

HARMONIOUS TAXES?

“Harmonious”: *har-mo-ni-ous*. *Adj. Having component elements pleasingly or appropriately combined.*

One of the most important measures in the Ontario Budget 2009 brought down by the Liberals is the harmonization of the Retail Sales Tax and the Goods and Services Tax ("HST"). The stated goal of the combination of the two taxes is to move from the embedded RST model, which is hidden in the production cost of goods, to a value added tax structure, with the consumer benefitting from the resulting lower prices. As if.

One result of the combination of the two taxes is to impose the combined 13% tax rate on the retail price of good and services which were not previously subject to RST. The result is not quite a pleasing combination. For example, it is estimated that the RST embedded in the cost of a new home is 2 to 3%. Adding the 8% RST will therefore result in the imposition of an additional 5 to 6% of tax on the cost of a new home in excess of \$500,000. (There is a planned rebate system for homes under \$500,000). This is besides the additional tax on legal fees, insurance premiums and other costs previously exempt from RST. It remains to be explained how the consumer is benefitting.

The Liberals have left the new home industry with a great deal of uncertainty as it has not established transitional rules or grandfathering provisions. In my conversation with the Ministry, they were not able to say whether the effective date for the new tax will apply to the date of the agreement, possession or closing. It is my understanding that the details are not worked out yet. I would think that agreements signed prior to the Budget date (March 26, 2009) will be grandfathered but later deals are questionable.

It is hoped that the transitional rules will make sense. In the meantime, until they are released, builders who are signing deals with a net price after tax of \$500,000 or more and with closings/possession after July 1, 2010 must take the new tax into consideration. Agreements should be clear as to who bears the risk of the tax increase.

Thought must also be given to supply contracts if they provide for delivery after July 2010. Theoretically there should be a price reduction for any embedded RST cost in the contract price.

Please contact us if you wish to have your agreements redrafted for this new reform measure.

For more information on real estate or leasing matters please call Morris Sosnovitch at 416-368-6444 or by email at msosno@businesslawyers.com.