

BRIEFING NOTE

TO: UBCIC CHIEFS COUNCIL
FROM: UBCIC HST COMMITTEE
DATE: JUNE 1, 2011
RE: UPDATE ON STATUS OF HST WORK IN PREPARATION OF REFERENDUM

PURPOSE

Provide overview of UBCIC's HST work to date, including a commentary on the upcoming HST referendum.

RECOMMENDATIONS

1. The UBCIC Chiefs Council consider a resolution rejecting the HST and calling on First Nations to vote "yes" on the HST referendum ballot to extinguish the HST and return to the GST and PST given the lack of consultation with First Nations and lack of expert economic or legal study on the impacts of HST on First Nations in BC.

BACKGROUND

First Nations in BC currently have an exemption from taxation for personal and real property situated on reserve, or goods delivered to reserve, as per the *Indian Act* S.87; however, First Nations in BC pay full tax off reserve. According to the 2009 Indian Registry Data, the majority of Status First Nations in BC (67,270) live off reserve and pay full tax, compared to a minority (60,122) that live on reserve. Additionally, First Nations living on reserve typically cannot make all purchases on a reserve, and pay full tax off reserve unless the goods are delivered to the reserve.

The provincial government of British Columbia announced its intentions on September 1, 2009 to adopt the proposed Harmonized Sales Tax (HST), which combines BC's 7% Provincial Sales Tax (PST) with the 5% federal Goods and Services Tax (GST). Implemented July 1, 2010, the HST is applied to the same tax base as GST is currently applied to; with some additional items no longer PST-exempt and subject to full HST (restaurant meals, bicycles, energy efficient appliances, etc.).

At the UBCIC Annual General Meeting in September 2009, Resolution no.2009-41 was passed in support of work regarding HST and related Tax Matters. The HST Committee was struck by Resolution no. 2009-51 and new appointments made by 2010-44. From October 2009, UBCIC actively sought a meeting with provincial Finance Minister Hansen, and federal Minister Flaherty, as well as contested the dismissive treatment that both ministers accorded to BC First Nations' taxation interests. UBCIC also engaged with the Fight HST Campaign, and through Resolution 2010-21, the Chiefs Council committed to exploring legal challenges to the HST. By UBCIC Resolution 2010-43, the Chiefs Council endorsed a Terms of Reference for the HST Committee.

UBCIC and FNS representatives met with Minister Hansen on June 24, 2010, when Minister Hansen committed to regular meetings. On October 4, 2010, the UBCIC HST Committee tabled a budget and workplan with Minister

Hansen to seek funding for further work, including an economic analysis of the impacts of HST on First Nations in BC, as well as a legal analysis to determine next steps. UBCIC's HST work to date is summarized in Appendix A.

CURRENT STATUS

The UBCIC Executive sent multiple correspondences to the Ministry of Finance regarding the budget and workplan of the HST Committee (November 10, March 18, and April 15), but did not receive a response until April 28, 2011. In this response, Finance Minister Falcon reiterated that because many First Nations are low income, they will receive the low-income HST credit and concluded "there does not appear to be a need for further study of the impact of the HST on First Nations in British Columbia."

UBCIC was invited to provide a submission to the Independent Panel on the HST Initiative and did so on March 16, 2011. In the submission, UBCIC emphasized that based on its three key advocacy points (see "commentary") there was need for the province to fund research into the impacts of the HST on BC First Nations, so that BC First Nations could make an informed decision at the HST referendum in June, 2011.

The Independent Panel released its report on Wednesday May 4th, which found that the HST has been oversold in BC. Importantly, the Panel found that HST is providing hundreds of millions of extra dollars to the province, and the savings that businesses enjoy are not being passed on to consumers. *The Panel estimated that the HST is costing BC families an average of \$350 more per year because it taxes a broader base of goods and services.*

HST Referendum, June 2011

In June, 2011, all residents of British Columbia will be able to participate in the HST referendum by mail-in ballot. Ballots will be mailed out beginning June 13, and must be returned by July 22, 2011. The question on the ballot is:

Q. Are you in favour of extinguishing the HST (Harmonized Sales Tax) and reinstating the PST (Provincial Sales Tax) in conjunction with the GST (Goods and Services Tax)?

