under section 9, even if the land has been subdivided or severed into more than two parts.

Expropriated property  
Sch V, Part I,  
para 9(2)(c)

14. When determining whether land has been subdivided or severed, if the individual, the trust or the settlor supplies a part of a parcel of land to a person who has the right to acquire the land by expropriation, such as a municipality or utility commission, that part and the remainder of the parcel are not considered to have been subdivided or severed from each other by the individual, trust or settlor.

### Example 1

Mr. Gardener owns four hectares of land. The four hectares were purchased as a single parcel of land with a single legal description. While Mr. Gardener uses a quarter hectare to produce vegetables for his market gardening business, the remainder of the property is used for his personal use and enjoyment. According to the CCRA's guidelines for determining if capital real property is used primarily in a business, (see Appendix A to this memorandum), Mr. Gardener does not use the property primarily as capital property in a business carried on by himself. If Mr. Gardener were to sell the entire parcel of land, the sale would be exempt under section 9 of Part I of Schedule V.

However, Mr. Gardener subdivides the four hectares into eight half-hectare lots. He sells a lot to each of his three children, and the remaining five lots to a developer. In this situation, under the provisions of paragraph 9(2)(c) of Part I of Schedule V, each lot sold to his children remains an exempt supply if his children acquire the lots for their personal use and enjoyment. The five lots sold to the developer are taxable supplies.

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### Footnote<sup>1</sup>

In section 9 of Part I of Schedule V, the term "settlor", where it is used in the context of a testamentary trust that arose as a consequence of the death of an individual, refers to the deceased individual.

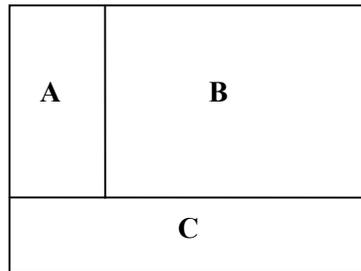
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### Example 2

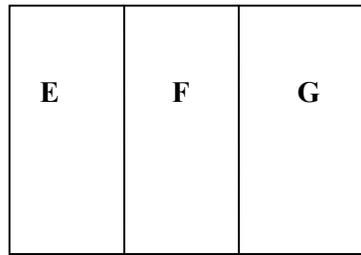
Ms. Fields purchased three separately titled properties that she holds primarily for personal use and enjoyment. The properties are contiguous to one another and share common boundaries as shown in Diagram 1.

Diagram 1



Ms. Fields decides to sell the three properties, but would first like to reconfigure these three pieces of land into three rectangular lots of the same shape and size with each having a separate legal description. She expects this will make them easier to sell. She ultimately ends up with the three properties regrouped as in Diagram 2:

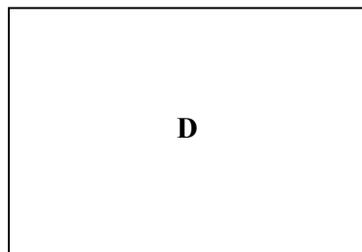
Diagram 2



Would the supply of one of the lots shown in Diagram 2 be an exempt supply of land by an individual or does paragraph 9(2)(c) of Part I of Schedule V apply in this situation?

Generally, in order to give rise to the reconfigured lots as shown in Diagram 2, Ms. Fields would have had to combine the three lots shown in Diagram 1 into a single lot, lot D, with a single legal title (Diagram 1A)<sup>2</sup>.

Diagram 1A



Lot D is considered to be one parcel of land. D is then subdivided or severed into three parts described as lots E, F and G. Thus, paragraph 9(2)(c) of Part I of Schedule V applies, and the sale of lots E, F and G would be taxable unless the lot is sold to a former

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#### Footnote<sup>2</sup>

This example is drawn from the provinces of British Columbia and Ontario where the repositioning of interior lot boundaries is accomplished by first removing the former boundaries and then re-drawing the new boundaries. These two events, which occur by operation of provincial real estate law, temporarily create a single, consolidated parcel of land.

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spouse or former common-law partner of Ms. Fields or an individual related to her and the lot is for that individual's personal use and enjoyment.

### Example 3

Mr. Acres at one time owned a three-hectare parcel of land. In 1992, Mr. Acres subdivided the parcel into one two-hectare lot and one one-hectare lot. He sold the one-hectare lot at that time. Since subparagraph 9(2)(c)(i) of Part I of Schedule V provides that a supply of a part of a parcel of land by an individual is exempt if the parcel is subdivided or severed into only two parts and if the originating parcel had not been subdivided or severed from another parcel, the sale of the one-hectare lot was exempt.

Now, in 2001, Mr. Acres subdivides the remaining two-hectare lot into two lots of one hectare each and sells the lots to people who are not related to him. He undertakes no other activity to market the properties. The land has been used primarily for Mr. Acres' personal use and enjoyment.

Since these one-hectare lots were produced by the further severance of the two-hectare lot which had itself been severed from the original three-hectare parcel, the supply of these one-hectare lots to people who are not related to Mr. Acres is not exempt. The provision offers no restriction as to when the prior subdividing or severing was to have taken place. Thus, even though there is a gap in time in this example between the first subdivision and the second, the provisions of subparagraph 9(2)(c)(i) apply to make the current sale of the remaining lots taxable.

In this example, the original three-hectare parcel of land had been subdivided in 1992 into a two-hectare parcel and a one-hectare lot. The sale of the one-hectare lot at that time had been exempt. Note that if this one-hectare lot had not been sold at that time, and had not been sold until the same time as, or even later than, the new parcels created from the further severance of the two-hectare lot, the sale of this original one-hectare lot would still be exempt. The conditions of its origin have not changed: it was created when a parcel of land was severed into only two parts, and the originating three-hectare parcel had not been severed from another parcel.

### Example 4

Ms. Lake owns a half-hectare parcel of land. The half hectare is in cottage country and has been used for Ms. Lake's personal use and enjoyment. On one side of the property is the lakeshore, on the other is the roadway. Ms. Lake wants to subdivide the property into two quarter-hectare lots. The municipality allows the subdivision but expropriates a 10-metre wide strip of her property that runs along the roadway to widen the road.

In this case, even though the subdivision results in three pieces of land, the two somewhat-less-than a quarter-hectare lots and the 10-metre wide strip of property beside the current roadway, paragraph 9(2)(c) of Part I of Schedule V deems the expropriated part not to have been subdivided or severed. Thus, the supply of either of the lots by Ms. Lake will be an exempt supply unless another exclusion to the exemption applies.

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### Supplies deemed under sections 206 or 207

Supplies deemed under sections 206 or 207 not exempt para 9(2)(d)

15. A sale of real property by an individual or a personal trust is excluded from the exemption under section 9 of Part I of Schedule V if the sale is deemed to have been made under sections 206 or 207. Under the provisions of section 206, if a personal trust ceases to use or reduces its use of capital real property in commercial activities and begins to use or increases its use of the property in non-commercial activities, there is a deemed sale of the property or portion of the property. Except where the sale is an exempt supply, the personal trust is deemed to have collected tax on the deemed sale. Section 207 applies in a similar manner to an individual who ceases to use or reduces the use of capital real property in commercial activities or begins to use the property primarily for personal use and enjoyment. Again, the individual is deemed to have collected tax on the deemed supply, unless the supply is an exempt supply (see paragraph 22). For further information on the change-in-use rules, see GST/HST Memorandum 19.4.2, *Commercial Real Property—Deemed Supplies*.

### Real property sold back to vendor

Taxable sale-back para 9(2)(f)

16. Effective October 5, 2000, if an individual or personal trust has bought taxable real property and subsequently sells it back to the vendor, the parties to the resale transaction may jointly elect, in limited circumstances, to have tax apply to the sale back to the vendor.

17. Specifically, this election to treat a particular sale of real property by an individual or personal trust as a taxable sale can be made if:

- the recipient (i.e., of the buy-back) is registered for the GST/HST;
- the registrant had previously made a taxable sale of the property to the individual, trust or settlor of the trust;
- the sale agreement for this previous sale gave the registrant the right (such as the right of first refusal) or obligation to re-purchase the property;
- this previous sale was the most recent sale of the property to the individual, trust or settlor of the trust; and
- the sale that returns the property to the registrant occurs not later than one year after the earlier of the day the individual, personal trust or settlor obtained possession of the real property and the day the individual, personal trust or settlor obtained ownership of the real property.

18. Prior to October 5, 2000, the person returning the real property could not recover the tax that was paid on the purchase of the real property in circumstances where the sale-back was an exempt supply. This election places a person who returns real property in a position similar to one who returns new goods to the vendor and receives a credit or refund for the GST/HST that was originally paid on the sale of the goods.

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19. The parties to the resale transaction must make the election jointly using form GST 22, *Real Property — Election to Make Certain Sales Taxable*. The registrant buying back the real property is responsible for filing the election with the tax return in which the registrant is required to report the tax payable on the supply.<sup>3</sup>

### Sale of farmland

20. In general, if a farmer sells or transfers ownership of farmland to an individual related to the farmer (or a former spouse or former common-law partner of the farmer) who, in turn, uses the land for the individual's own personal use and enjoyment, the sale or transfer is exempt. An exemption may also apply where a farmer changes the use of farmland and begins to use the land for his or her own personal use and enjoyment.

Sch V, Part I, s 10

21. Specifically, the sale of farmland by an individual is exempt from the GST/HST if it is sold to another individual who is related to, or who is a former spouse or former common-law partner of the individual and:

- the farmland was used at any time by the individual in a commercial activity that is the business of farming;
- the farmland was not used by the individual in a commercial activity other than the business of farming immediately before the time ownership of the property is transferred; and
- the recipient of the supply of the farmland is acquiring it for his or her own personal use and enjoyment or for that of an individual related to the recipient.

Example 1

A farmer, who was previously engaged in a profitable farming business, has not grown crops on a particular parcel of property for the past two years. He has cultivated the land to control the weeds. He sells the land to his son who will use the land solely for his personal use and enjoyment. This sale is exempt under the provisions of section 10 of Part I of Schedule V.

Example 2

A schoolteacher owns a farm where she undertakes limited farming activities without a reasonable expectation of profit. She decides to sell the farm to her brother. Since the teacher did not use the land at any time in a commercial activity that is the business of farming, the sale of the farmland is not exempt under the provisions of section 10 of Part I of Schedule V. It should be noted, however, that the sale would be exempt under section 9 of Part I of Schedule V.

Deemed sales  
Sch V, Part I, s 11

22. The deemed sale of farmland that occurs when an individual ceases using farmland in a commercial activity that is the business of farming and starts using the farmland for his or her personal use and enjoyment is an exempt supply under section 11 of Part I of Schedule V. This provision exempts certain supplies that might otherwise be taxable under subsection 190(2) or 207(1). In the absence of section 11, when the land ceases to be used in farming and starts to be used for personal use and enjoyment of the farmer, subsection 190(2) or 207(1) could apply to tax this change in use.

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23. Specifically, under subsection 190(2), if at any time an individual appropriates real property for his or her personal use and enjoyment (or for that of a related individual, former spouse, or former common-law partner), and if immediately before the appropriation, the property was held for supply or was used or held for use as capital property in the individual's business or other commercial activity and was not a residential complex, there is a deemed sale of the appropriated property. The individual is required to self-assess and account for GST/HST calculated on the fair market value of the property at the time of its appropriation.

