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Development Group



Government Barriers to Developing & Purchasing on First Nations leased land
Briefing notes prepared to The Standing Committee on Finance
November 20, 2013

1) GST/HST assessed on Multi Family Residential developments under First Nations leased land

Issue:

Canada Revenue Agency (CRA) is taking the position that any multifamily residential development completed on First Nations leased land is deemed to be a rental property and not a sale for both the land and the buildings.

Impact:

Any developer who builds multifamily residences on leased land, such as the Talasa condominiums at Sun Rivers, is at a disadvantage over developing on provincial land. Because a development is deemed a rental property, all GST/HST is due and payable on the estimated market value of the entire complex at the time the building is substantially complete. The GST/HST rebate is also to be claimed at this time. Therefore, CRA collects net GST/HST of 3.2%/5.2% on an entire condominium for sale, even though all of the units have not been sold.

Developers are penalized or discriminated by having to prepay hundreds of thousands in GST/HST on revenue which has not yet occurred. Market values change and condominiums in this economy can take up to 3 years to sell which adds an even larger burden on the developer. Please see the attached Schedule A which reflects the difference between First Nations leased land and provincial leased land.

Suggested resolution:

There is no definition in the law for leased land governed by federal law which needs to be rectified. The GST/HST law is missing an interpretation for multifamily developments on First Nations or federally regulated leased land. The definition simply needs to be amended under subsection 123(1) to add that a multifamily residential condominium unit includes both a strata plan registered under the laws of a province as well as under the First Nations Land Registry or other federally regulated land registries. This would remove the discriminatory application of the MURP status (Multi Use Residential Property) and treat the Multifamily condominium unit on First Nations Leased Land the same as on any Non-First Nations Leased Land.

We have a quotation from Mr. David Douglas Robertson, Partner of Couzin Taylor LLP, Tax Counsel dated November 26, 2011 which states:

"Under normal circumstances, each of the residential units in the complexes would have qualified for GST purposes as a "residential condominium unit" but for the fact that to qualify as a "residential condominium unit", the unit must be designated or described as a separate unit on a registered



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condominium or strata lot plan or description, or a similar plan or description registered under the law of a province. As these complexes were constructed on native reserve land, the strata plan describing each of the units in each of the buildings were not registered under the law of a province (i.e. British Columbia) but rather were registered under federal law in the native land registry maintained by the Department of Indian and Northern Affairs in Ottawa."

"Finally we do wish to note that this unique circumstance arises due to the fact the Excise Tax Act discriminates between condominium buildings built on leased land governed by provincial law and condominium buildings built on native reserve lands, which is governed by federal law. If the definition of "residential condominium unit" for GST/HST purposes as set out in subsection 123(1) were amended to refer to a strata plan registered under the laws of a province or the First Nations Land Registry, buildings like those constructed by Cambri/Talasa #1 LLP and Cambri/Talasa #2 LLP would be treated the same as condominium buildings constructed on leased land not located on first nations reserve lands."

Other information:

The Cambri/ Talasa Group of Companies (a non-First Nations developer) have undergone numerous audits of GST on Revenue, GST/HST rebates, GST/HST ITC's & Limited partnership reviews as a result of this missing definition. All of the GST/HST rebates were held and reviewed by CRA. As a result of these various audits they have undergone losses of cash flow on rebates from early 2010 until July 2012 when refunds were issued. After long battles with CRA and over \$100,000 in legal fees, we had to finally settle on the MURP status because prior to that we had been classified as a MURP for the payment of GST but were being classified as a seller for the GST rebate. At lease with the consistent application of the tax law, we at least received our rebates monies back. To this date we are still involved with the fairness act on approximately \$20,000 in interest overcharged as a result of filing and re filing after audited assessments.

2) BC First-Time New Home Buyers' Bonus

Issue:

British Columbian First Time New Home buyers are being denied the provincial bonus on their purchases because of the assessed GST/HST as noted in 1). CRA assessed the developer to prepay the GST/HST before the units were sold.

Impact:

Young adults who purchased a NEW condominium in Talasa were either denied the \$7,500 to \$10,000 bonus, or received the bonus only to have it retracted and instant repayment demanded. The province denied the bonus on the technicality that because the developer prepaid the HST on the vacant condos



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prior to the period of March 2012 to March 2013, the buyers did not pay the tax, although the equivalent tax was included in the price of their condominium (in effect they did pay the tax). This does not reflect well on Talasa, Sun Rivers, the Kamloops Indian Band nor the government as it directly affects young people in our society who have enough troubles struggling to buy a home. Based upon conversations with Steve Pleva, Director of Income Tax Programs for the Province of B.C., there are approximately 300 bonus applications denied as a result of leased land. That is \$2.5 to \$3 million denied.

Suggested resolution:

The HST prepaid by the developers should be reviewed, retracted so that accurate tax can be filed and assessed accordingly. Then the Province of British Columbia can see that the tax has been paid by the developer on behalf of each individual at the time of purchase and the individual can receive their bonus. At the very least, the CRA should advise the province of the misinterpretation of the tax law and notify the province that the HST was in fact paid by the purchaser on an equivalent basis and should receive the BC First Time New Home Buyer's Bonus for any condominium units sold between the period of March 1, 2012 and March 31, 2013.

