



Ministry of  
Finance

# ***Additional Transfer Tax***

*Property Transfer Tax Act (PTTA) &  
Property Transfer Tax Regulation (PTTA B.C. Reg. 74/88)*

December 2017  
Presenter: Raluca Dogaru

## ADDITIONAL TRANSFER TAX Legislative Concepts

15% Additional Transfer Tax on specific types of

taxpayers

and

properties

“Foreign Entities”

s. 2.01 and s. 2.02 and 2.03:  
**foreign entity** means a foreign  
national or a foreign corporation

**foreign national** means an  
individual who is a foreign national  
as defined in section 2 (1) of  
the Immigration and Refugee  
Protection Act (Canada),  
*i.e. non Canadian  
citizens or non permanent residents  
of Canada, including the stateless  
person.*

“taxable trustee”

s. 2.01 :  
**Taxable trustee** means a trustee  
who is a foreign entity OR a  
beneficiary of the trust is a  
foreign entity and holds a  
beneficial interest in the  
residential property to which the  
taxable transaction relates.

“Residential Property”

s. 2.01

In a “Specified Area”  
Greater Vancouver Regional District

## ADDITIONAL TRANSFER TAX

### Determination of Citizenship Status of Foreign Nationals

### AUDIT REVIEW

#### PROOF OF CANADIAN CITIZENSHIP STATUS

- Valid Canadian passport,
- Canadian citizenship certificate or citizenship card,
- Canadian birth certificate.

#### PROOF OF PERMANENT RESIDENT STATUS

- Valid permanent resident (PR) card (front and back),
- Confirmation of Permanent Residence (IMM 5292 or IMM 5688/5509),
- Valid Immigrant Visa\*\* and Record of Landing (IMM 1000)

\*\* In combination only with Record of Landing

**NOTE:** An expired PR is not an automatic loss of permanent status, but needs to be supported by other documentation for proof of residency status under the *Immigration and Refugee Protection Act* (IRPA).

**EXCEPTION** to residency requirements: Section 28 (2) (a) (ii) of IRPA- when one is married to and living with a Canadian citizen outside of Canada does not need to meet the residency requirements (i.e., live 2 years out of 5 on Canadian territory)

## ADDITIONAL TRANSFER TAX Legislative Concepts

**"taxable trustee"**, in relation to a taxable transaction, means a **trustee of a trust** in respect of which

- (a) **any trustee is a foreign entity**, or
- (b) no trustee is a foreign entity but, immediately after the registration of the taxable transaction, a **beneficiary of the trust who is a foreign entity holds a beneficial interest** in the residential property to which that taxable transaction relates

The definition includes a two-level test to determine a **"taxable trustee"**:

1. First, if any trustee is a foreign entity, then all trustees of a trust are taxable trustees.
1. Second, if no trustee is a foreign entity, then the PTTA looks through to the beneficiaries' list. If at least one beneficiary is a foreign entity, then the trustees of the trust become **"taxable trustees"**.

# ADDITIONAL TRANSFER TAX

## Determination of capacity as "Taxable Trustee"

### AUDIT REVIEW

#### TAXABLE TRUSTEE

- A) On registration for a trust
- B) By deeming the transferee to be a trustee
- C) and D) Filing and taxable trustee with no registered interest while claiming PTT (taxable trustee deemed)

#### AUDIT ASSESSMENTS

- 99% Canadian and 1% Foreign National structures \*\*
  - \*\* Information requested includes financial contributions into the transaction (**administrative concessions**- vertically related individuals)
- Deemed taxable trustee: regardless of the tax paid, the deemed taxable trustee is assessed ATT on 100% of the % of the foreign national.

## ADDITIONAL TRANSFER TAX

# EXEMPTIONS

## BC Provincial Nominees

## ADDITIONAL TRANSFER TAX

PTTA B.C. Reg. 74/88 – March 2017

### **Property Transfer Tax Act PROPERTY TRANSFER TAX REGULATION B.C. Reg. 74/88**

amended by B.C. Reg. 108/2017, March 31, 2017

#### **BC Provincial Nominee Exemption and Refund**

##### **Part 4 – Additional Tax under Act**

##### **Section 17.1 Definitions**

- 18 Provincial Nominee Exemption – specified transactions
- 19 Provincial Nominee Exemption – eligible transactions
- 20 Provincial Nominee Refund – eligible transactions

*Effective March 31, 2017*

##### **Section 21**

##### **Refund of additional tax under Act if transferee becomes citizen or permanent resident**

*Effective August 2, 2017*

# ADDITIONAL TRANSFER TAX

## EXEMPTION : BC Provincial Nominee

### Types of Taxpayer

#### "Provincial Nominee"

an individual who is named in a valid nomination certificate issued by the government in accordance with an agreement referred to in section 8(1) of the *Immigration and Refugee Protection Act* (Canada) between the government and Canada.

#### "qualifying transferee"

On registration date the individual is both a foreign national and a provincial nominee [...]

\* (s. 17.1 B.C. Reg. 74/88)

**Excludes** "taxable trustee"

\* (s. 17.1 (b)(ii) B.C. Reg. 74/88)

### Properties

#### "Principal Residence"

means the usual place where an individual makes his or her home and contains an improvement permanently affixed **intended** to be a dwelling

\*s. 17.1 (B.C. Reg. 74/88) reference to 12.01 (PTTA)

### Transactions

#### "Eligible transaction"

A taxable transaction registered at LTO on or after March 31, 2017

#### "Specified Transaction"

A taxable transaction registered at a LTO before March 31, 2017

#### "Taxable Transaction"

means a taxable transaction to which s.2.02 (3) of the Act applies

\*s. 17.1 (B.C. Reg. 74/88)

i.e., there is additional transfer tax liability and an additional transfer tax return must be filed



# ADDITIONAL TRANSFER TAX

## EXEMPTION : BC Provincial Nominee

### REGISTRATION DATE

- the date on which the application for registration is made at the Land Title Office and a FIN 532 is filed for the registration of the
  - eligible transaction (on or after March 31, 2017)
  - Specified transaction ( on Aug 2,2016 till March 31, 2017)

### QUALIFYING TRANSFEREE

- a **foreign national\*\*** and a **Provincial Nominee** who holds a valid certificate of Nomination
  - \*\*Not a taxable trustee (registers title in the property in a capacity other than as a taxable trustee)
- intends to **inhabit the residential** improvement as **principal residence**
- has **never qualified for an exemption or refund for additional transfer tax** and consents to the PTT administrator to conduct inquiries respecting qualifications

### RESIDENTIAL PROPERTY

- a permanently affixed improvement to the property
- the improvement is intended to be a dwelling and used as principal residence

## ADDITIONAL TRANSFER TAX

### EXEMPTION : BC Provincial Nominee

#### CERTIFICATE OF NOMINATION

- issued by the **Ministry of Jobs, Tourism and Skills Training and Responsible for Labour (JTST)**
- has an expiry date – 6 months after the issue date
  - \*\* If the certificate is expired at date of registration, but there is proof that the nominee applied for PR prior to expiration date, then the transferee is considered a BC PN for tax purposes
- nominates the applicant\*\* and does not cover other family members /dependents
  - \*\*B.C. Provincial Nominee
    - solely the individual nominated on the Certificate of Nomination
    - maintains the status as provincial nominee if the nominee has sent an application for permanent residence to Immigration Canada prior to the certificate of nomination's expiry date
- can be used by nominee to apply for himself and family members for permanent resident status with *Immigration Canada* (Government of Canada) before expiry date