24. Under subsection 207(1), where an individual who is a registrant ceases to use real property in commercial activities and begins to use the property exclusively for other purposes or primarily for the individual's personal use and enjoyment (or that of a related individual, a former spouse or former common-law partner), there is a deemed sale. The individual must self-assess and account for GST/HST calculated pursuant to the formula set out in subsection 207(1).

25. However, as noted in paragraph 22, section 11 of Part I of Schedule V exempts, in certain circumstances, supplies that might otherwise be taxable under subsections 190(2) or 207(1). Section 11 applies if the following conditions are met:

- the farmland was used at any time by the individual in a commercial activity that is the business of farming;
- the farmland was not used by the individual in a commercial activity other than the business of farming immediately before the time the supply is deemed to have been made under subsection 190(2) or 207(1); and
- the farmland is for the personal use and enjoyment of the individual or a related individual immediately after the time the supply is deemed to have been made.

### Example

Farmland lies adjacent to a lake. The farmer decides to build a cottage near the lakeshore. This necessitates building a road to the lakeshore to give easier access to the property on which the cottage is to be built. The entire parcel of land is appropriated for the personal use and enjoyment of the farmer and his family. Under the provisions of subsection 190(2), the farmer is deemed to have made a supply to himself of the land that is now being used for his own and his family's personal use and enjoyment. No tax liability is incurred, however, as this deemed supply is exempt under section 11 of Part I of Schedule V as long as the land was used in a commercial activity that is the business of farming, and not in any other business, immediately prior to the appropriation.

Exempt supply by  
corporation, partnership  
or trust  
Sch V, Part I, s 12

26. The sale of farmland is also exempt if a person that is a corporation, partnership or trust supplies the farmland by way of sale to a particular individual, an individual related to the particular individual, a former spouse or former common-law partner of the particular individual and if:

- immediately before the time ownership of the property is transferred,
  - (i) all or substantially all of the property of the person is used in a commercial activity that is the business of farming;

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- (ii) the particular individual is a member of the partnership, a beneficiary of the trust or a shareholder of, or related to, the corporation; and
- (iii) the particular individual, the spouse or common-law partner of the particular individual or a child (within the meaning of subsection 70(10) of the *Income Tax Act*) of the particular individual is actively engaged in the business of the person;

and

- immediately after the time ownership of the property is transferred, the farmland is for the personal use and enjoyment of the individual to whom the supply was made, or a related individual.

Related persons  
ss 126(2)

27. An individual is related to a particular individual if they are related to each other for purposes of subsections 251(2) to (6) of the *Income Tax Act*. Under that Act, individuals can be related by blood, marriage or adoption. For further information, see interpretation bulletin IT-419, *Meaning of Arm's Length*.

"Child"  
*Income Tax Act*  
ss 70(10)

28. Section 12 of Part I of Schedule V refers to subsection 70(10) of the *Income Tax Act* for the meaning of "child". Under that subsection, a "child" of a taxpayer includes:

- (a) a child of the taxpayer's child,
- (b) a child of the taxpayer's child's child, and
- (c) a person who, at any time before the person attained the age of 19 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control.

Meaning of "farmland"

29. For purposes of the farmland exemptions under Schedule V (i.e., sections 10, 11 and 12 of Part I), "farmland" should generally be interpreted as being the land that is regularly used by a person for the purpose of gaining or producing income from a farming business carried on by the person. A portion of land (other than land forming part of a residential complex), that is not used directly in a farming business but that is part of an entire parcel of land some of which is used directly in a farming business may be considered to be farmland. For example, a bush area surrounded by land used in a farming business is considered to be a part of the entire parcel of farmland. In addition, any fixtures on the farmland that a person also regularly uses in the business of farming would normally form part of the farmland to which the exemption, if applicable, would apply.

30. As noted above, for the farmland exemptions to apply, the farmland in question must have been used in a commercial activity that is the business of farming prior to the supply and not in any other commercial activity immediately prior to the supply or deemed supply. Accordingly, these provisions do not exempt the sale of hobby farms or the sale of land that was not used by the supplier in the business of farming but was farmed by another person who leased the land.

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31. When determining if the land was used in the business of farming, the CCRA considers such factors as the type of farming activity carried on by the supplier, the nature of the income or loss reported for income tax purposes by the supplier and the use for which the land is zoned for the purposes of municipal property tax assessment. Similarly, a change in the use of land transferred from a supplier to a recipient would be expected to result in appropriate changes for income tax reporting and, where applicable, the municipal property tax assessment of the land in question. For example, after the transfer of ownership, for the recipient to be considered to have acquired the land for his or her personal use and enjoyment, the recipient would no longer be reporting business income or losses relating to the farmland for income tax purposes. In addition, where a particular individual converts the farmland from business use to personal use, a deemed disposition of the land would occur for income tax purposes under section 45 of the *Income Tax Act*. Further, where applicable, the municipal property tax assessment of the farmland in question should have changed from farm property to the appropriate description of the actual use of the property for such assessment purposes.

32. The fact that the land is no longer being actively farmed does not mean that in all cases the land is being used for the personal use and enjoyment of the recipient. The CCRA would consider evidence that supports a personal use and enjoyment of the land, or that supports other non-personal uses of the land, such as a business or trading use. Where the recipient resides on the land, factors that may indicate the use of the land are whether any new buildings or other facilities have been constructed on the property and, if so, what type and for what purpose.

33. If the recipient did not reside on the premises and the land remained vacant, information should be provided as to the length of time that the land was held and the manner in which the land was used and enjoyed. Although there is no length of time set out in the Act with respect to qualifying for an exemption under section 9, 10 or 11 of Part I of Schedule V, length of time in holding the land may be a factor that indicates whether the land was in fact acquired for the personal use and enjoyment of the recipient or was acquired by the recipient for the purpose of resale.

34. If the recipient acquired the land for the purpose of resale, neither section 10 nor section 11 would apply since the land was not acquired for the required purpose.

### Taxable sale of farmland

Taxable sales

35. If an exemption does not apply, the sale of farmland by a farmer is generally taxable.

Election: sale of assets  
of a business  
ss 167(1)

36. However, where a person sells farmland as part of the supply of an ongoing farming business, the supplier and recipient may jointly elect to have no GST/HST payable on the sale. To qualify for the election, the supplier must sell a business or part of the business, not just the individual assets<sup>3</sup>, and the recipient must acquire ownership, possession or use of all or substantially all (90% or more) of the property required to carry on the business.

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Footnote<sup>3</sup>

If you need additional information on how to file this election, contact your nearest tax services office.

CCRA's in  
statement I

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37. To make the election, the recipient and the supplier must complete form GST44, *Election Concerning the Acquisition of a Business or Part of a Business*. The recipient, if a registrant, must file the form with the CCRA no later than the due date of the recipient's GST/HST return for the first reporting period in which tax would, if not for the election, have become payable in respect of the supply of any property or service made under the agreement for the supply of the business or part.

38. If the supplier and the recipient make this joint election, the recipient is considered to have acquired the farmland for use exclusively (90% or more) in commercial activities. If the recipient does not use the farmland exclusively in commercial activities, the recipient will have to self-assess the GST/HST owing on all or part of the property in accordance with the change-in-use rules using the regular GST/HST return (GST34).

Supply of business assets of deceased ss 167(2)

39. Similarly, the estate of a deceased individual can jointly elect with the beneficiary of the estate who is inheriting the farmland to not have tax apply to the supply of the property. This election is available under particular circumstances if the property being supplied is part of the supply of the business assets of the deceased and the property is acquired for use in the commercial activities of the recipient individual. As in paragraph 38, assessment of GST/HST due to change in use may be required.

40. For further information on tax-free sales of real property and the elections under subsection 167(1) and subsection 167(2), see GST/HST Memorandum 19.4.1, *Commercial Real Property—Sales and Rentals*.

### Sale of land previously leased for a residential complex

Exempt sale  
Sch V, Part I, s 5.2

41. Section 5.2 of Part I of Schedule V to the Act exempts the sale of land (as well as an interest in the land) that forms part of a residential complex where the land is sold without the building. This exemption is provided under the following conditions:

- immediately before the land is sold, the land was being leased on an exempt basis as described by paragraph 7(a) of Part I of Schedule V to the Act, i.e., the land was leased for at least one month to an owner or occupant of a residential unit affixed to the land for use by an individual as a place of residence; and
- if the building and the land were sold together at that time, the sale would have been an exempt sale of a residential complex under any of sections 2 to 5 of Part I of Schedule V. For information on exempt sales of a residential complex, see GST/HST Memorandum 19.2.1, *Residential Real Property—Sales*.

Example

Several years ago, the Martin family built their family's cottage on land they leased from a property development company for use as a summer residence. The company now sells the half hectare on which the cottage stands to the Martins. This sale of the half hectare is an exempt supply under the terms of section 5.2 of Part I of Schedule V.

### Sale of land that is a residential trailer park

Trailer park  
ss 123(1)

42. A "trailer park" of a person means a piece of land that is owned by or leased to the person and that is exclusively composed of:

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- (a) one or more sites each of which is, or is intended to be, supplied by the person by way of lease, licence or similar arrangement to the owner, lessee or person in occupation or possession of a mobile home, a travel trailer, motor home or similar vehicle or trailer, situated or to be situated on the site, and
- (b) other land that is reasonably necessary for
  - (i) the use and enjoyment of the sites by individuals residing in or occupying mobile homes, travel trailers, motor homes or similar vehicles or trailers, situated or to be situated on those sites, or
  - (ii) the purpose of engaging in the business of supplying the sites by way of lease, licence or similar arrangement.

### Residential trailer park

43. A *residential* trailer park is also defined in subsection 123(1). The definition says, in effect, that a residential trailer park is a trailer park or two or more contiguous trailer parks encompassing at least two sites, where:

- (a) 90% or more of the sites in the trailer park or trailer parks are supplied under a lease, licence or similar arrangement, or are intended to be supplied under a lease, licence or similar arrangement under which continuous possession or use of a site is provided for a period of at least
  - one month, in the case of mobile homes or other residential units, or
  - twelve months in the case of travel trailers or motor homes, or similar vehicles that are not residential units;

and

- (b) if the sites were to be occupied by mobile homes, the sites would be suitable for use by occupants of a mobile home (whether or not the park in fact has mobile homes) as a place of residence of individuals throughout the year. The test is whether or not the sites are serviced and accessible for use by mobile homes, thereby making the sites suitable for occupancy by individuals as places of residence throughout the year.

### Fixtures and appurtenances

44. Any building, fixture or other appurtenance to the residential trailer park that is reasonably necessary for the use and enjoyment of the sites by individuals residing in the park, or for the business of supplying such sites (for example, a rental office), is considered to be part of the residential trailer park.

### Exempt sale Sch. V, Part I, s 5.3

45. The sale of land or an interest in land that has been used as a residential trailer park is an exempt supply if the following conditions are met:

- in all cases, the land must satisfy all of the conditions of the definition of “residential trailer park” given in subsection 123(1); and
- the current vendor last acquired the park on an exempt basis; or

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- the last acquisition of the residential trailer park was deemed to have been a taxable supply under subsections 190(4), 200(2), 206(4) or 207(1) and that supply was the last supply of the park made by way of sale to the current vendor. (See paragraph 50.)