A. Voting "Yes" means that the HST will be "scrapped" and the GST and PST reinstated.

A. Voting "No" means that the HST will be kept.

COMMENTARY

The province of BC has continued to suggest that because many First Nations in BC are low income, they will receive the low-income HST Credit, and therefore that there will not be a great impact on First Nations. The HST Committee and the Executive have repeatedly responded that the current level of poverty First Nations experience is unacceptable, and the HST stands to maintain this level of poverty rather than addressing in any way. UBCIC has continued to emphasize three key points that must be addressed:

- a) First Nations in BC were not consulted about the shift to, and imposition of, the new tax regime, which the BC government has acknowledged;
- b) First Nations are sovereign nations who enjoy international recognition through the United Nations Declaration on the Rights of Indigenous Peoples, and Constitutional and judicial recognition of our Title,

Tights, and Treaty Rights, including the right to tax. The province's unilateral imposition of the HST on First Nations is beyond provincial jurisdiction;

- c) First Nations in BC experience a disproportionately high level of poverty that is rooted in government policies, legislation, and colonialism, and the HST stands to maintain and further increase our level of poverty.

In spring, 2011, the BC government held "Talking Taxes" events to hear from British Columbians; however, these forms of engagement did not constitute consultation with First Nations. Further, they did not meet the requests made by formal resolution of First Nations for appropriate analysis of the economic and legal impacts of HST on First Nations in BC, which are necessary for consideration of options to improve the HST. The UBCIC HST Committee had tabled a budget of approximately \$56,000 to carry out this important work. While the province did not provide this funding, they spent \$5M on an information campaign to inform all British Columbians about the HST.

Although both former Premier Campbell and former Finance Minister Hansen insisted that the HST was not on "their radar" prior to the May 2000 provincial election campaign, documents accessed under a Freedom of Information request demonstrate that senior BC finance officials were in contact with Ottawa regarding the HST nearly two months prior to the 2009 election; further, Hansen received a briefing note on the tax in March 2009. Since Premier Christy Clark took office, and appointed Kevin Falcon as the Finance Minister, the BC Liberal government has adopted a "we messed up" communications strategy acknowledging that the HST was introduced incorrectly, and seeking forgiveness from residents in BC by emphasizing technical advantages of the HST.

Following release of the Independent Panel's findings that the HST is costing families more than promised (i.e. it is not "revenue neutral"), the BC government recently pledged to reduce the HST from 12% to 10% by 2014 if British Columbians vote to keep the HST. They also promised to provide one time payments to help families transition. The Liberals have said they will pay for this by raising corporate taxes, despite consistently decreasing corporate taxes since taking office in 2001. However, Minister Falcon has emphasized that increasing the corporate tax rate would be temporary. Further, the onetime payments to help families "transition" will not be based on income, meaning that the government will be spending an equal amount of money of families who do not need financial help as low income families. Critics have noted that a bigger problem is that cutting the HST by two percentage points will cost about \$1.7 billion in lost revenue per year once fully implemented, while the increased corporate tax will only recoup approximately \$400M- this leaves a budget shortfall of approximately \$1.3B. Once again, the HST will not be revenue neutral, and the government will likely need to either increase debt or make cuts to public services and programs.

It is recommended that the UBCIC Chiefs Council consider a resolution rejecting the HST and calling on First Nations to vote "yes" on the HST referendum ballot to extinguish the HST and return to the GST and PST, given the lack of consultation with First Nations and lack of expert economic or legal study on the impacts of HST on First Nations in BC.

APPENDIX A: UBCIC HST WORK TO DATE- JUNE 2011

- In September, 2009, the UBCIC HST Committee directed the UBCIC Executive to send letters to the provincial and federal Ministers of Finance, pursuant to the UBCIC Resolution. Letters have also been sent to the Standing Senate Committee on Aboriginal Peoples requesting that the Committee conduct a study on the effects of HST on BC First Nations.
- UBCIC commissioned a discussion paper on the impacts of HST on BC First Nations. This was written by Merle Alexander, of Boughton Law Corporation and presented at the November 2009 Chiefs Council.
 - The report highlights that First Nations should feel rightly frustrated in the failure of BC and Canada to consult, and that the off-reserve population will be detrimentally affected by the regressive nature of the sales tax. The report also notes potential opportunities for Aboriginal businesses, and opportunity for preferential treatment of Indian Bands and First Nations non-profit entities. The report points out that there is need for clarity to ensure around how FNST and FNGST will be affected.
 - The report concludes with five key issues for engagement that address ensuring adequate consultation, inclusion of First Nations voice, clarifying impacts on FNST, clarifying impacts on FNGST, and considering a non-derogation statement regarding application of s.87 of the *Indian Act*.
- UBCIC published an initial press release in opposition to the HST on November 26, 2010.
- In December 2009, Chief Keith Matthew was actively involved in passing Assembly of First Nations' Resolution no. 32/2009 "Imposition of HST on First Nations." The resolution recognizes and supports First Nations that oppose the HST, and directs the AFN to support and participate in any action plans or direct action strategies by First Nations that oppose the HST.
- During Ontario Regional Chief Angus Toulouse's presentation on HST (December 14, 2009) to the Senate Standing Committee on Finance during their committee hearings on Bill C-62 – An Act to Amend the Excise Tax, he tabled a letter dated Oct. 22, 2009 from the UBCIC Executive to Minister Flaherty and Minister Hansen outlining UBCIC's concerns.
- UBCIC published a second press release on March 10, 2010, supporting the Ontario Chiefs opposition to the HST and re-stating UBCIC's position. This press release was read out at an anti-HST rally on Parliament Hill organized by First Nations in Ontario.
- UBCIC wrote a letter to MLAs in B.C. on April 20, 2010, calling on them to vote against the HST.
- UBCIC sent a follow-up letter to Hon. Colin Hansen and Hon. Jim Flaherty on May 12, 2010, reiterating objections to both levels of governments' failure to consult and respond to inquiries.
- UBCIC hosted a panel discussion on HST and effects on BC First Nations at the UBCIC Chiefs Council on June 3, 2010. Speakers included Chief Keith Matthew (UBCIC HST Committee), Cliff Atleo (President, Nuu-chah-nulth Tribal Council), Merle Alexander (lawyer), Former Premier Bill Vander Zalm (Fight HST), and