# ADDITIONAL TRANSFER TAX

## EXEMPTION : BC Provincial Nominee



BC Provincial  
Nominee Program

Ministry of Jobs, Tourism and Skills Training  
#450 - 605 Robson St. Vancouver BC  
V6B 5J3  
Canada  
[www.WelcomeBC.ca/PPN](http://www.WelcomeBC.ca/PPN)

March 15, 2016

Canada

### CONFIRMATION OF NOMINATION

|   |  |
|---|--|
| NOMINEE NAME<br>[REDACTED]                                  | PROV./TERR. STREAM<br>SKILLS IMMIGRATION                   |
| DATE OF BIRTH<br>[REDACTED]                                 | PROV./TERR. REFERENCE # (IF APPLICABLE)<br>SQ-15-1138      |
| NOMINATION CERTIFICATE #<br>2015-1138                       | EMPLOYER (IF APPLICABLE)<br>[REDACTED]                     |
| DATE APPLICATION RECEIVED BY PROV/TERR<br>February 27, 2015 | NAME OF OCCUPATION AND NOC<br>Customer Service Lead - 6211 |
| DATE NOMINATION ISSUED<br>March 12, 2016                    | RESTRICTIONS ON EMPLOYMENT<br>No                           |
| DATE NOMINATION WILL EXPIRE<br>September 08, 2016           | ORIGINAL NOMINATION OR EXTENSION<br>Original               |



## ADDITIONAL TRANSFER TAX

# REFUNDS

## PR or Canadian Citizens

## ADDITIONAL TRANSFER TAX

### REFUNDS: Canadian citizens or Permanent Residents

#### ON "registration date"

Taxpayer and Property

an individual is a **foreign national**  
\* (s. 21(2)(a) B.C. Reg. 74/88)

holds interest in the residential property in  
a capacity OTHER THAN "taxable trustee"  
(s. 21(2)(b) B.C. Reg. 74/88)

the **residential property** includes an  
**improvement** that is permanently  
affixed and is intended to be a  
dwelling

\*s. 21 (2)(c) (B.C. Reg. 74/88 7)

#### AFTER "registration date"

Taxpayer and Property

The transferee **moved onto the property**  
**within 92 days** from registration date and  
**inhabits the improvement for not less**  
**than one year as their principal**  
**residence**

\*s. 21(2)(d)(B.C. Reg. 74/88)

The transferee **becomes** Canadian citizen  
or **permanent resident** of Canada **ON or**  
**BEFORE** the first anniversary of the  
registration date

\*s. 21(2)(e)(B.C. Reg. 74/88)

## ADDITIONAL TRANSFER TAX

### REFUNDS: Canadian citizens or Permanent residents of Canada

#### REFUND APPLICATION

- After the first anniversary of the registration date and before the date that is 18 months from the registration date

\* s. 21(2)(g) B.C. Reg. 74/88

#### REFUND AMOUNT

- The portion of the amount of tax paid by the transferee attributable to the transferee's proportionate share of the taxable transaction's fair market value at the date of registration

**\*\*NOTE:** refund payable is for the portion of the amount of tax paid by the transferee attributable to the interest held in the capacity other than as a taxable trustee

- **Interest** is payable on tax refunded and it is calculated from the registration date

\*s. 21(6) B.C. Reg. 74/88

**\*\* NOTE:** Sections 6 (l) (b) and 7 of the *Interest on Overdue Accounts Payable Regulation, B.C. Reg. 215/83*, apply for the purposes of calculating interest payable

\*s. 21(7) B.C. Reg. 74/88

## ADDITIONAL TRANSFER TAX

## CONCEPT RECAP

## Property Transfer Tax Act and Additional Transfer Tax SIMILARITIES vs. DIFFERENCES

| Similarities to PTT  |   |
|--|---|
| Payable on the fair market value at the date of registration   | Payable on the fair market value of <b>the interest of foreign entities</b> in "residential property"   |
| <p>Transferees are liable for the tax and are taxed on the share they acquire in the property</p> <p>Trustees are treated as legal and beneficial owners of a fee simple interest<br/> <i>(s. 1(3)- For the purpose of calculating tax payable under this Act, a person registered in the land title office as the owner of land, other than a person registered only as the owner of a charge, is deemed to be the legal and beneficial owner of a fee simple interest in the land, even if the person holds the land in trust)</i></p> | <p>A trustee is liable for the payment of any additional tax on the property.</p> <p>A trustee becomes a "taxable trustee" if the trustee is a foreign entity or if any beneficiary is a foreign entity.<br/>           (def. <b>taxable trustee</b>, s. 2.01)</p> <p>The tax is payable on the share that the taxable trustee acquires, which may differ from the share of the beneficiary's interest.</p> |
| <p>If the transaction is a taxable transaction exempt from PTT, it is exempt under the Additional Transfer Tax</p> <p style="text-align: center;"><b>EXCEPT</b></p>  | <p>s. 14 (2.1) <i>Property Transfer Tax Act</i> specifically excludes three exemptions which might otherwise apply</p> <ul style="list-style-type: none"> <li>• <b>Transfer to survivor of a joint tenancy</b> (14(3)(m) code 08)</li> <li>• <b>Change in trustee</b> (14(4)(q) code 26)</li> <li>• <b>Amalgamations</b> (14(4)(u) code 38)</li> </ul>  |



# Property Transfer Tax Act and Additional Transfer Tax

## SIMILARITIES vs. DIFFERENCES

| Similarities to PTT  |   |
|--|---|
| <p>Refunds under the First Time Home Buyers' Program and Newly Built Housing Exemption are available to taxpayers who become Canadian Citizens or permanent residents within 12 months of the registration. They can be pro-rated.</p>                                   | <p>There are <b>refunds</b> ** of additional tax to taxpayers who become Canadian Citizens or permanent residents after the date of registration. (section 19 of the PTTA Reg. 74/88)</p> <p><b>** not pro-rated</b></p>  |
| <p>RETURNS filed for each transfer completed by the transferee liable for the payment of tax</p> <p>ELECTRONIC : V29 PTTA Return including the box for the calculated additional transfer tax (I-8)</p> <p>ATT RETURN (FIN 532) : The Additional Transfer Tax Return</p> | <p>Properties with mixed classes:</p> <ul style="list-style-type: none"> <li>• The fair market value will be apportioned between "residential property" and other property. Only the residential property is subject to the additional tax.</li> <li>• For properties with farm land, up to 0.5 hectares of farm land is included in the definition of residential property , if that farm land is classified as such because it is used for an owner's dwelling or a farmer's dwelling.</li> </ul> |

# Property Transfer Tax Act and Additional Transfer Tax

## **SIMILARITIES vs. DIFFERENCES**

| <b>Similarities to PTT</b>   |  |
|--|--|
| <b>Assessment</b><br>12 months or 24 months from the registration date<br>(s.18)   | 6 years from the date of registration<br>(s. 18(5.1))  |
| <b>Offences (s. 34)</b><br>** The fines currently need to go through the court process to apply and are collected by courts on behalf of the PTT Administrator |  |
|  | <b>Anti-avoidance rule (s.2.04)</b><br>** <b>DEMAND LETTERS</b> on 3 <sup>rd</sup> parties (s. 31) |

## **ADDITIONAL TRANSFER TAX POLICIES and LEGAL ADVICE**

### **ASSIGNMENTS, AMALGAMATIONS, LIMITED PARTNERSHIPS**

#### **ASSIGNMENT OF CONTRACT (avoidance or non taxable)**

- Profit = Bona fide reason \*\* (legal advice)

#### **AMALGAMATION (taxable vs. non taxable)**

- Amalgamation prior to August 2, 2016
- Registration post August 2, 2016

#### **LIMITED PARTERSHIPS \*\***

## **ADDITIONAL TRANSFER TAX**

**QUESTIONS?**

# Application Property Transfer Tax and the Additional Tax (Exemptions- s.14)

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## **PROPERTY TRANSFER TAX**

Property transfer tax (PTT) applies to the fair market value (FMV) of all taxable transactions as defined in section 1 of the *Property Transfer Tax Act (PTTA)*, unless specifically exempt (section 14).

