Significant Changes To The Land Transfer Tax Act

November 23, 2016

Effective January 1, 2017, Land Transfer Tax rates for commercial real property transactions will increase.

On November 16, 2016, the Province of Ontario introduced *Bill 70, Building Ontario Up for Everyone Act (Budget Measures), 2016* for first reading. Bill 70 brings significant changes to the *Land Transfer Tax Act* ("LTTA").

Effective January 1, 2017, Land Transfer Tax ("LTT") rates for commercial real property transactions will increase from 1.5 per cent to 2 per cent for the portion of the value of consideration given for the property that exceeds $400,000. This increased rate applies to all real property transactions except for conveyances transferring only one or two single-family residences. This is the first time rates have changed since 1989. These changes do not affect Toronto's Municipal Land Transfer Tax by-law, and Toronto has not indicated whether it is considering amending this regime.

Bill 70 contains a grandfathering clause which precludes new rates from applying to agreements of purchase and sale (“APS”) executed on or before November 14, 2016.

Purchasers seeking to rely on the grandfathering clause should remain cautious, however. Various issues may affect a purchaser's ability to rely on their pre-November 14, 2016 APS. For example, amending a pre-November 14 APS may risk triggering "novation," whereby extensive amendments could be considered, in effect, to create a new APS, effective after November 14, which would attract the increased rates. Purchasers should consult BLG to ensure they can rely on their pre-November 14 APS to avoid the increased rates.

These rate changes can be significant depending on the circumstances. For example, a $10 million transaction will attract an additional $48,000 in LTT if it closes on January 1, 2017 as compared to a closing on December 31, 2016. Purchasers should consider consulting BLG if they are in a position to close before year end.

By

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