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Ontario Proposes Changes to Land Transfer Tax for Certain Trusts and Partnerships

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The Ontario Ministry of Finance considers partnerships and most trusts to be transparent for Ontario land transfer tax (LTT) purposes. This means that if a unit trust or limited partnership with a large number of unitholders purchases a beneficial interest in Ontario real estate, technically each ultimate unitholder could be liable for LTT based on its pro rata interest in the acquired real estate. Although in practice the acquiring trust or partnership will often pay the LTT on behalf of its unitholders, the Ministry faces potential difficulties where this does not occur, especially if a unitholder has a complex multi-tier or cross-border structure. In addition, computation of the LTT may be difficult where the ultimate unitholders are eligible for different LTT rates or exemptions from LTT (such as the exemption available to the Crown and Crown agencies).

The Ministry has released for public consultation a proposed modification to the existing system – one that would introduce two new categories of vehicles for LTT purposes. Comments are due on August 28, 2017.

Separate Person Status for Mutual Fund Trusts and Specified Investment Flow-Throughs

Group 1 vehicles will themselves be treated as separate LTT taxpayers and, thus, be required to pay LTT on their beneficial acquisitions. Moreover, acquisitions or redemptions of interests in Group 1 vehicles will not trigger LTT. Group 1 vehicles are the following:

- specified investment flow-through (SIFT) trusts and SIFT partnerships – essentially, publicly traded unit trusts (other than REITs) and partnerships;
- mutual fund trusts; and
- pension trusts that are exempt for income tax purposes.

No mention is made of an exemption for beneficial transfers occurring on a REIT merger.

LTT Collection Obligation for Other Unit Trusts and Ontario LPs

There are two requirements to be a Group 2 vehicle (in addition to not being a Group 1 vehicle). First, it must be

- a unit trust for income tax purposes; or
- a partnership that has filed, or is required to file, a declaration under the *Limited Partnerships Act* for Ontario. No reference is made to partnerships formed in other jurisdictions.

Second, it must have issued units or partnership interests to 50 or more arm's-length investors.

Unitholders or partners of Group 2 vehicles will have the same substantive liability for the tax on beneficial acquisitions as before. Although the Group 2 vehicle itself will continue to be a flow-through for most such purposes, it will be required to collect and remit LTT calculated at the unitholder or partner level – and will be authorized to collect such amounts from the unitholders or partners through withholding from distributions. *If it collects an insufficient amount, it will be subject to a penalty of at least the amount it failed to collect.*

Exemption for *de minimis* Changes in Partnership Interest

LTT is exigible if a partner has an increase in its percentage partnership interest in a year (and, thus, in its percentage interest in Ontario real estate owned by the partnership) unless the increase for the year is 5% or less. This *de minimis* exemption is not currently available to a partner that is a trust or a partnership. It is proposed that a Group 1 vehicle that is a partner of a partnership will be able to access the *de minimis* exemption.

Other Trusts and Partnerships Unaffected

No changes are proposed for the treatment of other trusts or partnerships. Foreign entities generally will be classified the same as they would be for income tax purposes by the Canada Revenue Agency.

Disclosures by Nominees

Disclosure requirements for nominees will be expanded. For example, at the time of title registration, a nominee will be required to disclose the legal names and business registration numbers of the partnerships or trusts for which it holds title.

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