## **The ADDITIONAL TAX**

On August 2, 2016 the government amended the PTTA to introduce “the Additional Tax” payable at the time of registration on all taxable transactions registered by foreign nationals who are buying residential<sup>1</sup> real estate in Greater Vancouver Regional District. The Additional Tax is payable in addition to PTT and it is 15 percent of the total FMV of the property.

The Additional Tax is payable by the transferee at the time of registration at the Land Title Office for the share/interest acquired in the property, with the exception of the bare trustee (even if Canadian citizen) who pays the Additional Tax on 100% FMV if the property has foreign nationals as beneficiaries regardless of the percentage the foreign national beneficiary holds in the property.

The Additional tax is not retroactive and it took effect on August 2, 2016, being payable for the registrations that occurred on or after August 2, 2016.<sup>2</sup>

## **APPLICATION OF PTT and the Additional Tax: Exemptions under section 14 of the PTTA**

The exemptions under section 14 of the PTTA can be grouped using different principles in regards to the requirements of each of the exemptions.

### **Type of property (BCA Classification) and relationship between transferor and transferees**

|  |                         |
|--|-------------------------|
| Residential (Class 1)                      | Related Individuals     |
| Non-residential: Farm, Commercial or Other | Not related Individuals |

### **Type of transfer and Type of interest acquired & ownership registration**

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<sup>1</sup> For other BCA classifications (e.g., recreational residence-Class 8, farms-Class 9, commercial-Class 2, 4, 5 etc.), unless there is a portion on the land that is classed as Class 1, no Additional Tax is payable even when purchased by a foreign entity/national or foreign corporation. BC Assessment Property defines Class 1, Residential: single-family residences, multi-family residences, duplexes, apartments, condominiums, nursing homes, seasonal dwellings, manufactured homes, some vacant land, farm buildings and daycare facilities (<https://www.bcassessment.ca/Services-products/property-classes-and-exemptions/understanding-property-classes-and-exemptions>)

<sup>2</sup> Pre-sold contracts are the only exception to the rule and are addressed separately.

|   |  |
|---|--|
| Fee simple  | % and joint tenancy or tenants in common   |
| Lease   | % and length of the term of the lease  |
| Life Estate                                       | % and release of reversionary interest to<br>registered owner upon death of the life estate holder |
| Trusts (intervivos, deceased estate, bare trusts) | % and for whose benefit under the trust's<br>terms.  |
| Other   |  |

**Related individuals exemptions** are based on two main principles:

- Relationship between the transferee and the transferor

A **related individual** includes only a person's spouse, child, grandchild, great-grandchild, parent, grandparent or great-grandparent, the spouse of a person's child, grandchild or great-grandchild, the child, parent, grandparent or great-grandparent of a person's spouse.

Note: Child includes the stepchild. Parent includes the stepparent (the spouse of a parent of the child).

- Citizenship status.

To be considered **related individual** for the exemptions in section 14, the transferee **must** also be a **Canadian Citizen** or a **Permanent Resident of Canada**<sup>3</sup>.

**Family Members exemptions** are based on the following:

- Relationship between the transferee and the transferor and Citizenship Status

A "family member" is defined in PTTA as an individual who is a Canadian citizen or a permanent resident of Canada and is one of the following: a related individual, person's sibling, cousin, niece, nephew, aunt or uncle, the spouse of a person's sibling, cousin, niece, nephew, aunt or uncle, or the sibling, cousin, niece, nephew, aunt or uncle of a person's spouse.

In this exemption group, differently from the related individual exemption group, when transferor and transferee satisfy the relationship criterion (i.e., related individual/family member) BUT if not both Canadian Citizen or Permanent Resident of Canada, they **DON'T qualify** for a PTT exemption under section 14. In such case, both PTT and the Additional Tax is payable, if applicable.

Note: The Additional tax applies only to the residential portion of land that is classed by BCA as Class 1 when a transfer of a farm occurs.

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<sup>3</sup> A permanent resident of Canada is a person who has a valid permanent resident card issued by the Immigration Canada as defined in the *Immigration and Refugee Protection Act(Canada)* and is defined in section 1(1) of the PTTA : "permanent resident of Canada" means a permanent resident as defined in the *Immigration and Refugee Protection Act* (Canada).

**For RESIDENTIAL only**

|  |                                      |
|--|--------------------------------------|
|  |                                      |
| <b>If PTT exempt</b>   | <b>Additional Tax exempt</b>         |
| <b>RELATED INDIVIDUAL and Canadian citizen or Permanent Resident</b>   |                                      |
| <b>Except</b>  |                                      |
| <b>RELATED INDIVIDUAL and Canadian citizen or Permanent Resident BUT in TRUST (including BARE TRUST - unregistered/registered ) for a foreign national beneficiary</b> |                                      |
| <b>PTT exempt</b>  | <b>Additional Tax TAXABLE (only)</b> |

**FARM use ONLY with residential improvements**

|   |   |
|---|---|
| <b>FAMILY MEMBERS (farm transfer including the residential portion) and Canadian citizen/Permanent Resident</b>     |   |
| <b>If PTT exempt</b>  | <b>Additional Tax exempt</b>                        |
| <b>Except</b>   |   |
| <b>FAMILY MEMBERS (farm transfer including the residential portion) BUT NOT Canadian citizen/Permanent Resident</b> |   |
| <b>Not PTT exempt</b>   | <b>Additional Tax TAXABLE (only on residential)</b> |

