

A GUIDE FOR REAL ESTATE PRACTITIONERS

Land Transfer Tax and the Treatment of Unregistered Dispositions of a Beneficial Interest in Land



*This publication is intended as a guide only and is not a substitute
for the provisions of the Land Transfer Tax Act and Regulations.*

May 2006

This guide was revised June 2008 to incorporate formatting changes and changes in ministry name and contact information only.

For updates to publications, guides and forms, please refer to the Ministry of Revenue website at ontario.ca/revenue

For further information about the *Land Transfer Tax Act* or this guide, please call the following numbers or write to the address noted below:

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Ce guide est également disponible en français.

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PART 1 - Introduction

This guide reviews the current *Land Transfer Tax Act* and Regulations as they relate to unregistered dispositions of a beneficial interest in land. References in this guide to the *Land Transfer Tax Act*, as amended (referred to hereinafter as the Act) are to the date of this guide unless otherwise stated. Most of the bulletins and forms referred to in this guide may be obtained online at ontario.ca/revenue

This guide supercedes “GUIDENOTE - 1 LAND TRANSFER TAX ACT Treatment of Unregistered Dispositions of a Beneficial Interest in Land” published June 1991.

Charging Provisions

There are two basic charging provisions in the Act:

1. Section 2 imposes tax on a “conveyance” being tendered for registration; and
2. Section 3 imposes tax on an unregistered disposition of a beneficial interest in land.

The tax imposed pursuant to section 2 will be applicable to all conveyances tendered for registration, even if the transaction has received the benefit of a deferral, cancellation or exemption of section 3 tax.

PART 2 - General Commentary

History	<p>Significant changes to the scope of land transfer tax (“tax”) were brought about by the <i>Land Transfer Tax Amendment Act, 1989</i> (Chapter 77, Statutes of Ontario 1989). These amendments came into effect July 18, 1989. As a result, from July 19, 1989 on, unregistered dispositions of a beneficial interest in land are taxable in the same manner and at the same rates as if registered.</p> <p>Conveyances which would have attracted tax upon registration prior to the amendments continue to attract tax. Any relief from tax found under section 3 of the Act does not extend to tax incurred under section 2 of the Act upon registration of a conveyance. Where section 3 tax has been deferred, cancelled or exempted, registration of a document evidencing the disposition will continue to attract tax under section 2.</p>
Brief Outline of Treatment of Unregistered Dispositions of a Beneficial Interest in Land	<p><i>This portion of the guide is a brief outline. A more detailed review follows.</i></p> <p>Section 3 of the Act defines a disposition of a beneficial interest in land [subsection 3(1)] and imposes tax if there is such a disposition “as if the disposition were a conveyance of land tendered for registration” [subsection 3(2)] if, within 30 days, there has been no registration evidencing the disposition. (For grandfathering provisions available for dispositions which were pursuant to agreements dated prior to July 19, 1989 see section 21 of the Act.)</p> <p>Liability to pay the tax rests with “every person who acquires a beneficial interest in land or whose beneficial interest in land is increased as a result of the disposition” [subsection 3(3)]. Tax is payable under section 3 of the Act at the same rates determined under section 2 of the Act [subsection 3(2)].</p> <p>Having drawn this broad taxation net, certain sections of the Act as well as O. Reg. 70/91 and O. Reg 71/91, narrow the scope of tax, as it applies to unregistered dispositions, in several ways:</p> <p>(a) Section 3 of the Act sets out that a disposition of a beneficial interest in land includes “a sale, transfer or assignment, however effected, of any part of a beneficial interest in land” and “any change in entitlement to or any accretion of a beneficial interest in land” but does not include the following:</p> <ul style="list-style-type: none">(i) the transfer of a beneficial interest due to the death of the owner of the interest, [clause 3(1)(d)];(ii) transfers for the purpose only of providing security or the return of security for a debt or a loan, [clause 3(1)(e)];(iii) leases which, including renewals or extensions, cannot exceed 50 years, [clause 3(1)(f)]; and(iv) a beneficial interest in land which arises from an agreement of purchase and sale not yet completed, [clause 3(1)(g)];

Brief Outline
of Treatment
of
Unregistered
Dispositions
of a
Beneficial
Interest in
Land (cont'd)

- (b) Section 3 does not apply if a conveyance evidencing the disposition is registered and tax is paid pursuant to section 2 within 30 days of the date of disposition [clause 3(5)(a)];
- (c) the Act provides for the deferral and ultimate cancellation by the Minister of section 3 tax arising upon an unregistered disposition of a beneficial interest in land between corporations which are affiliates [subsections 3(9) and (11)];
- (d) Section 21 of the Act provides an effective date of July 19, 1989 for application of the provisions of section 3 and “grandfathers” some dispositions which commenced prior to this date which were not completed until on or after July 19, 1989;
- (e) Under O. Reg. 70/91, section 3 of the Act does not apply to certain unregistered dispositions of a beneficial interest in limited situations relating to:
 - (i) the acquisition of units in a mutual fund trust;
 - (ii) the acquisition of a less than 5% interest in a partnership; and,
 - (iii) a disposition that qualifies for the “butterfly” provisions of the *Income Tax Act* (Canada).
- (f) O. Reg. 70/91 also provides that certain exemptions available for conveyances subject to the section 2 tax may also be claimed for unregistered dispositions subject to the section 3 tax.

PART 3 - Operation of the Tax

Person Liable for Tax	Tax arising under section 3 is payable by the person or persons acquiring a beneficial interest in land [subsection 3(3)]. If more than one person acquires a beneficial interest in land, the tax liability is apportioned [subsection 3(4)].
Rates of Tax	The tax is calculated on the same basis and at the same rates as if the disposition were a conveyance of land tendered for registration [subsection 3(2)].
When is Tax Payable	The section 3 tax is payable on the 30th day after the date of the disposition [subsection 3(2)]. It is anticipated that the most widely-used exception to the liability for tax under section 3 will be the registration of an instrument evidencing the disposition of a beneficial interest in land, within 30 days after the date of the disposition, and the payment of tax under section 2 on that registration [subsection 3(5)].
Multiple Dispositions of Beneficial Interest	As with the registration of multiple deeds [subsection 2.3(1)], where multiple dispositions have occurred and the Minister is of the opinion that one of the reasons there has been more than one disposition is to reduce the total amount of tax payable (by artificially taking advantage of the progressive tax rates), subsection 2.3(2) imposes tax as if there had been only one disposition.
Tax Paid to Ministry	The tax arising under section 3 must be paid directly to the Ministry of Revenue. Land Registry Offices will not accept payment of tax arising from section 3.
Administration	All aspects of section 3 are administered by the Land Taxes Section of the Ministry of Revenue. The payment of tax under section 3, filing of returns, interpretation requests and requests for a deferral or an exemption must be forwarded to the Land Taxes Section. The phone number and address are at the end of this guide.
Requirement to Deliver a Return	Pursuant to subsection 5(7), every person liable to pay tax under section 3 is required to deliver a Return on the Acquisition of a Beneficial Interest (Return) to the Minister on or before the day the tax is payable and to remit the tax payable with the Return. The Minister has approved (not prescribed) a form of Return which is available from the Land Taxes Section. The Return is available in electronic form on line at ontario.ca/revenue .