46. The exemption is not available if the supplier has claimed an ITC in respect of the last acquisition of the park or an additional area, or in respect of an improvement to the park or additional area after the last acquisition of the park or additional area.

47. This treatment of a sale of a used residential trailer park parallels the treatment of a sale of a used apartment building, i.e., as an exempt sale of previously occupied multiple-unit residential housing.

Additional area separate  
supply  
ss 136(4)

48. Where a person sells a residential trailer park whose area has been extended to encompass additional land, the supply of the original area and the supply of the additional area are treated as separate supplies in certain circumstances. If no site in the additional area has been supplied by way of lease, licence or similar arrangement and if the supply of the original area of the park would have satisfied the requirements for exemption under section 5.3 of Part I of Schedule V if the additional area had not been added to the original area, then this sale will be treated as two separate supplies: the supply of the original area, which is an exempt supply and the supply of the additional area, which is a taxable supply.

49. If a site in the additional area had been supplied by way of lease, licence or similar arrangement as described by paragraph 7(b) of Part I of Schedule V, the person making this supply would have been deemed to have made and received a taxable sale of the additional area and to have collected and paid GST/HST on such a deemed sale under the self-supply rules. This treatment parallels the treatment of the lease of the first unit in an addition to a multiple-unit residential complex. If tax had applied at some time to the additional area of the park, the supply of the original residential trailer park and the new area would not be treated as two supplies. It would be treated as one supply that is exempt under section 5.3 of Part I of Schedule V, provided ITCs have not been claimed (see paragraph 46).

50. The provisions of the Act under which a person could be deemed to have both made and received a taxable sale of the land in a residential trailer park are:

- subsection 190(4)<sup>4</sup> — When a person first supplies a site in a residential trailer park for a period of at least one month by way of lease, licence or similar arrangement, there is a self-supply of the park, i.e., the person is deemed to have sold the park and collected tax on the sale calculated on the fair market value of the park at the time of the sale and to have reacquired the park and paid the tax equal to the amount deemed collected.

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Footnote <sup>4</sup>

For further information on the application of subsection 190(4), see GST/HST Memorandum 19.2.3, *Residential Real Property—Deemed Supplies*.

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- subsection 190(5)<sup>5</sup> — This subsection parallels subsection 190(4) and applies when a person first supplies a site located in an additional area of a residential trailer park for a period of at least one month by way of lease, licence or similar arrangement. When the first site is first leased, there is a self-supply of the additional area, i.e., the person is deemed to have sold the additional area and collected tax on the sale calculated on the fair market value of the additional area at the time of the sale and to have reacquired the area and paid the tax equal to the amount of tax deemed to have been collected.
- subsection 200(2)<sup>6</sup> — If a registrant that is a public service body (PSB) (other than a financial institution or a government) ceases to use capital real property primarily in commercial activities, and begins to use the property primarily in non-commercial activities, there is a change in use such that the registrant is deemed to have sold the property and collected tax on the sale calculated on the basic tax content of the property at the time of the sale and to have reacquired the property and paid the tax equal to the same basic tax content.
- subsection 206(4)<sup>7</sup> — If a registrant other than an individual or a PSB that is not a financial institution ceases to use capital real property in a commercial activity and begins to use it exclusively for other purposes, there is a change in use such that the registrant is deemed to have sold the property and collected tax on the sale calculated on the basic tax content of the property at the time of the sale and to have reacquired the property and paid the tax equal to the same basic tax content.
- subsection 207(1)<sup>8</sup> — If a registrant who is an individual ceases to use capital real property in commercial activities and begins to use it exclusively for other purposes or primarily for his or her personal use and enjoyment or for the personal use or enjoyment of a related individual, there is a change in use such that the registrant is deemed to have sold the property and collected tax on the sale calculated on the basic tax content of the property at the time of the sale and to have reacquired the property and paid the tax equal to the same basic tax content.

Supply of a single site  
taxable  
Policy statement P-088

51. Since a residential trailer park must be composed of at least two sites, the sale of a single, separately titled site in a residential trailer park is not a supply of a residential trailer park, nor is it the supply of an interest in such a park. Consequently, the sale of a single site in a residential trailer park is not exempt under section 5.3 of Part I of Schedule V.

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Footnote <sup>5</sup> For further information on the application of subsection 190(5), see GST/HST Memorandum 19.2.3, *Residential Real Property—Deemed Supplies*.

Footnote <sup>6</sup> Further information on the application of subsection 200(2) will be provided in GST/HST Memorandum 19.6, *Real Property and Public Sector Bodies*.

Footnote <sup>7</sup> For further information on the application of subsection 206(4), see the discussion of the change-in-use rules in GST/HST Memorandum 19.4.2, *Commercial Real Property—Deemed Supplies*.

Footnote <sup>8</sup> For further information on the application of subsection 207(1), see the discussion of the change-in-use rules in GST/HST Memorandum 19.4.2, *Commercial Real Property—Deemed Supplies*.

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52. Where a sale of a site in a residential trailer park is made together with the sale of an interest in the common elements of the residential trailer park, the supply of the interest in the common elements is considered to be incidental to the supply of the site and thus, under the provisions of section 138, to form part of the same supply. Consequently, the supply of the interest in the common elements will have the same tax status as the supply of the site in the residential trailer park.

53. The sale of an undivided interest in the entire residential trailer park that gives the recipient an undivided percentage ownership interest in the park with the exclusive right to use a single site in the park is considered to be a sale of an interest in a residential trailer park within the meaning of section 5.3 of Part I of Schedule V. Accordingly, such a sale would be exempt provided the other conditions of section 5.3 are also met.

ITCs available  
s 193

54. In cases where the sale of a single site in the residential trailer park is taxable, the supplier of the site may be entitled to claim ITCs under section 193<sup>9</sup> equal to the lesser of the basic tax content of the single site at the time the sale is made and the tax payable on the sale of the particular site provided that the supplier is a registrant. If the supplier is not a registrant, the supplier may be entitled to claim a rebate under section 257<sup>10</sup> equal to the lesser of the basic tax content at the time the sale is made and the tax payable on the sale of the particular site. The supplier, if a registrant, would also be entitled to claim ITCs for costs relating specifically to the sale of the site that are not included in the basic tax content referred to above.

Example 1

A corporation that owns a residential trailer park sells sites in the park to persons who are currently leasing the sites in the park for their travel trailers. Each site is sold as a separately titled, single site along with an interest in the common elements, as opposed to providing the recipients with an undivided percentage interest in the park as tenants in common. In this situation, the supply of each of the sites along with an interest in the common elements does not constitute the supply of a residential trailer park or an interest therein. It is a sale of land and subject to GST/HST.

Example 2

A corporation that owns a residential trailer park sells an undivided interest in the park with the exclusive right to use a single site in the park to those purchasing such an interest. This supply constitutes the supply of an interest in a residential trailer park. Provided that the park would qualify as a residential trailer park within the meaning of subsection 123(1) and that section 5.3 would apply to exempt the sale of the entire residential trailer park if such a supply were made, the sale of the undivided interest is exempt under section 5.3 of Part I of Schedule V.

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Footnote <sup>9</sup>

For further information on calculating ITCs in respect of real property under section 193, see the appendix to GST/HST Memorandum 19.2.3, *Residential Real Property—Deemed Supplies*.

Footnote <sup>10</sup>

For further information on the rebate under section 257, see GST/HST Memorandum 19.3.6, *Rebate on Non-Registrant's Sale of Real Property*.

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### Example 3

An individual who owns a residential trailer park sells single, separately titled sites in the park along with an interest in the common areas. As noted in the first example, the supply is not exempt under section 5.3 of Part I of Schedule V. Moreover, even though the sale is made by an individual, it is not exempt under section 9 of Part I of Schedule V since immediately before the sale the property was capital property used primarily in a business of the individual that, it is presumed, the individual carried on with a reasonable expectation of profit.

### Example 4

A corporation that owns a residential trailer park sells to an individual a single, separately titled site in a residential trailer park together with the mobile home on the site that the individual occupies as a place of residence. Although the mobile home is a residential complex, the site subjacent to it does not form part of the residential complex even though the mobile home has been permanently affixed to the site in the same manner as a house. Paragraph 123(1)(d) of the definition of residential complex excludes subjacent land from being classed as part of a residential complex if it is a site in a residential trailer park. The sale of this previously occupied mobile home is exempt either under section 4 of Part I of Schedule V if the corporation is the builder of the mobile home or under section 2 of Part I of Schedule V if the corporation is not the builder. The sale of the site in the residential trailer park, i.e., the land portion of the real property sold, is deemed under the provisions of subsection 136(2) to be a separate supply from the sale of the mobile home. The sale is a taxable supply of land since neither sections 5.2 nor 5.3 of Part I of Schedule V apply to make it an exempt supply.

Tax had already applied to this land when the corporation was deemed to have self-supplied it under subsection 190(4) at the time of the first lease of the first site in the residential trailer park. At the time of the taxable supply of the site to the individual, the corporation, if it is a registrant, may claim ITCs under the provisions of section 193 equal to the lesser of the basic tax content at the time of the sale of the site and the tax payable on the sale of the site or, if it is not a registrant, the corporation may be eligible for a rebate under the provisions of section 257.

### Example 5

A corporation that owns a residential trailer park sells to an individual a single, separately titled site in a residential trailer park. The individual already owns the mobile home that is permanently affixed to the site in the same manner as a house. This sale of the site to the individual is not the supply of a residential complex, nor is it a supply of a residential trailer park. It is a taxable supply of land.

As noted in example 4, tax had already applied to this land when the corporation was deemed to have self-supplied it under subsection 190(4) at the time of the first lease of the first site in the residential trailer park. At the time of the taxable supply of the site to the individual, the corporation, if it is a registrant, may claim ITCs under the provisions of section 193 equal to the lesser of the basic tax content at the time of the sale of the site and the tax payable on the sale of the site or, if it is not a registrant, the corporation may be eligible for a rebate under the provisions of section 257.

### Supplies of land by way of lease, licence or similar arrangement

- General rule 55. All supplies of land by way of lease, licence or similar arrangement are taxable unless specifically exempted. Exempt supplies of real property are listed under Part I of Schedule V to the Act. In general, exempt supplies of land by way of lease, licence or similar arrangement are supplies of land destined for long-term use as a place of residence by individuals. The treatment of residential land leases and residential head leases and sub-leases is discussed in GST/HST Memorandum 19.2.2 *Residential Real Property—Rentals*. For a discussion of the meaning of the terms “lease, licence or similar arrangement”, see GST/HST Memorandum 19.1, *Real Property and GST/HST*. Certain supplies of real property made by a charity or a public service body may be subject to additional exemptions found in Parts V.1 and VI respectively of Schedule V. Supplies of real property by a charity and other public sector bodies will be discussed in GST/HST Memorandum 19.6, *Real Property and Public Sector Bodies*.
- Sharecrop agreements Sch. VI, Part IV, s 9 56. A supply made to a registrant of farmland by way of a lease, licence or similar arrangement is zero-rated to the extent that the consideration for the supply is a share of the farmland’s production of zero-rated crops. For example, if one farmer rents farmland to another for \$1,000 plus one-third of the land’s farm production (which is a zero-rated crop), the tax is to be charged only on the \$1,000 payment. The value of any other consideration given (other than a share in a crop the supply of which would be zero-rated) would also be taxable at 7% or 15%. For further information on zero-rated crops, see GST/HST Memorandum 4.4, *Agriculture and Fishing*.

