



TO: The Blue Mountains Attainable Housing Corporation ("**BMAHC**")
FROM: Robins Appleby LLP
SUBJECT: Goods and Services Tax/Harmonized Sales Tax ("**GST/HST**") Exemptions and Rebates Available to BMAHC
DATE: October 20, 2020
FILE NO.: N/A

OVERVIEW & ASSUMPTIONS

BMAHC is a non-share capital corporation incorporated pursuant to the *Corporations Act*,¹ and was created by The Town of The Blue Mountains (the "**Town**"). BMAHC's purpose is "[t]o augment the supply of healthy, affordable and sustainable ownership housing units in [the Town] which are affordable to a larger portion of the population."²

Pursuant to By-Law No. 1, BMAHC has two membership classes: (1) a single Municipal Member, being The Town, which is entitled to forty-five votes at all member meetings, and (2) Members, being BMAHC's directors (to a maximum of twenty), which are each entitled to one vote.

BMAHC is planning an attainable housing development at 171 King Street East in Thornbury, ON (the "**Property**"). The Property was purchased by the Town and will be transferred to BMAHC for development.

For the purposes of this memorandum, we have assumed and relied on the following facts:

- BMAHC is a non-profit organization ("**NPO**") within the definitions in paragraphs 123(1) and 259(1) of the *Excise Tax Act*³ (the "**ETA**");
- BMAHC is controlled by the Town;
- the Town is a municipality;
- BMAHC will operate solely in Ontario and be resident in Ontario;
- BMAHC will develop the Property for the purposes of residential rental accommodations in connection with its non-profit purpose;

¹ RSO, 1990, c C.38.

² Letters Patent of BMAHC, at para 4.

³ RSC, 1985, c E-15. For the purposes of both paragraphs 123(1) and 259(1), NPO "means a person (other than an individual, an estate, a trust, a charity, a public institution, a municipality or government) that was organized and is operated solely for a purpose other than profit, no part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof".



- BMAHC's only supply is that of attainable, long-term residential accommodation for individuals, including seniors and persons with eligible financial means;
- BMAHC will not supply rent-geared-to-income (i.e. RGI) housing;
- the development on the Property will not be registered as a condominium;
- BMAHC will not undertake any commercial activities; and
- upon development of the Property, BMAHC will act as landlord to the residential tenants thereon.

Please advise us if any of the above-mentioned facts or assumptions are wrong, as our analysis and conclusions may change.

ISSUE

The purpose of this memorandum is to address whether BMAHC is:

- (1) exempt for the payment and/or collection and remittance of GST/HST; and
- (2) entitled to any credits or rebates for GST/HST paid.

SHORT CONCLUSION

For the reasons explained in further detail below, BMAHC:

- (1) should be exempt from collecting and remitting GST/HST in connection with any rent collected in connection with the provision of residential accommodation; and
- (2) should be entitled to ITCs for land purchase and development expenses and *may* be entitled to a PSB rebate or NRRP rebate (each defined below) for ongoing expenses.

A mix of market and affordable rent will not impact the above conclusions, so long as the tests outlined in this memorandum are met. Moreover, any commercial space would be treated as separate from the residential properties, and it would be a taxable supply for which HST would be collected and ITCs can be claimed on the ongoing operating expenses.

ANALYSIS

GST is a tax that applies to most supplies of goods and services in Canada. Participating provinces (including Ontario) have harmonized their provincial sales tax with the GST by way of HST. In Ontario, HST is applied at a rate of 13% on most supplies of goods and services and many supplies of real property and consists of both a 5% federal tax and an 8% provincial tax.

GST/HST applies to almost all purchases of *taxable* supplies, subject to narrow exceptions for "Indians" (as defined in the *Indian Act*), diplomats, and governments.

While GST/HST typically applies to all purchases of goods and services in Canada, GST/HST may:



- (1) not be payable in certain circumstances by virtue of either the GST/HST rate being reduced to 0% (a "zero-rated supply") or the supply of goods and services being exempt from GST/HST; or
- (2) if GST/HST is paid, federal and provincial credits and rebates may be available to offset or eliminate GST/HST paid or payable.

An analysis of whether BMAHC is entitled to either (1) certain exemptions and/or (2) credits and rebates is provided below.

(1) BMAHC Should be GST/HST Exempt for Providing Residential Accommodation

There are two instances where no GST/HST is payable on a supply of goods or services:

- i. **zero-rated supplies:** where a supply is "zero-rated", that means that GST/HST applies (i.e. the supply is taxable), but it applies at a rate of 0%; and
- ii. **exempt supplies:** where a supply is "exempt" from GST/HST (i.e. the supply is non-taxable), that means that no GST/HST applies.