Requirement to Deliver a Return (cont'd)	<p>As well, pursuant to subsection 5(8), every person who holds a legal interest in land in trust for any other person, is required to file a Return with the Minister within 30 days of becoming aware of any disposition of a beneficial interest in the land. This Return must be delivered regardless of whether the beneficial owner has filed a Return. The trustee is not liable for the payment of tax, nor is the trustee required to see to the payment of the tax which arises under section 3. Rather, the Return required of a trustee is informative in nature.</p> <p>Should the trustee fail to deliver a Return as required, penalties as described below, may apply.</p>
Verification of Tax Paid	<p>To avoid double taxation, subsection 3(6) provides that if a person has paid tax under section 3 and proposes to register an instrument evidencing the disposition upon which tax has been paid under section 3, no tax is payable under section 2. In such an instance, subsections 3(7) and (8) provide that the Minister may verify in writing on the instrument that tax has been paid under subsection 3, and such an instrument may then be registered without the payment of tax under section 2 and without the production of the affidavits otherwise required by the Act.</p>
Refund of Tax	<p>If a person pays tax on a disposition pursuant to the provisions of section 3 of the Act, and upon registration of an instrument evidencing the disposition pays tax under section 2 of the Act, an application for a refund of the second tax payment may be made within 4 years after the date of payment and the Minister may refund the tax under the authority of subsection 8(6).</p>
Penalties	<p>Subsection 5(7) requires every person liable to pay tax under section 3 to deliver a Return to the Minister and remit the tax payable with the Return. If a Return is not delivered as required or the tax is not remitted with the Return, subsection 7.1(3) authorizes the Minister to assess a penalty in an amount equal to 5% of the amount of tax payable.</p> <p>Subsection 5(8) requires every person who holds legal title to land in trust for any other person to deliver a Return within 30 days of becoming aware of any disposition of the beneficial interest. If this Return is not delivered as required, subsection 7.1(3) authorizes the Minister to assess a penalty in an amount equal to 5% of the amount of tax paid or payable with respect to the disposition.</p> <p>Subsection 7.1(1) authorizes the Minister to impose a penalty in an amount equal to the greater of \$500 and 25% of the tax a person has failed to pay where that person's failure to pay tax is attributable to fraud or wilful default.</p> <p>All penalties imposed are in addition to any tax payable.</p>

Offences

In addition to the administrative penalties discussed above, the Act provides that a person who fails to deliver a Return as required (including a trustee who fails to deliver a Return as required) or fails to remit the tax payable is, on conviction, liable to a fine of not less than 25% of the tax payable and not more than double the amount of the tax payable, [section 6.1]. Section 6, concerning false and deceptive statements made in a Return, provides that in addition to any penalty otherwise provided, a person will be liable on conviction to a fine of not less than \$1000 and not more than double the amount of the tax which is properly payable. Also on conviction, a person is liable to imprisonment.

The imposition of a penalty, fine, or both does not alleviate liability for tax.

Extension of
Time for
Return

Subsection 5(12) authorizes the Minister to extend the time for making a Return either before or after the time for making the Return has expired. Should the Minister exercise this discretion, interest on the amount of tax due will run from the date on which the tax is due. Thus the extension of time for delivery of a Return will not alleviate the requirement to pay interest on tax due [subsection 17(1)].

Interest accrues on penalties assessed, as well as on the principal amount of tax [subsection 17(1)].

The interest rate to be paid in connection with land transfer tax matters is set pursuant to O. Reg 310/97, and varies from time to time in accordance with the provisions of that Regulation and is compounded daily. The Land Taxes Section may be contacted if a calculation of the interest is required.

PART 4 - Detailed Review

Effective Date of Tax on Unregistered Dispositions **Effective July 19, 1989, dispositions of a beneficial interest in land (which includes a sale, transfer or assignment, however effected, of any part of a beneficial interest in land and any change in entitlement to or any accretion to a beneficial interest in land) are taxable in the same manner and at the same rates as conveyances that are registered.**

Registration of an Instrument Evidencing the Disposition of a Beneficial Interest in Land

Tax Paid Once **The Act provides at clause 3(5)(a) that, if there is a disposition of a beneficial interest in land, an instrument evidencing the disposition of the beneficial interest in land is registered within 30 days after the date of the disposition and tax payable under section 2 has been paid, no tax is payable under section 3 of the Act.**

The result is that in the majority of cases where registration follows the closing of a transaction and tax is paid at the Land Registry Office, the person acquiring the interest need not be concerned with section 3 of the Act.

Where the tax has been paid under section 3 and a registration of a conveyance evidencing the disposition is subsequently registered, the conveyance will be endorsed by the Ministry accordingly.

Land Registry Offices Cannot Collect Section 3 Tax **It should be noted that Land Registry Offices will not accept payment of tax under section 3 of the Act and may collect land transfer tax only with respect to provisions of section 2 of the Act relating to the tender for registration of a conveyance.**

Exceptions to the Definition of a Disposition of a Beneficial Interest in Land

Tax is incurred if there is a “disposition of a beneficial interest in land”. This term is defined to include “a sale, transfer or assignment, however effected, of any part of a beneficial interest in land” and “any change in entitlement to or any accretion to a beneficial interest in land” [clauses 3(1)(a) and (b)].

The term “beneficial interest in land” is not defined in the legislation. The Ministry considers the meaning of the term to have been well established through case law. While the definition of a “disposition of a beneficial interest in land” is broad, several items are excluded.

Death of the Owner

Clause 3 (1)(d) excludes from the definition of a disposition of a beneficial interest in land a “transfer of a beneficial interest in land which occurs by reason of the death of the owner of the interest”.

This exclusion is tempered somewhat by the requirement that the transfer “is not required to be made under the terms of an agreement enforceable by or against the person legally or beneficially entitled to the interest immediately following the death of the owner”.

This clause exempts the acquisition of a beneficial interest in land by operation of law (for example, upon the death of a joint tenant, or in cases of intestacy, the operation of statutory succession law or in instances in which land passes directly pursuant to the terms of a will).

This exception is not available in cases in which a beneficial interest in land, although it passes upon the death of the owner, does so pursuant to a contract, the completion of which is triggered by death, rather than by operation of law. Thus, a disposition of a beneficial interest in land that occurs pursuant to an agreement of purchase and sale or any other agreement, which is to be completed upon the death of the vendor, will be taxable.

For the Purpose Only of Providing Security

Clause 3(1)(e) of the Act excludes from the definition of “disposition of a beneficial interest in land” a “transfer or assignment of a beneficial interest in land by a debtor to a creditor for the purpose only of providing security for a debt or loan and a transfer or reassignment by the creditor to the debtor of the security”.

A disposition of a beneficial interest in land where the person acquiring the beneficial interest does so only to hold it as security for a debt, or upon the interest being reconveyed when the debt is satisfied, is not taxable.

If the disposition has a purpose in addition to that of security for a debt (or the return of such security), clause 3(1)(e) will not apply as its operation is limited to those situations in which the provision of security for a debt (or returning the security) is the only purpose.

Thus, an employer taking a deed from an employee pursuant to a relocation plan, both as security for amounts loaned to the employee and to enable the employer to sell the house if the employee is unable to do so, will not be exempt under clause 3(1)(e) as the disposition is not only for the purpose of security or the return of security. (It should be noted that O. Reg. 71/91 regarding employee relocation plans may exempt the employer from section 3 tax in this situation.)

