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Indirect tax alert

BC's new 15% property transfer tax

Key questions and considerations

July 28, 2016

On July 25, 2016, the BC government introduced legislative changes directed at BC's residential housing market. The key changes include the introduction of an additional 15% property transfer tax (PTT), effective August 2, 2016, on transfers of residential properties within the Greater Vancouver Regional District (GVRD) to foreign entities or taxable trustees.

In order to determine whether the additional 15% PTT may apply, the key questions that must be answered are:

1. Is the property within the geographical taxing area?
2. Is the property a "residential property"?
3. Is the purchaser a "foreign entity" or "taxable trustee"?

If the answers to all of the above three questions are "yes", then it is likely the additional 15% PTT will apply.

This overview describes these key questions and outlines points to consider to determine if and how the new additional 15% PTT will apply.

Is the property within the geographical taxing area?

First, the property must be within the taxing area to be subject to the additional 15% PTT. The taxing area is currently limited to the GVRD, which includes: Anmore, Belcarra, Bowen Island, Burnaby, Coquitlam, Delta, Langley City and Township, Lion's Bay, Maple Ridge, New Westminster, North Vancouver City and District, Pitt Meadows, Port Coquitlam, Port Moody, Richmond, Surrey, Vancouver, West Vancouver, White Rock and Electoral Area A. The additional tax does not apply to properties located on Tsawwassen First Nation lands.

The Ministry has the authority to prescribe certain areas within the GVRD to be excluded from the taxing area, as well as to prescribe geographies outside the GVRD to be within the taxing area. At this time, none are prescribed.

Is the property a residential property?

Second, the additional 15% PTT applies only on property that is considered a "residential property". The new rules follow the definition of Class 1 residential property under section 1 of the **Prescribed Classes of Property Regulation, BC**.

With some exceptions, Class 1 residential property includes:

- Land or improvements, or both, used for residential purposes, (e.g., single and multiple family residences, duplexes, apartment and condo buildings, nursing and rest homes);
- Improvements on land classified as a farm under section 23(2) of the **Assessment Act** and used in connection with the farm operation;
- Land which has no present use and which is neither specifically zoned nor held for business, commercial or industrial purposes; and
- Land or improvements, or both, used for child daycare purposes.

It is notable that the definition of “residential property” under the new section 2.01 of the **Property Transfer Tax Act** provides an exclusion for any “prescribed land or property”. While no land or property has yet to be prescribed, the BC Ministry of Finance does have the ability to do so, thereby excluding any such prescribed residential land or property from the additional PTT.

Is the purchaser a foreign entity or a taxable trustee?

A foreign entity is either a person who is not a Canadian citizen or a permanent resident, or a foreign corporation, including a foreign-controlled Canadian corporation.

In cases where the transferee is a trustee, the additional PTT may apply in cases where the trustee of a trust is considered a “taxable trustee”. A taxable trustee is considered a trustee of a trust where:

- Any trustee is a foreign entity, or
- No trustee is a foreign entity but, immediately after the registration of the transaction, a beneficiary of the trust who is a foreign entity holds beneficial interest in the property.

Notably, mutual fund trusts (MFTs), real estate investment trusts (REITs) and specified investment flow-through trusts (SIFTs) are not considered trusts for the purposes of the definition of taxable trustee. As such, foreign entities that are trustees of MFTs, REITs and SIFTs are not impacted by the new rules.

How will the additional PTT apply?

Generally, the additional 15% PPT will apply on the fair market value of any transfers of residential property within the GVRD to a transferee that is a foreign entity or a taxable trustee. An **Additional Property Transfer Tax Return** must be filed at the time the property transfer is registered with the Land Title Office.

In instances where not all transferees are taxable trustees or foreign entities, the additional PTT will only apply on the proportionate share of fair market value of the property that is attributable to the taxable trustee or foreign entity.

Proration will also apply in cases where a property transfer includes both residential and non-residential property. The additional PTT will only apply on the residential portion of the property.

When will the additional PTT apply?

No grandfathering measures are included in the new legislation which means the additional 15% PTT will apply to any applicable transfers registered with the Land Title Office as of August 2, 2016, regardless of when the contract of purchase and sale was entered into.

Other considerations

It is important to note that all transferees are jointly and severally liable for the additional 15% PTT. This means that Canadian citizens or permanent residents may be liable for any tax not paid by any transferees who are taxable trustees or foreign entities.

In addition, the legislation contains very broad anti-avoidance provisions.

Penalties for non-compliance include a penalty equal to the unpaid tax, plus interest, and fines of \$200,000 for corporations and \$100,000 for individuals. A prison term of up to two years can also apply. The statute of limitations on property transfers is six years from the date in which the transfer is registered at the Land Title Office.

Other legislative changes announced on July 25, 2016 include the creation of a Housing Priority Initiatives Fund, amendments to the Real Estate Services Act, and changes to the Vancouver Charter to permit the City of Vancouver to implement a tax on vacant homes.

Please reach out to your Deloitte advisor to understand how these new changes may impact you.

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