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Ontario Unveils a New 15% Land Transfer Tax and Expanded Rent Controls

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On April 20, 2017 the Ontario government announced a set of measures, dubbed the Fair Housing Plan, intended to “help more people find an affordable place to call home, while bringing stability to the real estate market and protecting the investment of homeowners.” The plan includes a proposed 15% tax on foreign real estate purchasers and an expansion of the current rent control rules. The principal features of these proposed measures are outlined below.

Non-resident Speculation Tax

- The 15% tax applies, effective April 21, 2017, to the value of the consideration for the transfer (including a beneficial transfer) of a residential property in the “Greater Golden Horseshoe” if any of the transferees is a “foreign entity” or “taxable trustee.”
- The Greater Golden Horseshoe extends roughly from Simcoe County (i.e., Midland but not Gravenhurst) down to the Niagara Region and Haldimand County on Lake Erie, and from the Waterloo Region to Peterborough and Northumberland Counties.
- Binding purchase agreements signed on or before April 20, 2017 will not be subject to the tax.
- A residential property means a real estate property containing up to six family residences, and includes residential condo units (irrespective of the number purchased). Large residential rental apartment buildings are expressly excluded.
- A foreign entity is a “foreign national” or a “foreign corporation.”
- A foreign national is an individual who is not a Canadian citizen or permanent resident.
- A foreign corporation includes not only corporations incorporated outside Canada but also certain Canadian corporations. More particularly, a foreign corporation includes a Canadian-incorporated corporation the shares of which are not listed on a Canadian stock exchange and that is controlled “in whole or in part” by a foreign national or other foreign corporation. There is no guidance on what it means for a corporation to be controlled in part by a person. A foreign corporation also includes a Canadian-incorporated corporation that is “controlled” by a foreign entity within the meaning of section 256 of the *Income Tax Act* (Canada). Section 256 extends control beyond the strict *de jure* test of more than 50% of the votes. For example, a person who exercises *de facto* control over a corporation or owns shares representing more than 50% of the value of the corporation will be considered to control that corporation for purposes of section 256.
- A taxable trustee is a Canadian citizen, permanent resident or corporation holding title in trust for foreign entity beneficiaries or a foreign entity holding title in trust for anyone.
- The tax applies to a transfer of residential property if *any* of the transferees is a foreign entity or a taxable trustee. Thus, if a transfer of residential property is made to multiple transferees and only one is a foreign entity or taxable trustee, the tax will be imposed on the full value of the consideration for the property. Each transferee will be jointly and severally liable for the tax payable.
- The tax does not apply to a purchase made as trustee for a mutual fund trust, a real estate investment trust or a specified investment flow-through trust. It is unclear whether this exemption is intended to apply to foreign REITs.

- There are also narrowly cast exemptions for personal use by foreign nationals who receive confirmation under the Ontario Immigrant Nominee Program, for refugees and for foreign nationals who acquire property jointly with a spouse who is a Canadian citizen, permanent resident or other qualifying person. Rebates may also be available for foreign nationals who become Canadian citizens or permanent residents within four years of the acquisition, who are full-time Ontario students for two years following the acquisition or who legally work full-time in Ontario for one full year following the acquisition.
- The legislation, when drafted, will contain anti-avoidance provisions, the scope of which is unclear at this point.
- Although the Teranet system is not yet set up to collect the new tax, in the meantime all transfers registered after April 20 (and all reporting of beneficial conveyances) must contain a statement acknowledging that consideration has been given to the application of the new tax, and the tax must be paid directly to the Ministry of Finance (purportedly even before the legislation is drafted or passed).

Rent Control

- The Fair Housing Plan would expand rent control to all private rental units, including those built after 1991 (which units were previously exempted). The measures would limit increases in rental costs to the rate posted in the annual provincial rent increase guideline, with the maximum increase capped at 2.5% annually. Landlords will be allowed to apply vacancy decontrol and seek above-guideline increases where permitted. When passed, the legislation enacting these changes will be effective as of April 20, 2017.
- In an attempt to lessen the impact of the changes on the construction of new private rental units, the Ontario government proposes to introduce a targeted \$125-million, five-year program to encourage the construction of new rental apartment buildings through a rebate of a portion of the development charges otherwise applicable thereto. However, this program may be limited to those areas that the Ontario government determines are most in need of new purpose-built rental housing.

Other Measures

The Fair Housing Plan contains a number of other measures, including the following:

- introducing new legislation that, if passed, would empower municipalities to introduce a vacant home tax;
- ensuring that property tax for new multi-residential apartment buildings is charged at a similar rate as other residential properties;
- providing municipalities with tools to help “unlock development opportunities,” such as imposing a higher tax on vacant land that has been approved for new housing;
- tackling practices that may be contributing to tax avoidance and excessive speculation in the housing market such as “paper flipping,” a practice that includes entering into an agreement to buy a residential unit and assigning it to another person prior to closing.

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