Leases with an Unexpired Term that Cannot Exceed 50 Years

Clause 3 (1)(f) excludes from the definition of a disposition of a beneficial interest in land “a lease of land or a transfer of the interest of a lessee under a lease of land if, at the time of the disposition, the unexpired term of the lease cannot exceed 50 years, including any renewals or extensions of the term provided for in the lease or in a separate option to lease or other document entered into as part of the arrangement relating to the lease (whether or not the lessee and the optionee or person named in the document are the same persons)”.

Leases with an Unexpired Term that Cannot Exceed 50 Years (cont'd)

Subsection 1(6) of the Act contains similar provisions regarding registrations involving leases and interests thereunder. In both instances, care must be taken to include any renewals or extensions of the term of the lease as described above.

NOTE: Although leases with a term of less than 50 years are not subject to tax, the granting of an option, contained in such a lease, triggers the tax. The tax under section 3 is payable on the granting of an option, when no registration occurs, even if that option is contained in a lease than cannot exceed 50 years.

For further information relating to the application of the Act to leases, refer to [Tax Bulletin LTT 6-2000, Leases and the Land Transfer Tax Act](#).

Beneficial Interest from an Agreement of Purchase and Sale Not Yet Completed

Clause 3(1)(g), in limited circumstances, excludes from the definition of a disposition of a beneficial interest in land, the transfer or assignment of a beneficial interest in land arising on the execution of an agreement of purchase and sale of an interest in land (including the subsequent assignment of such beneficial interest). The exclusion may only be temporary, however, as it is dependant upon the presence of conditions in subclauses 3(1)(g)(i) and (ii), which relate to the agreement not being complete.

In this regard the term “complete” or “completed” has no reference to the elements of deed and registration which usually form part of the concept of a completed transaction. Section 3 of the Act, in large part, deals with instances in which registration in the normal course does not occur. Accordingly, the concept of “complete”, for purposes of determining when a purchaser’s or assignee’s interest would become taxable had to look to elements not related to registration and not related to deeds.

“Completion” of a transaction occurs when the value of the consideration called for in the agreement is satisfied. Clause 3 (1)(g) reflects this indicator of “completion” of an agreement, and in effect suspends section 3 tax being levied on a purchaser or assignee until such time, if ever, as the conditions at 3(1)(g)(i) and (ii) cease to exist. Generally, an indicator of the point at which “completion” occurs is that the purchaser obtains possession of the land, thereby crystallising the liability for the value of the consideration if the value of the consideration has not yet been otherwise satisfied.

It may be that the holder of the beneficial interest arising under an agreement will assign that interest during the time section 3 tax is suspended. In such an instance, the beneficial interest does not fall within the definition of a “disposition of a beneficial interest in land” during the time the assignor holds the interest. As a result, section 3 tax will not be payable by the assignor, even if the underlying transaction is ultimately “completed”.

For example, A and B execute an agreement in which A agrees to sell and B agrees to buy an interest in land. Completion is scheduled for 60 days following the execution of the agreement. The consideration is the assumption of an existing mortgage and payment of cash. Fifteen days following the execution of the agreement B assigns his/her rights in the agreement to C in return for cash, and C assumes B’s position under the agreement. On the scheduled closing date A, on direction, provides a deed of the land to C, who pays the required cash to A and assumes the liabilities. C does not register the deed.

Beneficial Interest from an Agreement of Purchase and Sale Not Yet Completed (cont'd)

In this example equity would award to B a beneficial interest in the land which is the subject of the agreement immediately upon the execution of the agreement. B would not be subject to tax under section 3 of the Act. This is due to the fact that the provisions in subclauses 3(1)(g)(i) and (ii), respectively, being “the value of the consideration specified in the agreement has not been paid to or for the benefit of the transferor” and “the liability for the value of the consideration specified in the agreement has not been assumed by or on behalf of the transferee” have not been fulfilled. That is to say, the payment of cash required on closing has not been made and the assumption of the existing mortgage as required under the terms of the agreement has not occurred. During the period B holds the beneficial interest pursuant to the agreement, the provisions in subclauses (i) and (ii) continue to be met, and thus B will not be liable to pay tax under section 3 of the Act in this example.

C will obtain a beneficial interest in the land by virtue of the assignment of B's interest. At that point, C will also be sheltered by the provisions in subclauses (i) and (ii) in that the cash called for on closing in the agreement will not have been paid, and the assumption of the existing mortgage will not have taken place.

However, when C pays over the cash and assumes the liability as set out in the agreement, the sheltering provided by subclauses (i) and (ii) will cease. At such time, C will be taxable under section 3 of the Act, as the beneficial interest which C has received will then fall within the terms of a disposition of a beneficial interest in land.

The phrase “value of the consideration” is a defined phrase under the Act [at subsection 1(1)] and it is advisable to consider the particulars of that definition, as set forth in the seven subclauses thereof in reading subclauses 3(1)(g)(i) and (ii).

“Back to Back” Agreements of Purchase and Sale

In some instances A will enter into an agreement of purchase and sale of land with B. The agreement is to be **completed** in four weeks. B then enters into an agreement of purchase and sale for the same land with C. The completion date of this agreement is the same as the completion date in the agreement between A and B.

Sheltering Provisions of Clause 3(1)(g) Do Not Apply

The sheltering from tax provided by clause 3(1)(g), will not apply to B once B completes its agreement with A. This is because the purchase price will be handed over, or liabilities assumed thereof by B. At such time tax will be incurred as the beneficial interest which B has received falls within the Act's terms of a “disposition of a beneficial interest in land”.

Administrative Concession

However, as an administrative matter, the Ministry has stated that, provided the two agreements are **completed** at the same time or within moments of one another, it will not raise an assessment against B for the tax incurred under section 3 of the Act.

NOTE: These provisions relating to back to back agreements only apply to unregistered dispositions and not to conveyances (including notices of an agreement of purchase and sale) which are registered. The tax under section 2 would apply to the registered conveyances.

Agreements Regarding Condominiums

In general, the Ministry considers that the purchaser of a “proposed unit” under the *Condominium Act* does not acquire a beneficial interest in land for purposes of taxation under section 3. This results from the view that the *Condominium Act, 1998* does not create any interest in land for proposed units.

However, there are instances where an undivided interest in the underlying land is conveyed before the condominium building is built. The interest being conveyed under this method does constitute a beneficial interest in land and the purchaser will be subject to the terms of section 3 of the Act. In most instances, this type of agreement is such that the conditions set forth in subclauses 3(1)(g)(i) and (ii) cease to exist upon the execution of the agreement or shortly thereafter. Thus, the sheltering provided under 3(1)(g) is not available.

PART 5 - Unregistered Dispositions of a Beneficial Interest in Land from Developers to Builders

As stated, section 3 of the Act imposes a tax on all unregistered dispositions of a beneficial interest in land. A disposition of a beneficial interest in land includes a sale transfer or assignment, however effected, of any part of a beneficial interest in land and any change in entitlement to or any accretion to a beneficial interest in land.

