



BACKGROUNDER ON HARMONIZED SALES TAX AND BC FIRST NATIONS

TO: FIRST NATIONS IN BC

FROM: FIRST NATIONS SUMMIT (FNS) and UNION OF BC INDIAN CHIEFS (UBCIC)

DATE: JULY 1, 2010

Purpose

In follow-up to FNS and UBCIC resolutions concerning the Harmonized Sales Tax (HST), provide background information on the HST and its implications for First Nations in BC.

Background

On September 1, 2009 the provincial government of British Columbia announced its intentions to adopt the Harmonized Sales Tax (HST), which combines BC's 7% Provincial Sales Tax (PST) with the 5% federal Goods and Services Tax (GST). On November 30, 2009, the governments of BC and Canada signed the HST implementation agreement, called the Comprehensive Integrated Taxation Agreement (CITCA). The CITCA provides for the structure and administration of HST. The federal government will administer the HST pursuant to the *Federal Excise Tax Act* and return the provincial component (7%) to the province. The HST will be applied to a slightly increased tax base than the GST is currently applied to, and comes into full effect July 1, 2010. Pursuant to the CITCA, the Government of Canada will transfer three separate payments totaling approximately \$1.6 billion to the province of BC between April 2010 and July 1, 2011 as an incentive to the province to implement the HST. The province is putting this "Assistance Amount" into its general revenue. The current GST credit for low income families will be replaced automatically by an HST credit according to income reported via income tax.

Potential Implications for First Nations in BC

First Nations in BC currently have an exemption from taxation for personal and real property situated on reserve, or goods delivered to reserve, as per the *Indian Act* s.87 – **this exemption will be continued**. Off-reserve, First Nations in BC do not have the exemption from taxation for personal and real property, and currently pay both federal and provincial sales tax (the GST and PST); this means that **First Nations in BC will pay the full 12% HST for goods purchased off-reserve that are not delivered to reserve**. According to the 2009 Indian Registry Data, the majority of Status First Nations in BC (67,270) live off reserve and pay full tax, compared to a minority (60,122) that live on reserve. Additionally, First Nations living on reserve typically cannot make all purchases on a reserve, and pay full tax off reserve unless the goods are delivered to the reserve.



Like all British Columbia residents, First Nations will see an increase in items subject to full 12% tax on off-reserve purchases (except those delivered to reserve); however, First Nations will likely feel a greater impact from this increase in expenditure because of the disproportionately high level of poverty experienced.

Work to Date by BC First Nation Organizations

The Union of BC Indian Chiefs (UBCIC) resolutions 2009-41 and 2010-21 provide a mandate for work on the HST, and resolution 2009-51 mandated creation of the UBCIC HST Committee. The First Nations Summit passed resolution 0610.09 supporting the campaign against the imposition of the HST and calling for respect of First Nations' rights regarding taxation. Key advocacy points include:

- a) First Nations in BC were not consulted about the new tax regime that will be imposed;
- b) First Nations are sovereign nations who enjoy international recognition through the United Nations Declaration on the Rights of Indigenous Peoples, and Constitutional and judicial recognition of our title, rights, and treaty rights, including the right to tax, and that the province's unilateral imposition of the HST on First Nations is beyond your jurisdiction;
- c) First Nations in BC experience a disproportionately high level of poverty that is rooted in government policies, legislation, and colonialism, and that the HST stands to maintain and further increase our level of poverty.

The FNS and UBCIC will continue to work together to raise awareness about, and pursue solutions to, these key issues for First Nations relating to the HST.

Ontario First Nations' Success in Achieving P.O.S. Exemption from Provincial Portion of HST

Ontario First Nations' current Point of Sale (P.O.S.) exemption from provincial sales tax dates back 30 years. **The P.O.S. exemption means that Ontario First Nations are exempt from provincial sales tax on all goods whether purchased on or off reserve, at the time of purchase.** Ontario First Nations assert that the P.O.S. exemption is based on their treaty and inherent rights; the Ontario provincial government asserts that the P.O.S. exemption is based on Ontario's administrative policy. First Nations in British Columbia do not have this same P.O.S. exemption – in BC, First Nations are only exempt from sales tax for goods purchased on-reserve or delivered to reserve.

Following a year of active opposition, negotiations, and threats of protests during the G8 and G20 Summits, the First Nations in Ontario announced on June 18th that they successfully achieved a P.O.S. exemption from the 8% provincial component of the HST off-reserve. This effectively continues the current P.O.S. exemption from provincial sales tax off reserve that First Nations in Ontario enjoy. First Nations in Ontario will continue to be exempt from provincial and/or federal taxation on reserve.



Although Ontario First Nations and the government of Ontario disagree on the basis of the current First Nations P.O.S. exemption, in a Memorandum of Agreement signed May 3, 2010, they recognized that both Parties are committed to the principle of reconciliation and to the continuation of the First Nation P.O.S. tax exemption under the HST, as currently applied in practice in Ontario.

Canada Revenue Agency GST/HST Info Sheets for First Nations

- HST and First Nations in BC and Ontario: <http://www.cra-arc.gc.ca/E/pub/gi/gi-072/gi-072-e.html>
- Collecting First Nations Tax in a Participating Province: <http://www.cra-arc.gc.ca/E/pub/gi/notice254/README.html>

Important Documents

- BC Comprehensive Integrated Tax Agreement (CITCA): http://hst.blog.gov.bc.ca/wp-content/uploads/2010/04/bc_citca_nov09.pdf
- Federal *Excise Tax Act*: <http://laws.justice.gc.ca/PDF/Statute/E/E-15.pdf>
- BC HST *Excise Tax Act* Amendments: http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=C-62_4&File=24
- BC Government list of “What’s Taxable under the HST and What’s Not”: https://hst.blog.gov.bc.ca/wp-content/uploads/2010/05/GST_PST_HST_List_v04.pdf

Websites Re. HST

- Union of BC Indian Chiefs (details of UBCIC HST work): www.ubcic.bc.ca
- Fight HST website: www.fighthst.ca
- Canada Revenue Agency website: <http://www.cra-arc.gc.ca/gncy/hrmznzn/menu-eng.html>.
- BC Provincial Blog about HST: <http://hst.blog.gov.bc.ca/>
- BC Government and HST: http://www.sbr.gov.bc.ca/business/Consumer_taxes/harmonized_sales_tax/hst.html#1
- Chiefs of Ontario & HST: <http://chiefs-of-ontario.org/PageContent/Default.aspx?SectionHeadlineID=246>