

14th Tax Planning for Real Estate Transactions
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LAND TRANSFER TAX IMPLICATIONS

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Land Transfer Tax Act

Key Definitions – Subsection 1(1)

- ▶ **“conveyance”** *includes* any instrument or writing by which land is conveyed...
 - includes a final order of foreclosure, option to purchase, lease agreement or a caution or notice of any kind in writing... by which land (or an interest in land) is conveyed
- ▶ **“land”** *includes* lands, tenements and hereditaments and any estate, right or interest therein...
 - includes structure to be built as part of agreement relating to conveyance of land; leasehold interest, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to land or any buildings or fixtures
- ▶ **“value of the consideration”** *includes*,
 - sale price, value of benefit + liability assumed
 - foreclosure value / value of cancelled debt under mortgage (including costs)
 - value of leasehold interest (term, including renewals, of 50 years or more)
 - value of conveyance of beneficial interest
 - value of shares issued in exchange for land

Land Transfer Tax Act

Charging Provisions

- ▶ Section 2: registered conveyances
 - ▶ Section 3: unregistered conveyances
- ▶ Note: Section 2 tax applies to conveyances tendered for registration, even if previous deferral, cancellation or exemption of Section 3 tax

Land Transfer Tax

Tiered Rates – Section 2

- ▶ “Every person who *tenders for registration in Ontario a conveyance shall pay...*(a) tax computed at the rate of:”
 - value to \$55,000 0.5% plus
 - value > \$55,000 to \$250,000 1% plus
 - value > \$250,000 1.5% plus
 - value > \$400,000 2% (if up to 2 single family residences)
- ▶ Same rates apply for unregistered conveyances (s. 3(2))

Land Transfer Tax Rates

Simple Formulas

Where n = total value of consideration

LTT = total Land Transfer Tax payable

- Any real property up to \$55k:

$$\text{LTT} = (n \times 0.005)$$

- Single family residence > \$55k and up to \$250k, or commercial transaction up to \$250k:

$$\text{LTT} = (n \times 0.01) - \$275.00$$

- Single family residence over \$250k and up to \$400K:

$$\text{LTT} = (n - \$250k) \times 0.015 + \$2,225.00$$

- Residential property with one or two single family residences over \$400k:

$$\text{LTT} = (n - \$400k) \times 0.02 + \$4,475$$

- Commercial transactions over \$250k:

$$\text{LTT} = (n \times 0.015) - \$1,525.00$$

Municipal Land Transfer Tax (City of Toronto)

- ▶ Additional Land Transfer Tax (“Miller Tax”)

- ▶ Residential property (1 to 2 single family residences):
 - value to \$55,000 0.5% plus
 - value > \$55,000 to \$400,000 1.0% plus
 - value > \$400,000 2.0%

- ▶ All other property:
 - value to \$55,000 0.5%
plus
 - value > \$55,000.00 </= \$400,000 1.0% plus
 - value > \$400,000 </= \$40,000,000 1.5% plus
 - value > \$40,000,000 1.0%

Deemed Consideration

- ▶ **Transfer to Corporation for Shares (wholly or in part) OR Transfer From Corporation to Shareholder(s)**
 - LTT on the “fair market value” at time of registration
 - Independent appraisal
 - Applies to unregistered conveyances
- ▶ **Transfer from Parent to Child**
 - Consideration plus any assumed liabilities (e.g. debt under existing mortgage)
 - Even if transfer for “natural love and affection”
 - Value of outstanding debt assumed at time of disposition
 - Mortgage statement

No LLT Applicable

▶ Amalgamations

- LTT not applicable
- Name change application for Amalco NOT a conveyance

▶ Trust Transfers

- Beneficial owner (“BO”) to trustee (for same BO)
- Trustee to trustee (for same BO)
- Trustee to original BO
- Estate trustee to beneficiary of estate (no consideration)
- Supplementary filings with Ministry
 - Affidavit evidencing trust

Contribution of Capital

Zero LTT

- ▶ Zero LTT if land is contribution of capital to corporation
- ▶ No other consideration (i.e. no shares, assumption of liabilities or promissory note, etc.)
- ▶ Not an exemption from LTT
- ▶ Mandatory Filing (for unregistered dispositions):
 - “Return on the Acquisition of a Beneficial Interest in Land”

Transfers – Affiliated Corporations

Deferral & Cancellation

▶ Deferral

- Subsection 3(9) *unregistered dispositions only*
- LTT eventually cancelled (36 months – deferral period)
- Conditions:
 - remain affiliates through deferral period
 - transferee beneficially owns property through deferral period
 - no registration of conveyance AFTER beneficial conveyance
 - “*affiliates*”: ss. 3 (14) and (15) of Act and ss. 1 (3) – (6) of *Securities Act* (Ontario)