### Deemed self-supplies of leased land

57. There are a number of provisions of the Act that deem a self-supply of land to have occurred when the land is supplied by way of lease, licence or similar arrangement. The relevant provisions are:

- ss 190(3)—Land supplied for residential use,
- ss 190(4)—Land leased in a residential trailer park (see paragraph 50),
- ss 190(5)—Land leased as an addition to a residential trailer park (see paragraph 50), and
- subpara 191(1)(b)(ii)—Builder sells a building on leased land. (This subparagraph deems a self-supply of a residential complex to occur, including the land.)

The self-supply rules and these provisions are discussed in GST/HST Memorandum 19.2.3, *Residential Real Property—Deemed Supplies*.

### Special cases

#### Land allowance for a residential complex

- Land allowance
58. A residential complex, defined in subsection 123(1), includes an amount of land that is reasonably necessary for the residential unit's use and enjoyment as a place of residence for individuals. This reference to land in the definition of "residential complex" is usually considered to be the same area of land as is allowed for the purposes of the principal residence exemption for individuals under the *Income Tax Act*, that is, generally up to a half hectare.
59. If the amount of land that is part of a residential complex is a half hectare or less, no proof of such use and enjoyment is required normally in respect of this amount of land. (Special considerations may apply with respect to the sale of a condominium unit.)
60. Where the total area of land exceeds a half hectare, the excess land is not normally considered to be part of the residential complex unless it can be demonstrated that such excess land is reasonably necessary for the unit's use and enjoyment as a place of residence for individuals. In this regard, the excess land must clearly be necessary for the residential unit or building to function properly as a residence and not simply be desirable. This rule also applies to residential complexes situated on farms.
61. The application of this half-hectare rule is discussed in detail in GST/HST Memorandum 19.2.1, *Residential Real Property—Sales*.

#### Land formerly part of a residential complex

- Sale of land related to a residential complex  
Policy statement P-121
62. If land is not part of a residential complex, as that term is defined in subsection 123(1) of the Act, immediately prior to the sale of the land, it does not qualify for exemption under those sections of the Act that would otherwise apply to a sale of a residential complex or in interest in one. This may occur, for example, where land has been severed from a residential complex and supplied separately from the land upon which the complex is situated. Consequently, a sale of such land is not exempt under section 2, 3, 4 or 5 of Part I of Schedule V, which exempt, under certain conditions, a sale of a residential complex or an interest in one. The sale of the land would not usually qualify for exemption under section 5.2 of Part I of Schedule V, which exempts the sale of land that forms part of a residential complex. Section 9 of Part I of Schedule V may apply to exempt the sale of land by an individual provided that the sale meets the other requirements of the section.
- Example 1
- Where a corporation owns a residential complex and a portion of the land that previously formed part of the complex is severed from it, the subsequent sale of the severed land is taxable. None of sections 2, 3, 4, 5, 5.2 and 9 of Part I of Schedule V applies to exempt the sale of the land by the corporation.
- Example 2
- An individual owns and resides in a residential complex. The individual severs a portion of the land that previously formed part of the complex. The subsequent sale by the individual of that severed land would not be a sale of a residential complex nor of an interest in one. However, the sale may be exempt under section 9 of Part I of Schedule V, provided that the exclusions from the exemption do not apply.

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### Example 3

An individual, who owns a residential complex, supplies the residential complex by way of lease. The individual severs a portion of the land that previously formed part of the complex. The subsequent sale of the severed land would not be exempt under section 9 of Part I of Schedule V if the severed land is supplied by way of lease immediately before the sale in circumstances where it would be considered capital property used primarily (more than 50%) in a business (within the meaning of subsection 123(1) of the Act) carried on by the individual with a reasonable expectation of profit. Assuming that the severed land was supplied by way of lease immediately prior to the sale, the land would generally be considered to be capital property, the rental of which would constitute a business for GST/HST purposes. It is a question of fact, however, whether or not the rental business in which the property is being used had a reasonable expectation of profit.

Note that for supplies made after October 4, 2000, where the individual is a registrant and the lease of the property is taxable, the supply by way of sale is excluded from the exemption whether or not the rental business had a reasonable expectation of profit.

### Options

63. The definition of real property in subsection 123(1) includes, other than in the Province of Québec, "...every estate or interest in real property, whether legal or equitable...". In the common law provinces and territories, an option<sup>11</sup> in real property normally creates an equitable interest in the property where the grantee has the right to compel the grantor of the option to sell or transfer an ownership interest in the real property to the grantee.

64. An option contract is a form of a choice given to a person to take some specified action under the conditions specified in the option agreement. If the option gives its holder the choice of buying or not buying, i.e., if the holder can compel the grantor to sell, it is known as a "call option". In the granting of a call option, an equitable interest in the property (being "real property") is transferred from the grantor to the grantee. "Sale" is defined in subsection 123(1) to include "any transfer of the ownership of the property...". Accordingly, the grant of a call option normally constitutes a sale of real property and those provisions of the Act affecting sales of real property apply.

65. If the supply of the call option is a taxable supply, the consideration payable for the acquisition of the option is subject to tax. Where the recipient is registered, the supply of the call option is subject to the self-assessment and reporting rules of subsections 221(2) and 228(4)(acquisition of real property). To the extent that consideration paid is in respect of the ongoing right to use the property and not for the supply of the option itself, subsections 221(2) and 228(4) will not apply.

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#### Footnote <sup>11</sup>

The comments in paragraphs 63 to 68 are limited to option contracts that relate to the transfer of title to or ownership of real property and should not be interpreted as being applicable to other types of option contracts.

## 19.5 Land and Associated Real Property

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66. For example, a person may grant another person an option to purchase or lease property. The granting of such rights gives the grantee an equitable interest in the property. The consideration paid for the actual grant of the interest may be considered as being in respect of the sale of the interest but only to the extent such consideration is not paid for the actual use of the underlying property.

67. However any consideration that is not reasonably attributable to the granting of the option, such as consideration payable by the recipient of the option for the use of, or right to use, the property until the option is exercised (whether pre-paid or paid by periodic payments), would not be consideration for the granting of the option and, therefore, would not relate to the sale of the equitable interest, but rather to the right to use the property. Such consideration would generally be considered payable for the supply of the property by way of lease, licence or similar arrangement.

68. The determination of whether the consideration is paid for the grant of the option, i.e., the sale, or for the use, i.e., the lease, of the property may be reflected either in the nature of the interest being transferred, the terms of the agreement or other documentation relating to the transfer, or the actual dealings among the parties involved.

### Air rights and density rights

Air rights

69. Air rights are part of the bundle of rights that are owned with the land and generally relate to the access to and control of the area above the surface of a property. Rights to the control of and access to the air space above a parcel of real property constitute interests in the underlying real property and therefore, under both the common law and civil law, i.e., in all provinces of Canada, air rights constitute real property for GST/HST purposes. Accordingly, a supply by way of lease, licence or similar arrangement, of the use or right to use these rights also constitutes a supply of real property for GST/HST purposes.

Density rights

70. Density rights, on the other hand, relate to the ability to construct buildings of a particular height or “density” and are matters of municipal regulatory control. A supply of density rights does not constitute a supply of real property.

### Land swaps

Sale  
ss 123(1)  
Value of consideration  
ss 153(1)

71. A “land swap” is a transfer or an exchange of the ownership of land between two parties. Since the definition of “sale” includes “any transfer of the ownership of the property...”, the transfers of land ownership occurring in a land swap are sales of land. If the land swap is a straight exchange of Parcel A for Parcel B, the value of consideration for the supply of Parcel A is the fair market value of Parcel B at the time the supply of Parcel A is made, and vice versa. In these situations, a property can be both the consideration for the supply and a supply in itself, i.e., a barter.

## 19.5 Land and Associated Real Property

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### Example

Red Developments has four hectares of land. It exchanges these four hectares for two parcels of two hectares each owned by Blue Developments. The fair market value of the four hectares at the time of the supply is \$100,000. The fair market value of the two parcels owned by Blue is \$50,000 each or \$100,000 in total. Thus, the value of consideration for the supply by Red to Blue is \$100,000, and the value of consideration for the supply by Blue to Red is \$100,000 (subject to subsection 153(3) as discussed in paragraph 73 below).

72. Generally speaking, when parcels of land are exchanged between two persons who are dealing with each other at arm's length, the fair market value of each of these parcels will be equal. In circumstances where the fair market value of one parcel does not equal the fair market value of the other, one of the persons may be making a supply of real property for consideration that is less than fair market value of the property being supplied. In such cases, subsection 155(1) may apply to deem the property to be supplied for consideration equal to its fair market value where the parties to the barter are seen not to be dealing with each other at arm's length.

### Swaps between registrants ss 153(3)

73. In the case of an exchange of like property<sup>12</sup> between two registrants each of which is acquiring the property as inventory for use exclusively in its commercial activities, the value of the consideration for the property is deemed to be nil. Consequently, the registrants do not have to collect GST/HST on the exchange of the property since the value of the consideration for the supply is deemed to be nil. Thus, if the parties to the exchange described in the preceding example are registrants and each of them is acquiring the land, for example, as vacant lots in a residential subdivision as inventory for use exclusively in its commercial activities, then neither of them would have to calculate tax on the value of consideration of the exchanged land.

### Swap includes items other than land

74. A land swap may also involve items other than land. In these situations, the value of consideration is composed of the fair market value of the land at the time of the supply and the fair market value of other personal property being exchanged along with the land. Fair market value is determined at the time of the supply.

### Swap includes money

75. Under the provisions of subsection 165(1), "every recipient of a taxable supply made in Canada shall pay ... tax in respect of the supply calculated ... on the value of the consideration for the supply." A supply as defined in subsection 123(1) means "... the provision of property or a service..." As the definitions of both "property" and "service" exclude money, money can be consideration for a supply, but money cannot be supplied for GST/HST purposes<sup>13</sup>. Consequently, as illustrated in the following example, in cases where the recipient of a supply of real property also receives money, the recipient must calculate tax only on the value of consideration of the real property being received. The value of any property given up in exchange for the cash is excluded from the calculation.

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### Footnote<sup>12</sup>

For purposes of subsection 153(3), each of the properties exchanged is required to be of the same particular class or kind.

