

Value of Self Supplied Rental Units for GST Purposes

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Beaudet v The Queen, [2014 TCC 52](#)

The taxpayers were members of an undeclared partnership that build and rented multi-family dwellings. They self-assessed the value of the buildings for purposes of the [Excise Tax Act](#), subsection 191(3), equating Fair Market Value with construction cost. The MNR reassessed on the basis that FMV should be determined using either (i) the comparison method, or (ii) the income method of valuation (para 60).

The TCC held that FMV, for purposes of the ETA subsection 191(3), for self-supply of multi-family residences, the construction cost including developer's profits is an appropriate method .

The TCC began by referring to the definition of "fair market value" in the ETA, at subsection 123(1), being mostly a self-referential definition that excludes from the value any tax excluded by section 154 from the consideration for the supply. The CRA provided its own opinion as to the definition of FMV, in policy statement [P-165R](#), "Fair Market Value for Purposes of Part IX of the *Excise Tax Act*", published by the Canada Revenue Agency (CRA):

"Generally, the Department's [Revenu Québec's] position is that fair market value represents the highest price, expressed in terms of money or money's worth, obtainable in an open and unrestricted market between knowledgeable, informed and prudent parties acting at arm's length, neither party being under any compulsion to transact"

The difference between the taxpayer's and Minister's positions rests on the proper appraisal method. The taxpayer considered relevant only the primary market of the supply, and not the value added by the secondary market forces of the leasing business. The Minister did not differentiate between primary and secondary markets, and considered the leases as part of the sale of the building. (para 57-58). The TCC concluded that cost plus developer's profits is an appropriate method, leaving only the determination of what components must be taken into account in arriving at the value (para 60): *Desjardins v. Canada*, [2010 TCC 521](#); 9103-9438 *Québec Inc. v. Canada*, [2004 TCC 466](#); *Charleswood Legion Non-Profit Housing Inc. v. Canada*, [1998] T.C.J. No. 503 (QL), [1998] G.S.T.C. 65.

For the building itself, the court used the actual cost (taxpayer) rather than the costs set out in a manual (Minister) (para 69), as this was a new building. The Court agreed that appraisal by costs can be "reduced in cases where there are construction cost overruns, or particular problems with regard to soil contamination, or errors in design or construction" (para 69).

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