BC's Additional Property Transfer Tax for Foreign Entities

On July 25, 2016 the B.C. Liberal Government tabled draft legislation that is intended to address the issue of affordable housing in the Greater Vancouver Regional District ("GVRD").

This BC property transfer tax legislation contains four separate measures, which are as follows:

1. An additional property transfer tax of 15% which will apply to transfer of residential real estate in the GVRD to foreign entities or taxable trustees;
2. The creation of a new "*Housing Priorities Initiative's Fund*". This Fund will receive an initial investment of $75 Million. Ongoing funding will be provided from a portion of the tax revenue from the Property Tax including revenues from the additional tax on foreign entities noted above;
3. Amendments to the Real Estate Service Act to substantially implement the key recommendations of the independent advisory group and to end self-regulation of the real estate industry; and
4. Amendments to the Vancouver Charter to provide the City of Vancouver the legislative authority to allow the city to levy a tax on vacant homes.

This article will address the key concepts of the first measure, the Additional Property Transfer Tax on foreign entities and taxable trustees.

Effective date and Area of Application

Effective August 2, 2016, the additional property transfer tax applies to residential property transfers to foreign entities in the Greater Vancouver Regional District, 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 Nations Lands.

The additional tax applies to all applicable transfers registered with the Land Title Office on or after August 2, 2016, regardless of when the contract of purchase and sale was entered into.

Effected Persons – Foreign Entities

Foreign entities are transferees that are foreign nationals, foreign corporations or taxable trustees.

Foreign nationals are transferees if the individual is not a Canadian citizen or permanent resident, including a stateless person.

Foreign corporations are transferees that are corporations:

- Not incorporated in Canada or

- Incorporated in Canada, but controlled by a foreign national or other foreign corporation, unless the shares of the corporation are listed on a Canadian stock exchange.

A taxable trustee will exist if any trustee of a trust is a foreign entity or if immediately after the registration any beneficiary of the trust that is a foreign entity, has a beneficial interest in the residential property.

Applying the Additional Tax

The additional tax is 15% of the fair market value of the foreign entity's proportionate share of a residential property. This tax applies in addition to the general property transfer tax.

The additional tax does not apply to non-residential property. The value of the residential portion of a transfer of a mixed use property is calculated in the same way as for the property transfer tax.

The additional tax applies on the foreign entity's proportionate share of any applicable residential property transfer, even when the transaction may normally be exempt from property transfer tax. This includes transactions such as:

- A transfer between related individuals;
- A transfer resulting from an amalgamation;
- A transfer to a surviving joint tenant; and
- A transfer where the transferee is or becomes a trustee in relation to the property, even if the trust does not change.

The additional tax does not apply to trusts that are mutual fund trusts, real estate investment trusts or specified investment flow-through trusts.

Filing and Paying the Additional Tax

Filing the Return

Foreign entities registering a transfer, or their legal representative, must file an *Additional Property Transfer Tax Return* (FIN 532). The return must be filed at the time the property transfer is registered with the Land Title Office.

Paying the Additional Tax

The additional tax must be paid at the time the property transfer is registered with the Land Title Office.

Each transferee is jointly and severally liable for the additional tax payable. If one transferee does not pay the required additional tax, the other transferees, including Canadians, must pay that transferee's share of the additional tax payable.

Tax Avoidance

All property transfer transactions are subject to audit and all additional property transfer tax returns will be reviewed and verified. The audit period is six years from the date the transfer is registered at the Land Title Office.

Where transactions involve Canadian citizens, the Canadian citizen's social insurance number must be collected and their identification verified against official government issued identification such as a Canadian passport. Invalid social insurance numbers or other discrepancies on a return will lead to an audit and investigation of the transaction.

Anti-avoidance provisions exist and will be enforced to ensure all foreign entities report and pay the additional tax as required, including examining circumstances where Canadians hold property in trust for a foreign entity or are trustees where a beneficiary may be a foreign entity.

Failure to pay the additional tax as required or purposely completing the general or additional property transfer tax return with incorrect or misleading information may result in a penalty of the unpaid tax plus interest and a fine of $200,000 for corporations or $100,000 for individuals and/or up to two years in prison. The penalties apply to anyone who participates in tax avoidance.

Property transfers will be monitored for compliance and the province will follow up with those businesses or individuals filing incomplete or incorrect general or additional property transfer tax returns.

Points to Note

- No grandfathering - the additional tax will apply to all transfers on or after August 2, 2016 notwithstanding the fact that the agreement to sell or transfer the property was entered into prior to its announcement. This provision has been subject to criticism as it may affect a purchaser's decision to close on a pending sale given the additional unanticipated cost. Generally, where the parties to a transaction have agreed upon the terms of sale prior to the introduction of a new tax, the legislation includes provisions that ensure the taxation is in accordance with the law that existed at the time the parties agreed upon the terms of the sale ("grandfathering"). We could encourage the Government to reconsider this decision given the uncertainty it may create for the purchaser and the vendor.

- Taxable trustees – a trustee of any trust purchasing or receiving an affected property must carefully assess the trusts liability for the additional tax.

  For example, the fact that a beneficiary of the trust has emigrated from Canada may cause the transfer to be subject to the additional tax.

- Monitoring and penalties – while the initial assessment involves a self-assessment of the taxes there will be extensive monitoring and review and heavy penalties for anyone involved in the improper reporting of a transfer.

- Transfer – it should be noted that a taxable transfer will include transfers that do not involve a sale. For example, it could include a gratuitous transfer to a spouse, death of an owner or changes in the trustee of a trust. This tax significantly increases what foreigners will have to pay for a residential property located in the GVRD. It may ultimately decrease the amount that foreigners are willing to pay which may lead to a tempering in the cost of housing in the GVRD. Details of how the tax revenue going to

- the Housing Priorities Initiative Fund will be used are not yet available; hopefully they will be used wisely.

In any event we encourage anyone involved in the purchase/transfer of residential property within the GVRD to carefully assess the situation. Failure to comply where applicable could add considerable costs to an already large bill.

If you have any further questions about this new additional property transfer tax legislation or wish to discuss your options for residential property transfers to foreign entities, please contact a member of the Manning Elliott Tax Team for assistance at **1-604-714-3600**.