Tax Insights
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Ontario imposes new 15% tax on foreign buyers of residential property

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In brief

Foreign purchasers of residential property in the Greater Golden Horseshoe will be liable for a new 15% non-resident speculation tax (NRST). The new tax will apply to agreements of purchase and sale signed after April 20, 2017. It will apply in addition to Ontario's general land transfer tax and Toronto's land transfer tax.

In detail

Who will be liable for the tax?

The 15% NRST will be imposed on foreign entities and taxable trustees that purchase or acquire certain residential property in the Greater Golden Horseshoe.

Despite the description of the tax, it will apply regardless of whether a property is acquired with a speculative investment intention.

Foreign entities and taxable trustees

Foreign entities are:

- foreign nationals – individuals that are not Canadian citizens or permanent residents
- foreign corporations – corporations that are:
  - not incorporated in Canada
  - incorporated in Canada, but controlled by a foreign national or other foreign corporation (unless the corporation's shares are listed on a Canadian stock exchange), or
  - controlled directly or indirectly by a foreign entity for purposes of the associated corporation rules in Canada's *Income Tax Act*

A taxable trustee is a trustee that is:

- a foreign entity holding title in trust for beneficiaries, or
- a Canadian citizen, Canadian permanent resident beneficiary or a corporation holding title in trust for foreign entity beneficiaries

Residential property subject to the tax

For the NRST to apply, the land transferred must contain at least one, but not more than six single family residences. A detached house, semi-detached house, townhouse and condominium unit would each be considered one single family residence.

When multiple condominium units are purchased, each unit would be considered land containing one single family residence.

Duplexes, triplexes, fourplexes, fiveplexes and sixplexes would be considered to contain more than one single family residence and thus be subject to the tax.

The NRST does not apply to multi-residential rental apartment buildings with more than six units, agricultural land, commercial land or industrial land.

Greater Golden Horseshoe

The Greater Golden Horseshoe includes Brant, Dufferin, Durham, Haldimand, Halton, Hamilton, Kawartha Lakes, Niagara, Northumberland, Peel, Peterborough, Simcoe, Toronto, Waterloo, Wellington and York.

How will the tax be calculated?

The tax will be 15% of the value of the consideration for the residential property.

If the land transferred includes both residential property and another type of property, the NRST applies on the portion of the value of the consideration attributable to the residential property.

If any of the transferees of residential property is a foreign entity or taxable trustee, the NRST will apply to 100% of the value of the consideration for the transfer. Each transferee will be jointly and severally liable for any NRST payable, even if the other transferees are Canadian citizens or permanent residents.

The NRST also applies to unregistered dispositions of a beneficial interest in residential property, when the purchaser of the interest is a foreign entity or taxable trustee. It does not apply when a person purchases or acquires residential property as a trustee of a mutual fund trust, real estate investment trust or specified investment flow-through trust.

Exemptions

Exemptions from the NRST are available to a foreign national who:

- is confirmed under the Ontario Immigrant Nominee Program (a "nominee") at the time of the purchase or acquisition if the property is used as the foreign national's principal residence
- is conferred the status of "convention refugee" or "person in need of protection" (a "refugee") under the *Immigration and Refugee Protection Act* at the time of the purchase or acquisition
- has a spouse who is a Canadian citizen, Canadian permanent resident, nominee or refugee if the foreign national jointly purchases residential property with that spouse (but not jointly with any other person)

Rebates

A rebate of the NRST may be obtained if the foreign national:

- becomes a Canadian citizen or permanent resident within four years of the date of the purchase or acquisition
- is a student who has been enrolled full-time for at least two years from the date of purchase or acquisition in an "approved institution," or
- has legally worked full-time in Ontario continuously for one year since the date of purchase or acquisition

To be eligible for a rebate, the property must:

- be held solely by the foreign national or by the foreign national and his or her spouse, and
- have been used as the foreign national's (and if applicable his or her spouse's) principal residence for the entire period

Documentation will be required to support rebate applications.

Paying the tax

All transfers registered after April 20, 2017, must explicitly state whether or not the NRST applies. If the NRST applies, confirmation of payment must be provided.

For the interim, Ontario's electronic registration system will not be able to collect the NRST. During this time, affected purchasers and transferees should pre-pay both Ontario's general land transfer tax and the NRST directly to the Ministry of Finance, which will provide confirmation of payment.

Failure to pay the NRST as required can result in a penalty, fine and/or imprisonment.

Other land transfer taxes

The NRST will apply in addition to the province's general land transfer tax, which increased effective January 1, 2017. See our *Tax Insights* "Ontario changes Land Transfer Tax and Ontario Interactive Digital Media Tax Credit rules" at www.pwc.com/ca/taxinsights.

Further, when applicable, Toronto's Municipal Land Transfer Tax will continue to apply; for conveyances and dispositions made after February 28, 2017, Toronto's rates increased to mirror Ontario's.

Why was the tax introduced?

The NRST makes buying a home in the Greater Golden Horseshoe more expensive for foreign purchasers. It is part of a broad package of initiatives introduced by Ontario to make home ownership more affordable.

Ontario's plans also include:

- allowing Toronto and possibly other municipalities to impose a vacant homes property tax
- tackling real estate practices that may be contributing to tax avoidance
- working with the Canada Revenue Agency to explore more comprehensive reporting requirements so that correct income and sales taxes are paid on real estate transactions
- expanding rent control to all private rental units in Ontario, including those built after 1991

These initiatives follow federal efforts to improve tax compliance and stabilize Canada's housing market, as well as British Columbia's introduction of a foreign buyers' tax. For more information, see the following *Tax Insights* at www.pwc.com/ca/taxinsights:

- "Selling your home? Reporting is now required"
- "Canada targets trusts and non-residents holding residential property"
- "BC imposes new 15% tax on foreign buyers of residential property"
- "BC provides some foreign buyers relief from 15% property transfer tax"

Let's talk

For a deeper discussion of how these tax issues might affect you, please contact the following:

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