# OTHER EXEMPTIONS

|   | ATT TAXABLE ONLY | ATT EXEMPT | PTT EXEMPT |
|---|------------------|------------|------------|
| <b>08</b><br>Transferee is not Canadian citizen or permanent resident   | YES              | -          | YES        |
| <b>09</b><br>The Executor is not Canadian Citizen or Permanent Resident<br>PTT Return transferee ticks NO to the Canadian citizen question and put \$0.01 in the additional tax box at ( 6(o) so the form will validate. No ATT form needs to be mailed | Exception NO-    | -          | YES        |
| <b>13</b>   | YES              | -          | YES        |
| <b>14</b><br>Transferee is not Canadian citizen or permanent resident   |                  | YES        | YES        |
| <b>15</b>   |                  | YES        | YES        |
| <b>16</b>   |                  | YES        | YES        |
| <b>17</b>   |                  | YES        | YES        |
| <b>19</b>   |                  | YES        | YES        |
| <b>20</b>   | N/A              | N/A        | YES        |
| <b>21</b>   |                  | YES        | YES        |
| <b>22</b>   | N/A              | N/A        | YES        |
| <b>23</b>   | N/A              | N/A        | YES        |
| <b>24</b>   |                  | -          |            |
| <b>25</b>   |                  | YES        | YES        |
| <b>26</b><br>Trustee Transferee NOT Canadian or Permanent Resident  | YES              | -          | YES        |
| <b>27</b>   | N/A              | N/A        | YES        |
| <b>28</b>   | N/A              | N/A        | YES        |
| <b>29</b>   |                  | YES        | YES        |
| <b>30</b>   |                  | YES        | YES        |
| <b>31</b>   |                  | YES        | YES        |
| <b>32</b>   |                  | YES        | YES        |
| <b>34</b>   |                  | YES        | YES        |
| <b>35</b>   |                  | YES        | YES        |
| <b>37</b>   | N/A              | N/A        | YES        |
| <b>38</b><br>If the corporation is foreign  | YES              |            | YES        |
| <b>39</b>   | N/A              | N/A        | YES        |
| <b>40</b>   |                  | YES        | YES        |
| <b>41</b>   |                  | YES        | YES        |
| <b>42</b>   |                  | YES        | YES        |
| <b>43</b>   |                  | YES        | YES        |
| <b>44</b>   |                  | N/A        | YES        |
| <b>45</b>   |                  | YES        | YES        |



|    |  |     |     |
|----|--|-----|-----|
| 46 |  | N/A | YES |
| 47 |  | YES | YES |
| 48 |  | YES | YES |

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## THE ADDITIONAL TAX

### ANTI-AVOIDANCE SECTIONS IN THE ACT

#### AREA AFFECTED

**Q: Can you please confirm that the areas are exempt from the new PTT surcharge on Foreign Entity purchase of residential real estate?**

**Q: The website of Metro Vancouver lists Abbotsford as part of GVRD but for "park purposes only." It is not listed in the tax information sheet 2016-006 issued by the Ministry of Finance. Would you be able to confirm whether or not this additional PTT is applicable to residential properties in Abbotsford?**

**A: No it is not applicable to residential properties in the Abbotsford area...Abbotsford is in the Fraser Valley Regional District.**

#### BILL 28

**Q: Is the new legislation concerning foreign investors available in draft legislation (a link to it? ) where one can read the detailed legislation as implementable starting Aug. 2/2016?**

**A: This is the link to the webpage so you can see the Bill. It is in the first table at the bottom - Bill number 28, the Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016. Click on the date in the third column (1st reading) and you will get to the Bill:**  
<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/40th-parliament/5th-session/bills/progress-of-bills>

There are changes to other Acts as well so you have to scroll down to find the Property Transfer Tax Amendments.

#### COLLECTION OF CITIZENSHIP AND SIN-verification and other

**Q: What is the legal basis to collect SIN numbers**

**A: The SIN is a mandatory field on the form as prescribed by the Minister. The citizenship information is collected on all the purchasers regardless of the location of the property. Under section 2 of the Property Transfer Tax Act on application for registration, a transferee must file a return in the prescribed manner:**

**2 (1) Subject to subsection (2), on application for registration of a taxable transaction at a land title office, the transferee must**

**(a) Pay tax to the government in accordance with section 3 or 38, and**

**(b) File a return, in the prescribed manner, whether or not the taxable transaction is exempt under this Act.**

**Comment [DR1]:** There is confusion about the permanent resident status versus resident of BC. To be clarified in the changes we will make to the Public Information

**Q: Invalid or expired SIN card and/or permanent resident card**

**Q: Verification of the SIN at the time of transfer by the legal representative**

**Comment [DR2]:** Standard answer to be posted and distributed sent to HH, Aug. 19.

**Q: I am a Canadian citizen/PR who is a non-resident (I reside permanently in the Cayman Islands. I would like to confirm that I would not be subject to the new additional property transfer tax.**

**A:** As long as one maintains their Canadian citizenship and/or permanent resident status (as defined in *Immigration and Refugee Protection Act*), the additional tax does not apply even when not residing in Canada. To file the transfer the transferee will have to provide their SIN to confirm the affirmation of the citizenship status.

If the transferee has not got a valid SIN card or any documentation from CRA that confirms it, the transferee can contact the Federal government to get confirmation of the SIN from them so, PTB can be assured it is the correct one.

**Q: My clients are Canadian Citizens with Canadian Passports and SIN Numbers but are currently working abroad and for taxes purposes are non-residents. They plan to purchase a residential property in Vancouver for themselves when they return to Canada. Is the new 15% PPT applicable to them?**

**A:** If a transferee is a Canadian citizen or has maintained their permanent residence status, the 15% additional tax does not apply to the purchase of a residence in the GVRD area.

**Q: How would the additional tax of 15% apply if the buyers are a family of three with the daughter being permanent resident of Canada with valid PR Card purchasing and her parents holding foreign passport residents? How does the tax apply when one of the buyers on title is a PR of Canada?**

**A:** The two family members who are foreign nationals would be liable for the additional tax on their share of the property. The share acquired in the property by the permanent resident of Canada would not be liable for the additional tax of 15%.

**Q: If a foreign buyer purchases a property in partnership with a Canadian permanent resident in greater Vancouver area, how it would be taxed under both the PTT and the additional tax?**

**A:** Property Transfer Tax is payable on the property on the FMV of the entire property. The Additional tax is payable solely on the share acquired by the foreign buyer. So, if the purchasers hold the property as joint tenants, the Additional tax is payable on 50% of the fair market value of the property (usually the purchase price).

**Q: How would the additional tax apply in the circumstance when I am not Canadian, but my spouse is and he is on to hold the property for both of our benefit?**

**A:** If the title is only in your husband's name (i.e., Canadian citizen), then it is not subject to the Additional tax. However, if the person registered on title is holding title as a trustee for the benefit of others, then the beneficiary, if not Canadian or PR, is still liable for the payment of the Additional tax on the beneficial interest/share in the property.

**Q: What is the minimum share of the ownership of this property the foreign individual can have, before being liable for the Additional tax?**

**A:** There are no limitations (minimum or maximum) of ownership that triggers or relieves the purchaser from the liability to pay the Additional tax, if applicable. The Additional tax applies on the interests acquired by the purchasers. If there are two and they take title to the property as joint tenants then the foreign individual will be liable for the tax on 50% of the fair market value. If they are tenants in common it depends on what percentage interest each of them has, so if the foreign individual took 75% and the Canadian 25%, for example, the Additional tax would be payable on 75% of the fair market value.

#### **CLASSIFICATION**

**Q: Would the new 15% tax apply to the purchase of a residential apartment building?**

**A:** If the property is or, if it is new and it has yet to be classified would be, classified as residential under the BC Assessment Act the tax would apply.

**Q: Based on the new property transfer tax, I was wondering what classifies as "non-residential properties"?**

**A:** The additional tax is imposed on the purchase of all properties that are (or would be if they are new and not yet classed) **classed as Class 1 (residential) under the BC Assessment Act.** All other classifications are considered "non-residential". Please check the BC Assessment details to determine if the property falls within Class 1.