Chris Delaney (Fight HST). UBCIC met with technical representation from the Fight HST Campaign to explore options for legal challenges to HST.

- On June 24, 2010, the UBCIC HST Committee and representatives from the UBCIC and FNS Executives met with BC Finance Minister Colin Hansen. Minister Hansen committed to an ongoing dialogue. UBCIC issued a press release, sent a letter to Minister Hansen summarizing the meeting, and sent a follow-up letter when Minister Hansen did not respond. Minister Hansen responded to the second letter and is looking forward to the upcoming meeting.
- On June 25, 2010, Chief Don Moses of the UBCIC HST Committee moved Resolution 18/2010 at the BC Assembly of First Nations Annual General Meeting in support for the Campaign against the HST.
- BC First Nations representatives at the PTOs are exploring multiple options during the shift in taxation regime, including a P.O.S. exemption; securing a First Nations-targeted fund from the provincial portion of HST revenues derived from First Nations; and/or pursuing amendments to the CITCA.
- UBCIC posted HST-related materials on the website: <http://ubcic.bc.ca/issues/HST.html>
- UBCIC HST Committee prepared a budget and workplan for its activities in order to seek funding to carry out its work from Minister Hansen.
- UBCIC issued a press release on August 16, 2010, in support of the Fight HST Campaign's court case, stating that the number of signatures on the anti-HST petition demanded immediate follow-up. UBCIC representatives also sat in court in support of the Fight HST Campaign.
- In September, 2010, the UBCIC Chiefs Council endorsed the UBCIC HST Committee's Terms of Reference via Resolution 2010-43.
- UBCIC met with Finance Minister Hansen on October 4, 2010, and tabled a budget and workplan for consideration. UBCIC sent a follow-up letter to Minister Hansen on November 10th, which Minister Hansen acknowledged on January 6th but did not respond to. UBCIC sent another letter on March 18th, and then on April 15th, seeking response in order to begin the work mandated by the UBCIC Chiefs Council. New Finance Minister Hansen responded on April 28th, 2011, and did not provide funding to the UBCIC HST Committee.
- UBCIC provided a submission to the Independent Panel on the HST Initiative on March 16th, 2011.

APPENDIX B: ONTARIO FIRST NATIONS' SUCCESS IN P.O.S. EXEMPTION FROM PROVINCIAL PORTION OF HST

Ontario First Nations' current P.O.S. exemption from provincial sales tax dates back 30 years. Ontario First Nations assert that the P.O.S. exemption is based on their treaty and inherent rights; the Ontario provincial government asserts that the P.O.S. exemption is based on Ontario's administrative policy.

Following a year of active opposition, negotiations, and threats of protests during the G8 and G20 Summits, the First Nations in Ontario announced on June 18th, 2010 that they have successfully achieved a Point of Sale (P.O.S.) exemption from the 8% provincial component of the HST off-reserve. This effectively continues the current P.O.S. exemption PST that First Nations in Ontario enjoy, and which is far broader than the P.O.S. exemption that First Nations in BC have. First Nations in Ontario will continue to be exempt from provincial and/or federal taxation on reserve.

Although Ontario First Nations and the government of Ontario disagree on the basis of the current First Nations P.O.S. exemption, in a Memorandum of Agreement signed May 3, 2010, they recognized that both Parties are committed to the principle of reconciliation and to the continuation of the First Nation P.O.S. tax exemption under the HST, as currently applied in practice in Ontario under the RST system.