While no GST/HST is payable on both zero-rated and exempt supplies, input tax credits ("**ITCs**") may only be claimed for the GST/HST payable or paid on purchases made and expenses incurred to provide *taxable* supplies. In other words, if a supply is exempt, you do not charge GST/HST on the supply and you are not entitled to claim ITCs on purchases made and expenses incurred to provide these supplies. Conversely, if the supply is zero-rated, you do not charge GST/HST on the supply, but you are entitled to claim ITCs on purchases made and expenses incurred to provide such supplies because they are nevertheless taxable.

i. BMAHC is Not Expected to Purchase or Supply any Zero-Rated Supplies

Zero-rated supplies are those listed in Schedule VI of the ETA⁴ and include prescription drugs or biologicals, medical assistive devices, feminine hygiene products, basic groceries, agriculture and fishing, exports, transportation services and financial services.

Based on the facts provided, BMAHC is not expected to purchase or supply any goods or services that are zero-rated.

ii. BMAHC's Supply of Residential Accommodation Should be Exempt from GST/HST

Exempt supplies are listed in Schedule V of the ETA and include health care services, education services, child and personal care services, legal aid services, charitable supplies, certain supplies

⁴ For a discussion, see Tax Partners, "Zero-rated and Exempt Supplies for GST/HST", online: <<https://taxpartners.ca/zero-rated-and-exempt-supplies-for-gst-hst/>>: the purpose of not taxing such supplies is numerous, but, generally speaking, "it is clear that each category describes certain products and/or services, the development of which society generally wants to encourage".



by public sector bodies (which includes NPOs), financial services not included in Schedule VI, ferry, road or bridge tolls, in addition to certain supplies involving real property.

With respect to real property, BMAHC's supply of long-term rentals of residential accommodation (and parking) is an exempt supply under Schedule V, Part I, section 6. As BMAHC will be providing attainable housing (i.e. residential accommodations), it need not collect and remit GST/HST on the rent collected for residential accommodation.

Further, if BMAHC makes any supplies under Schedule V, Part VI (such as supplying food, beverages, or short-term accommodation provided in the course of any activity, the purpose of which is to relieve poverty⁵), then such supply will be exempt from GST/HST. Based on the information provided, it does not appear that such an exemption would apply at present.

iii. Conclusion on GST/HST Exemptions Available to BMAHC

In sum, BMAHC should be entitled to a GST/HST exemption for the residential accommodation rent it collects. However, as this is an exempt supply, BMAHC will not be entitled to claim any ITCs for GST/HST it pays to provide residential accommodation (discussed more below).

(2) BMAHC Should be Entitled to ITCs and/or Rebates for Certain GST/HST Paid or Payable

For the purposes of this memorandum, we have considered whether BMAHC is entitled to:

- i. ITCs to recover GST/HST paid or payable;
- ii. a public service body rebate as a qualifying NPO to recover GST/HST paid or payable;
- iii. as an alternative to (ii), a public service body rebate as a *municipality* to recover GST/HST paid or payable;
- iv. a new residential rental property rebate; and/or
- v. rebates related to commercial spaces it may develop.

i. BMAHC Should be Entitled to ITCs for the GST/HST Paid to Acquire and Develop the Property

If an NPO is registered for GST/HST purposes, it can recover GST/HST paid or payable on expenses related to providing taxable goods and services by way of claiming an ITC. No ITCs may be claimed for the GST/HST paid or payable on property and services resold, used, or consumed in the course of exempt activities.

In the case of an NPO that receives government funding to build attainable housing, during construction, the NPO can register for GST/HST and claim ITCs for the property and services bought that relate to the construction of the housing.⁶ However, once construction is substantially

⁵ See section 14.

⁶ RC4081 GST/HST Information for Non-Profit Organizations, online: <<https://www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4081/rc4081-18e.pdf>> at p 25 ["RC4081"].



completed or possession is first given, whichever later, the NPO is deemed to have made a taxable sale to itself (i.e. a self-supply) such that GST/HST arises at an amount equal to the greater of the following:

- i. the amount of the GST/HST calculated on the fair market value of the housing; and
- ii. the total of all of the GST/HST that would have been payable for the acquisition of the land, construction, and any other improvement to the property.

Where the housing is used for long-term residential rents (i.e. is exempt), then no ITCs may be claimed for the tax on the self-supply. However, a rebate may be available (see below).