### Footnote<sup>13</sup>

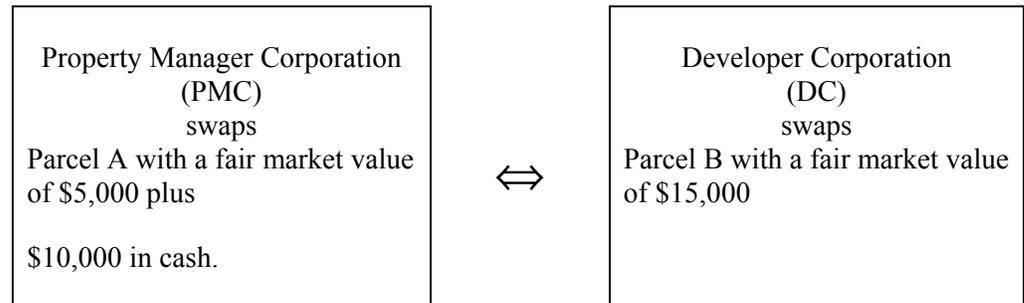
In some circumstances, the *payment* of money may be a financial service, which can be a supply.

## 19.5 Land and Associated Real Property

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### Example

Property Manager Corporation and Developer Corporation agree to exchange parcels of land. The parcel of land that the Property Manager Corporation agrees to supply to the Developer Corporation (Parcel A) has a fair market value of \$5,000. The parcel of land that the Developer Corporation agrees to supply to the Property Manager Corporation (Parcel B) has a fair market value of \$15,000. To complete the exchange of these parcels of land, the Property Manager Corporation has agreed to pay the Developer Corporation an additional sum of \$10,000 in cash.



In this example, assume that neither corporation is acquiring land as inventory for sale in the course of its commercial activities. Consequently, subsection 153(3) does not apply. Also, assume that both corporations are dealing with each other at arm's length.

In this example, liability for tax is as follows:

- PMC's tax liability:

PMC acquires the land in Parcel B. In acquiring this land, PMC is the recipient of a taxable supply, the land in Parcel B. Consequently, PMC is liable to account for tax calculated on the value of consideration of Parcel B. The value of consideration for the land in Parcel B is the fair market value of Parcel A (\$5,000) plus the amount of cash (\$10,000), for a total of \$15,000. Thus, PMC is liable for tax calculated on \$15,000.

- DC's tax liability:

DC acquires the land in Parcel A and \$10,000 cash. In acquiring the land, DC is the recipient of a taxable supply, the land in Parcel A. Consequently, DC is liable to account for tax calculated on the value of consideration for Parcel A. The value of consideration for the land in Parcel A is the fair market value of that portion of Parcel B that is exchanged for Parcel A, i.e., \$5,000<sup>14</sup>. Thus, DC is liable for tax calculated on \$5,000.

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Footnote<sup>14</sup>

The remaining portion of Parcel B is being exchanged for \$10,000 in cash. Since the transfer of money is not a supply of property, see paragraph 75, there is no tax imposed on that portion of Parcel B given up in exchange for \$10,000 cash.

### Joint tenancy of farmland

Transfer of farmland by a farmer, holding sole title, to one or more related persons and themselves as joint tenants  
Policy statement P-109

76. Many farmers, who are registered for GST/HST purposes as sole proprietors of a farming business, hold sole title to the farmland. Occasionally, farmers will transfer title to some or all of the farmland from themselves to their spouses and/or other related persons and themselves as joint tenants for nominal or nil consideration. The “non-farming” joint tenant is not directly involved in the farming operations and prior to the acquisition of this interest in the property, the individual is not engaged in commercial activities and accordingly is not registered. This conversion in the holding of the farmland to a joint tenancy is often done solely for estate planning purposes, such as avoiding probate costs, since under a joint tenancy (unlike a tenancy-in-common) the surviving joint tenant automatically receives title to the entire property without the property falling into the deceased joint tenant's estate.

77. The question arises as to whether or not the transfer of the farmland from sole ownership to joint tenancy constitutes a taxable supply made by the farming joint tenant to the non-farming joint tenant. Since the non-farming joint tenant is not registered and does not deal with the farming joint tenant at arm's length, the non-arm's length rule in section 155 of the Act would apply to deem the consideration to be equal to the fair market value of the supply. As a non-registrant, the non-farming joint tenant has no means of claiming an ITC, and no rebate would be available.

78. However, where there is a transfer of farmland in the following circumstances, the CCRA will not apply section 155 of the Act:

- The transfer of the farmland does not result in any change of use of the farmland from business use to personal use. The land continues to be used solely in the farming operation as it was prior to the transfer into joint tenancy.
- The consideration paid by the non-farming joint tenant for the joint tenancy is nil or a nominal amount, since a non-nominal amount suggests that the creation of the joint tenancy is occurring for reasons other than solely for estate planning.
- The non-farming joint tenant is not currently registered (except as noted in paragraph 79) and the only reason this individual would otherwise register would be to avoid the effect of the non-arm's length rule. Where the non-farming joint tenant registered solely to recover the tax paid on the creation of the joint tenancy, or where the individual registered or is eligible to register for activities that are not related to the farming operation, the CCRA will not apply section 155. If, however, the individual is registered because the individual's farming activity is a commercial activity in its own right, then the use of this policy is unnecessary as section 155 would not apply.

## 19.5 Land and Associated Real Property

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- The non-farming joint tenant does not receive any proceeds from the farming business that constitutes business income earned on the individual's own account. Otherwise, the farming income would suggest that the individual is involved in the farming operation on the individual's own account or as a partner. If so, the individual is eligible to register in the former case, or the partnership may be required to register in the latter case. If the non-farming joint tenant receives only employment income from the farming operation, then the CCRA will not apply section 155.
- The person who operates the farm must transfer the farmland into joint tenancy with themselves and one or more "related persons", as defined in subsection 126(2) of the Act. If the operator of the farm does not retain any title to the land, and if the transferee allows the operator to continue to use the land to operate the farm, then it is the CCRA's position that the transferee would generally be making a supply to the operator of the farm of the right to use the land and that this supply by the transferee is a commercial activity for GST/HST purposes. In this situation, section 155 is not applicable if the transferee is a registrant at the time of the transfer into joint tenancy.
- The non-farming joint tenant is not involved in the farming business independently on the individual's own account and the farming operation is not a partnership. If the individual is farming on the individual's own account, then the individual has a commercial activity and is eligible to register, and section 155 is not relevant. If the farming operation is a partnership, then the partnership should be registered.

79. It is possible that some persons may have registered to avoid the application of subsection 155(1) requiring payment of GST/HST on the fair market value of the interest being transferred to the non-farming joint tenant. To ensure equal treatment between those who registered solely for this purpose and those who did not register, retroactive cancellation of registration in such cases is appropriate.

80. However, under paragraph 171(3)(b) of the Act read together with subsection 207(1), GST/HST would have to be paid equal to the basic tax content of the non-farming joint tenant's interest at the time the registration was cancelled. To avoid the payment of GST/HST when registration is cancelled, the CCRA will not apply subsection 171(3) of the Act in circumstances where the person applied for registration solely to avoid the application of the non-arm's-length rule in section 155.

81. There will be no time limit for registered non-farming joint tenants applying to cancel their registration if they registered solely to avoid the application of the non-arm's-length rule upon the creation of the joint tenancy, and for no other reason.

82. Cases that are similar to those addressed by this administrative position, but which do not precisely fit the criteria set out in paragraph 78, will be dealt with on a case-by-case basis and should be referred to the local tax services office.

## 19.5 Land and Associated Real Property

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### Example 1

Mr. Farmer carries on a farming business as a sole proprietor and is registered for the GST/HST. Mr. Farmer holds sole title to the farmland. For estate planning purposes, he transfers the farmland to his spouse, Mrs. Farmer, and himself as joint tenants for \$1.00. Mrs. Farmer is not actively involved in the farming operation, does not earn or report any business income from the farming operation on her own account for income tax purposes, and is not registered for the GST/HST since she has no commercial activity of her own. The farmland will continue to be used in the same manner as it was used prior to the creation of the joint tenancy.

As this case satisfies the criteria set out in paragraph 78, section 155 will not be applied and GST/HST will not be payable on the creation of this joint tenancy.

### Example 2

Mrs. Acres carries on a farming business as a sole proprietor and is registered for the GST/HST. Mrs. Acres holds sole title to the farmland. For estate planning purposes, Mrs. Acres transfers the farmland to her spouse, Mr. Acres, and herself as joint tenants for \$2.00. Mr. Acres is not actively involved in the farming operation and does not earn or report any business income from the farming operation on his own account for income tax purposes. However, Mr. Acres is the sole proprietor of a bookkeeping business and is registered for the GST/HST. The farmland will continue to be used in the same manner as it was used prior to the creation of the joint tenancy.

As this case satisfies the criteria set out in paragraph 78, section 155 will not be applied and GST/HST will not be payable on the creation of this joint tenancy.

### Example 3

Mr. Gardener carries on a farming business as a sole proprietor and is registered for the GST/HST. Mr. Gardener holds sole title to the farmland. Mr. Gardener transferred the farmland to his spouse, Mrs. Gardener, and himself as joint tenants for \$3.00 for estate planning purposes. Mrs. Gardener is not actively involved in the farming operation, and does not earn or report any business income from the farming operation on her own account for income tax purposes. However, prior to the transfer of the farmland, Mrs. Gardener was advised to register to avoid paying GST/HST on the fair market value of her joint-tenancy interest. The farmland continues to be used in the same manner as it was prior to the creation of the joint tenancy. Mrs. Gardener applies to have her registration cancelled.

Since the transfer was only for estate planning purposes and was to a related person for a nominal consideration with no change occurring in the use of the farmland, and since Mrs. Gardener registered solely to avoid paying GST/HST at fair market value on the creation of the joint tenancy, there will be no payment of GST/HST pursuant to subsection 171(3) when her registration is cancelled.

Input tax credits on  
farmland acquired in  
joint tenancy  
Policy statement P-183

83. A problem arises in regards to claiming ITCs when a farmer who is registered for GST/HST purposes (the “farming joint tenant”) purchases farmland for use in the farming business, but title to the farmland is taken in the name of the farmer and a related individual or individuals as joint tenants. The problem is that the second individual (the “non-farming joint tenant”, usually a spouse but not necessarily so) is unable to claim ITCs since this individual is not involved in the farming operations and, at the time of the acquisition of the second individual’s interest in the property, this individual has no commercial activities and accordingly is not registered.

## 19.5 Land and Associated Real Property

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84. Unless one of the exempting rules in Part I of Schedule V applies, the acquisition of farmland is a taxable supply. In cases where joint tenancy is not an issue, the recipient of the supply (if registered) would self-assess and account for the tax payable pursuant to subsections 221(2) and 228(4). Where the farmland is being acquired for use in a commercial activity that is the business of farming, section 169 allows the recipient to claim an ITC.

85. However, where title is taken in the names of both the farming and non-farming joint tenants, there is a question concerning whether or not the farming joint tenant can claim an ITC for the entire amount of tax paid or payable in respect of the acquisition of the farmland. The question arises because the farming joint tenant has received only a partial interest in the farmland, and therefore may be able to claim only a partial ITC. The ITC the farming joint tenant would be eligible to claim would be equal to the amount of tax that was payable in respect of the farming joint tenant's interest in the farmland only. The result being that while the farmland was acquired exclusively for use in the course of a commercial activity of a registrant, not all of the tax would be recoverable.