Background Clause 3(1)(g) of the Act, in limited circumstances, excludes from the definition of a “disposition of a beneficial interest in land”, the transfer or assignment of a beneficial interest in land, arising on the execution of an agreement of purchase and sale of an interest in land.

The provisions of subclauses 3(1)(g)(i) and (ii), respectively, being “the value of the consideration specified in the agreement has not been paid to or for the benefit of the transferor” and “the liability for the value of the consideration specified in the agreement has not been assumed by the transferee” relate to an agreement not yet “completed”.

Dispositions to Builders A builder will acquire a beneficial interest in land upon execution of its agreement with a developer. Subclauses 3(1)(g)(i) and (ii) will shelter the builder from the tax incurred under section 3, until the agreement has been “completed”.

An agreement is “completed” when,

- 1) the value of the consideration as specified in the agreement is paid to or for the benefit of the transferor, or
- 2) the liability for the value of the consideration specified in the agreement is assumed by or on behalf of the transferee.

Once the conditions in subclauses (i) and (ii) cease to exist (the agreement is “completed”) the transfer or assignment of a beneficial interest in land falls within the Act’s terms of a “disposition of a beneficial interest in land” and is taxable.

“Back to Back” Administrative Concession Not Applicable The Ministry has noted an abuse of the “Back to Back” administrative concession where tax planners have incorrectly placed reliance on developer/builder and builder/home purchaser agreements “closing” within moments of one of another. The concession may be available where both agreements are “completed” within moments of each other.

Agreements are generally completed at closing. However, it is not unusual for an agreement between a developer and a builder to require the builder, upon the availability of building permits, or some similar identifiable point in the development of the subdivision (prior to the agreement’s closing date), to pay the developer the consideration specified in the agreement, or to assume liability for the consideration as specified in the agreement or a combination thereof.

“Back to Back”
Administrative
Concession Not
Applicable
(cont’d)

Upon that occurrence the sheltering provided under subclauses (i) and (ii) will disappear (the agreement is “completed”), and if no instrument is registered evidencing the disposition between the developer and the builder within thirty days of that identified time, tax will be payable by the builder pursuant to section 3 of the Act.

If a registration does occur within the 30-day period, tax pursuant to section 2 will be payable by the builder on registration.

Developer’s
Responsibilities

Where there is an unregistered “disposition of a beneficial interest in land” from a developer to a builder, the Ministry considers the **developer** to be a **trustee** (holder of legal title), with respect to the lot(s) the builder acquired from the developer.

In accordance with subsection 5(8) of the Act, the developer is required to advise the Minister of the change in beneficial ownership by filing a Return with the Land Taxes section of the Ministry of Revenue, within 30 days of the disposition date (for a copy of the Return call or write LTT as per information on [inside cover](#)).

A developer who fails to deliver a return as required under subsection 5(8) of the Act, shall be charged a penalty, upon assessment, of an amount equal to 5 percent of the tax payable by the builder.

PART 6 - Deferral and Ultimate Cancellation of Section 3 Tax Arising Upon an Unregistered Disposition of a Beneficial Interest in Land Between Corporations Which are Affiliates

Beneficial
Ownership
Versus
Economic
Interest

Subsections 3(9) and (11) of the Act provide, upon certain conditions, for the deferral and ultimate cancellation of tax which arises under section 3.

Subsections 3(9) and (11) and section 2 of O. Reg. 70/91 reflect a partial recognition of the tension between the concept of changes in beneficial ownership, upon which the Act rests, and the concept of the maintenance of an economic interest in property by a taxpayer, notwithstanding changes in the beneficial interest. This latter concept is found, for example, in the *Income Tax Act (Canada)*, the *Corporations Tax Act* and Regulations pursuant to the *Retail Sales Tax Act*.

While the provisions of the Act and O. Reg. 70/91 provide some relief from land transfer tax in cases where there is a change of beneficial ownership, but no change in the underlying economic interest, the provisions do not mirror the *Income Tax Act (Canada)* and, in fact, are far narrower in scope. As a result, caution should be exercised in determining the availability of the deferral and the extent of the deferral with respect to a transaction. It is not correct to assume that transactions which incur no immediate tax consequences under the *Income Tax Act (Canada)* will receive similar treatment under the Act.

Reference should also be made to [Tax Bulletin LTT 3-2000, *Transfers Involving Corporations*](#).

Application
for Deferral

In order to apply for the deferral a properly completed **Application and Undertaking for the Deferral Of Land Transfer Tax Pursuant to Subsection 3(9)** form must be submitted together with the completed **Return on the Acquisition a Beneficial Interest in Land** form along with other supporting documentation as set out in the application form.

Deferral
Limited to
Section 3 Tax

It must be noted that the tax which may be deferred pursuant to subsection 3(9) is “the payment of the tax payable by virtue of this section by the corporation acquiring the beneficial interest”. The phrase “by virtue of this section” is a reference to section 3, that is, the charging section with respect to unregistered dispositions of beneficial interests in land. One of the results of this limitation is that in the event tax arises in connection with the registration of a conveyance, the deferral under subsection 3(9), even if it has been converted to a cancellation under subsection 3(11), is of no consequence regarding the liability for tax under section 2.

Deferral Limited to Dispositions Between Corporations	One of the requirements for a deferral under subsection 3(9), is that the disposition must be of a beneficial interest in land “from one corporation to another corporation”. Accordingly, a disposition between an individual and a corporation of which the individual is a shareholder cannot be the subject of a deferral.
Corporations Must Be Affiliates	<p>Where the disposition is from one corporation to another corporation, each must be an “affiliate” of the other “immediately before and at the time of the disposition”.</p> <p>“Affiliate” is the term used in the Act to define the underlying ownership which must be common to the corporations between which the disposition is taking place. “Affiliate” is defined at subsection 3(14) and provides that a corporation will be considered an affiliate of another corporation if one of them is a subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person or persons. Subsections 1(3) to (6) of the <i>Securities Act</i> apply in determining if the corporation is an affiliate of another corporation and a corporation is deemed by clause 3(14)(b) to be a subsidiary of another corporation if it would be a subsidiary of that corporation for the purposes of the <i>Securities Act</i>.</p>
Three Year Holding Period	<p>With a view to preventing the use of the deferral as a means of setting up a tax-free disposition or conveyance of land, the Act requires the corporation seeking to defer the tax (that is, the corporation which acquired the beneficial interest in land) to undertake to the Minister that it and the corporation which made the disposition will (i) continue to be affiliates of each other, and (ii) continue to own the beneficial interest in the land for a period of at least 36 months immediately following the date of the disposition. A further disposition of the beneficial interest within the 36-month period to a corporation which is an affiliate of both the corporation which is the recipient of the initial deferral and the corporation which made the initial disposition, is permissible within the terms of the undertaking. The transferee on this subsequent disposition would have to apply for the deferral under subsection 3(9) in order to avoid payment of the tax.</p> <p>The Minister does not consider it improper for a corporation to submit the undertaking even though the corporation may be aware it cannot fulfill the time period of the undertaking and is relying on clauses 3(11)(b) or (c) operating in the future to shorten the time period.</p>
Security Required	Because the tax is at first conditionally deferred rather than cancelled, the Minister has the authority to require security [clause 3(9)(b)]. Security for the deferred tax and interest in the form of an irrevocable letter of credit (see Tax Bulletin LTT 3-2000, Transfers Involving Corporations , for sample form of letter of credit) in favour of the Minister is to be provided. This letter of credit should be automatically renewable, or should not expire before 39 months from the date of the disposition. However, the Minister has accepted letters of credit with a 1-year term. This is on the clear understanding that the Minister may present the letter for payment anytime after 11 months, in the event a replacement letter of credit satisfactory to the Minister for the ensuing year has not been received.