**Q: A foreign client wants to purchase a piece of agriculture land with market value around 8 million. Would the 15% tax apply on top of the regular PTT?**

**A:** Please confirm the BC Assessment information for the property: if any property is classed as residential (including portion of the farm land) the transferee needs to pay the additional tax on the residential improvements and on 0.5 ha of the land. The form that they need to complete when they register the purchase is on our website at the link below and the apportionment calculation is in Part E:

<http://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/fin-532-additional-property-transfer-tax-return.pdf>

**Q: Would the additional PTT apply to the sales of Multi-family buildings?**

**A:** If a multi-family dwelling is classed as residential by BC Assessment (Class 1) and foreign entities are the transferees then, the additional tax of 15% would be payable.

**Q: Would the additional PTT apply to the mixed-use buildings?**

**A:** The additional tax applies on all properties that are (or would be if they are new and not yet classed) classed as Class 1 (residential) under the BC Assessment Act. All other classifications are considered "non-residential".

If a property has mixed use and part of it is classified as residential then tax is payable on that part of the land and improvements unless the property has farm class. In that case the tax is

payable on the residential improvements and/or the farmer's dwelling and 0.5ha of the land.  
The definition under the new legislation is:

**"residential property"** means any of the following:

- a) land or improvements, or both, as defined in section 1 (1) of the Assessment Act, that are described as class 1 property in section 1 of the Prescribed Classes of Property Regulation, B.C. Reg. 438/81, but does not include prescribed land or improvements;
- b) an area of land, not including improvements, that
  - (i) is not larger than 0.5 ha in area, and
  - (ii) is classified as a farm under the Assessment Act only because the land is used for
    - (A) an owner's dwelling as defined in section 23 (0.1) of the Assessment Act, or
    - (B) a farmer's dwelling as defined in section 1 (1) of the Classification of Land as a Farm Regulation, B.C. Reg. 411/95;

**Q: Is agricultural land exempt from the foreign transfer tax since the legislation is for residential zoned properties?**

**A:** Tax is payable on residential property classified under Class 1 of the BC Assessment Act rather than on the zoning.

- If the land is classed as farm land but there are residential improvements the tax would be payable on the value of the residential improvements plus 0.5ha of the land.
- If the property is mixed class the tax is payable on any residential improvement and land classed as residential.
- If there is no residential component the tax does not apply.

## **CORPORATION(s) and PARTNERSHIPS**

### **EXEMPTIONS UNDER THE PTTA and APPLICATION OF THE ADDITIONAL TAX**

#### **FARMS**

**Q: Can you please clarify if this tax is applicable on a purchase in the ALR, such as for example Blueberry Farm in the Agricultural Land Reserve?**

**A:** The additional tax is payable on any land or improvement classed as residential (Class 1 under the BC Assessment Act) in the GVRD; therefore, it would be payable if there are residential improvements and land with that classification.

**If all the land is classed as farm land but there is a residential improvement then the additional tax is payable on the value of the improvement plus 0.5 ha of land.**

## **FORM AND PTT RETURN V.27**

### **GENERAL**

#### **MULTIPLE BUYERS**

**Q:**

#### **PRESOLDS pre and post- AUG 2/ 2016 AND SELLING CONTRACTS**

**Q: Can a pre-sold contract entered into after August 2nd, be assigned/sold before registration of the property at the Land Title Office? If so, is the Additional tax still payable by the first pre-sold purchaser?**

**A:** If the contract allows an assignment to a third party, you will not be liable for the Additional tax as it will not be registered in your name. However, if you retain any sort of interest in the property (even if you are not on title) you will be liable for the Additional tax and also may be liable to penalties under the Act if there is proof the assignment of the contract is done for tax avoidance purposes and not a real assignment of the contract.

**Q: Can a foreign individual buying a pre-sale, assign the property to another individual (Cdn citizen, e.g. boyfriend & girlfriend) and not pay the additional tax and PTT?**

**A:** If a developer allows the assignment of a contract, the PTT is payable by the purchaser who finally registers the purchase at the Land Title Office. However if it is determined that this was done purely to avoid the tax there are penalties under that Act that can be imposed along with the tax and any interest owing.

**Q: Can you please clarify, whether the Additional tax applies to new built and/or pre-sale condos?**

**A:** The tax is applied when the property is registered at the Land Title Office, so on completion of the sale. Any transaction registered on or after August 2nd 2016 where one or more of the purchasers are **not** a Canadian citizen or permanent resident, they are subject to the additional tax, regardless of when the contract to purchase was signed.

**Q: The transferees (husband & wife) bought a pre-sale property that will be finished in mid-2017; one of the buyers (husband) is a Canadian and the wife is American. Would the PTT and the Additional tax apply?**

**A:** PTT is payable at the time of registration of the contract by both purchaser and the additional tax would apply on the interest gained by the wife (non-Canadian), who is considered a foreign national. The amount payable depends on the share that she acquires when the transaction is registered at the Land Title Office.

**Q: If a foreign person has signed a purchase agreement before Aug 2, 2016 and complete the purchase (registration on title) in another name (for e.g., his/her spouse who is Canadian citizen), is this an illegal act?**

A: If there is a clause in the purchase agreement that allows assignments, and a couple decide to arrange the registration on, for example, a property they were intending to occupy so the additional tax is not payable, that in itself is not something that would be considered tax evasion.

Q: Basically, a foreign buyer purchased a condo from a developer a few years ago (before the ATT was introduced). The completion date of the condo is in 2019. That foreign buyer now wants to sell (or Assign the contract) to s.22. The developer has requested that the Assigner (the original purchaser) and Assignee s.22 sign a contract witnessed by a Notary; indicating the two of them are responsible for the foreign buyer's tax – if any. The developers want to protect themselves from owing any ATT as a result of the transaction.

s.22 wants us to confirm in writing that he is not liable for the ATT, so that he does not have to sign the form for the developer. s.22 advised me on the phone that he is a Canadian Citizen (of course I have not verified this).

A: Thank you for your email. The additional transfer tax applies when a title to property is registered at the Land Title Office, so on completion of the sale. Any transaction registered on or after August 2nd 2016 where one or more of the purchasers is not a Canadian citizen or permanent resident is subject to the additional tax, regardless of when the contract to purchase was signed.

The rights and obligations of the vendor/developer and purchaser are agreed upon by the contract parties. It is the developer's responsibility to decide under what circumstances they will consent to an assignment of a contract. The Ministry of Finance cannot comment on how contracts or transactions should be structured or under what circumstances/conditions an assignment of a contract can occur. We advise you seek independent legal advice in regards to your query.

If the contract allows an assignment to a third party, the assignee (third party purchaser) might not be liable for the Additional tax. However, if the assignor retains any sort of interest in the property (even if they are not on title) the registered purchaser will be liable for the Additional tax. In addition, under section 2.04 of the Property Transfer Tax Act, penalties are applicable if upon review of the transactions there is proof that the assignment of the contract is done for tax avoidance purposes and it is not a real, open market assignment of the contract.

#### PRINCIPAL RESIDENCE

Q: Are leases under 30 years taxable for the additional tax when the purchaser qualifies for an exemption under the

Q: Canadian company has two directors (each 50% shareholder) - one of the directors is not Canadian Citizen or permanent residence. Will additional tax applies?

Q: one of the partners in a limited partnership is non Canadian (non-controlling interest). The transferee is a Canadian corporation holding property for limited partnership. Will additional tax applies?

#### REFUNDS

Also, what about people who have already applied for Permanent Residency, but are waiting for their application to be processed & accepted?

**Comment [DR3]:** Standard question about the refunds and the timing of becoming PR as compared with other exemptions under the Act? Policy in development.



