

A TAXING PROPOSITION: B.C. BUDGET 2018'S IMPACT ON PROPERTY TRANSFER TAX IN BRITISH COLUMBIA

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On February 20, 2018 the NDP government delivered its 2018 budget for British Columbia. The budget brings with it a number of measures that will impact real property transactions in British Columbia. These measures are outlined in a government publication entitled "Homes for B.C.: A 30-Point Plan for Housing Affordability in British Columbia" (the "**Homes for BC Plan**"). Many of the initiatives set out in the Homes for BC Plan will be implemented under the Budget Measures Implementation Act, 2018, which passed first reading on February 20, 2018.

Pursuant to the Homes for BC Plan, taxation of real property transfers in British Columbia will be significantly impacted. To reflect the government initiatives in the Homes for BC Plan, the Ministry of Finance introduced a new form of Property Transfer Tax Return, Version 30, (the "**PTT Form**") which is effective as of February 21, 2018. The PTT Form contains a number of updates to the previous form that reflect the real property transfer tax changes brought about by the following budgetary measures pursuant to the Homes for BC Plan.

A. Increased Property Transfer Tax Rate on Residential Properties

Property transfer tax ("**PTT**") is generally paid based on the fair market value of land and improvements when a transfer of real property is registered with the Land Title Survey Authority (the "**LTSA**"), the organization responsible for operating the land title and survey system of British Columbia. The PTT payable for a given transaction prior to the Plan was assessed at the following rates:

1. 1% on the first \$200,000;
2. 2% on the amount greater than \$200,000 and up to and including \$2,000,000; and

3. 3% on the amount greater than \$2,000,000.

This structure will remain intact, but an additional 2% will be payable on the amount greater than \$3,000,000 for residential properties, or the residential portion of a property, as the case may be.

B. Increased and Extended Foreign Buyers Tax

The scope of the foreign buyers tax, which is an additional property transfer tax payable on residential properties, has been expanded in terms of both rate and geographic application. The rate will increase by 5% (from 15%) to 20%. Similarly, the foreign buyers tax, which was previously payable only on residential properties located in the Greater Vancouver Regional District (excluding the Tsawwassen First Nation lands), will now also be payable on residential properties located in the Capital Regional District, Fraser Valley Regional District, Regional District of Central Okanagan, and Regional District of Nanaimo.

Notwithstanding the foregoing, the provincial government has provided transitional rules for implementation of the expanded foreign buyers tax. If the subject property is located within any of the 4 newly added Regional Districts the foreign buyers tax applies to, then this tax will not be payable in any the following circumstances:

1. The transfer of residential property is registered on or before May 18, 2018 and is subject to a written agreement dated before February 21, 2018, provided that tax will be payable if the written agreement is assigned to a foreign entity or taxable trustee on or after February 21, 2018; and
2. The transfer of residential property is:
 - a. subject to a court order dated on or before February 20, 2018;
 - b. subject to an Order Nisi of Foreclosure dated on or before February 20, 2018;
 - c. subject to a separation agreement signed on or before February 20, 2018;
 - d. from the personal representative of a deceased's estate to the beneficiary and the death of the deceased occurred on or before February 20, 2018; or
 - e. to a surviving joint tenant when the death of the deceased occurred on or before February 20, 2018.

C. Expanded Information Disclosure Requirements

In an effort to take action to end hidden ownership, the information that will be collected on the new PTT Form is much broader than it previously was. In addition to the changes implemented in 2017 to collect additional information about the transferor (including address, phone number and tax residency status under the Income Tax Act (Canada)), the new PTT Form will also require the following information with respect to each transferee:

1. **If the transferee is an individual:** The new form will continue to require the transferee to disclose:

- a. whether or not the transferee is a Canadian citizen or permanent resident of Canada; and
- b. where the transferee is not a Canadian citizen or permanent resident of Canada, whether or not the transferee is a citizen of a foreign country or state and, if so, the country or state which the transferee is a citizen of.

The additional information the new form will require the transferee to disclose is:

- c. if the transferee is a Canadian citizen or permanent resident of Canada, the transferee's date of birth and social insurance number; and
- d. if the transferee is not a Canadian citizen or permanent resident of Canada, the date of birth and social insurance or individual tax number, as the case may be.