Security
Required
(cont'd)

The letter of credit must be in an amount which equals the principal amount of tax deferred, together with interest for 36 months calculated using applicable rates, from time to time prescribed for purposes of the Act and should refer to the indebtedness of the transferee. In the event a letter of credit is for a period less than 39 months, it must, upon replacement or renewal, be in an amount that reflects interest accrued on the unpaid deferred tax from the date the tax was incurred to the end of the period covered. The Land Taxes Section may be contacted if a calculation of the interest is required.

All tax deferred is required to be secured notwithstanding that there may be several successive deferrals within the same corporate circle.

In the event the undertaking required under subsection 3(9) is partially satisfied, for example, by a tax-paid sale of part of the land to a person who is not an affiliate of the corporation, the Minister will consider reduced security.

Rate of
Interest

The rate of interest applicable to land transfer tax matters is set in accordance with the provisions of O. Reg. 310/97. Rates are set January 1, April 1, July 1 and October 1 based on a formula relating to prime interest rates. The rate set is available on line at ontario.ca/revenue.

Deferral
Followed by
Winding Up
or Dissolution

It is recognized that, in some instances, the disposition of a beneficial interest in land will be between a corporation and its shareholder(s) in the course of a dissolution or winding up.

Under the Act a disposition in such circumstances is taxable, although it may well be that a deferral is available if the shareholder is a corporation. The difficulty in such cases is that the corporation which is wound up or dissolved will no longer be a legal entity. Thus it will not be possible for the corporation which acquires the beneficial interest on the winding up or dissolution to fulfill the 3 year affiliation requirement in the undertaking which supports the deferral.

Subsection 3(12) alleviates this situation by deeming the corporation which has been wound up or dissolved to continue to exist and to be an affiliate of the corporation which acquired the beneficial interest. This provision only operates for the purpose of determining whether the undertaking has been fulfilled and is not of general application in the Act. It should be noted that notwithstanding these deeming provisions, other conditions of the undertaking must still be fulfilled for a three-year period.

Statutory
Amalgamation

A similar situation results without the assistance of subsection 3(12) in the case of corporations which amalgamate through statutory amalgamation.

In the Ministry's view, for land transfer tax purposes, the amalgamated corporation is a continuation of the corporations which have been amalgamated. As a result, the corporations which have been amalgamated, if they were affiliates immediately before and at the time of amalgamation, will always be affiliates following the amalgamation.

The significance of this factor, however, may be less than it appears. This is due to the fact that the conditions which must be met to earn a cancellation of tax are two-fold. The second condition, that the corporation which acquires the beneficial interest must maintain it for 36 months immediately following the disposition, is not fulfilled by the amalgamation itself.

Timing of
Application
for Deferral

The application for a deferral must be made within 30 days of the disposition of a beneficial interest in land. Subsection 3(10) authorizes the Minister to extend the time to apply for a deferral "if the Minister is satisfied that any delay by the corporation when applying for the deferral or submitting the undertaking was not for the purpose of attempting to delay, avoid or evade the payment of the tax".

In addition, if a Return is not filed within 30 days after the date of the disposition, an extension of time to file a Return must also be applied for. Subsection 5(12) provides that the Minister may extend the time for delivering a Return. This extension is in addition to the extension provided under subsection 3(10).

A request for an extension of time to apply for a deferral and/or to deliver a Return should include the names of the parties, a short legal description of the land, the date the disposition(s) took place, the reason the extension is requested, and the length of extension requested.

It should be noted that the decision of the Minister to extend the time to apply for a deferral or to deliver a return is discretionary, and such extensions should not be expected or relied upon.

Conversion
of Deferral to
Cancellation
of Tax

The deferral may be converted to a cancellation of section 3 tax upon the occurrence of any of the three factors set forth in clauses 3(11)(a), (b) and (c).

Under clause (a) the Minister must be of the opinion that "the undertaking given under subsection (9) has been satisfied and no conveyance or instrument evidencing the disposition of the beneficial interest in land has been registered". The latter portion of this clause underlines the point made earlier that the deferral provisions do not narrow the incidence of tax when a conveyance is registered. The deferral provisions do not provide relief from section 2 tax when a conveyance is registered.

Conversion of
Deferral to
Cancellation
of Tax (cont'd)

Under clause (b) the deferred tax is cancelled “if a conveyance or instrument or electronic document evidencing the disposition of the beneficial interest in land to the corporation has been registered and the tax payable under section 2 has been paid”. This simply reflects that there is no attempt in the legislation to tax the same transaction twice, both at the unregistered and registered levels. Thus, if a corporation which has acquired a beneficial interest in land, has had the section 3 tax on that disposition deferred, then registers an instrument evidencing that acquisition, and pays the tax on registration, the application of the section 3 tax is not necessary with regard to the unregistered transaction. The deferral is completed by deemed compliance with the deferral conditions.

Clause (c) involves cases in which the beneficial interest in the land leaves the corporate circle of affiliated corporations and is acquired by a non-related third party. Provided the tax payable is paid on the acquisition by that third party, the corporation or corporations which had received a deferral may have their undertakings shortened and their deferred tax cancelled. This is because the purpose of the holdover requirements, which was to prevent the deferral mechanism being used to set up a tax free disposition, will have been fulfilled by the payment of tax by the unaffiliated person. Please note that the correct tax must be paid on the acquisition by the unaffiliated person. Vendors should take care to ensure the tax payable is paid.

No Relief
From Tax on
Registration

Subsection 3(13) emphasizes that the deferral is limited to unregistered situations by indicating that “nothing in subsection (9) or (11) relieves any person from the payment of tax under this Act upon the registration of a conveyance which evidences the disposition of a beneficial interest in land”.

Tax would also be payable on the registration of an instrument (not limited to a deed or transfer but may also include a mortgage, lease or any other document) which contains a “notice of any kind” evidencing the disposition. The Act sets out that a “notice of any kind includes a recital or reference made in any registered instrument”.

For example, Company X transfers a beneficial interest in land to Company Y. There is no deed registered for that change in ownership. However, a reference is made in a mortgage document being registered (after the date of disposition) that “Company Y has acquired a beneficial interest in the land”. That would constitute a “notice of any kind” and the tax would be triggered on the registration of that mortgage document.

PART 7 - Exemptions Pursuant to O. Reg. 70/91

All exemptions provided for in O. Reg 70/91 are limited to tax arising under section 3 of the Act. They do not provide relief from tax which may arise under the other charging section of the Act. Accordingly, a registration of a conveyance will attract tax under section 2, even though the transaction may have been exempted from section 3 tax.

