



CESTNICK

TAX MATTERS

Complicated tax rules can lead to unexpected GST/HST on real estate

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This week, an employee asked me a personal finance question. It was an easy question, so I finished my response with “It’s not rocket science.” But to be fair, when it comes to taxes on real estate, sometimes it feels like it. Today, I want to share the story of two brothers who lost a court decision (1351231 Ontario Inc. v. The King, 2025 FCA 53) a few weeks ago.

The story

In 2008, the brothers purchased a condominium in Ottawa through their corporation. They rented out the condo from 2008 until 2017 to a number of different long-term renters. In February, 2017, and for a little over a year, they changed to short-term rentals (defined as fewer than 60 days) by listing the condo on Airbnb.

The brothers then sold the condo in April, 2018. Neither the buyer nor the corporation remitted GST/HST on the sale. The Canada Revenue Agency didn’t like this much and assessed the corporation for GST/HST of \$77,080.

Now, if you sell a property that is considered to be a “residential complex” (and you’re not a builder and didn’t claim a GST/HST input tax credit on the purchase earlier), then there’s no need to charge GST/HST on the sale. The brothers in the case argued that the condo was a residential complex.

The court didn’t accept this argument because a residential complex “does not include a building, or that part of a building, that is a hotel, a motel, an inn, a boarding house, a lodging house or other similar premises” The judge at the Tax Court of Canada concluded (and the Federal Court of Appeal agreed) that short-term rentals are similar to a hotel, motel, an inn, a boarding house or a lodging house and are therefore not residential complexes.

It didn’t matter that the condo had been rented to long-term renters (and was therefore a “residential complex”) for most of the time it was owned. It’s the status of the property on date of the sale that matters. Fair? Maybe not. But it’s how the law is worded.

Further, the court noted that GST/HST applied on the change in use of the condo from long-term to short-term rentals. You see, subsection 206(2) of the Excise Tax Act can apply to deem you to have received a “taxable supply” and therefore liable to pay GST/HST – when changing the use of a property by more than 10 per cent to a commercial use such as short-term rentals.

The scenarios

This story got me thinking about the many situations where people buy, sell, or change the use of a property and can get caught owing GST/HST unexpectedly. Here are a few scenarios to watch for

Purchase of a new property. If you buy a newly constructed residential property, GST/HST generally applies. The good news? The government has promised to exempt first-time home buyers from this tax, although legislation to enact this hasn’t been introduced yet. Here’s a tip: If you’re a buyer, make sure your purchase agreement says that GST/HST is included in the price to avoid problems with CRA later.

Purchase of a substantially renovated property. Similar to buying a new home, a property that has been substantially renovated – which involves significant alterations such that 90 per cent or more of the interior has been removed or replaced – generally requires the seller to charge GST/HST. The same tip above applies here: your agreement should specify that GST/HST is included in the price.

Converting to commercial use. The brothers in the 135 Ontario case originally purchased their condo to rent out long-term, which avoided an

obligation to charge GST/HST on their rents and would have side-stepped GST/HST on the property sale. But when they changed the use to short-term rental, the change itself triggered a GST/HST liability since it was more than a 10-per-cent change in use.

Converting from commercial use. What if you own a residence that you’ve been renting out as a short-term rental and then convert the property to non-commercial use (such as a long-term rental or principal residence)? This change in use can result in a GST/HST liability on the change.

Sale of a commercial property. If the property you’re selling doesn’t meet the definition of a “residential complex” – perhaps because it’s a short-term rental property – then you could face GST/HST on the sale – just as in the 135 Ontario case.

The bottom line? These are complex rules. Visit a GST/HST expert if you think they might apply.

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