New Land Transfer Tax Rules Proposed for Certain Trusts and Partnerships

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On July 14, 2017, the Ontario Ministry of Finance (the "Ministry") released proposed rules to the *Land Transfer Tax Act* (the "LTTA") for public consultation. If implemented, the proposed rules impose broader disclosure requirements when registering or transferring real property, and alter the land transfer tax ("LTT") treatment of certain trusts and partnerships used as real property investment vehicles. These proposed rules are meant to address LTTA compliance and enforcement issues that arise when property is held through trust or partnership structures, as these entities are currently not considered "persons" under the LTTA.

New Disclosure Requirements

The proposed rules will require a legal titleholder who acquires land to disclose all persons, trusts, partnerships and other "vehicles" for whose benefit land is held at the time a conveyance of land is registered.

The Ministry has not provided any further details, and it is unclear how these rules would apply. However, the Ministry states that these rules would, for example, require a nominee to disclose the legal names and business registration numbers of each partnership or trust that has acquired a beneficial interest in the land transferred to the nominee. It is not clear whether these proposals will extend to the disclosure of beneficial interests of other entities.

These proposed disclosure requirements are in addition to previous disclosure rules that the Ministry announced on April 20, 2017, which require a person acquiring certain agricultural or residential land to disclose information pertaining to the nationality and/or residency of every individual or corporation that holds a legal or beneficial interest in the land.

Certain Trusts and Partnerships to be Deemed "Persons"

The LTTA currently ignores trust and partnership structures when determining the LTT consequences of transferring a beneficial interest in land. Instead, the LTTA looks through each trust or partnership and imposes LTT on the ultimate corporate or individual partners or unitholders of a trust or partnership structure, who are considered

to hold trust- or partnership-owned land as tenants-in-common with each other in proportion to their interest in the trust or partnership. Accordingly, any exchange of partnership or trust units or interests may trigger LTT because such exchanges are treated as a change in the proportional beneficial ownership of any partnership- or trust-owned land.

If enacted, the proposed rules will deem certain trusts and partnerships to be "persons" under the LTTA. These entities are Specified Investment Flow-Through Tax ("SIFT") trusts and partnerships as defined in the *Income Tax Act* (the "ITA"), Mutual Fund Trusts as described in subsection 132(6) of the ITA, and Pension Trusts as described in paragraph 149(1)(o) of the ITA (referred to by the Ministry as "Group 1 Vehicles").

If Group 1 Vehicles are deemed to be persons, the vehicles themselves will be liable for LTT instead of their ultimate corporate or individual partners or unitholders. This would mean that Group 1 Vehicle unit trades, DRIPs (distribution/dividend reinvestment plans), and unit redemptions will no longer attract LTT. Additionally, a Group 1 Vehicle that holds an interest in a partnership may qualify for the *de minimis* partnership exemption as described in O Reg 70/91.

Rules for Large LPs and Unit Trusts

The Ministry also proposes a new LTT scheme for other investment entities which include limited partnerships governed by the *Limited Partnerships Act* or "unit trusts" as described in subsection 108(1) of the ITA, so long as that limited partnership or unit trust has at least 50 arms' length unitholders or partners ("Group 2 Vehicles").

Under the proposed rules, Group 2 Vehicles would continue to be ignored for determining the LTT consequences of a disposition of a beneficial interest in land, but would instead be required to collect and remit any LTT owing by the ultimate corporations, individuals, or Group 1 Vehicles that hold units or interests in the Group 2 Vehicle through its trust or partnership structure. The Ministry also proposes establishing quarterly reporting periods to relieve Group 2 Vehicles from reporting LTT on a transaction by transaction basis.

Unlike Group 1 Vehicles, Group 2 Vehicle unit trades, DRIPs (distribution/dividend reinvestment plans), and unit redemptions would still be subject to LTT.

Expect More Changes

The LTTA has already been subject to significant change over the past year with LTT rate increases, new disclosure obligations, and the new Non-Resident Speculation Tax. Significant changes are likely to continue, especially as the Ministry has stated that other potential measures to "maintain the integrity and equity of Ontario's tax and revenue collection system" have not been included in this current consultation. Additionally, the Ministry's proposed rules are only phase one of the Ministry's two-phase LTTA review. Phase two of the LTTA review will involve a broader review of the application of LTT in the modern real estate context, in order to ensure fairness and revenue integrity.

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