Acquisition of Units in a Mutual Fund Trust

Mutual Fund Trust Units

Subsection 1(1) of the Regulation exempts certain mutual fund units from tax under section 3 of the Act. A trustee holds the property on behalf of the owners of the units of the mutual fund trust. As a result, if the fund has land among its assets, the unit holders will have a beneficial interest in that land. The issue or trade of a unit of such mutual fund constitutes a disposition of a beneficial interest in land and is subject to tax unless it falls within the provisions of the Regulation.

Most holders of mutual fund units view their holdings as an investment rather than as a direct interest in land. It also is unlikely that mutual fund trusts will be used only for the purpose of avoiding land transfer tax. In recognition of these factors, and of the administrative difficulty of requiring Returns to be filed and tax collected in connection with many relatively small transactions, the issue or trade of units of a mutual fund is exempted from tax under section 3 of the Act provided certain conditions are met.

Mutual Fund Trust Units must be Distributed by Prospectus and Widely Held

The conditions which must be met are found in the *Income Tax Act (Canada)* and Regulations pursuant thereto. The mutual fund must be a mutual fund trust as defined in subsection 132(6) of the *Income Tax Act (Canada)*. In addition, the units issued or traded must meet the requirements of paragraphs 4801(a) and (b) of the *Income Tax Act (Canada)* Regulations.

The requirement in paragraph 4801(a) that a class of units of the trust be “qualified for distribution to the public” is defined at 4803(2) of the *Income Tax Act (Canada)* Regulations and, in effect, requires that the units must have been distributed to the public by way of a prospectus.

Section 4801(b) requires that the class of units have no fewer than 150 beneficiaries, each of whom holds not less than one block of units of the class, and each of whom holds units within a class having an aggregate fair market value of not less than \$500. The phrase “block of units” is defined at 4803(1) of the *Income Tax Act (Canada)* Regulations and means 100 units if the fair market value of 1 unit of the class is less than \$25, 25 units if the fair market value of 1 unit of the class is \$25 or more but less than \$100 and 10 units, if the fair market value of 1 unit of the class is \$100 or more.

No Return Need Be Filed for Mutual Fund Exemption

A person acquiring a beneficial interest in land by way of a unit of a mutual fund that is exempt pursuant to the Regulation need not file a Return or specifically request the exemption. While such matters are always subject to audit, the application of the exemption in such cases is determined in the first instance by the taxpayer.

Acquisition of a “De Minimis” Partnership Interest

Subsection 1(2) of O. Reg. 70/91 provides that section 3 of the Act does not apply to a disposition of a beneficial interest in land “if it is an interest of a partner in a partnership and if the person acquiring the interest would not be entitled, during the fiscal year of the partnership in which the disposition was made, to a percentage of profits of the partnership, assuming the partnership had profits to distribute, that exceeds by more than 5 per cent the percentage of profits to which the person would have been entitled at the beginning of the fiscal year”.

Land Transfer Tax View of Partnership

In the administration of the Act, the Branch takes the position that a partnership is not a legal entity and therefore a conveyance or disposition of land to a partnership, whether the partnership is a general partnership or a limited partnership, constitutes a conveyance to the partners of the partnership as tenants-in-common and in proportion to their partnership interest(s).

In other words, each partner of the partnership has a beneficial interest in the property of the partnership. As a result, bringing land into a partnership, the issue or trade of so called partnership units of a partnership which holds land, or the acquisition of a partnership interest in a partnership which holds land, will be taxable under section 3 of the Act unless the exemption described herein is applicable.

The formation of, and small changes in, a partnership which holds land will be exempt from section 3 tax in certain circumstances. As with other deferrals and exemptions, the registration of a conveyance relating to the disposition which is the subject of the exemption will be taxable under section 2 of the Act.

The availability of the “de minimis” partnership exemption rests on the limited nature of the interest acquired or increased by a person in a partnership in any fiscal year of the partnership. Thus, a partner, who held 40% of a partnership immediately prior to and at the beginning of the partnership’s fiscal year and acquired a further 5% interest of the partnership in that same fiscal year, would be able to claim the exemption with respect to the 5% acquisition. This would be so notwithstanding that the partner’s total interest in the partnership would then be 45%.

If the same person acquired the said 5% one day before the end of a fiscal year of the partnership and acquired a further 4% one day into the next following fiscal year of the partnership, and obtained nothing further in that fiscal year, the person would be entitled to the exemption both with respect to the 5% and with respect to the 4% due to the acquisitions being in separate fiscal years of the partnership.

However, if the person acquires more than a 5% interest in any one fiscal year of the partnership (whether by one acquisition or several) the exemption is not available and the value of all acquisitions in that year is subject to tax.

Partner’s Interest

For purposes of O. Reg. 70/91 the determination of the interest of a partner in a partnership is a reference to the entitlement to profit. The limit for the exemption is any amount in excess of 5%, so an acquisition of an entitlement to profit up to and including 5% will be exempt.

Partner's Interest (cont'd)	<p>Entitlement to profit is considered by the Ministry to be an entitlement to what, in accounting terms, amounts to net earnings. The entitlement to profit is not to be calculated, for the purpose of application of the Regulation, based on a partner's right to a percentage of assets of the partnership on a winding-up, dissolution, or notional winding-up or dissolution.</p>
Estate Freeze Partnership	<p>Care must be taken in calculating section 3 tax with regard to so-called estate freeze partnerships. Generally the facts are similar to the following:</p> <p>Parent owns land and wishes to pass to his/her children the benefit of the future accretions in the value of the land and the current earnings arising from the land. The parent has two children, A and B. The parent, A and B form a partnership. The parent contributes \$1.00 and A and B contribute another \$99.00, investing equally. The parent contributes the land to the partnership and takes back a note for the difference between the fair market value of the land at the time of the contribution less outstanding liabilities. Alternately this amount could be shown as a capital contribution on the parent's account. All future earnings of the partnership, whether current or by way of capital gain are, after the payment of current expense, debt and capital accounts, to be distributed at 1% to the parent and 49.5% to each of A and B.</p> <p>In this situation, the Ministry, in accordance with its position that a partnership is not a legal entity, looks through the partnership and considers A and B to each have obtained a 49.5% entitlement to profits in a partnership which has, among its assets, the land in question. The Ministry considers that A and B have acquired a beneficial interest in land resulting in a disposition of a beneficial interest in land. The value of the consideration given in connection with the acquisition by A and B is 99% of the liabilities assumed, those liabilities which encumbered the subject land at the time of the disposition, together with 99% of the capital account in favour of the parent. As A and B have acquired an entitlement to profit in excess of 5%, the de minimis exemption is not available to them.</p>
No Return Need Be Filed to Claim Exemption	<p>As is the case with the mutual fund unit exemption, a person acquiring a beneficial interest in land, by way of the acquisition of an interest in a partnership in situations to which the exemption applies, need not file a Return or specifically request the exemption. While such matters are always subject to audit, the application of the exemption is determined in the first instance by the taxpayer.</p>

Exemptions Available for Registered Conveyances Extended to Unregistered Dispositions

Section 3 of O. Reg. 70/91 also provides that unregistered dispositions, which, if evidenced by a registered instrument, would be exempt from tax under section 2 by virtue of the following noted Regulations, will be exempted from section 3 tax. A return must be filed in these situations and the exemption from tax claimed.

