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COMMERCIAL LEASES: THE RETURN TO THE GST/PST SYSTEM IN BRITISH COLUMBIA

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After a provincial referendum in 2011 that called an end to the HST era in BC, the government has spent the greater part of 18 months preparing to transition back to the GST / PST system. With the provincial government's commitment to return to the GST / PST system on April 1, 2013, businesses have been left to cope with the various implications of changing the tax system. Principal among those implications are the obligations on businesses to collect the appropriate level of tax from their customers without exposing themselves to liability or instigating disputes with customers.

While the general rule of thumb is that consumers will only pay the PST on those goods and services which were subject to the PST prior to the introduction of the HST system (i.e. pre-July 1, 2010), the new legislation contemplates various measures designed to improve the efficiency of the PST system.

As we transition back to the GST / PST system, there are two key areas of interest to landlords in the context of commercial leasing: transactions that occur around April 1, 2013 and transactions that are specifically subject to (or specifically exempt from) GST and/or PST.

The Application of GST / PST to Leases of Real Property in British Columbia

PST

Prior to the introduction of the HST in British Columbia, the PST did not apply to leases of real property (both commercial and residential). As the province returns to the PST system, PST will continue to **not** apply to leases of real property.

Generally, PST will only apply to sales and leases of "tangible personal property" and, since real property is not included in the definition of "tangible personal property", leases of real property are not subject to PST.

GST



With the transition back to the GST, all commercial leases of real property in British Columbia will be subject to 5% GST as of April 1, 2013. Use the transition rules discussed below to determine whether GST or HST will apply to rent payments.

Transitioning to GST/PST: Transactions Occurring Around April 1, 2013

The complexity of reconfiguring the taxation system is particularly magnified around the date of the actual transition, April 1, 2013. This is the date that must be in the forefront of all landlords' minds as they contemplate the impact of the new taxation system. For commercial leases, this means that landlords (or tenants) will encounter variances in the amount they collect (or pay) as "tax" on commercial rentals, even if the payments occur on the same day. The following are general guidelines to follow when collecting or paying HST/GST on rent under commercial leases:

GST applies to rent payments that are (a) due on or after April 1, 2013 and (b) made on or after April 1, 2013.

HST applies to rent payments made before April 1, 2013 *OR* to payments due before April 1, 2013.

When considering the application of the relevant tax, consider which event occurs first: the date the payment is due or the date the consideration is paid. The earlier of the two dates determines which tax is applicable. If the earlier date is before April 1, 2013, then HST applies. If the earlier date is on or after April 1, 2013, GST applies.

Using these general rules in the context of commercial leases, consider the following examples:

1. A lease payment is due on (or before) March 31, 2013. The payment is made on (or after) April 1, 2013: HST applies because the earlier of the two dates is March 31, 2013 and that date is part of the "HST era"
2. A lease payment is due on (or before) March 31, 2013. The payment is made on (or before) March 31, 2013: HST applies because the earlier of the two dates (in this case both dates) is March 31, 2013 and that date is part of the "HST era".
3. A lease payment is due on (or after) April 1, 2013. The payment is made on (or after) April 1, 2013: GST applies because the earlier of the two dates (in this case both dates) is April 1, 2013 and that



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date is part of the "GST era".

4. A lease payment is due on April 1, 2013. The payment is made on (or before) March 31, 2013: HST applies because the earlier of the two dates is March 31, 2013 and that date is part of the "HST era".

It is noteworthy that even when payments are due on or after April 1, 2013, if a payment is made prior to April 1, 2013, it is subject to HST.

The information provided in this newsletter is of a very general nature. If you would like to discuss the impact on commercial leases of the return to the GST/PST system in British Columbia then please contact one of the lawyers in our Commercial Leasing Practice Group



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