**Q: Do I need to submit a specific form for refunds?**

**A:**

| <u>Situation</u>   | <u>Refund Application Form Required</u> |
|--|---|
| Refund for tax paid in error – Calculation                       | No                                      |
| Refund for tax paid in error – CC/PR/PNP at date of registration | YES                                     |
| Refund for becoming a PR/CC within a year etc.                   | Yes                                     |
| PNP Retro Exemption  | YES                                     |

**Q: I am a temporary foreign worker and my Permanent Resident Application was submitted and I expect to become a PR by 2017. My pre-sold contract is to be registered prior to that and, if I have to pay for the Additional tax of 15% and the PTT by closing day, can I claim a refund at the time I become a permanent resident?**

**A:** There are no provisions to provide a refund of the Additional Tax payable or paid at the time of registration of title. If one is not a permanent resident of Canada at the time of registration at the Land Title Office, they are liable for the payment of the Additional tax and are be entitled to apply for a refund of the paid tax.

#### **SUBDIVISIONS**

#### **TRUSTS**

**Q: I notice that section 2.02(5)(b)(i) and (ii) are identical after the comma. Is the intention of the provision is to collect 15% additional PTT on a foreign entity's beneficial interest through the taxable trustee.**

**A:** Thank you for the feedback – the term "taxable trustee" is defined in S2.01 as:

"taxable trustee", in relation to a taxable transaction, means a trustee of a trust in respect of which

(a) any trustee is a foreign entity, or

(b) no trustee is a foreign entity but, immediately after the registration of the taxable transaction, a beneficiary of the trust who is a foreign entity holds a beneficial interest in the residential property to which that taxable transaction relates;

This renders any further wording around the application of the tax to trusts in 2.02(5)(b) superfluous.

The new Additional Tax form is filled out manually so the lawyers can use the fields provided to accommodate corporations etc.

**Q:** We have a client who is a Canadian citizen, and who would like to transfer her home to a principal residence trust of which one of her children, a Canadian citizen, would be the trustee. During her lifetime, the only beneficiary of the trust will be the client. On her death, she has a power of appointment over the trust property but, as drafted, if she fails to exercise her power of appointment, the trust property will be divided among her children, with a gift-over to the children of a predeceased child. A couple of the children, and possibly some of the grandchildren, are neither Canadian citizens nor permanent residents.

Our office is unclear about the definition of "taxable trustee", and in particular in (b), how broadly a "beneficiary of the trust" and "holds a beneficial interest in the residential property" is intended to apply. In the case at hand, the only non-Canadian citizens or permanent residents who could receive any assets of the trust (and of course not necessarily any interest in the residential property) are contingent successor beneficiaries who may never receive any portion of the residence either (1) by exercise of the power of appointment and (2) because the residence could be sold before any assets of the trust are distributed after the client's death.

Is it the new 15% PTT intended to apply to this circumstance or can we file and know that the 15% would not apply?

**A:** Yes, it is taxable. Nevertheless, in the scenario where a person's grandchildren aren't born yet, but would be foreign, and are potential beneficiaries, not sure the trustee would qualify as taxable. (Advice from Tax Policy on Aug 29, 2016)

- **BARE TRUSTS**

**SCENARIO:** the buyer of land is acquiring the land the title to which is already held by a bare trustee corporation, while the beneficial ownership of the land is owned by someone different than the bare trustee corporation. Typically, a buyer may decide to acquire the beneficial ownership from the beneficial owner and the shares of the bare trustee corporation, such that there is no registered transfer of title and therefore no property transfer tax.

We are wondering what the BC government's position will be on how the tax applies to a foreign entity who acquires, on or after August 2, 2016, the beneficial interest in land and the shares of a pre-existing bare trustee corporation that holds registered title. On its face, new s. 2.02(3) will not apply because there is no application for registration, that's the case even though the definition of "taxable trustee" is broad enough that the bare trustee corporation might be a taxable trustee. However, the new GAAR, which is applicable to only the new 15% tax, is creating uncertainty. Even if the new 15% tax were to apply to such a scenario, we are not sure how the tax would be paid, since the PPTA contemplates payment triggered by application at the land title office for registration (e.g. new s. 2.02(3)).

**Hilary Harley response on July 29, 2016-**

You are correct – the Additional Tax, like Property Transfer Tax, is payable only if the transfer of the interest is registered at the Land Title Office so a change in beneficiaries of a bare trust is not taxable under the new provisions and would not contravene the anti-avoidance provisions.

## **PR SUPPORT DOCUMENT**

**Q.** Is a PR Travel Document sufficient proof of PR status for an exemption to the foreign buyer's tax?

One of our clients holds a valid PR Travel Document in lieu of a PR Card. PR Travel Documents are issued to PRs who meet all the usual PR Card requirements but are currently residing outside Canada with the intent to eventually return to Canada as a PR. E.g. where a senior executive is on a temporary two-year assignment at an overseas office on behalf of a Canadian headquartered company. In these cases, Immigration Canada allows for PRs to apply for a long-term multiple-entry PR Travel Document as proof of PR status to allow for the individual to retain their PR status and travel in and out of Canada as a PR.

**A.** The travel documentation for principal resident individuals who do not have a valid PR card are based on specific facts and are unique to the circumstances of each individual as indeed outlined in your example. Therefore, we are auditing each file to determine how the travel documents are indicative of the valid permanent status of each taxpayer and whether the taxpayer meets the definition of permanent resident as defined in the *Property Transfer Tax Act*.

## **PROVINCIAL NOMINEE EXEMPTION**

**Q: My client has an existing work permit that will expire in 2018. Does he have to pay ATT?**

**Q: My clients who are foreign buyers want to purchase a 15 acre parcel of land that will eventually be developed. Do they have to pay ATT?**

**Q: A BC PNP Work Permit holder is now able to benefit from the exemption of the 15% additional foreigner's PTT for the purchase of his/her principal residence. What would happen if his/her BC PNP is revoked or cancelled after the completion/registration of their title transfer? In this case, would he/she be responsible for remitting the 15% additional tax?**

**A.** Status at the date of registration is relevant for the liability and remittance of 15% ATT. However, the PTT Administrator under section 17 has the ability to investigate whether at the time of registration there was indication that the status would be cancelled or revoked, potentially making the transferee unqualifiable for the exemption. Under the current provisions of the PTFA there are tax avoidance and offence provisions that should prevent taxpayer to withhold information that might impact their qualifications under any of the PTFA exemptions.

**Q: BC PNP nominee is applying for a full refund. Nomination has only main applicant's name. However, the property was bought under the main applicant and spouse's name, joint tenant. Main applicant paid 15% ATT at the time of registration. Shall we issue full refund or only 50% to the main applicant?**

**A.** After the BC PNP nominates one for permanent residence, the nominated person and all the dependants, if applicable, must apply for permanent residence to CIC Under the Provincial Nominee Class. The nominee has six months from the date of nomination to apply to CIC. Application for permanent residence allows one to include their family members on one's nomination, but that does not mean that the nomination extends to the family members/dependants. Therefore the dependants are not nominated as PNPs and are not eligible for an exemption of the Additional transfer tax.

Link- BC PNP skill immigration and express entry BC Guide

**Q: BC PNP nominee who purchases property after nomination expires. Is ATT applicable?**

**A.** We need certainty that the BC PNP applied for PR before the expiration date of the certificate of nomination. The expiry date listed on the Confirmation of Nomination only refers to the date that the nominee must submit a formal application for permanent residency to the federal government. Nominees who have applied for permanent residency prior to the expiry date will continue to be considered nominees after the expiry date has passed.