86. When farmland is taken in joint tenancy, the agreement of purchase and sale with the vendor may not be signed by all of the joint tenants. Nevertheless, regardless of whether or not all the joint tenants signed the purchase and sale agreement, each joint tenant may hold the registered title under the applicable land laws. Thus, with joint tenancies, one of three situations could arise:

- the farming joint tenant (the registrant) signs the agreement of purchase and sale;
- all of the joint tenants sign the agreement of purchase and sale; or
- the non-farming joint tenant (the non-registrant) signs the agreement of purchase and sale.

87. Unless Part IX of the Act provides otherwise, the recipient of the supply, that is, the person who is liable to pay the consideration under the agreement for the supply, must normally claim ITCs. With respect to the first two scenarios listed in paragraph 86, it is the CCRA's position that where the four conditions in paragraph 88 are met, the farming joint tenant would be liable to pay the consideration (whether alone or jointly) and therefore is a recipient of the supply. Accordingly, where there is an acquisition of farmland by two or more persons as joint tenants, the registered farming joint tenant may claim ITCs as if the farmland had been registered in the farming joint tenant's name alone.

88. The four conditions that must be satisfied are:

- The farming joint tenant is a party to the agreement of purchase and sale.

## 19.5 Land and Associated Real Property

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- The non-farming joint tenant is neither currently registered nor eligible to register (except as noted below) and the only reason the non-farming joint tenant would otherwise wish to register is to ensure that available ITCs are claimed. Where the non-farming joint tenant was registered or is eligible to register for activities that are not related to the farming operation (for example, the non-farming joint tenant owned a bookkeeping business), an ITC will still be available to the farming joint tenant to the extent that the land is used in a commercial activity.
- The non-farming joint tenant does not receive any proceeds from the farming business that are business income earned on the individual's own account for income tax purposes. Otherwise, it would suggest that the individual is involved in the farming operation on the individual's own account or as a partner. If the proceeds are business income for income tax purposes, the non-farming joint tenant in the former case would be eligible to register, or the partnership should be registered in the latter case, making the application of this administrative position unnecessary. If the non-farming joint tenant receives employment income from the farming operation, the registered farming joint tenant may claim ITCs as if the farmland had been registered in the farming joint tenant's name alone.
- There must be an acquisition of farmland as joint tenants by the individual who operates the farm and who is registered for GST/HST purposes, and by one or more "related individuals", as defined in subsection 126(2) of the Act, who are not eligible to register in respect of the farming business.

89. In the third scenario given in paragraph 86, where only the non-farming joint tenant signs the agreement of purchase and sale, it is doubtful whether or not the farming joint tenant could be considered to be a recipient and thus eligible to claim ITCs. The eligibility to claim ITCs in such cases will be determined by the CCRA according to the facts of each case.

90. Where both the agreement of purchase and sale and the title to the land are solely in the name of the non-farming individual, this individual is the sole owner of the farmland. If the individual who owns the farmland allows another person to use the land to operate the farm, then it is the CCRA's position that the owner of the farmland is making a supply of a right to use the land to the person operating the farm. This supply by the owner is a commercial activity for GST/HST purposes. The non-farming individual who owns the farmland would be eligible to register and could claim ITCs for the tax paid on the acquisition of the farmland.

91. In any case where all the tax is allowed as ITCs, the farmland is considered to have been used 100% in commercial operations, and therefore excluded from exemption by paragraph 9(2)(a) of Part I of Schedule V (capital property used primarily in a business with a reasonable expectation of profit). A subsequent sale of the farmland by the joint tenants will be subject to GST/HST. If the subsequent sale of the farmland is by the surviving non-farming joint tenant, the sale may be subject to GST/HST depending on the facts of the particular case.

## 19.5 Land and Associated Real Property

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Transitional adjustment

92. Prior to the implementation of Policy Statement P-183, *Input Tax Credits On Farmland Acquired In Joint Tenancy*, where this administrative position was originally set out, there may have been situations where a non-farming joint tenant registered solely to ensure that the entire amount of tax paid on the acquisition of the farmland could be recovered through ITCs (i.e., each joint tenant claimed an ITC for their portion of the total tax paid) even though the non-farming joint tenant was not engaged in a commercial activity. Where the guidelines given in paragraph 88 are met, cancelling registration of the non-farming joint tenant ensures equal treatment between those who registered and those who did not. Cancelling registration can be initiated either by the non-farming joint tenant or by the CCRA when it is clear that these guidelines apply.

93. Usually, pursuant to paragraph 171(3)(b) read together with subsection 207(1), cancelling registration requires the non-farming joint tenant to pay GST/HST equal to the basic tax content of the non-farming joint tenant's interest in the farm at the time registration is cancelled. However, in the situation outlined above, paragraph 171(3)(b) and subsection 207(1) may not apply because these provisions apply only where the property was used in a commercial activity prior to registration being cancelled. In cases where the non-farming joint tenant did not have a commercial activity, that person was not entitled to register. However, even though paragraph 171(3)(b) and subsection 207(1) would not apply, a person whose registration is retroactively cancelled because the individual was never entitled to register may be assessed by the CCRA for ITCs that the person claimed but was not entitled to claim .

94. In this situation, the CCRA will not insist upon a recapture of the ITCs through a formal notice of assessment if the following conditions are met:

- the person registered solely to claim ITCs;
- the four criteria set out in paragraph 88 have been met; and
- the farming and non-farming joint tenants agree to have the CCRA make the appropriate adjustments between their respective GST/HST accounts.

95. Such an agreement should be provided in writing. The farming joint tenant must not make a subsequent claim for the ITCs that had been previously claimed by the non-farming joint tenant and have not been recaptured since this would result in an excess amount of GST/HST being claimed as ITCs.

96. There will be no time limit for non-farming joint tenants seeking to have their registration cancelled where they registered solely for purposes of recovering the tax paid on the acquisition of the farmland as joint tenants, and for no other reason. However, it is to the advantage of such persons to apply promptly to have their registration cancelled and avoid the necessity of filing nil GST/HST returns.

97. Cases that are similar to those addressed by these guidelines, but which do not precisely fit the criteria set out in paragraph 88, such as cases not involving farmland or cases involving the third scenario in paragraph 86, will be dealt with by the CCRA on a case-by-case basis.

## 19.5 Land and Associated Real Property

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### Example 1

Mr. Meadows carries on a farming business as a sole proprietor and is registered for the GST/HST. Mr. Meadows will be signing an agreement of purchase and sale to purchase additional farmland. When the sale closes, title to the farmland will be registered in the name of Mr. and Mrs. Meadows as joint tenants solely for estate planning purposes. Mrs. Meadows is not actively involved in the farming operation, does not report any business income from the farming operation on her own account for income tax purposes, and is not registered for the GST/HST because she is not engaged in any business. The farmland will be used exclusively in Mr. Meadows' farming business, which is a commercial activity.

In this case, because the situation satisfies the criteria given in paragraph 88, Mr. Meadows will be entitled to claim an ITC pursuant to section 169 for the full amount of tax paid on the acquisition of the farmland.

### Example 2

Mrs. Land carries on a farming business as a sole proprietor and is registered for the GST/HST. Mrs. Land, her husband and their daughter will be signing an agreement of purchase and sale to purchase additional farmland. When the sale closes, title to the farmland will be registered in the name of Mrs. Land, Mr. Land and their daughter as joint tenants. The joint tenancy is created solely for estate planning purposes. Neither Mr. Land nor the daughter is actively involved in the farming operation, and neither of them earns or reports any business income from the farming operation on his or her own account for income tax purposes. However, Mrs. Land pays her husband a salary for the bookkeeping services he provides with respect to the farm. Mr. Land is not registered for the GST/HST as he is a full-time employee at a local factory. However, the daughter is registered for the GST/HST as she operates a separate business on her own. The farmland will be used exclusively in Mrs. Land's farming business, which is a commercial activity.

As this case satisfies the criteria given in paragraph 88, Mrs. Land will be entitled to claim an ITC for the full amount of tax paid on the acquisition of the farmland.

### Example 3

Mr. Fields carries on a farming business as a sole proprietor and is registered for the GST/HST. Mr. Fields signed an agreement of purchase and sale to purchase additional farmland. The sale closed and title to the farmland was registered in the name of Mr. and Mrs. Fields as joint tenants solely for estate planning purposes. Mrs. Fields is not actively involved in the farming operation, and does not earn or report any business income from the farming operation on her own account for income tax purposes. However, prior to the acquisition of the farmland, Mrs. Fields registered for GST/HST purposes. Mrs. Fields claimed an ITC for half of the total tax paid on the acquisition of the farmland. The farmland is used exclusively in Mr. Fields' farming business. Mrs. Fields has applied to have her registration cancelled. Mrs. and Mr. Fields have agreed in writing not to claim an additional ITC for the amount of tax originally claimed as an ITC by Mrs. Fields.

Since all four conditions for the application of the CCRA's position on the acquisition of farmland in joint tenancy are met in this case and Mrs. Fields was registered solely to claim an ITC for the tax paid with respect to her joint tenancy interest, her registration will be cancelled. Mrs. Fields will not be required to repay the ITC claimed by her on the acquisition of the farmland, provided Mr. Fields does not claim any additional ITC with respect to the tax paid on the acquisition of the farmland.



**Enquiries**

If you wish to make a **technical enquiry** on the GST/HST by telephone, please call one of the following toll-free numbers:

1-800-959-8287 (English service)  
1-800-959-8296 (French service)

**General enquiries** about the GST/HST should be directed to Business Enquiries at one of the following toll-free numbers:

1-800-959-5525 (English service)  
1-800-959-7775 (French service)

If you are in the Province of Québec, please call the following toll-free number:  
1-800-567-4692 (Ministère du Revenu du Québec)

All GST/HST memoranda and other Canada Customs and Revenue Agency publications are available on Internet at the CCRA site <http://www.ccr-aadrc.gc.ca/> under the heading "Technical Information" in "Tax".

## APPENDIX A

### Guidelines for determining if capital real property is used primarily in a business

1. Capital real property must be used, or held for use, for one or more purposes at all times. In other words, capital real property of an individual or personal trust cannot be regarded as having no use.
2. For purposes of the GST/HST, primarily means more than 50%.
3. When determining if land that is capital real property of an individual or personal trust is used primarily in a business rather than primarily in non-business uses immediately prior to its sale, consideration must be given to all uses of the land throughout the time it is owned by the individual or personal trust.
4. If there is no evidence of personal use, this would suggest business use and conversely, if there is no evidence of business use, this would suggest personal use.
5. At the time of acquisition, there may be an intention to use the property primarily for one use, and secondarily for another.
6. If an individual or personal trust has concurrent business and non-business uses of capital real property, it is necessary to determine if the property is used primarily in business or non-business uses.
7. The following are some of the factors to consider when determining if land is used primarily in a business carried on by an individual or personal trust immediately prior to its sale. This list is not exhaustive. There could be other factors not listed here that may be relevant in a particular circumstance. Note that each factor considered separately may not support the same conclusion. Therefore, the determination as to how land is used primarily is generally not based upon a single factor, but rather upon a weighing of all factors, although in some cases, some factors could be more significant than others in making such a determination. Factors to consider include:
  - the extent to which land is employed for, or dedicated to, one or more business or personal uses measured by reference to land area used, value of land used, or time spent in relation to the land used;
  - the extent to which improvements to the land are employed for, or dedicated to, one or more business or personal uses measured by reference to improvement area used, e.g., floor space, size of the improvement or part used, value of the improvement or part used or time spent in relation to the improvement or part used;
  - the other resources, i.e., inputs, employed for, or dedicated to, one or more business or personal uses such as costs incurred, attention and effort devoted, time spent, etc.;
  - the output or expected output from one or more business uses as compared to one or more personal uses;

- legal restrictions such as land use regulations or zoning bylaws;
- the likelihood of the individual's stated use or intended use of the property. Such likelihood may be viewed with regard to the property's size, value, and the present uses of comparable properties.