In BMAHC's case, if it registers for GST/HST purposes, it should be entitled to claim ITCs for the property and services bought that relate to the acquisition or construction of the planned attainable housing on the Property. However, BMAHC would not be entitled to claim ITCs on ongoing operating expenses for the attainable housing because it is an exempt activity. However, these ongoing operating expenses may be offset by a rebate, as provided below.

ii. BMAHC May be Entitled to a Public Service Body Rebate, Subject to Qualification

An NPO that receives 40% or more of its revenue from government funding⁷ is a "qualifying non-profit organization" (a "**Qualifying NPO**").⁸ A Qualifying NPO is entitled to a public service body ("**PSB**") rebate,⁹ which allows the Qualifying NPO to recover the GST/HST paid or payable on eligible purchases and expenses for which it *cannot claim ITCs or any other rebate, refund or remission*.¹⁰ The PSB rebate allows the Qualifying NPO to recover:

- i. 50% of the GST and the federal part of the HST paid or payable on its eligible purchases and expenses for which it cannot claim ITCs or any other rebate, refund or remission.¹¹ In Ontario, this would reduce the federal part of HST from 5% to 2.5%; and
- ii. 82% of the provincial part of the HST paid or payable on "non-selected public service body activities"¹². In Ontario, this would reduce the provincial part of HST from 8% to 1.44%.

⁷ Public Service Body Rebate (GST/HST) Regulations, made under the *ETA* ["**PSB Regs**"], s 2.

⁸ *ETA*, subsection 259(2). Note that government funding does not include internal subsidies, indirect or non-financial forms of assistance, low interest loans and loan guarantees, property or services supplied at a subsidized price, and refunds, rebates or remissions of or credit for taxes, duties or fees imposed under law.

⁹ See *PSB Regs*, *supra* note 7.

¹⁰ RC4081, *supra* note 6 at p 16.

¹¹ *Ibid.*

¹² *Ibid.*, p 17. "Non-selected public service body activities" are activities other than (a) those activities for which a person was designated as a municipality; or (b) activities carried out in the course of fulfilling responsibilities as a local authority, operating a public hospital, an elementary school or a secondary school, a post-secondary college or technical institute, a recognized degree-granting institution or a college affiliated with, or research body of, such a degree-granting institution, or making facility supplies, ancillary supplies, or home medical supplies or operating a qualifying facility to make facility supplies.



To claim the PSB rebate, a Qualifying NPO must complete and file Form GST523-1.¹³

For a PSB rebate to be claimed by a Qualifying NPO on its non-profit housing-related expenses, at least 10% of the units in the development must be provided to one or more of the following groups:

- seniors;
- youths;
- students;
- individuals with a disability, individuals in distress or other individuals in need of assistance;
- individuals whose eligibility for occupancy of the complex or unit or for reduced lease payments is dependent on a means or income test;
- individuals for whose benefit no other persons, other than public sector bodies, pay consideration for the supplies of the accommodation and who either pay no consideration for the supplies or pay consideration that is significantly less than the consideration that could reasonable be expected to be paid for comparable supplies made by a person in the business of making such supplies for the purpose of making profit; or
- any combination of the above.¹⁴

Accordingly, a Qualifying NPO that provides at least 10% of its units to one or more of the above groups shall be entitled to the PSB rebate. Moreover, this test allows that part of the housing can be provided as market rent, so long as at least 10% of the units fall into one of the groups above.

In BMAHC's case:

- it may be a Qualifying NPO. According to BMAHC's Business Model, BMAHC anticipates that government funding will constitute approximately 50% of its budget.¹⁵ BMAHC should determine whether such government funding will comprise 40% or more of its revenues at present and in the future to determine whether it is a Qualifying NPO; and
- the residential accommodation it provides may be eligible for the PSB rebate. According to BMAHC's Business Model, BMAHC anticipates to provide housing to both seniors and those who earn less than the Town's median income (as determined by a means and/or income test).¹⁶ Accordingly, if BMAHC supplies at least 10% of its residential accommodation to the groups listed above, BMAHC may be entitled to the PSB rebate.

¹³ Non-Profit Organizations – Government Funding, online: <<https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/gst523-1/gst523-1-18e.pdf>>.

¹⁴ See PSB Regs, supra note 9, s 4(1).

¹⁵ According to BMAHC's Conceptual Business Model, June 2019, available online: <https://www.thebluemountains.ca/document_viewer.cfm?doc=956>, "[BMAHC] will actively apply to federal, provincial and County housing programs to generate approximately 50% of its budget".

¹⁶ *Ibid.*



Based on the information provided, it is likely that BMAHC would be entitled to a PSB rebate, but BMAHC should confirm it qualifies based on the criteria above.

iii. Alternatively, BMAHC May Be Entitled to a Municipal PSB Rebate if a Municipality

A municipality (as opposed to Qualifying NPO) is also entitled to a PSB rebate, but for 100% of the federal part of HST and, in Ontario, 78% of the provincial part of HST. Certain corporations may be "determined"¹⁷ by CRA to be a municipality upon application (including corporations created and controlled¹⁸ by a municipality, i.e. "para-municipal" organizations). Alternatively, an organization can be "designated"¹⁹ as a municipality if:

1. it is a charity, a cooperative housing corporation, a non-profit organization or a public institution;
2. it supplies long-term residential accommodation within a program to provide housing to low to moderate-income households;
3. more than 10% of the housing units in a particular housing project are provided on a RGI basis; and
4. the organization receives funding from a government or municipality to assist it in providing the accommodation within a program to provide housing to low to moderate-income households.