Other information:

We have been in contact with numerous provincial & federal constituents, The Minister of Finance for the province of BC, Steve Pleva, the Director of Income Tax Programs and the Honorable Christy Clark about the unfairness of their position of these First Time New Home Buyers. We had correspondence delivered not only to the province, but the Kamloops Indian Band, Sun Rivers Developments Inc. and the Canadian Home Builders Association of BC (CHBA). CHBA was instrumental in helping the province design this bonus program so that BC new construction could be stimulated by allowing young and less fortunate adults to purchase new homes in BC. They are very upset that the intention of the bonus has been disqualified because of the acquisition of a brand new condominium on First Nations leased land.

3) Indian Land Registry delays in property transaction registrations and additional costs

Issue:

First Nations pursuing land development are competitively disadvantaged by the delays in property transaction registrations and the cost of insurance for every buyer who purchases on First Nations lands. Minister Valcourt committed to a process to improve the service, it remains at a commitment of



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10 working days and more quickly if there is urgency. 10 working days is a competitive disadvantage and costly for the entire transaction network.

Impact:

Loss of Business - Fee simple land title systems operate at the speed of business and routinely register property transactions with 1 - 2 days. The Indian Land Registry system however is unreliable; delays cause uncertainty in the transaction network (i.e. sellers, developers, First Nations, buyers, bankers & insurance companies).

Loss of Trust in doing business with First Nations - Uncertainty increases cost. Registration times range from 3 - 30 days and at times have been as long as 60 days. The market standard is 2 days.

Increase in costs - Buyers pay an additional \$350 - 500 per transaction for gap insurance to cover the gap in registration time so they can meet their contractual obligations and move into their homes. Buyers also pay higher legal fees as a result of the much larger volume of registration documents required by the Indian Land Registry versus fee simple. The additional burden of knowledge that Canada's law society needs on the processes required by the Indian Land Registry has also caused major delays in the transfer of ownership.

e.g. The Talasa development just completed the registration of one condominium unit in the Land Title Registry that transacted on May 3, 2013. The frustrated transaction was a convoluted result of an inexperienced notary, an inexperienced lender and the missing documents being held at the Kamloops Indian Band because they could not process in the Indian Land Registry without the regulatory requirements. The purchaser paid for her condominium but did not have legal title to it for 6 months. The purchaser was also completely unaware that she did not legally own the unit until now.

Suggested resolution:

Ottawa implemented a very successful e-registration pilot project resulting in 1 - 2 day registrations. This was cancelled and the registration process was returned to the archaic system in the BC regional office which has not overseen this function in the past.

Re-instate the e-registration system with a maximum commitment to 2 day approvals and reduce the necessary paperwork to complete the registration. Support the First Nations in achieving competitiveness in the business environment.

Other information:

Numerous letters on the issue have been sent from Chief Shane Gottfriedson, Kamloops Indian Band and Sun Rivers Golf Resort Community to Minister Valcourt & Minister Duncan, AANDC Mr. Allan Tallman, Registrar of the Indian Land Registry, and Eric Magnuson, Regional Director General AANDC over the past 3 years.



**COMPARISON EXAMPLE OF 3 CONDOS ON FIRST NATIONS FEDERAL LEASED LAND VERSUS PROVINCIAL LEASED LAND
(For informational purposes only)**

Navarro Building Comparison - Cambri/Talasa #1 LLP:

	REVENUE	GST	GST REBATE	NET GST
GST filed and paid December 2009 filing:				
31-Jan-10	13,603,800	680,190	238,162	442,028
If assessed the same as provincial leased land				
Actual Condominium Unit Sales:				
2009	8,124,500	406,225	146,241	
2010	3,522,036	176,102	63,397	
2011	256,686	12,834	4,620	
2012	300,388	15,019	5,407	
2013	771,221	38,561	13,882	
UNSOLD	Estimate	11,434	4,116	
	<u>13,203,513</u>	<u>660,176</u>	<u>237,663</u>	422,512
				<u>Net estimated overpayment of GST</u>
				<u>19,515</u>

Alamar Building Comparison - Cambri/Talasa #2 LLP

	REVENUE	GST	GST REBATE	NET GST
GST filed and paid June 2010 filing:				
31-Jul-10	19,225,600	961,280	334,720	626,560
If assessed the same as provincial leased land				
Actual Condominium Unit Sales:				
2010	14,304,300	715,215	257,477	
2011	2,595,832	129,792	46,725	
2012	515,504	25,775	9,279	
2013	799,903	39,995	14,398	
UNSOLD	Estimate	16,468	5,928	
	<u>18,544,899</u>	<u>927,245</u>	<u>333,808</u>	593,437
				<u>Net estimated overpayment of GST</u>
				<u>33,123</u>

Paloma Building Comparison - Cambri/Talasa #3 LLP

	REVENUE	HST	HST REBATE	NET HST
GST filed and paid December 2011 filing:				
31-Jan-12	18,435,700	2,212,284	1,253,646	958,638
If assessed the same as provincial leased land				
Actual Condominium Unit Sales:				
2011	4,635,589	556,271	315,220	
2012	9,731,514	1,167,782	661,743	
2013	2,387,833	286,540	162,373	
UNSOLD	Estimate	150,399	85,226	
	<u>18,008,263</u>	<u>2,160,992</u>	<u>1,224,562</u>	936,430
				<u>Net estimated overpayment of HST</u>
				<u>22,208</u>