Transfers – Affiliated Corporations

Deferral & Cancellation (cont'd)

- Filing with Ministry of Revenue within 30 days:
 - “Return on the Acquisition of a Beneficial Interest in Land”
 - “Application and Undertaking for the Deferral of Land Transfer Tax (Subsection 3(9))”
 - Security (= to LTT plus any interest to end of deferral period)
 - Agreements
 - Shareholders registers – all corporations (including shareholder corporations)
 - Appraisals (if FMV is the consideration)
 - Parcel abstract showing no registration
 - Any other documentation the Ministry may require (?)

Acceptable Security? Currently, payment or Letter of credit only

Transfers – Affiliated Corporations Deferral & Cancellation (cont'd)

- Cancellation of Tax (Subsection 3(11))
 - Evidence that that undertakings satisfied after deferral period
 - or
 - Sale to a third party within deferral period and LTT paid in the normal course by purchaser

Exemptions

Corporate Re-Organizations – Butterfly

- Section 2, Regulation 70/91 exemption from Section 3 tax
- Conditions:
 - Part of a reorganization and dividend is received by corporation
 - Dividend deemed under subsection 55(2) of the *Income Tax Act* (Canada), but for the application of paragraph 55(3)(b) of that Act, not to be a dividend received by the corporation, but to be proceeds of disposition of a share or shares or to be a gain of the corporation from the disposition of a capital property.
 - Disposition of beneficial interest in land must be transfer of property of particular corporation to one or more corporations for the purposes of 55(3)(b) of the *Income Tax Act* (Canada) in respect of the dividend referred to in subsection (2).

Exemptions

Corporate Re-Organizations – Butterfly (cont'd)

- Filing with Ministry of Revenue within 30 days:
 - “Return on the Acquisition of a Beneficial Interest in Land”
 - “Application and Declaration for the Exemption of Land Transfer Tax Pursuant to Ontario Regulation 70/91”
 - Copy of all agreements
 - Brief outline of transactions (opinion) or copy of CRA ruling
 - Any other documentation the Ministry may require in support of the application for exemption.
- Exemption n/a to registered conveyances

Other Exemptions

de minimis Partnership Interest

- ▶ Acquisition of a "De Minimis" Partnership Interest – "5%" (Subsection 1(2) of O. Reg. 70/91)
 - Limited to maximum of 5% interest acquired during fiscal period of partnership
 - Exemption n/a to registered conveyances

Other Exemptions

Specific Exemptions

- Certain Easements Granted to Oil or Gas Pipe Lines (Regulation 695, R.R.O. 1990)
- Certain Transfers Between Spouses (Regulation 696, R.R.O. 1990)
- Certain Conveyances of Family Farms or Family Businesses (Regulation 697, R.R.O. 1990 Exemption (See Bulletins [LTT 3-2008, Exemption for Certain Transfers of Farmed Land](#), and LTT 6/79, Land Transfer Tax Exemption for Family Business Corporations)
- Taxation of Mineral Lands (Regulation 703, R.R.O. 1990) (See Bulletin [LTT 3-2004, Land Transfer Tax Exemption for Certain Conveyances of Mineral Lands](#))

Exemptions (cont'd)

- ▶ **Available exemptions under Regulations expressly extended to unregistered dispositions**
 - Section 3 of O. Reg. 70/91
 - A return must be filed in these situations and the exemption from tax claimed
- ▶ **Any exemption under Act = Exemption for Municipal Land Transfer Tax (Toronto)**

Section 85

Income Tax Rollovers

- ▶ No Symmetry
- ▶ Possible Relieving Provisions
 - Affiliated Corporation Beneficial Transfers
 - Family Business Corporation Exemption
 - Butterfly Transactions: 55(3)(b)
 - Rollovers of “De Minimis” Partnership Interests

Partnerships

- ▶ Ministry Position: “look through”
- ▶ “De Minimis” Exception
- ▶ 98(3) Income Tax Rollout
 - No tax if land rolled out based on original partnership interest

Trusts

- ▶ Bare Trust: No change in Beneficial Ownership (“BO”)
- ▶ Family Trusts:
 - May involve change in BO
 - If so, treated like gifts
 - Any liabilities assumed?

Estates

- ▶ Exemption Where Transfer is:
 - Under terms of Will
 - Intestacy laws
 - Note: Mortgages not included
- Issues with Corporate owned Real Estate
- Bare Trustee Corporations

Affiliated Corporation Transfers

