



## **Goods and Services Tax ("GST") on Upgrades to New Residential Units January 15, 2008**

Frequently, after a purchaser of a new residential unit enters into an agreement of purchase and sale with a builder, the purchaser will enter into a second agreement with the builder regarding certain changes or upgrades to the unit. This usually occurs before possession and ownership of the unit are transferred. There is an issue as to how to calculate the GST on the upgrades and whether the cost of such upgrades should be included in the calculation of the New Housing Rebate and land transfer tax. This issue is of particular importance now, since the timing of the GST liability will affect whether the purchaser will benefit from the recent GST rate reductions.

In general, regardless of when the purchaser is required to pay an additional amount to a builder in respect of an upgrade to a residential unit, GST in respect of the additional amount is payable at the same time and at the same rate as the GST in respect of the supply of the residential unit. In other words, the GST on both the original agreement and the agreement related to upgrades will be determined based on the date that the original purchase and sale agreement was signed and the date(s) that ownership and possession of the unit are transferred to the purchaser. The aggregate GST on the original purchase and the cost of the upgrades should be used in both the calculation of the GST New Housing Rebate and the land transfer tax on the purchase.

In some unusual situations, the upgrades may not be considered to be related to the original purchase and sale agreement, or the purchaser and the builder may renegotiate the terms of an existing agreement for the purchase and sale of a residential unit and enter into a new agreement, such that the obligations under the previous agreement no longer prevail. You should contact your advisor at Goldfarb, Shulman, Patel & Co LLP to discuss the GST implications of these situations or if you have any other questions.