## **PERMANENT RESIDENT OR CANADIAN REFUND APPLICATION**

**Q: We are representing a non-resident purchaser. The tax certificate from the Township shows there is no portion of the land that is residential, but conversely allows for a Home Owner's grant, and designates a value for Residential Improvements. How do I determine which portion of the land is residential and which portion is subject to the 15% additional transfer tax?**

**A:** For properties with farm class, the additional tax is payable on the residential improvements and/or the farmer's dwelling and 0.5 ha of the land. The form that needs to be completed when the purchase is registered is on our website at the link below and the apportionment calculation is in Part E: <http://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/fin-532-additional-property-transfer-tax-return.pdf>

**Q: Can you please provide guidance on whether the Additional Property Transfer Tax applies to the purchase of taxable real property by a limited partnership where a limited partner is a foreign entity? If so, how is the tax calculated (ie. to their proportionate share of unit investment or to the entire purchase, regardless of the level of Canadian investment)?**

**Assume the property is purchased by a Canadian/BC controlled bare trustee acting on behalf of a Canadian/BC controlled and owned (exempt) general partner**

**A:** Thank you for your inquiry. The question you have asked is hypothetical. In the absence of specific evidence and facts we could not comment on the application of the Additional Transfer Tax. Should you require more information, please submit all the relevant documentation and an explanatory letter in regards to the structure of the proposed transaction and apply for an Advance Tax Ruling. For more information on Advance Tax Ruling process, visit <http://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/ptt-021-advance-tax-rulings.pdf>

**Q: To date, has the BC government issued any support documentation, bulletins or publicly accessible advance rulings/decisions with respect to the application of Additional Property Transfer Tax to partnerships or limited partnerships?**

**A:** Thank you for your email. Due to the complexity of the corporate structures involving partnerships and corporations, we cannot comment in detail on the application of the additional transfer tax, hence the advice to apply for an Advance Tax Ruling attaching all the supportive documentation for the proposed transactions. The facts of each type of transaction and structure can trigger different tax liabilities under the Act.

**Q: Is a corporation incorporated in Canada whose shareholders and directors are Canadian citizens but declared as non-residents for income tax purpose subject to pay the additional 15% property transfer tax when the corporation purchases commercial properties in GVRD?**

**A:** A foreign national is a person who is not a Canadian citizen or permanent resident of Canada, including a stateless person. As long as one maintains their Canadian citizenship and/or permanent resident status (as defined in the Immigration and Refugee Protection Act), the additional tax does not apply even when not residing in Canada.

The additional property transfer tax only applies to transfers of properties that are (or would be if they are new and not yet classed) as Class 1 (residential) under the BC Assessment Act. All other classifications are considered "non-residential". If a property has mixed use and part of it is classified as residential and part of it is classified as commercial, then the additional tax is payable on the part of the land and improvements that are classified as residential.

#### **ADVANCED TAX RULING INFORMATION**

As discussed, the ministry will provide an advance ruling on how the tax and exemption provisions of the Property Transfer Tax Act will be applied to a transaction proposed by the taxpayer. For more information on the advance tax ruling process please visit <http://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/ptt-021-advance-tax-rulings.pdf>

#### **BENEFICIARIES AND EXECUTORS**

**Q.** I am writing to obtain clarification on the following questions:

**a)** whether the additional 15% PTT is payable when a residential property in Vancouver is being registered in the name of an Executor who is not a Canadian citizen or permanent resident?

**b)** whether the additional 15% PTT is payable when an Executor under a Will transfers a residential property in Vancouver to a beneficiary who is not a Canadian citizen or permanent resident but who pays tax in Canada? Would it make a difference if it is a specific bequest in accordance to the Will?

**A.** (a) A transfer into the name of an executor who is not a Canadian Citizen or Permanent Resident would *not* be subject to the Additional 15% tax and EX 09 would apply. A PTT form is completed claiming the exemption and no ATT form is required. The transferee ticks NO to the CDN citizen question and in section I6 (b), \$0.01 is entered in the Additional Tax box so the form will validate.

(b) ATT is payable when an executor under a will transfers a residential property in Vancouver to a beneficiary of the will who is *not* a Canadian Citizen or Permanent Resident.

#### **OPEN DATA**

**Q.** Hi, I am looking for data for foreign buyers in Vancouver and B.C. Where can I track this data on your website.

**A.** Please refer to the following link & click on the first report called Provincial Monthly 2017 to access.

<https://catalogue.data.gov.bc.ca/dataset/property-transfer-tax-data-2017>

## **TIPS**

**Q.** Hello, how do I report realtors and other who I believe may be engaging in or otherwise encouraging foreign buyer tax avoidance? This isn't very well document (sic) on your web site.

**A.** You may direct any tips or leads to this email address, [atteng@gov.bc.ca](mailto:atteng@gov.bc.ca). Please include as much information as you have available, such as names, addresses, and dates.

Raluca,

Can you please draft an answer?

Thanks,

Emily

**From:** FIN REV G PTB-PTT Enquiries FIN:EX

**Sent:** Tuesday, January 17, 2017 4:34 PM

**To:** Seeburn, Sanjeeve FIN:EX; Dogaru, Raluca FIN:EX; Lewis, Emily FIN:EX

**Subject:** FW: Permanent Residents - PRC Expired Card

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April 3, 2017 ATT meeting Emily, Raluca, Benson, Bailey, Joanne, Yvonne

#### General application and policy Qs

#### PNP

1. When do we start process PNP refund applications?  
We are arranging information sharing with JTST to verify PNP certificates information. We will start process PNP refund application after we have access to the PNP database.
2. We received refund applications of new PR. What we do?  
Return the applications and explain that they only submit the refund applications after 12 months using the property as principle residences (must have moved on within 92 days & lived there for 1 year).
3. PNP confirmation of nomination list one nominee. Property was purchased under both spouses names. Refund will be issued to the nominee only or to the family?  
Refund to nominee only.
4. If the PR application linking to the PNP nomination was declined or cancelled, but nomination is still valid, will purchasers qualify for PNP exemption? If the taxpayers hide the PR rejection or cancellation from us, how can we tell?  
No.
5. If PNP exemption is claimed before the linking PR application is rejected or cancelled, do we charge back?  
NO
6. Does PTB accept as proof of nomination the "work permit support letter for BC Provincial Nominee Program"?  
NO.

The Work Permit Support Letter is used at a port of entry, and is not a BC PNP Confirmation of Nomination. PTB can verify PTT transferee's status as PNP by using this document, BUT BC PNP program recommended that we require the Confirmation of Nomination letter as verification of their Provincial Nomination (for consistency).

Confirmations can be reissued at the request of the nominee (by emailing the helpdesk at [PNPInfo@gov.bc.ca](mailto:PNPInfo@gov.bc.ca)), although loss is rare as the document has been provided in an electronic format for roughly a year.

DECISION Emily: Given the above information from PNP, we will stick with our previous decision to only accept Confirmation of Nomination letters.

#### **RESUBMISSION**

Q: It seems that only change was in June purchaser registered with a wrong last name 'S.22', in Sep, resubmission showed last name 'S.22'. It's transfer of \$7.1M house, shall we assess for \$1.065M ATT on this case? Since we assessed for the last tax return with this issue that withdraw before Aug 2, 2016 & resub after Aug 2, 2016, shall we look case by case, or we assess all of them?

