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Tax Alert – Canada

Ontario files regulations to facilitate land transfer tax compliance

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On 26 April 2018, Ontario filed Regulation 343/18, Timing of Tax Payable Under Subsection 3(2) of the Act, in accordance with the *Land Transfer Tax Act* (LTTA). This regulation sets out quarterly filing requirements for dispositions of a beneficial interest in land that change the composition of certain trusts and partnerships. These requirements apply to qualifying dispositions occurring on or after 1 January 2018.

Background

On 14 July 2017, the Ontario Ministry of Finance posted a consultation document containing proposals to facilitate compliance with section 3 of the LTTA, which imposes provincial land transfer tax on unregistered dispositions of beneficial interests in land. Under subsection 3(2) of the LTTA, tax is payable on the 30th day after the date of the unregistered disposition, subject to certain prescribed exemptions. For example, tax does not apply to unregistered dispositions of a beneficial interest in land that is a partnership interest, if the purchaser is an individual or corporation who acquires no more than a 5% interest in the partnership (the de minimis partnership exemption).

The July 2017 proposals intended to address tax compliance challenges posed by increasingly complex partnership and trust structures, apparently including any challenges arising from the “clarifying amendments” Ontario had made on 18 February 2016 to preclude the de minimis exemption from being available in respect of a purchaser’s acquisition of a partnership interest if the purchaser was a trust or a partnership (including a real estate investment trust).



In the July 2017 proposals, Ontario sought to further amend the LTTA and the regulations to recognize certain partnerships and trusts either as taxpayers or collectors for land transfer tax purposes. More specifically, an entity would be required to collect and remit the tax where:

- ▶ The entity was a unit trust under subsection 108(1) of the *Income Tax Act* (Canada), or a partnership under the *Limited Partnerships Act* (Ontario);
- ▶ The entity had 50 or more arm's length unitholders or partners; and
- ▶ The entity was not a group 1 vehicle.

Group 1 vehicles would be considered as taxpayers and would be required to remit tax within 30 days of acquiring a beneficial interest in land, in accordance with the current rules for taxpayers under the LTTA. A "group 1 vehicle" would include:

- ▶ Specified investment flow-through (SIFT) trusts and 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, as defined under subsection 1(1) of Ontario Regulation 70/91, Exemptions From Tax Under Section 3 of the Act.

The consultation document indicated that comments received on or before 8 September 2017 would be considered as part of the decision-making process by the ministry. For further details concerning the July 2017 proposals, refer to [EY Tax Alert 2017 Issue No. 31](#), "Ontario Ministry of Finance seeks input on proposals to facilitate compliance with the *Land Transfer Tax Act*." Subsequent to the July 2017 proposals, Ontario amended the LTTA to provide greater payment flexibility by allowing the minister to prescribe different rules for payments of tax in relation to unregistered dispositions of land.

Regulation 343/18

The new quarterly filing requirements apply to dispositions of a beneficial interest in land that result if a person acquires an interest in a qualifying entity or a person's interest in a qualifying entity increases.

A *qualifying entity* is a trust or partnership in which 50 or more people hold an interest, whether directly or indirectly through one or more partnerships or trusts, on the first day of the year in which the disposition occurs.

Tax is payable no later than 30 days after the end of the calendar quarter in which the disposition occurred. For example, if a disposition occurs on or after 1 January and on or before 31 March of a calendar year, the tax is required to be paid by 30 April of that year.

In general, these filing requirements do not apply when a partnership or a trust that is a qualifying entity acquires land (or an interest in land) as property of the partnership or trust.

As well, the regulation does not apply to the 15% non-resident speculation tax levied under subsection 2(2.1) of the LTTA.

In an information notice released on 27 April 2018, Ontario indicated that it will accept a consolidated filing by a representative of a qualifying entity. In addition to remitting the tax, the following documents should be filed:

- ▶ Return on Dispositions of a Beneficial Interest in Land by Partners or Beneficiaries Holding an Interest in Qualifying Entity;
- ▶ Schedule 1 (Description of Land); and
- ▶ Schedule 2 (Description of Disposition, by Partner/Beneficiary).

Implications

Reg. 343/18 only modifies the tax filing requirements for the tax that is payable in respect of dispositions of a beneficial interest in land that results if a person acquires an interest in a qualifying entity or a person's interest in a qualifying entity increases. The computation of the underlying tax liability remains unchanged. It is of interest to note that, in contrast to the initial July 2017 proposals, a "qualifying entity" for the purposes of Reg. 343/18 is not required to be a "unit trust" under subsection 108(1) of the *Income Tax Act* (Canada), or a partnership under the *Limited Partnerships Act* (Ontario).

Reg. 343/18 does not contain the exemption for the "group 1 vehicles" that was initially contemplated in the July 2017 proposals. As well, Reg. 343/18 does not appear to impact investors who qualify for the "mutual fund trust exemption" in subsection 1(1) of Reg. 70/91 (i.e., investors who acquire beneficial interests in land through acquisitions of units of a mutual fund trust as defined under subsection 1(1) of Ontario Regulation 70/91, Exemptions From Tax Under Section 3 of the Act).

Learn more

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