



HST rate changes in Atlantic Canada

Does your business have clients or customers in Atlantic Canada?
Whether you ship goods or provide services to them, you may need to know about upcoming Harmonized Sales Tax (HST) rate changes.

The HST is part of the Goods and Service Tax (GST) system and is fully integrated as part of the GST which applies across Canada. In the non-HST provinces and the territories, the GST is 5%. In the HST provinces, the tax rate is higher although the federal portion of the HST is the same 5%.

**ALL OF THE ATLANTIC PROVINCES
WILL BE AT 15% BY OCTOBER
EXCEPT ONTARIO WHICH WILL BE AT 13%**

In most cases, the applicable GST/HST rate depends on the location of the customer. There are some exceptions, but in general, goods shipped to an

HST province must bear tax at that province's HST rate, and services provided to a customer in an HST province must bear tax at that province's HST rate—even if the supplier is in a non-HST province.

Quebec is a special case. It has the Quebec Sales Tax (QST) which is "semi-harmonized" with the GST/HST in that it follows the same rules, but it is not integrated into the GST/HST system. So if you do not conduct business in Quebec, you need not register for QST and charge QST on sales you make to Quebec customers. You charge only the 5% GST.

British Columbia was an HST province but withdrew in April 2013.

From April 2013 through June 2016, the HST provinces and rates were the following:

Ontario	13%
New Brunswick	13%
Nova Scotia	15%
Prince Edward Island	14%
Newfoundland and Labrador	13%

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AROUND THE COURTS



Can you sue the CRA?

Taxpayers who have been treated badly by the Canada Revenue Agency often wonder whether they can sue the Agency. The answer is yes, but it's important to realize two things first.



TO BEGIN, suing the CRA does not necessarily have anything to do with contesting a tax assessment, and the Agency's actions are almost always irrelevant when you are appealing your assessment. The fact that the auditor did things he or she should not have, or that Collections officials overstepped their authority, or that a supervisor did not return your calls before the assessment was issued, generally has **no bearing** on your appeal, and the judge will ignore these issues. **The only thing that matters on an appeal to the Tax Court of Canada is whether the assessment is correct.** (There are some situations where—if the CRA obtained information illegally—it cannot use that information in Court, but this is generally limited to criminal prosecutions where you are protected by the *Charter of Rights*.)

SECONDLY, if Agency officials were acting within the bounds of their authority—and were not acting maliciously—you will not succeed in a lawsuit simply because they did something wrong. You will normally have to show negligence or malice.

A lawsuit against the CRA for negligent or malicious acts can be brought in either Federal Court or the province's Superior Court. Note that there may be short time limits within which you must start your lawsuit, and that these can vary by province—based on the *Crown Liability and Proceedings Act*.

Below are three examples of lawsuits that have succeeded.

Of course, there have been many other lawsuits where the taxpayer was unsuccessful!

The Chhabra case

Federal Court of Appeal, 1989

The Court awarded damages—including exemplary damages, which are similar to punitive damages—for malicious action on the part of Revenue Canada Collections officials in trying to collect taxes owing.

The Luo case

Ontario Superior Court, 1997

An employee of the Unemployment Insurance Commission negligently provided an individual with wrong information about entitlement to benefits, and the individual relied on that information to his detriment. The government was found liable.

The Groupe Enico and Archambault case

Quebec Court of Appeal, 2016

This was a lawsuit against Revenu Québec (RQ), which administers the GST and Quebec Sales Tax in Quebec. RQ Collections officials proceeded with collection action to seize hundreds of thousands of dollars from a company, even though the Audit group which had issued the assessments had advised Collections that the assessments were wrong and were going to be substantially reduced. RQ was found to have been negligent and malicious in various ways. The total damage award to Archambault and his company was \$3 Million—including \$1 Million in punitive damages—plus legal fees. This case was decided under the *Quebec Civil Code*, unlike the common law which applies in all other provinces, so it is uncertain how applicable it is to other provinces. ■

Making donations to US charities

If you make donations to charities located in the United States, they may be eligible for a tax credit on your Canadian tax return in one of four ways.



OPTION 1

Donations to many foreign universities qualify as charitable donations in Canada.

