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Tax Alert – Canada

Ontario Ministry of Finance seeks input on proposals to facilitate compliance with the *Land Transfer Tax Act*

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On 14 July 2017, the Ontario Ministry of Finance (the Ministry) posted a consultation document on the Regulatory Registry. This document sets out proposals to facilitate compliance with section 3 of the *Land Transfer Tax Act* (the Act), which imposes provincial land transfer tax (LTT) on unregistered dispositions of beneficial interests in land. Specifically, these proposals aim to promote the payment of LTT under section 3 of the Act and address challenges to the effective administration of the Act posed by certain partnership and trust structures. The Ministry has invited feedback and will consider all comments submitted on or before 28 August 2017.

Background

Section 3 of the Act is an anti-avoidance provision that imposes LTT on unregistered dispositions of beneficial interests in land, thereby eliminating any tax advantage that may have applied when a change in the beneficial ownership of land was not accompanied by a change in registered title. Specifically, a person who acquires a beneficial interest in land is required to deliver a return to the Minister within 30 days of the transfer, along with payment of the LTT. This provision applies to taxable dispositions occurring on or after 19 July 1989.

The Ministry has indicated that the use of increasingly complex partnership and tax structures has made it more difficult administer this provision effectively. In part, this stems from the fact that the Act does not treat partnerships or trusts as persons for LTT purposes. Therefore, it is necessary to "look through" such entities to determine the individual or corporation who is liable to pay the LTT. The Ministry also noted that some taxpayers may not have applied the appropriate tax rate to transactions under section 3 of the Act.

Building a better working world

Proposed approach

The Ministry is conducting a review of the LTT in two phases. As part of the first phase, it will consider amending the Act and the regulations to facilitate the payment and administration of LTT as it applies to unregistered dispositions of beneficial interests in land. The second phase will involve a broader review of the LTT and aims to ensure fairness and revenue integrity.

This tax alert briefly summarizes recommendations made as part of phase one of the review. Details of the Ministry's phase two review are expected at a future date.

Guiding principles of the Ministry underlying the proposals are as follows:

- In general, rules should apply equally to persons acquiring registered interests in land and persons acquiring unregistered interests.
- The application of the LTT must be balanced with the practicalities of compliance in the current real estate and commercial context.
- Rules should aim to facilitate compliance and ease the administrative burden on taxpayers, while not compromising the integrity of the LTT regime.

To that end, the Ministry has posted a consultation document entitled *Facilitating the Payment and Administration of the Land Transfer Tax Under Section 3 of the Land Transfer Tax Act*, which contains two main proposals. First, the Act and the regulations would be amended to recognize certain partnerships and trusts as either taxpayers or collectors for LTT purposes. Second, new disclosure requirements would apply at the time of title registration.

The Ministry has asked for comments concerning the proposed changes to be submitted by 28 August 2017 at the latest.

New "vehicles" for LTT purposes

The following vehicles (group 1 vehicles) would be deemed to be taxpayers for LTT purposes:

- Specified investment flow-through (SIFT) trusts and SIFT partnerships, as defined under the *Income Tax Act* (Canada);
- Pension trusts that are exempt from tax under paragraph 149(1)(o) of the *Income Tax Act* (Canada); and
- Mutual fund trusts, which are entities defined under subsection 1(1) of Ontario Regulation 70/91, Exemptions From Tax Under Section 3 of the Act.

Group 1 vehicles would be required to remit tax within 30 days of acquiring a beneficial interest in land, in accordance with current rules for taxpayers under the Act. However, LTT would not apply to unit trades or unit redemptions, including units acquired pursuant to a distribution/dividend reinvestment plan (DRIP).

The Ministry has indicated a qualifying group 1 vehicle that is a partner in a partnership would be able to use the de minimis partnership exception, as currently prescribed under [subsection 1(2) of Ontario Regulation 70/91](). In brief, this provision provides that LTT will not apply to unregistered dispositions of a beneficial interest in land that is a partnership interest, including changes in partnership interests as a result of changes in entitlements to a percentage of the profits, if the purchaser acquires no more than a 5% interest in the partnership or the partner's share in the profits did not change by more than 5% (although recent regulatory changes have made it more difficult for partnerships and trusts to access the exemption: for further details, see the November 2016 Information Notice entitled *Land Transfer Tax "De Minimis" Partnership Exemption: Clarifying Amendments for Certain Dispositions*).

A second set of rules would deem certain vehicles (group 2 vehicles) to be collectors for LTT purposes. These rules would apply to a vehicle that:

- Is either a unit trust under subsection 108(1) of the *Income Tax Act* (Canada) or a partnership that has filed or was required to file a declaration under the *Limited Partnerships Act* (Ontario);
- Has issued its "investments" to 50 or more arm's length unitholders or partners; and
- Is not a group 1 vehicle.

While the Ministry has initially proposed a minimum threshold of 50 unitholders or partners, it is open to considering public comments on the thresholds for the number of taxpayers and/or the number of partners or unitholders that may be "look-through" vehicles.

A group 2 vehicle would be required to collect and remit LTT, as calculated at the partner or unitholder level, in accordance with the following rules:

- Every partner/unitholder of the group 2 vehicle would be treated as a person for LTT calculation purposes only.
- A group 2 vehicle that remitted LTT in respect of partners or unitholders would be entitled to collect this amount by deducting or withholding amounts payable by the vehicle to the partner or unitholder.
- If the group 2 vehicle failed to collect or collected an insufficient amount of LTT, it would be liable to a minimum penalty equal to the amount of tax it failed to collect.

Subject to public feedback, the Ministry proposes that group 2 vehicles would be required to file quarterly returns.

The consultation document also indicates that amendments will be introduced to define a DRIP for LTT purposes. Neither group 2 vehicles nor group 1 vehicles would be required to collect and remit LTT in respect of DRIP acquisitions by their investors.

The LTT treatment of partnerships and trusts that do not qualify as group 1 or group 2 vehicles would not change.

New disclosure requirements

The Ministry is also proposing new disclosure rules for persons, trusts, partnerships and other vehicles for whose benefit land is held at the time of registration. For example, a nominee that acquired and held title on behalf of partnerships and/or trusts would be required to disclose the legal names and business registration numbers of such entities.

Learn more

For more information or assistance with making submissions during the consultation period, please contact your EY advisor or one of the following professionals:

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