



The HST: Implications for BC First Nations, Governments and Businesses

By Heather Mahony and Drew Mildon

British Columbia will implement the harmonized sales tax (the “HST”) on July 1, 2010. HST is the current regime in Nova Scotia, Newfoundland and New Brunswick. Ontario will also implement the HST in 2010. The HST will generally apply to the same tax base and be subject to the same rules as the GST, though with some limited rebates including children’s clothing and motor fuels. Although First Nation individuals who, by necessity, make purchases off-reserve may well face immediate cost increases, overall, First Nation businesses and governments will probably benefit from the HST. Below are some examples.

Impact on Exemptions Available to First Nations Governments and Band-Empowered Entities

Since the Federal government has generally taken a broader view of the exemptions available to First Nations governments than has the Provincial government, the HST will result in an expansion of exemptions to match the Revenue Canada policies under the current GST regime.

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UPCOMING EVENTS:

May 13 – 14, 2010: CLE Employment Law Conference – **Eamon Murphy & Berry Hykin** will present their paper, co-written with **Leah Mack**: *First Nation Governments as Employers*. Details are on the W&Co website.

May 15 – 17, 2010 : IFIP Conference - Jack Woodward, along with Michael Marx and Chief Al Lameman of Beaver Lake Cree Nation, will be presenting at the seminar: *“Fighting Alberta’s Tar Sands: A cross-ENGO, cross-First Nations Collaboration.”*

Lawyer at large: Murray Browne

Musician, professor, land use planner, governance advisor, hockey player/coach, mediator and negotiator – just some of the skills Murray brings to W&Co. He is also one of the few lawyers in Canada who has been on the legal team for a completed Aboriginal title case (the *Tsilhqot’in* case) and is also nearing completion of Final Agreement negotiations in the Treaty process. He also worked with the Tse Keh Nay to win a rare rejection of the proposed Kemess North mine (which would have destroyed Amazay Lake) in an Environmental Assessment process.

Murray works with First Nations all over B.C. to protect and implement Aboriginal and Treaty rights and title; generate economic development activities; negotiate Treaties, specific claims and other agreements; implement taxation; and develop and implement Land Codes and community-driven laws.

He enjoys his work with First Nations but sometimes worries that too many bad negotiations with federal and provincial governments will make him cynical. "I don't know how First Nation leaders and members can remain so patient and optimistic. Negotiations are the way forward but if I ever get so cynical that I can no longer see any positive or productive solutions, I will move on and find another wall against which to bang my head. Hopefully, we will achieve some fair and honourable settlements before it gets to that point."

Murray is committed to social justice and plans to work on more international human rights and environmental issues. If he ever takes a break from law, we will probably find him building wells, teaching school and studying music in Africa or trying to save endangered turtles in the Galapagos.



Murray has a young daughter and son and likes nothing better than going on adventures with his family. He looks forward to sailing around the world with them some day. ❖

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For example, First Nations and incorporated and unincorporated “band empowered entities” who were formerly liable to pay PST may claim an exemption for the full HST where it acquires the good or service for band management activities (i.e., non-commercial activities for which the entity would not otherwise be entitled to an input tax credit).

Impact on First Nations’ Transaction Taxation under the FNGST

Goods and services that are taxable under the HST will be FNGST-taxable, but the tax rate for the FNGST will be the same as the federal portion of the HST. Because Status Indians must pay the federal portion but not the provincial portion of the HST for on-reserve FNGST-taxable purchases, it appears that on-reserve businesses will be back in the business of checking status cards to determine whether the consumer is liable for the full HST (non-Status) or only the federal portion (Status). A notable example is restaurant food, which was previously PST-exempt.

Impacts for First Nation Businesses

First Nations’ and First Nation individuals’ on-reserve un-incorporated businesses whose purchases of supplies qualified for *Indian Act* PST exemptions will lose this previous business advantage, since under the HST, other businesses will be able to claim input tax credits for the full amount of the HST. Still, the increased availability of input tax credits stands to benefit First Nations’ businesses generally. ❖

Originally written for the FN Tax Administrators’ Association newsletter and reprinted with permission.



Beaver Lake Cree Nation Chief Al Lameman and **Jack Woodward** are quoted in the centerfold feature of the April issue of *New Internationalist*. Under the banner **Everyone’s Downstream**, the article is headed ‘Legal action is the only way.’ The article briefly outlines the case its implications for major oil companies. Jack is quoted as saying: “Canada’s aboriginal people will be the ones that rescue Canada from international embarrassment, and rescue all the people of the world from the worst effects of tar sands exploitation. ❖

HOW BRITISH COLUMBIA GOT ITS NAME

Here’s a link to a short clip from a video in which Jack explains how our province ended up with its moniker. The explanation may not surprise you, but the province’s previous name might!

<http://www.youtube.com/watch?v=IoaRpNAxV6s>



TAKING THE TAR SANDS ISSUES TO DC

Jack Woodward and Ron Lameman of Beaver Lake Cree Nation were guest speakers at the Climate Action Symposium on April 13, 2010, hosted by George Washington University’s Institute for Sustainability. Jack and Ron explained BLCN’s legal action to stop the expansion of Alberta’s tar sands, highlighting the event’s theme: *The Next Big North American Climate Issue: Sustainability Impacts of the Canadian Tar Sands Development*. ❖

Left to right: Garth Lenz (photographer), Jack Woodward, Jessica Shipley (Pew Foundation), James Hoggan (Climate Cover-Up), Ron Lameman, Margery Moore (BNA), and Mark Starik (GWU).