2. **If the transferee is a corporation:** The new form will continue to require the transferee to disclose:

- a. the total number of directors of the transferee; and
- b. the number of directors who are Canadian citizens or permanent residents of Canada.

The additional information the new form will require the transferee to disclose is:

- c. the date of birth and social insurance number for each director who is a Canadian citizen or permanent resident of Canada;
- d. in relation to each director who is not a Canadian citizen or permanent resident of Canada:

(i) the name, contact information, date of birth and, as applicable, social

insurance number or individual tax number of the director; and

(ii) whether or not the director is a citizen of a foreign country or state and, if so, the name of such foreign country or state; and

e. the business corporation number of the transferee.

3. **If the transferee is a bare trustee of a trust, acquiring the land to which the taxable transaction relates:** The new form will continue to require the transferee to disclose, in addition to the information required if the transferee is also an individual or a corporation, the following information:

a. in the case of a settlor or beneficiary who is an individual:

(i) the name and contact information of the settlor or beneficiary;

(ii) whether or not the settlor or beneficiary is a Canadian citizen or permanent resident of Canada; and

(iii) if the settlor or beneficiary is not a Canadian citizen or permanent resident of Canada, whether or not the settlor or beneficiary is a citizen of a foreign country or state and, if so, the name of such foreign country or state; and

b. in the case of a settlor or beneficiary that is a corporation:

(i) the name and contact information of each director of the settlor or beneficiary and whether or not the director is a Canadian citizen or permanent resident of Canada; and

(ii) if a director is not a Canadian citizen or permanent resident of Canada, whether or not the director is a citizen of a foreign country or state and, if so, the name of such foreign country or state.

The additional information the new form will require the transferee to disclose is:

c. in the case of a settlor or beneficiary who is an individual:

(i) if the settlor or beneficiary is a Canadian citizen or permanent resident of Canada, the date of birth and social insurance number of the settlor or beneficiary;

(iii) if the settlor or beneficiary is not a Canadian citizen or permanent resident of Canada, the date of birth and, as applicable, social insurance number or individual tax number of the settlor or beneficiary; and

d. in the case of a settlor or beneficiary that is a corporation:

(i) the date of birth and social insurance number of each director of the settlor or beneficiary who is a Canadian citizen or permanent resident of Canada; and

(ii) if the director is not a Canadian citizen or permanent resident of Canada, the date of birth and, as applicable, social insurance number or individual tax number of the director.

The government is requiring all of this additional information be disclosed for the purposes of creating a registry, to be administered by the LTSA, in an effort to ascertain the beneficial ownership of land in British Columbia. This information will be publicly available and will be shared with federal and provincial tax and law enforcement authorities to assist them in their investigations.

D. Expanded Review and Enforcement Powers

In addition to the budgetary measures reflected in the new PTT Form, the government will introduce a number of changes to increase transfer tax review and enforcement powers. Firstly, the limitation periods for property transfer tax assessments will be substantially lengthened from either 1 year or 24 months, depending on whether exemptions, refunds or credits have been applied for, to 6 years. Secondly, the anti-avoidance rule will be extended from application solely to the foreign buyers tax to all taxable transactions. Finally, from an enforcement perspective, a monetary administrative penalty will be established that will apply to any person who attempts to evade or avoid transfer tax. Liability under this new administrative penalty will be joint and several for the amount of any tax avoided or evaded, plus an amount equal to 100% of such evaded or avoided tax.

E. Conclusion:

It is the provincial government's goal to close apparent loopholes in British Columbia's real estate market and understand who owns residential property in British Columbia. To accomplish this goal, the Homes for BC Plan sets the stage for allowing the collection of beneficial ownership and for the potential future taxation of transfers of beneficial

ownership of real property in British Columbia. The provincial government has already implemented and increased PTT and foreign buyers tax for residential properties that file a transfer of ownership in the LTSA. It may not be in the distant future that beneficial transfers of real property will be taxed in a similar regime that transfers registered in the LTSA are subject to.

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