

B.C.'s new provincial sales tax, in April 1, will be substantially different from its predecessor

# Preparing for the end of the HST

**B**y voting yes to “reinstate” the PST in the 2011 HST referendum, many B.C. voters assumed that the old PST would return as it was immediately before the implementation of HST on July 1, 2010. In fact the new Provincial Sales Tax Act, which re-imposes PST effective April 1, 2013, will be substantially different from its predecessor Social Service Tax Act.

Certainly the changeover in tax systems has provided an opportunity to improve on the old tax. After the initial release of the new law in May 2012 the Ministry of Finance website stated that the “new PST Act implements a tax that is substantially the same as the old PST, and provides all the same permanent exemptions – but in a new, modern, clear, comprehensive act.” Many of the changes are therefore intended to fill in gaps in the application and administration of the old tax. But some expansion of the tax is clear from the latest version of the Provincial Sale Tax Act released January 9, 2013.

The old PST, for example, did not apply to digital downloads. The new PST taxes purchases from iTunes, Netflix and similar digital-content providers under the guise of the old tax on *telecommunication services*. The new definition of that term encompasses not only traditional communication services (e.g., telephone services) but the accessing, downloading or viewing of “audio books,

audio programs, music, ring tones, a television program, motion picture or other videos.”

Other changes are more subtle but nonetheless expand the tax base. The old PST applied to *taxable services*, which meant services “to install, assemble, dismantle, repair, adjust, restore, recondition, refinish or maintain tangible personal property” (i.e., physical goods of any kind). The new law contains a tax on *related services*, which means “any service *provided to* tangible personal property.” Arguably, a service “provided to” a good means an action that changes its properties with the result that the new definition simply reduces the number of verbs in the old taxable service definition.

## Questions remain

But there are two problems with the new definition. First, it is not clear that a service *provided to* a good is one that necessarily changes its physical properties. If you pay a mover to move furniture, you have relocated the good. Is that a service provided to a good? If so, then potentially *related services* encompass a whole range of services that were not taxed previously: furniture mov-

ing, transporting, storing, warehousing and appraising goods, to name a few.

Second, the old definition of *taxable service* was interpreted as entailing a limited change to the properties of the good. Substantial transformations were considered to be manufacturing services that were outside the tax base. The Ministry of Finance therefore ruled that hardening steel, drying lumber, log banding, custom cutting, engraving, firing ceramics, sign painting and even bronzing baby shoes were not *taxable services* under the old PST. But the distinction between limited changes and substantial transformations is now gone based on the broad definition of *related service* in the new PST. Any business providing a service involving goods must be concerned with the expansive definition.

These changes are provided for in the publicly released Provincial Sale Tax Act. But major areas of the tax are to be covered by regulations that have not been released. For example, the exemptions for equipment used in manufacturing, mining and the oil and gas industries will be contained in the regulations that are yet to be released. As a result, with less than three months remaining before the implementation of the new PST, B.C.’s manufacturers and their suppliers do not know whether the exemption will be reinstated as it read before HST or whether it will be narrowed to resolve the outstanding issues still being litigated under the old PST.

## Opportunity missed

At the same time some aspects of the tax that merit improvement remain unchanged. A governing principle of the PST has always

been to ensure that B.C. residents do not avoid the tax by procuring goods and services outside the province. Self-assessment rules applied to ensure that imports were subject to tax. A curious aspect of the old law was that in the case of legal services, the only professional service subject to PST, the tax policy appears reversed. The law created an incentive for businesses to retain lawyers *outside* the province. Surely the tax on legal services was due for improvement? Instead, the old tax on legal services has simply been reproduced in the new PST.

As April 1 approaches many questions remain. In particular, businesses want to know whether to purchase or at least pre-pay for goods and services now and pay the HST. The 7 per cent provincial portion of the HST can be recovered by most businesses as an input tax credit under the HST system whereas the 7 per cent PST will be a fixed cost. For the construction industry the answer seems to be a clear “no.” The revised Provincial Sales Tax Act imposes new PST on all building materials used in construction on or after April 1 regardless of when the items have been purchased or paid for. For all other goods and services that will be taxed under the new PST the transitional rules suggest that PST can be avoided by prepaying for goods and services before April 1, 2013.

But nothing is certain in the absence of final legislation, including regulations. Presumably the final legislative package will be released by the time the B.C. legislature begins its next sitting in February, less than two months before de-harmonization. ♦

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## TAX STRATEGY

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