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| Regulation 695,
R.R.O. 1990 | Exemption(s): For Certain Easements Granted to Oil or Gas Pipe Lines. |
| Regulation 696,
R.R.O. 1990 | Exemption(s): For Certain Transfers Between Spouses. |
| Regulation 697,
R.R.O. 1990 | Exemption(s): For Certain Conveyances of Family Farms or Family Businesses. Refer to bulletins LTT 3-2008 Exemption for Certain Transfers of Farmed Land , and LTT 6/79, Land Transfer Tax Exemption for Family Business Corporations, for further details. |
| Regulation 703,
R.R.O. 1990 | Taxation of Mineral Lands. Refer to bulletin LTT 3-2004 Land Transfer Tax Exemption for Certain Conveyances of Mineral Lands , for further details. |

PART 8 - "Butterfly" Exemption - Section 2 of O. Reg. 70/91 Subsections 55(2) and 55(3)(b) of the Income Tax Act (Canada)

Only for Unregistered Dispositions	<p>This exemption is limited to tax arising under section 3 of the Act. There is no relief from tax which may arise under the other charging section of the Act. Accordingly, a registration of a conveyance will attract tax under section 2, even though the transaction may have been exempted from section 3 tax.</p>
O. Reg 70/91	<p>O. Reg 70/91 exempts from tax unregistered dispositions between corporations which occur as part of a reorganization, in the course of which a dividend is received by a corporation and, but for the provisions of paragraph 55(3)(b) of the <i>Income Tax Act (Canada)</i>, 55(2) of the <i>Income Tax Act (Canada)</i>, would apply to the dividend. This exemption does not apply to dispositions from or to non-corporate entities.</p> <p>If subsection 55(2) of the <i>Income Tax Act (Canada)</i> would have deemed the amount of the dividend to be other than a dividend, the disposition will be exempted from section 3 tax, provided the Minister is satisfied the requirements of section 2 of the Regulation have been met.</p>
Background	<p>This exemption is an extension of the subsection 3(9) deferral discussed previously in this guide. The subsection 3(9) deferral requires, among other things, that the corporation which disposes of the beneficial interest and the corporation which acquires that beneficial interest be affiliates.</p> <p>Generally, in the case of a "butterfly", the shareholders of a corporation are attempting to separate their common interests so that each can deal independently of the others and the corporation. That is, the assets of the corporation are being moved out of the corporation to its shareholders. However, because the shareholders are going their separate ways, it is unlikely that the corporation disposing of the beneficial interest in land and the corporation acquiring that interest will continue to be affiliates.</p> <p>Accordingly, in such a situation the corporations will not be eligible for the subsection 3(9) deferral. The "butterfly" exemption overcomes the lack of affiliation.</p>
Particulars of Exemption	<p>It is important to note the following factors in connection with this exemption:</p> <ol style="list-style-type: none">(1) The exemption relates to a disposition only between corporations and must occur as part of a reorganization in the course of which a dividend is received by a corporation.(2) The situation must be such that subsection 55(2) of the <i>Income Tax Act (Canada)</i> would have applied to the dividend which is received by a corporation, but for the provisions of paragraph 55(3)(b) of the <i>Income Tax Act (Canada)</i>.

Particulars of Exemption (cont'd)	<p>(3) The disposition of the beneficial interest in land must constitute a transfer of property of a particular corporation to one or more corporations for the purposes of the application of paragraph 55(3)(b) of the <i>Income Tax Act</i> (Canada) in respect of the dividend.</p> <p>(4) Where the “butterfly” transaction requires an additional disposition, in order to accommodate any prohibition in corporate law of a subsidiary holding shares of its parent, the Ministry will also consider the additional disposition exempt from section 3 tax, provided the only purpose of the additional disposition is to accommodate corporate law requirements.</p> <p>(5) It is necessary to satisfy the Minister of Revenue that the exemption applies to the disposition or dispositions in question. The exemption does not come into play until the Minister is so satisfied.</p>
Application for Exemption	<p>In order to apply for the exemption, a properly completed Application and Declaration For The Exemption Of Land Transfer Tax Pursuant to Ontario Regulation 70/91 form must be submitted together with the completed Return on the Acquisition a Beneficial Interest in Land form along with other supporting documentation as set out in the application form.</p> <p>If a ruling has been obtained from the Canada Revenue Agency concerning the reorganization, a copy of that ruling should be attached to the application for exemption.</p> <p>It is recognized that in most instances no federal ruling concerning the reorganization will be available. In that case, a solicitor’s or accountant’s written opinion, setting out the basics of the transaction and the view that subsection 55(2) of the <i>Income Tax Act</i> (Canada) would have applied to the dividend but for the provisions of 55(3)(b) of that statute, and that accordingly section 2 of O. Reg. 70/91 is applicable to the disposition or dispositions mentioned, will be satisfactory. In the event no solicitor’s or accountant’s opinion have been sought by the parties, the corporation acquiring the beneficial interest may set out the steps of the reorganization and the reasons the person believes section 2 of O. Reg. 70/91 to be of application.</p> <p>Where this exemption has been claimed and it is subsequently determined by either the Canada Revenue Agency or the Ontario Ministry of Revenue’s Corporations Tax Branch that the transaction does not qualify for the “butterfly” provisions, land transfer tax would be payable.</p>
No Protection from Tax Arising on Registration	<p>The “butterfly” exemption under section of O. Reg 70/91 only exempts unregistered dispositions from the section 3 tax. Upon registration of a conveyance or conveyances relating to the disposition, tax will be payable under section 2 the Act in the normal course.</p> <p>This exemption is also discussed in Tax Bulletin LTT 3-2000, Transfers Involving Corporations.</p>

PART 9 - Exemption for Certain Unregistered Dispositions of Land from Employee to Employer - O. Reg. 71/91

The exemption provided for in O. Reg. 71/91 is limited to tax arising under section 3 of the Act. It does not provide relief from tax which may arise under the other charging sections of the Act. Accordingly, a registration of a conveyance will attract tax under section 2, even though the transaction may have been exempted from section 3 tax.

This Regulation provides that section 3 of the Act does not apply to a disposition of a beneficial interest in land to an employer from an employee and/or an employee's spouse, if the conditions in the Regulation are met.

Employer Defined "Employer" is defined under subsection 1(3) of the Regulation and includes a person administering an employee relocation plan on behalf of the employer. As a result, should the employer have another person administer the plan on the employer's behalf, a disposition from an employee or spouse to that administrator will not fall outside the exemption provisions.

Requirements Paragraphs 1 through 8 of subsection 1(1) of the Regulation set out various requirements, all of which must be met in order for the Regulation to be applicable:

1. The disposition must not be evidenced by a registered conveyance. This reinforces the underlying policy that conveyances which are tendered for registration will be subject to tax in the same manner as prior to the enactment of section 3 of the Act.
2. Immediately before the disposition of the beneficial interest in land to the employer, the beneficial ownership and the registered title to the land must have been held by the employee or the employee's spouse or both.
3. The disposition must be made under the terms of an employee relocation plan offered by the employer to the employee as part of the employment package.
4. The employee and/or his or her spouse will have disposed of the land because the employee commenced working for the employer or was relocated by the employer to a new work location.
5. The land being disposed of must have situated on it only a single family residence and the employee must have ordinarily resided in that residence until moving to the new work location. "Single family residence" is defined in subsection 1(1) of the Act. As a result, the exemption is not available in instances where the subject lands contain more than one single family residence, or contain a multi-unit building. For example, a house with a basement apartment would not qualify as a single family residence, however a unit of a condominium is likely to qualify.
6. The employee's new residence must be at least 40 kilometres closer to the new work location than the land disposed of by the employee and/or his or her spouse.

