



HST misconception a sleeping giant

Not all condo fees exempt from harmonized sales tax

Friday, June 23, 2017

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Income tax considerations have received a lot of attention lately in Canadian condominium corporations. Meanwhile, it looks like another type of tax has been flying under the radar and could become a potentially significant liability for condominium corporations, boards of directors and management companies who may be unaware of or even ignoring the issue.

HST or harmonized sales tax is a term not normally associated with condominium corporations. That may be due to some misleading articles and misinterpretations of the current law in Canada over the past decade. This article will focus on clarifying in general terms the HST rules as they relate to condominium corporations in Canada. The objective is to raise awareness so that owners, boards of directors and management can consider whether they may be affected by the issue. If so, then they should most certainly seek out professional advice.

The largest source of the confusion has been with some previous pronouncements that “condominium fees in Canada are exempt from HST.” This statement is much too general: the law does exempt condominium fees, but only “residential” condominium fees. Therefore, what people often do not realize is that, generally, condominium fees on commercial units are not exempt and are in fact taxable.

Complicating the matter are other types of revenues that are also taxable and have become more prominent over the past few years. Revenues such as guest suite and party room rentals, roof rentals for telecommunications equipment and certain types of parking rentals may also be subject to HST. This is not a complete list; there are additional revenues that condominium corporations earn and will need to be considered as well. These “other” or “ancillary” revenues can add up to thousands of dollars per year and are often overlooked when condominium corporations assess whether they are required to collect and remit HST.

So what are the rules to determine whether a condominium corporation must register and charge HST on these previously mentioned sources of revenue? The legislation has a “small supplier” rule, which applies to non-profit organizations. Since condominium corporations are generally considered non-profit organizations, they do not have to register and collect HST if their revenues, referred to as “taxable supplies,” are less than \$50,000 for the year. Therefore, each condominium corporation has to add up all of these taxable supplies. If the total exceeds \$50,000 on an annual basis the condominium corporation has to apply for a tax registration number and begin to collect and remit HST.

While many condominium corporations will fall well under this threshold, there is an exceedingly large number of condominium corporations that will find themselves above the threshold for exemption and that may have never even considered the implications. To examine the potential tax liability, it’s necessary to understand the system of collecting and remitting HST.

If a condominium corporation is in Ontario and exceeds the threshold for exemption, it would have to collect tax of 13 per cent HST on all commercial condominium fees and any other taxable supplies. However, they may be able to claim “input tax credits,” which are essentially some of the HST that they have paid out on their expenses, such as various operating costs and other repair and replacement projects.

There is a lot of uncertainty as to what input tax credits condominium corporations can claim. The considerations vary depending on the situation. Some of the questions that arise are: What percentage of total HST paid by the corporation can be claimed as an input tax credit? How should expenditures such as reserve fund charges be handled when they may or may not relate directly to the taxable revenues?

Where a condominium corporation has residential and commercial units or activities, it would be considered a mixed-use entity for HST purposes. There are various rules in the law that need to be considered with respect to claiming input tax credits for mixed-use entities, so it's critical to seek professional advice. Ultimately, the condominium corporation must remit the net HST to the government, usually on a quarterly or annual basis.

So why call this a "sleeping giant" of an issue? Because it appears as if there are many condominium corporations in Canada that are clearly well above the small supplier threshold and are not registered and are not collecting and remitting the tax. In some cases, they may have exceeded the threshold for years without considering the tax.

There are also various strategies that a corporation can take to come into compliance with the law, such as making a voluntary disclosure. Therefore, if a corporation appears to be in a position where they are required to collect and remit HST they should immediately seek professional advice.

Whatever direction a board or management chooses, continuing to ignore the issue and hoping it will go away is a risky strategy. If this goes unreported the corporation could be held liable for the unreported tax as well as penalties and interest. The government normally has a specific period of time to reassess a tax return, but a corporation is always liable for HST it has never reported. This could amount to many thousands of dollars and it can be resolved by registering and collecting the tax. While accounting for and collecting the HST are added burdens on management, a sudden assessment for unreported and uncollected taxes represents a much larger burden to the corporation.