8. The following examples use the preceding factors to determine whether or not capital real property is being used primarily in the course of a business carried on by an individual immediately prior to the sale of the land by the individual.

### Example 1

Ms. Cook operates a restaurant. The building where the restaurant is located also contains a single-unit residential complex that she occupies as a place of residence. Since Ms. Cook anticipates future expansion of the restaurant, she purchases the vacant lot adjacent to her property. On occasion, she parks her vehicle on the lot. However, after she buys the vacant lot, there is an economic recession and her restaurant business declines. She makes no improvements to the vacant lot. Finally, Ms. Cook decides to sell it.

In this situation, the vacant lot is capital real property since it was not acquired for the purpose of resale. At the time of acquisition, the intended use of the property was exclusively for business purposes, i.e., in relation to Ms. Cook's restaurant business. Although there was some personal use of the property throughout the time the property was held, the amount of use was minimal in relation to the intended business use. Moreover, based upon additional information, the likelihood of Ms. Cook acquiring the vacant lot primarily for her personal use as a parking space is very low for a number of reasons: the value of the land far exceeded the cost of comparable parking spaces in the immediate area, the size of the lot made it unreasonable for such a limited use, and the zoning would not have permitted such use other than on an interim basis. For these reasons, the sale of the vacant lot would be a taxable supply since paragraph 9(2)(a) of Part I of Schedule V would exclude it from exemption under section 9 and no other exempting provision applies.

### Example 2

Mr. Park acquired 25 hectares of land of which 10 hectares formed a wood lot and 15 hectares were scrub land. Mr. Park intended to selectively log/harvest the treed area and to construct a single-unit residential complex for use as his primary place of residence. Mr. Park, who is involved in the logging industry, realised his intentions. After two years, both the logging and the house were completed. Mr. Park continued to live there for another year before selling the entire property.

In these circumstances, GST/HST applies to the sale of the property in the following manner:

- Under the provisions of subsection 136(2) there are two separate supplies: 1) the single-unit residential complex, and 2) the remaining land not included in the residential complex<sup>15</sup>.

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Footnote<sup>15</sup>

In the absence of legal restrictions such as minimum lot size or functional considerations such as needing additional land for road access, the amount of land considered to form part of the residential complex, i.e., the amount of land considered to be reasonably necessary for the use and enjoyment of the residential unit as a place of residence, would be restricted to a half hectare. See paragraph 58 in the main document.

## 19.5 Land and Associated Real Property — Appendix A

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- The sale of the single-unit residential complex is exempt under section 2 of Part I of Schedule V.
- The sale of the land not included in the residential complex is not exempt under section 9 of Part I of Schedule V. It is excluded due to the provisions of paragraph 9(2)(a), since the only identifiable use of the land not included in the residential complex is in the logging business. There is no evidence of personal use.

### Example 3

Ms. Brown owns 20 hectares of land that is used for hay farming and for keeping horses for recreational use. The facts of her property use are as follows:

- land use:
    - 15 hectares are dedicated to hay farming and includes a building for hay storage,
    - 5 hectares are dedicated to the horses and includes a riding ring, stable, pens and grazing areas.
  - value of improvements:
    - farming—\$25,000,
    - horses—\$75,000.
  - value of land:
    - all parts of the land valued equally.
  - distribution of time and effort:
    - 25% on farming activity
    - 75% on horses and related activity.
  - output:
    - 65% of hay sold in the farming business
    - 35% of hay used to feed horses.
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## 19.5 Land and Associated Real Property — Appendix A

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Ms. Brown decides to sell her property. In examining the facts of her situation, there is no predominating factor that determines whether the property has been used primarily for business use or primarily for personal use. The area of land use and output (i.e., hay production) support business use, while the value of improvements and the amount of time and effort spent support personal use. However, as 35% of the hay is used to feed the horses, more than one-third of the indicators that would appear to support business use are in fact directed to personal use. The result is that the balance of the factors shifts in favour of primarily personal use. Consequently, the supply of the property will be exempt under section 9 of Part I of Schedule V.

## APPENDIX B

### **Determining if there is a reasonable expectation of profit in the context of paragraph 9(2)(a) of Part I of Schedule V**

1. The discussion in the next paragraphs is expressed in terms of an individual's activities. These remarks apply equally to the activities of a personal trust as defined in subsection 123(1) of the Act.
2. A determination of whether or not an individual has a reasonable expectation of profit must be based on an analysis of all the facts and an assessment of the activities actually undertaken by the individual. Such a determination cannot be made solely upon the fact that the individual is engaged in particular activities with the intent of gaining a profit from the activities. Rather, in addition to the individual's intention to profit, there must be an objective determination as to whether the profit expectation is reasonable under the circumstances. Determining if an activity carried on by an individual constitutes a business with a reasonable expectation of profit requires an analysis of the activity using some or all of the factors below. In assessing the situation against these factors, it is important to remember that it is the "expectation" of profit that is being assessed not the actual realisation of profit. In addition, the term "reasonable" refers to the expectation of profit, and not to whether the profit or profits are reasonable.
3. Generally, the following factors should be considered when determining if an activity engaged in by an individual has a reasonable expectation of profit:
  - the profit and loss experience in past years;
  - the amount of gross income, if any, reported over several years;
  - the length of time over which a profit could reasonably be expected to be shown must be relevant to the nature of the activity, e.g., in the case of a tree farm, the relevant time period might be longer than for a vegetable farm;
  - the extent of activity in relation to businesses of a comparable nature and size in the same locality;
  - the amount of time spent on the activity in question;
  - the individual's qualifications, such as experience, training and education, including eligibility for membership in a professional association;
  - the qualification of the individual for public assistance given to those who are carrying on a business in that field of activity;
  - the individual's intended course of action, as evidenced by efforts showing an intention to make a profit, e.g., the preparation of a business plan;

## 19.5 Land and Associated Real Property — Appendix B

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- the capability of the venture as capitalised to show a profit after charging depreciation, and the development of the operation and commitment for future expansion according to the individual's available resources, including the ability to secure proper and reasonable financing in order to make the venture a viable business capable of showing a profit;
- the degree of effort in promoting and marketing the products or services supplied by the individual as, for example, the registration of a trading name and the opening and maintaining books and records;
- the type of expenditures claimed and their relevance and reasonableness to the activity, e.g., will the expenditure enhance the ability to make a profit; and
- the nature of the product or service supplied, such that it has a profit potential, e.g., a market exists or can be developed.

4. None of these factors is more important than another and generally no single factor determines whether or not an activity is carried on with a reasonable expectation of profit. Each factor should be weighed in light of the whole. The individual's failure to meet any one particular factor will not in itself prevent the individual's activities from qualifying as a commercial activity. However, in certain circumstances only one factor could be sufficient to determine if an individual has a reasonable expectation of profit. For example, an individual may have access to large amounts of capital, may be willing to spend extensive amounts of time on the activity, may have the relevant experience, but if it is clear that there is no market nor potential for a market for the product or services being offered, there is no reasonable expectation of profit.

## APPENDIX C

### Business vs. adventure or concern in the nature of trade

“Business”  
ss 123(1)

1. For GST/HST purposes, a business  
  
“includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment.”

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2. Paragraph 9(2)(b) of Part I of Schedule V excludes from exemption supplies made in the course of a business of an individual or personal trust and supplies to which the election GST 22 applies—*Election to Treat the Tax Exempt Supply of Real Property By Way of Sale by an Individual or Trust as a Taxable Supply*. This election can be made in respect of an otherwise exempt supply made as an adventure or concern in the nature of trade. To determine whether a sale of real property takes place in the course of a business or as an adventure or concern in the nature of trade or neither, for purposes of paragraph 9(2)(b) of Part I of Schedule V, the CCRA will consider the following factors:

- the supplier’s whole course of conduct in dealing with the property;
- the activities undertaken relating to the sale; and
- the characterization of the transaction for income tax purposes.

Each factor will be considered in light of the particular facts of the transaction.

General approach

3. Generally, a sale made in the course of a business may be distinguished from a sale that constitutes an adventure or concern in the nature of trade by the amount of time, attention and resources devoted to the transaction or by the frequency or regularity of similar transactions. In this regard, a sale made as an adventure or concern in the nature of trade usually involves acquiring property on an isolated basis with the primary or secondary intention of resale at a profit and only passive or limited activities related to the resale (i.e., those necessary to facilitate the resale). Regular sales of property or sales made in a business-like manner as demonstrated by extensive marketing and advertising, or the devotion of extensive time, attention and resources to the sale of the property, would normally be considered as sales made in the course of a business. Only in circumstances where the supplier changes or abandons the primary and, where applicable, the secondary intention of resale, would the eventual resale be made neither in the course of a business nor as an adventure or concern in the nature of trade.<sup>16</sup>

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Footnote<sup>16</sup>

The change-in-use rules may apply where the intended use of the property has changed. For a discussion of the change-in-use rules, see Section 19.4.2, *Commercial Real Property—Deemed Supplies*.

## 19.5 Land and Associated Real Property — Appendix C

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### Intention of resale

4. Where property was originally acquired without the primary or secondary intention of resale (for example, inherited property or property acquired solely for personal use), or the primary and, where applicable, the secondary intention of resale was abandoned during the holding of the property (as seen perhaps by a change of use), the subsequent sale of the property generally would not be considered as being made as an adventure or concern in the nature of trade. The CCRA considers that a primary or secondary intention of resale from the time of acquisition to time of disposition is normally a prerequisite for the resale to have been made as an adventure or concern in the nature of trade. If a primary or secondary intention of resale is present, the extent of activities in relation to a particular property as well as the frequency or regularity of similar transactions involving other properties must be examined to determine whether the sale was made in the course of a business or as an adventure or concern in the nature of trade.

### Guidelines Interpretation bulletins IT 218 and IT 459

5. Determining whether or not there is a primary or secondary intention of resale is based on guidelines similar to income tax guidelines that are set out in interpretation bulletins IT-218 and IT-459. An intention to sell is almost invariably present even when a true investment has been acquired as demonstrated by the fact that the property would be sold if circumstances arose making it more beneficial financially to sell the investment than to continue to hold it. Nevertheless, the intention to sell, by itself, is not sufficient to establish that a sale was made in the course of a business or as an adventure or concern in the nature of trade.

