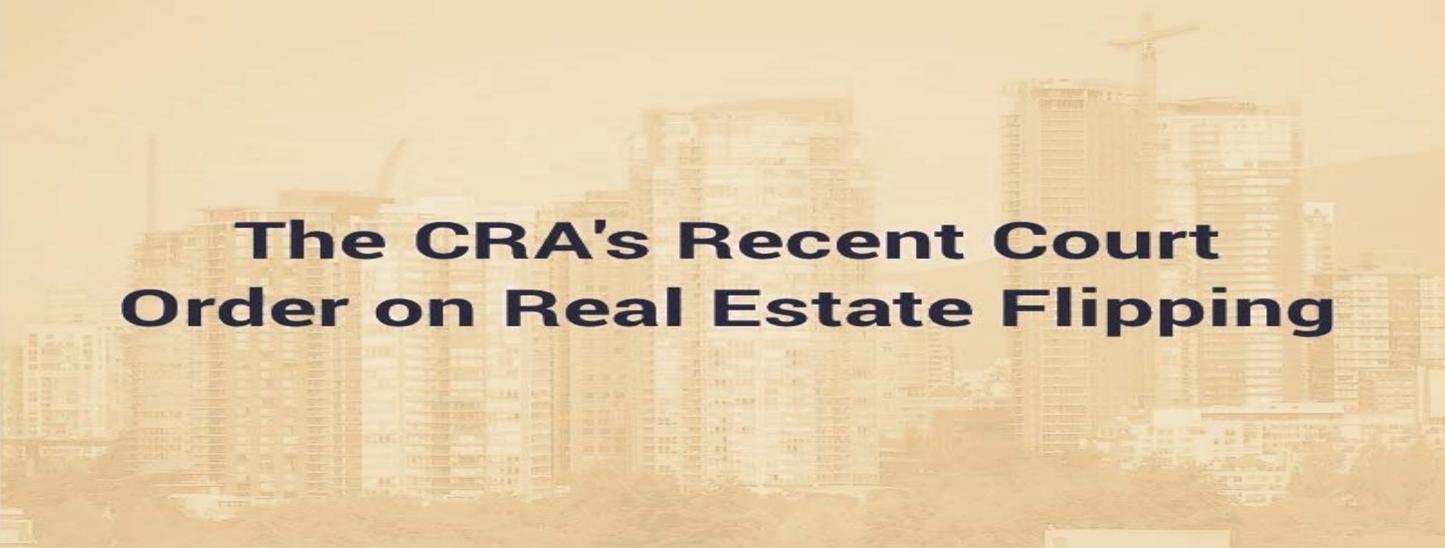




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## **CRA found nearly \$600 million in unpaid tax in real estate sector? What are the common issues?**

A background image of a city skyline with several high-rise buildings and a construction crane, overlaid with a semi-transparent orange filter.

# **The CRA's Recent Court Order on Real Estate Flipping**

A newspaper recently disclosed that CRA has found \$600 million in unpaid taxes in Ontario and British Columbia's real estate sector over the past 3 years and has levied \$47 million in penalties. Furthermore, about 90% of the unpaid taxes in Ontario were related to GST. This high percentage is somewhat unique in Ontario and is aimed by CRA likely for a simple reason: the 13% HST on the selling price could easily be more than the income taxes, as the income taxes are only based on the profits. So, what were the common items that taxpayers should be aware of in order to avoid mistakenly fall into the traps?

### **1. Flipping houses or condos or assignments**

- The profits are generally considered to be fully taxable as business income, not a capital gain which only 50% is taxable;
- The principal residence exemption does not apply to property flipping; and
- These transactions would be subject to GST/HST. It is the CRA's view that both the markup and deposit originally paid to the builder are taxable for GST/HST purposes.

### **2. Unjustified new housing rebate claims**

- This rebate applies to an individual that acquires a new home as a primary residence of that individual or a relative of that individual. Where multiple individuals joint together to purchase a new home, the use of the home as a primary residence must be satisfy by all the individuals. For example, if a buyer needs an Uncle to

be added to title (with no intention to use as his primary place of residence) in order to qualify for a mortgage on closing; since Uncles, Aunts, Nieces, Nephews, Cousins do not qualify as immediate family members for the rebates purpose and therefore the condition for the rebate is not met.

### 3. Tearing down, build and sell

- The sale is taxable and subject to GST/HST, the builder must collect the GST/HST from the purchaser unless the purchaser is a GST registrant and not an individual, in which case the purchaser must self-assess the GST/HST.

### 4. Build and lease as place of residence

- The builder would be liable for the GST/HST under the so-called "self-supply rule" based on the fair market value of the property at the time the house is occupied as a place of residence of completion; however, the builder would be able to claim the input tax credit ("ITCs") on the GST/HST paid on the construction of the residential property.

### 5. An individual builds their own house

- When the builder occupies the house as their place of residence, the builder must self-assess and remit GST/HST based on the FMV of the house at the time the builder first occupies it, unless the builder did not claim an ITC in respect of the construction of the house.

CRA indicated it uses various advanced risk-assessment tools, including third party data to detect non-compliance. There are signs that CRA may be considered as a high risk of tax evasion, including but not limited to mismatch between reported income and lifestyle, frequently changing principal residence ("PR") with PR exemption, unreported T1135/worldwide income but with foreign sources, unreported GST, and property flipping etc.