Noteworthy GST/HST Decisions in Real Estate from 2019

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CRA's continued focus on the real property sector resulted in significantly more audits and tax assessments in 2019, as well as a few noteworthy court decisions.Participants in the real property sector, as well as tax advisors, may find the following cases to be of interest.

Roofmart - Taxpayer required to disclose information about its biggest customers to the CRA

Roofmart[1] demonstrates the breadth of CRA's powers to compel information disclosure.

In *Roofmart*, the Federal Court ordered the company, a roofing and siding supplier, to comply with the CRA's request for it to identify and disclose customers whose annual purchases exceeded a certain threshold. Roofmart was also required to disclose customers:

- contact information;
- CRA business numbers;
- itemized transaction details; and
- bank account information.

The CRA uses third-party requests, such as the request in *Roofmart*, to identify targets for future tax audits. Businesses should be aware of these CRA powers, but should also be aware of the limits to these powers and other important considerations with respect to the CRA's intended use of disclosed information.

Note that *Roofmart* has been appealed to the Federal Court of Appeal.

Prima Properties – Lessors can face serious GST/HST issues when tenants' activities change

Prima Properties[2] highlights the need for lessors to consider the GST/HST implications of their leasing arrangements, and to inquire about their tenants' intended use of a space.

In *Prima Properties*, the taxpayer purchased the Bosman Hotel in Vancouver and immediately leased it to the previously owner to continue operating as a hotel. The taxpayer subsequently entered into a lease with PHS Community Services Society who would use the property to provide long-term housing support to the homeless instead of operating the property as a hotel. The CRA audited Prima Properties and determined that at the time the original lease ended and the PHS lease began, there was a change of use of the property from commercial to non-commercial (as a residential complex), which would have required the lessor to self-assess and pay GST/HST to the CRA. Fortunately for the appellant, the CRA had reassessed them beyond the normal 4-year reassessment period and the Court held that the CRA's reassessment of the appellant was statue barred. *Prima Properties* is an important reminder to lessors that the intended use of their property and their tenants' activities (or changes to such activities) directly impact the lessor's GST/HST obligations, and may require the lessor to self-assess the GST/HST on the fair market value of the property.

Ngai: Courts continue to interpret restrictively the new housing rebate rules

The CRA continues to disallow claims for new housing rebates on strictly technical grounds. *Ngai*[3] demonstrates that developers, purchasers, and their advisors should carefully review these rules where unconventional circumstances are involved (*e.g.* friends or extended family acting as co-purchasers).

The Federal Court of Appeal in *Ngai* held that a non-related purchaser of a residential complex cannot act as an agent when claiming the new housing rebate on behalf of a principal. This is an important decision that significantly narrows the availability of the GST/HST New Housing Rebate for many purchasers of new residential homes.

Ngai involved an aunt and nephew acting as co-purchasers of a new home, solely to assist the nephew with financing. The aunt applied for a GST/HST new housing rebate, which was denied because the aunt and her nephew were not related persons. The new housing rebate is only available if a purchaser or a related person intends to occupy a home as their principal residence, and uncle/aunt-niece/nephew are not related persons under the *Excise Tax Act* and *Income Tax Act*. The aunt successfully appealed the CRA's decision in Tax Court on the basis that the aunt applied for the rebate as an *agent* of her nephew.

The Federal Court of Appeal overturned the Tax Court's decision. The Court found that only an individual who is a "particular individual" for the purposes of the new housing rebate is eligible to apply for the new housing rebate.[4] In other words, an agent cannot claim the rebate on their principal's behalf. Here, the aunt had to qualify as a "particular individual." Her status as her nephew's agent was irrelevant.

Ngai should raise flags for real estate practitioners and those involved in residential transactions.

For a detailed interpretation and application of “agency” in the GST/HST context, please see the 2019 TCC decision in *Lohas Farm Inc*.[5]

Anand: Inaccurate contracts can lead to serious tax disputes

Anand[6] reiterates the importance of ensuring legal contracts accurately document parties’ intended business arrangements, and the potential GST/HST costs of not doing so where an agency relationship is involved.

In *Anand*, a taxpayer provided project management services to a homeowner who was constructing a custom-built home. The taxpayer assisted with managing the project. The taxpayer also engaged contractors and purchased materials, although he did so as agent for and on behalf of the homeowner.

Unfortunately, the parties papered their deal using a template agreement (potentially found online) for use by general contractors (not project managers). The CRA assessed the taxpayer for failing to collect $178,318.59 in GST/HST on the basis that the taxpayer purchased all services and materials as a general contractor on his own account, and resupplied them to the homeowner.

The taxpayer was ultimately successful. The Court agreed he was a project manager, making purchases as agent for and on behalf of the homeowner.

Anand highlights the importance of ensuring parties’ contracts accurately reflect their intended business deal, and the risks of relying on boilerplate documents without getting legal advice. For a detailed interpretation and application of “agency” in the GST/HST context, please see the 2019 TCC decision in *Lohas Farm Inc*.[7]

[1] *Canada (Minister of National Revenue - MNR) v. Roofmart Ontario Inc*., 2019 FC 506 (Federal Court).

[2] *Prima Properties (92) Ltd. v. R*, 2019 TCC 4 (Tax Court of Canada).

[3] *Ngai v. R*, 2019 FCA 181 (Federal Court of Appeal).

[4] *Ibid* at para 20.

[5] *Lohas Farm Inc. v. Canada*, 2019 TCC 197 (Tax Court of Canada).

[6] *Anand v. R.*, 2019 TCC 119 (Tax Court of Canada).

[7] *Lohas Farm Inc. v. Canada*, 2019 TCC 197 (Tax Court of Canada).

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