6. However, if one of the tests set out in these interpretation bulletins (e.g., the nature of the property, the length of holding period of the property, the taxpayer's conduct and actions while holding the property, and the taxpayer's background) points to a business or an adventure or concern in the nature of trade and if it can be established or reasonably inferred that the supplier's intention was to sell the property at the first suitable opportunity, then such a corroborated intention is viewed as evidence that the sale was made either in the course of a business or as an adventure or concern in the nature of trade. On the other hand, the inability to establish that an intention to sell existed does not preclude a transaction from being regarded as having been made in the course of a business or as an adventure or concern in the nature of trade if it can otherwise be so regarded pursuant to one or more of the tests set out in the interpretation bulletins.

7. For purposes of the application of subparagraph 9(2)(b)(ii) (election GST 22, *Election to Treat the Tax Exempt Supply of Real Property By Way of Sale by an Individual or Trust as a Taxable Supply*), it must also be determined if the sale is a disposition made on account of capital. Where the property is capital real property and the proceeds from the sale would be considered a capital gain or capital loss, as the case may be, for income tax purposes, the sale of the property would not have been made either in the course of a business or as an adventure or concern in the nature of trade. Such a supply would not be eligible for the election.

8. If, however, the sale results in a gain that is business income for income tax purposes because it is a sale made in the course of a business (which, for income tax purposes, includes an adventure or concern in the nature of trade), it is important for GST/HST purposes to determine if the sale was made in the course of a business or as an adventure or concern in the nature of trade.

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Business or adventure or concern in the nature of trade

9. Generally, applying the principles set out in paragraphs 2 to 8 to paragraph 9(2)(b) of Part I of Schedule V would lead to the following conclusions:

Acquired without the intention of resale

- Real property that was originally acquired without a primary or secondary intention of resale and that is subsequently sold by an individual or a personal trust, with only passive or limited activities involved in the sale of the property, would be considered as having been made neither in the course of a business nor as an adventure or concern in the nature of trade. A sale of such real property would be exempt under section 9 of Part I of Schedule V, unless one of the other exclusions to the exemption in section 9 applied.
- Where real property that was originally acquired without a primary or secondary intention of resale is subsequently sold by an individual or a personal trust, and there are activities undertaken with respect to the sale of the property, then, depending on the extent of the activities undertaken, the sale may be considered as having been made in the course of a business or on account of capital. Such a sale would not normally be considered as having been made as an adventure or concern in the nature of trade.

If the activities involved in the sale are minimal, the sale will generally be considered as having been made on account of capital. An example of such minimal activities would be filing a simple subdivision plan for the property in question creating lots similar in size to other lots in the area. If the activities undertaken are required solely for purposes of facilitating the sale, such as providing the minimum amount of services required by existing law, the activities would be considered minimal. If services were installed at a time when the property was intended to be for personal use, they would also be regarded as minimal activities. With such minimal activities, the sale is exempt from GST/HST unless one of the other exclusions to the exemption in section 9 applies, e.g., paragraph 9(2)(c), in spite of the fact that such simple subdivision or minimal services may enhance the value of the land.

- Even where the supplier did not acquire the subdivided land with the intention of resale, once the supplier goes beyond such minimal activities, it may be that the supplier's intention has changed and the sale of the lots is made in the course of a business and, therefore, subject to GST/HST. The supplier's activities may be considered to have been undertaken in the course of a business, which would include sales of the lots, if such activities of the supplier were to include servicing the lots to a greater extent than required by law, or selling the property in a business-like manner as demonstrated by extensive marketing and advertising, or by devoting extensive time, attention and resources to the sale of the property.

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Acquired with intention of resale

- Where real property was acquired originally with a primary or secondary intention of resale, and no activities were undertaken with respect to the sale of the property (other than those to merely facilitate the resale), the sale of the property by an individual or a personal trust would generally be considered as being made as an adventure or concern in the nature of trade. As a result, the sale by an individual or a personal trust would be exempt unless an election is filed under subparagraph 9(2)(b)(ii) to exclude it from exemption or unless one of the other exclusions to the exemption in section 9 applies. If such sales become frequent, the activity may become a business of the individual or personal trust. In this regard, the occupation of the individual or trustees (e.g., whether or not the individual or trustee carries on the business of a builder or a building contractor either as a sole proprietor, as a member of a partnership, or as an employee, officer or director of a corporation) and the number and frequency of single or isolated sales may be factors in determining whether or not the intention of resale is present and in determining if the supply is made in the course of a business or as an adventure or concern in the nature of trade.
- Where real property originally acquired with a primary or secondary intention of resale is sold, and activities were undertaken with respect to the sale of the property, the extent of such activities is important in determining whether the character of the sale has changed from having been made as an adventure or concern in the nature of trade to having been made in the course of a business. Where the buying and selling of the real property are isolated events or are done infrequently, where such events are not connected to other activities of a business carried on by the supplier, and where the activities are minimal or are required solely for purposes of facilitating the sale, the sale of the property is normally treated as having been made as an adventure or concern in the nature of trade.

Business intentions

- If the individual has gone beyond such minimal activities to more extensive ones, such as servicing the lots beyond the services required by law for subdivision approval, or the individual exhibits some of the indicators of a business enterprise, such as establishing a pattern of purchasing and selling real property or engaging in extensive marketing and advertising activities, the sale might be considered as having been made in the course of a business.
- Once there is a business intention in reselling the real property, the sale is not exempt under section 9 of Part I of Schedule V. The fact that such intention may be frustrated does not change the character of the sale as having been made in the course of a business and, therefore, subparagraph 9(2)(b)(i) of Part I of Schedule V applies to exclude the sale from being exempt. If while holding the property after the intention to resell was frustrated, the supplier intended to use the property solely for personal use such that the supplier no longer had the intention of reselling the property, a subsequent sale of the property could be exempt. However, consideration should be given to possibility of section 196.1 applying in such circumstances<sup>17</sup>.

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Footnote<sup>17</sup>

Section 196.1—Appropriation to use as capital property. See the discussion of real property appropriated for use as capital property in GST/HST Memorandum 19.4.2, *Commercial Real Property—Deemed Supplies*.

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### Example 1

Mrs. Forest acquired vacant land a number of years ago for the personal use of her family. Later, she sold the property. No activities were undertaken to enhance the value of the land. The disposition of the land resulted in a capital gain for income tax purposes.

The sale of the property would be considered as having been made neither in the course of a business nor as an adventure or concern in the nature of trade. Accordingly, the election cannot be filed to make the sale taxable. The sale is exempt under section 9 unless one of the other exclusions to the exemption applies.

### Example 2

Mr. Acres inherited vacant land that was used by another person some time ago in the business of farming. He held on to the land for a number of years but did not use it for business purposes. Later, he decided to sell the land. To enhance its value, Mr. Acres severed the property into two lots and serviced the lots to the minimum extent required by law. No other activities were undertaken. The disposition of the land resulted in a capital gain for income tax purposes (in accordance with paragraph 24 of interpretation bulletin IT-218).

The activities of filing the subdivision plan, providing minimum services and selling lots thereunder do not, by themselves, mean that the sale of the land was made in the course of a business, notwithstanding that such subdivision and services may enhance the value of the land. Given that the land in question was inherited, there was no primary or secondary intention to acquire the property for resale, thus, the sale would not be considered as having been made as an adventure or concern in the nature of trade. Accordingly, paragraph 9(2)(b) of Part I of Schedule V does not apply to the sale of these lots and the election cannot be filed to make the sale taxable.

However, if Mr. Acres had provided more than the minimum amount of services or had devoted much time, attention and resources to the project or carried out an extensive marketing and advertising campaign, the sale could be considered as having been made in the course of a business and, therefore, subject to GST/HST.

### Example 3

Mrs. Gardener purchased vacant land with the intent of building a home for her personal use as a place of residence. The lot was serviced as required to be habitable, e.g., water mains, gas pipes. Then Mrs. Gardener's circumstances changed. She was unable to build the home and decided to sell the serviced lot. No other activities were undertaken to make the property saleable. The disposition of the land resulted in a capital gain for income tax purposes. Under the provisions of subsection 9(2) of Part I of Schedule V, the sale of the lot is exempt from GST/HST.

The sale of the serviced lot is considered as having been made neither in the course of a business nor as an adventure or concern in the nature of trade. Accordingly, paragraph 9(2)(b) of Part I of Schedule V does not apply to the sale of the serviced lot and the election is not available to make the sale taxable.

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### Example 4

Mr. Meadows acquires vacant land with the intent of selling it for a profit as soon as possible and sells it within one year. No further activities are undertaken in respect of the land during the time he owned it. The gain on the resale of the property is business income for income tax purposes and, therefore, is subject to income tax on the full amount of the gain (i.e., it is not treated as a capital gain since the venture is considered to be a business for income tax purposes)<sup>18</sup>. Mr. Meadows does not have a history of buying and selling real property. The sale of this vacant land would be considered to have been made in the course of an adventure or concern in the nature of trade.

Accordingly, GST/HST does not apply unless Mr. Meadows files an election in accordance with subparagraph 9(2)(b)(ii) of Part I of Schedule V. Should there be a pattern of such purchases and resales by the individual, then the resale may be considered as having been made in the course of a business for GST/HST purposes and, therefore, subject to GST/HST. The characterization of the sale as either having been made in the course of a business or as an adventure or concern in the nature of trade may also depend on such factors as the occupation of the individual and the number and frequency of such transactions.

### Example 5

Mrs. Land purchases vacant land with the intention of selling it for a profit. There are no municipal or other requirements necessary to service the land in order to sell it. Nevertheless, to enhance the land's value, she subdivides it into two lots and installs the minimal services required by law for subdivision approval. Upon completion of the subdivision and improvements, the land is sold. For income tax purposes, the full amount of the gain is on account of income (and not treated as a capital gain).

The sale is considered as having been made as an adventure or concern in the nature of trade. In such a case, although the gain on the sale is fully subject to income tax, GST/HST applies only if Mrs. Land files an election in accordance with subparagraph 9(2)(b)(ii) of Part I of Schedule V.

### Example 6

Mr. Fields purchases a previously occupied residential complex. He intends to demolish the residential complex, construct a new one, and then sell it. Accordingly, the used complex is demolished, but Mr. Fields is unable to build the new one and decides to sell the property. The proceeds from the disposition of the property are considered business income and not a capital gain for income tax purposes.

Mr. Fields is engaged in the housing construction industry and has established a pattern of buying lots, constructing houses and selling them for the purpose of earning a profit. He is therefore considered to have acquired the property in the course of a business. The fact that the project was not completed does not change the character of the sale of the land from also having been made in the course of a business. Accordingly, GST/HST applies on the sale of the land.

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Footnote <sup>18</sup>

Note that for purposes of the *Income Tax Act*, the term “business” is defined, with certain exceptions, to include an adventure or concern in the nature of trade.

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If Mr. Fields had used the land for personal or other business purposes (such as a parking lot or farming) after demolishing the house, he may be seen as having abandoned his original intention of selling the property in the course of a business. Whether GST/HST would apply on the subsequent sale of the land would depend on the exclusions to the exemption that may be applicable at such time. Such a determination would require examining such factors as the use of the property immediately prior to the sale and the nature of the activities undertaken by Mr. Fields in respect of the sale of the property. For example, do activities undertaken by Mr. Fields constitute a business carried on by Mr. Fields with a reasonable expectation of profit?