Cassels

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

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On July 14, 2017, the Ontario Ministry of Finance released for public consultation proposed changes to the *Land Transfer Tax Act* (the "Act") relating to the taxation of unregistered dispositions of the beneficial interest in land. The purpose of such changes is to address the increasingly complex partnership and trusts structures that are used to hold land in Ontario. Comments are due on August 28, 2017.

Land transfer tax ("LTT") applies to transfers of land, whether registered or unregistered, subject to exceptions. Currently under the Act, if there is an unregistered disposition of a beneficial interest in land, tax is payable by every person who acquires that beneficial interest in land or whose beneficial interest in land is increased as a result of such disposition on the 30th day after the date of the disposition, unless the tax is otherwise exempt, deferred or cancelled under the Act and regulations under the Act.

Targeted Rules for Two New Categories of Vehicles

Targeted rules for two new categories of entities (referred to as “vehicles” in the proposals) for LTT purposes will be introduced.

Group 1 Vehicles

Group 1 vehicles are specified investment flow-through ("SIFT") trusts and SIFT partnerships, mutual fund trusts, and pension trusts that are exempt for income tax purposes.

Group 1 vehicles are deemed to be persons subject to LTT. Consequently, Group 1 vehicles will be subject to LTT if they acquire or increase their beneficial interest in land.

LTT will not apply when a partner or unitholder of a Group 1 vehicle acquires an interest in the vehicle, on a redemption of a unit of the vehicle or with respect to a distribution/dividend re-investment plan of the vehicle.

Group 2 Vehicles

Two conditions to be a Group 2 vehicle:

- A “unit trust” for federal income tax purposes or a partnership that has filed a declaration under the

Ontario *Limitation Partnerships Act*, and
- 50 or more arm's length unitholders or partners (or other minimum thresholds determined by Ministry, based on public consultation process).

A Group 2 vehicle excludes a Group 1 vehicle.

Group 2 vehicles are not themselves subject to LTT however, Group 2 vehicles are LTT collectors of tax imposed on the unitholders and partners of Group 2 vehicles, who will continue to be liable for LTT if they acquire a beneficial interest in land or whose beneficial interest in land has increased through an acquisition of units of the trust or an interest in a partnership.

The Group 2 vehicles will be entitled to deduction or withhold the LTT from any amount payable by the vehicle to the unitholders or partners. If the vehicle collect insufficient amounts, the vehicle, as the LTT collector, will be subject to a penalty of at least the amount it failed to collect.

Distribution/dividend reinvestment plans are excluded.

De Minimis Exemption

The 5% *de minimis* partnership exemption will be available to a Group 1 vehicle that is member of a partnership including a Group 2 vehicle that is a partnership.

Partners of Group 2 vehicles that are individuals, corporations or Group 1 vehicles are entitled to the *de minimis* exemption.

New Disclosure Requirements

Disclosure will be required of persons, trusts, partnerships and other vehicles for whose benefit land is held at the time of title registration. This includes title held by a nominee.

For further information, please contact James Morand, Tera Li or any other member of the Taxation Group.