Given that BMAHC does not plan to provide any accommodation on an RGI basis (as required by (3)), it would not likely be eligible for designation as a municipality. However, BMAHC may consider applying to CRA for determination as a municipality by virtue of it being created and controlled by the Town.

iv. BMAHC Should Be Entitled to a New Residential Rental Property Rebate

If an NPO is not entitled to a PSB rebate (or elects to not receive one) it may nevertheless be entitled to a new residential rental property ("**NRRP**") rebate. An NPO may only receive one of the PSB rebate and NRRP rebate (and not both).

The NRRP rebate is available to, among others, landlords who built their own residential rental properties and accounted for the GST/HST on the self-supply that it leases to another person for residential use by an individual(s). To qualify for the NRRP, a unit in the residential property must meet the qualifying unit test, which, briefly, requires that:

- the unit be residential;
- the landlord owns/co-owns/leases the unit;
- the unit is a self-contained residence;

¹⁷ Where CRA "determines" a local authority to be a municipality, all the GST/HST legislative provisions relating to municipalities will apply to the local authority as a whole.

¹⁸ A municipality controls a local authority where the municipality approves the local authority's operating budget (and capital budget, if necessary) and it appoints the majority of the members of the local authority's governing body.

¹⁹ Where CRA "designates" a person to be a municipality, the municipal designation only applies to those municipal activities for which the person is designated.



- the unit is held to make an exempt leases (i.e. exempted from GST/HST); and
- used as a primary place of residence for at least one year.²⁰

Where the residential property is located in Ontario, the NRRP rebate provides for a rebate of part of both the federal and provincial parts of HST payable.

The value of the NRRP rebate is based on the FMV of the qualifying unit. Depending on the FMV of the unit, the NRRP rebate rate will vary.

Given that BMAHC will build the residential units on the Property and the units should meet the qualifying unit test, BMAHC should be entitled to the NRRP rebate.

v. Commercial

If BMAHC is developing any commercial property that may be built alongside the residential accommodations, it will be considered taxable supply for which HST would be collected. ITCs can be claimed on the ongoing operating expenses of the commercial space. Basically, the commercial and residential spaces are treated as two separate properties for HST purposes.

v. Conclusion on Credits and Rebates

In sum, BMAHC should be entitled to ITCs for the purchase and development of the Property (provided it registers for GST/HST purposes). GST/HST incurred by operating the residential accommodation may not be offset by ITCs as residential accommodation is an exempt activity. However, this GST/HST may be offset by either the PSB or NRRP rebates. To qualify for the PSB rebate, BMAHC must either be a Qualifying NPO or a municipality.

Based on the information provided, it is likely that BMAHC would qualify, but confirmation is required regarding BMAHC's level of government funding long-term; however, given that BMAHC was created and is controlled by the Town, it may be a municipality if it applies to be determined as such by the CRA's Public Service Bodies and Governments Division.

To qualify for the NRRP rebate, BMAHC must build the residential accommodation on the Property, account for the GST/HST on the self supply, and the units must qualify for the rebate. Based on the information provided, BMAHC should qualify for the NRRP rebate.

CONCLUSION

In purchasing and developing the Property, BMAHC should be entitled to claim ITCs for any GST/HST paid in connection therewith. Once construction is substantially complete or the residential units are being occupied, BMAHC may be entitled to a PSB rebate to offset some of the HST it pays in connection with the self-supply and ongoing operations of the residential units

²⁰ For a full list of the questions and considerations to be considered a qualifying residential unit, see CRA, RC4231 – GST/HST New Residential Rental Property Rebate, online: <<https://www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4231/rc4231-16e.pdf>> at p 9.



on the Property. Based on the facts and assumptions provided above, the supply of residential accommodations by BMAHC should be exempt from HST.

As mentioned above, however, BMAHC would only qualify for the PSB rebate if it meets the definition of a Qualifying NPO or municipality. If BMAHC does not meet the definition of Qualifying NPO or municipality (i.e. is not determined to be a municipality), it should nevertheless be entitled to the NRRP rebate.

If BMAHC is entitled to both a PSB and NRRP rebate, it should decide which rebate is more favourable, which can be determined once the Property has been developed and FMVs of each unit may be determined.

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