

Application of GST to Mortgage Broker Fees/Commissions

The Issue

Do mortgage broker fees/commissions attract GST? The Tax Court of Canada, at least in the circumstances before it in the case of *Rojas v. Her Majesty the Queen, 2016 TCC 177* has said they do not. The case can be found at <http://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/169118/index.do>. (Please note “GST” in this bulletin refers to both GST and HST.)

Facts of the Case

The circumstances of the case were a fairly typical brokering arrangement. The licensed broker was licensed by the regulator and, operated as an independent contractor, to a specific brokerage. In that role, she identified a potential borrower and determined whether the borrower qualified for a mortgage. She identified lenders who were willing to provide a mortgage loan to the borrower and the various terms under which the mortgage loan would be provided. Once the borrower chose a lender and a specific mortgage, the broker took steps to obtain a lending commitment from the lender. She then completed the mortgage application process by obtaining the applicable forms from the borrower and providing them, by way of the brokerage, to the lender. She obtained a commitment letter from the lender and earned a commission for the brokerage. The lender paid the brokerage the commission, from which payment the brokerage paid the broker her share. The Court said it was difficult to think of a clearer situation in which a person is arranging for the lending of money.

Analyses and Determination of the Court

The Court applied to these fairly typical facts, fairly straightforward law. Taxable supplies are supplies made in the course of commercial activities. They attract GST, unless an exemption applies. The broker’s activities were a business. She provided services in the business in the course of commercial activity. The services attracted GST, unless the services came within an exemption.

The Court said that an exemption does apply because the services provided were financial services, and the lending of money is specified as an exempt financial service.

The Court in looking at the facts of the case said, *“It is difficult to think of a clearer situation in which a person ... is arranging for the lending of money.”*

The Court rejected Her Majesty’s argument that the broker did not provide exempt services but rather was providing administrative services that were preparatory for the brokerage to provide or potentially provide the services. A preparatory service is:

- a service of collecting, collating, or providing information, or
- a market research, product design, documentation preparation, document processing, customer assistance, promotional or advertising service or similar service.

Preparatory services could attract GST. However in this case the Court found it to be significant that the service in question was not supplied separately from the financial service. The broker had made only one supply of service, which was the supply of arranging for the lending of money; that service came within the financial services exemption to commercial activity attracting GST.

The Court had little difficulty finding that the broker’s service in this case did not attract GST. The reasoning in the case is virtually on all fours with the content of GST/HST Technical Information Bulletin B-105 *“Changes to the Definition of Financial Service”* issued in February, 2011. The Bulletin can be found at <http://www.cra-arc.gc.ca/E/pub/gm/b-105/README.html>.

Take-a-way for Mortgage Brokerages/Brokers and Agents

The main takeaway for mortgage brokers is that GST does not apply to fees or commissions, at least in the circumstances described.

The case does not address all possible brokering arrangements. The industry should ask what steps should be taken next. Asking for an advance tax ruling or advance interpretation from the tax authorities could serve to put a magnifying glass on something that might otherwise not attract attention. On the other hand, having more information in advance could allow for better structuring of relationships to fit within an advance ruling or interpretation; keeping in mind that an advance ruling or interpretation does not bind tax authorities or the Courts regarding later specific instances.