Requirements (cont'd)	<ol style="list-style-type: none">7. The employer must pay any profit from the sale of the land to the employee and/or his or her spouse. "Profits" is defined in subsection 1(3) of the Regulation. This requirement is meant to ensure that the benefit of the exemption is only available if the employer undertakes the relocation plan without the prospect of financial gain through the sale of the employee's former residence.8. The employer must dispose of the beneficial interest in the land or convey the land to a person not associated with the employer, and tax must be paid on that disposition or conveyance, all within 180 days from the date the employer originally acquired the interest in land. This provision is meant to ensure that employers seeking to obtain a long-term interest in the land will not have the exemption available, and also to ensure that the exemption will not be used to set up a subsequent tax-free transaction. An employer disposing of or conveying land to a related company or a relative or spouse will not have fulfilled this requirement.
Extension of Time to File a Return	<p>An employer expecting to obtain the exemption provided in O. Reg 71/91 may not know if the conditions under (8) above can be met until the 180th day after the date of the employer's acquisition of the beneficial interest in the land.</p> <p>In order that the employer will not be in a breach of subsection 5(7) of the Act, subsection 1(2) of the Regulation permits a delay for filing a Return and paying the tax. It provides that the employer has up to 30 days after the expiration of the 180-day time period set out in paragraph 8 of subsection 1(1) to file a Return and pay the tax plus interest.</p> <p>This would only be necessary if the requirements of the Regulation were not met and thus the exemption was not available.</p>
Failure to Meet the Conditions	<p>If the conditions set out in subsection 1(1) of the Regulation are not met, tax is payable under section 3 of the Act within 30 days of the disposition unless the conveyance is registered and tax paid under section 2 prior to the thirtieth day after the date of the disposition.</p> <p>If any of the conditions detailed in paragraphs 2-7 of subsection 1(1) have not been met, section 3 tax is payable on the thirtieth day after the date of the disposition.</p> <p>If the condition detailed in paragraph 8 of subsection 1(1) is not met, the employer has until the thirtieth day after the expiry of the 180-day period to pay the section 3 tax together with interest. The interest is calculated from the thirtieth day after the date of the original acquisition of the beneficial ownership in the land by the employer.</p>
No Return Required if Conditions Met	<p>A Return claiming the exemption is not required to be filed if all the conditions of the Regulation have been met as required. The applicability of the exemption is determined in the first instance by the taxpayer. Nevertheless, the matter is always subject to audit.</p>

PART 10 - Other Matters

Section 3 of the Act applies only to unregistered dispositions of beneficial interests in land. For registered conveyances, the balance of the Act applies. The deferral, cancellation or exemption from section 3 tax does not limit the liability to pay section 2 tax on registration.

Trusts

It must be remembered that the legislation provides no exemption from land transfer tax for conveyances involving trusts. However, where there is truly no “value of the consideration” for such transfers, the land transfer tax payable will be nil as the tax rate will be applied against a zero base. Refer to [Bulletin LTT 1-2005 Conveyances Involving Trusts](#), for clarification of the application of the Act to conveyances involving trusts.

Often, there will be no value of the consideration for the three types of trust transfers (trustee to beneficial owner, trustee to trustee and beneficial owner to trustee). However, since such transactions are not exempt from land transfer tax, the tax is payable if there is consideration given or to be given. The deferrals and exemptions set out in section 3 of the Act and related Regulations are limited to unregistered dispositions and do not alter the tax status of registered conveyances, regardless of whether a trust is involved.

It is often the case in a transaction which will receive the benefit of a deferral and ultimate cancellation of tax under subsections 3(9) and (11), and in connection with transactions which will be exempt of section 3 tax under O. Reg. 70/91 or O. Reg 71/91, that the parties are not content to have the registered title with respect to the land remain static.

Plans to alter the registered title of land which is the subject of an unregistered disposition, more or less coincident with the unregistered disposition, usually involve the registration of a deed from the existing registered title holder to a corporation which will act as a trustee only.

It is important to remember that the deferral and cancellation of tax provided under subsections 3(9) and (11) and the exemptions from tax provided under O. Reg. 70/91 and O. Reg. 71/91, relate only to section 3 tax and are of no assistance in the event tax arises under the other charging provision of the Act. It is also important to note that one of the conditions for a deferral and cancellation under subsections 3(9) and (11) are that no conveyance or instrument evidencing the disposition has been registered. This concept is reinforced in subsection 3(13).

Notice of Unpaid Tax

The Act does not provide for an automatic statutory Crown lien regarding tax. A bona fide purchaser of land for value, without actual notice, need not be concerned with unpaid land transfer tax unless the Minister has issued a warrant (such a warrant has the same force and effect as a writ of seizure and sale issued out of the Superior Court of Justice [15(1)(b)]) or the Minister has registered a notice claiming a first lien and charge [15.1(1)].

It should be noted that the Minister has the authority to register such a lien notwithstanding that the person who has failed to pay the tax is not shown as the registered owner of the land in the proper Land Registry Office.

Partnerships
(General
Comments)

As in registered conveyances, the Ministry takes the position that a partnership is not a legal entity and therefore a conveyance or disposition of land to a partnership, be it a general or limited partnership, is tantamount to a conveyance to the partners of the partnership as tenants-in-common in proportion to their partnership interest.

As a result, the issue or trade of so called partnership units of a partnership, or the acquisition of a partnership interest in a partnership which holds land, will be taxable under the provisions of section 3 unless the exemption provided by subsection 1(2) of O. Reg. 70/91 applies (Acquisition of a "de Minimus" Partnership Interest).

Transfer of
Shares of a
Corporation

The transfer of shares of a corporation which holds land in its own right does not ordinarily attract tax under the Act. The Ministry considers that it is well-established law that the property of a corporation is that of the corporation and not of the shareholders of the corporation. Accordingly, the transfer of shares of such a corporation will not affect the ownership of the property.

One notable exception is the transfer of shares of a corporation in combination with the right to the shareholder to exclusive occupation or possession of a unit or apartment (sometimes known as an equity co-operative). The underlying disposition of a beneficial interest in the land will attract tax under section 3.

Care must be exercised in instances of the transfer of shares of the corporation which holds the registered or legal title to land but not the beneficial title to the land. This is because in most trust transfer cases, the transfer of shares of a trustee corporation signals a change in the underlying beneficial ownership of the land. While the transfer of shares of the trustee corporation may not be of itself a taxable matter, the change in beneficial ownership of the land, which often occurs coincident with the transfer of the shares, is taxable.

Contacts

The filing of Returns as required under subsections 5(7) and (8), requests for refunds, endorsements and written enquiries are handled through the Ministry. The mailing address is:

Ministry of Revenue
Land Transfer Tax Program
33 King Street West
PO Box 625
Oshawa ON L1H 8H9

Telephone enquiries may be made through the following numbers:

1 866 ONT-TAXS (1 866 668-8297)
1-800-263-7776 Teletypewriter (TTY)

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