The institution must be included in Schedule VIII of the *Income Tax Regulations*, which lists universities that are known to have significant numbers of Canadian students and that have applied to be on the list. Schedule VIII lists 552 institutions, of which 450 are in the United States. The list runs alphabetically from Abilene Christian University (Abilene, Texas) to Yeshiva University (New York, New York), and includes virtually every important US university and college. You can find Schedule VIII at the end of the *Income Tax Regulations* on www.canlii.org (which is a handy source of all Canadian laws, regulations and reported Court cases).

It's worth noting that the Canada Revenue Agency has a measure of control over foreign universities for purposes of Canadian donations. If the CRA determines that a foreign university is not complying with the requirements as to how the funds should be used, the CRA can "de-register" the university and it will no longer qualify for donations. Thus, for example, if a US university is involved in a scheme to issue donation receipts for "donations" that are really payments for tuition—that are paid back to the donor or routed to causes that are not part of the university's normal function—it could be de-registered and no longer qualify as a Canadian donation.

OPTION 2

If you have US-source income, donations to any other US charity will generally qualify for Canadian credit.

This rule is found in Article XXI, paragraph 6 of the Canada-US tax treaty. The charity must be one that "could qualify in Canada as a registered charity if it were a resident of Canada." Donations can be claimed for up to three quarters of your "income arising in the United States." This could include business income from US clients, or investment income arising in the US such as dividends or interest on US stocks or bonds within your Canadian brokerage account. The CRA may have a more restrictive interpretation—such as requiring you to be operating a business in the US—but the Courts have yet to determine the scope of this rule.

The CRA has stated that any organization that qualifies under section 501(c)(3) of the US Internal Revenue Code will qualify for this relief. If you want to know whether a particular organization you are donating to qualifies under section 501(c)(3), you can search for it on www.guidestar.org

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HST RATE CHANGES CONT'D FROM P. 1

Starting July 2016, both New Brunswick and Newfoundland and Labrador raised their HST rate to 15%.

(Technically, the change was made by federal regulations passed by the federal Cabinet and published in the *Canada Gazette* before 1 July 2016.)

Starting October 2016, Prince Edward Island is similarly raising its HST rate to 15%.



Thus, as of October, all the Atlantic provinces will be at 15%. Only Ontario will have a different HST rate, at 13%.

New Brunswick, Newfoundland and Labrador and Prince Edward Island have all published transitional rules to explain the timing of the change.

The regulations to implement these rules are available to the public in the *Canada Gazette*. You can also find the details of the transitional rules at:

New Brunswick:

tinyurl.com/nb-hst-13-15

Newfoundland and Labrador:

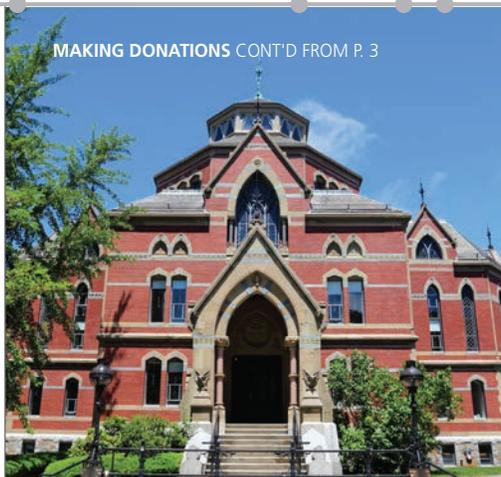
tinyurl.com/nl-hst-13-15

Prince Edward Island:

https://www.princeedwardisland.ca/sites/default/files/publications/notice_-_2016-06-16_0.pdf

In general terms, if amounts were billed or paid before July 1, then the old (13%) rate applied. ■

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OPTION 3

Some foreign charities have a "Canadian Friends of..." or similarly-named organization in Canada, which is registered as a Canadian charity.

The "Canadian Friends" can receive donations and use them to operate projects that benefit the foreign charity, and will issue you a Canadian tax receipt which you can use on your Canadian tax return like any other Canadian charitable donation. If you are considering a donation to a US charity and cannot obtain Canadian tax relief under either of the first two ways, ask the charity if it has a parallel Canadian charity that can accept donations for it, or check the CRA web site at cra.gc.ca/charities

OPTION 4

If you live near the border and commute to a place of employment or business in the US...

...and if this place of employment is your chief source of income for the year, then you can treat donations to US charities as though they were to Canadian charities. This rule is found in subsection 118.1(9) of the *Income Tax Act*. ■



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