#### **RELATIONSHIPS**

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### **99:1 Procedures**

99:1 files refer to any ownership structures registered at LTO where individuals subject to ATT are given significantly less ownership interest than the Permanent Resident / Citizen transferees.

### **Workload Development**

Workload is generated by running a report of all property transfers for a specified period with the following parameters:

- Property Location – GVRD
- Property Class (Class 1) as per BC Assessment
- ATT was filed and paid

### **Audit Procedures**

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|                          | Reported           | Assessed  | Adjusted  |
|--------------------------|--------------------|-----------|-----------|
| Interest Acquired        | 0.990000           | 99.000000 | 98.010000 |
| Exempt Amount (FTH-NB/H) | 0.00               | 0.00      | 0.00      |
|                          | Issue FTH Penalty  |           |           |
|                          | FTH Penalty Amount |           | 0.00      |
| ATT Liability            |                    |           |           |

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### ATT Farm Calculation:

#### Example facts:

- Sale price: \$4,000,000
- Mixed use farm and residential
- Land size: 20.23 acres

#### Calculation steps:

- FMV of the farm land is calculated by taking the sale price of \$4,000,000 and subtracting the BCA FMV of improvements (228,000 + 396,000 = 624,000). BCA's land values cannot be used for calculating property transfer tax.
  - o  $\$4,000,000 - 624,000 = \$3,376,000$
- The breakdown of land and improvements can be seen on Roll History or by reprinting the Notice.
- Calculate the FMV of the land per Hectare
  - o 20.32 acres = 8.2234 Hectares (2.471 Acres/Hectare)  
(# Acres / 2.471 = # Hectares)
  - o  $\$3,376,000 / 8.2234 \text{ hectares} = \$410,535.76/\text{Hectare}$
  - o  $\times 0.5 = \$205,267.89 \text{ per } 0.5 \text{ Hectares}$
- Add FMV of improvements to FMV of 0.5 Hectares of land
  - o  $\$624,000 + \$205,267.89 = \$829,267.89$

FMV of the residential portion for calculation of ATT: \$829,267.89

| E. ADDITIONAL PROPERTY TRANSFER TAX CALCULATION  |                 |         |                    |
|--|-----------------|---------|--------------------|
| Complete this section to determine the total additional tax payable. If the property is entirely classed as residential, complete E3, E8 to E10. For all other properties, complete as applicable. |                 |         |                    |
| 1. Total value of all improvements   | \$ 624,000.00   | E1      |                    |
| 2. Total value of land   | \$ 3,376,000.00 | E2      |                    |
| 3. Fair market value of property   | \$ 4,000,000.00 | E3      |                    |
| 4. Size of property in hectares  | 8.2234          | E4      |                    |
| - to convert square feet to hectares, multiply by 0.0000093<br>- to convert acres to hectares, divide by 2.471   |                 |         |                    |
| 5a. If classified as mixed residential land, other than farm, enter the residential land value only, or  |                 | E5a     |                    |
| (to E7)  |                 |         |                    |
| 5b. If classified as farm, land and property is larger than 0.5 hectares, then perform the following proportional land calculation   |                 |         |                    |
| \$ 3,376,000.00  | +               | 8.2234  | x 0.5 = 205,267.89 |
| from E2  |                 | from E4 | (to E7)            |
| 6. Value of residential improvement  | \$ 624,000.00   | E6      |                    |
| 7. Value of residential land (from E5a or E5b)   | \$ 205,267.89   | E7      |                    |
| 8. Taxable amount (from E3, or E6 plus E7, if applicable)  | \$ 829,267.89   | E8      |                    |
| 9. Total percentage of ownership transferred   | 100.00 %        | E9      |                    |
| 10. Total taxable residence value (E9 % of E8)   | \$ 829,267.89   | E10     |                    |
| (to column BE, FF & EE)  |                 |         |                    |

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Withheld pursuant to/removed as

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**PNP Risks and factors to refer to audit**

PNP verification:  
s.15

**Presales:**

**Property Transfer Tax Act Section 1.4 – Proposed strata lots**

If a strata unit is purchased before it is built, then the PTT and ATT paid on the transfer is based on the original consideration.

If the contract is assigned to an arm's length party (on the open market), then PTT and ATT is paid based on the total consideration paid by the assignee. This will include the original contract price, plus whatever the person paid to acquire the contract.

- To still be considered a pre-sale, the assignment agreement must be dated before the developer deposits the strata with LTO. This can be viewed on LTSA as the first registered event on the PID,

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**PNP Refund:**

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| <u>Situation</u>   | <u>Refund Application Form Required</u> |
|--|---|
| Refund for tax paid in error – Any reason other than CC/PR/PNP at date of registration | No                                      |
| Refund for tax paid in error – CC/PR/PNP at date of registration                       | Yes                                     |
| Refund for becoming a PR/CC within a year etc  | Yes                                     |
| PNP Retro Exemption  | Yes                                     |

**PNP retro exemption:**

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| <u>Situation</u>   | <u>Refund Application Form Required</u> |
|--|---|
| Refund for tax paid in error – Any reason other than CC/PR/PNP at date of registration | No                                      |
| Refund for tax paid in error – CC/PR/PNP at date of registration                       | Yes                                     |
| Refund for becoming a PR/CC within a year etc  | Yes                                     |
| PNP Retro Exemption  | Yes                                     |

**PR Refund: Transferee became Permanent Resident or Canadian Citizen within one year of purchase date:**

If application received before 1 year anniversary of registration date, return all documents with early application letter. Document tax return number and date received on PR Refund Applications spreadsheet and retain no other information.

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| <b><u>Situation</u></b>  | <b><u>Refund Application Form Required</u></b> |
|--|--|
| Refund for tax paid in error – Any reason other than CC/PR/PNP at date of registration | No   |
| Refund for tax paid in error – CC/PR/PNP at date of registration                       | Yes  |
| Refund for becoming a PR/CC within a year etc  | Yes  |
| PNP Retro Exemption  | Yes  |

| Situation                               |                       | Request                                      | Accept                        |
|---|-----------------------|--|-------------------------------|
| SIN                                     | Citizenship/PR answer |  |                               |
| 000-000-000, blank, or --- -<br>--- --- | Yes                   | SIN Support<br>Citizenship Status<br>Support | Citizenship Status<br>Support |
| 000-000-000, blank, or --- -<br>--- --- | No                    | SIN Support<br>Citizenship Status<br>Support | Citizenship Status<br>Support |
| Temporary                               | Yes                   | SIN Support<br>Citizenship Status<br>Support | Citizenship Status<br>Support |
| Temporary                               | No                    | SIN Support<br>Citizenship Status<br>Support | Citizenship Status<br>Support |
| Permanent                               | No                    | Citizenship Status                           | Citizenship Status<br>Support |



**Taxable Trustee Indicators**

s.15

### **Verifying Citizenship Status**

#### **Procedure:**

- s.15

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#### **Information requested:**

##### **Citizenship Status:**

- Canadian birth certificate
- Canadian citizenship certificate or citizenship card,
- Valid Canadian passport,
- Valid permanent resident (PR) card (front and back),
- Valid Nexus card (front and back),
- Confirmation of Permanent Residence (IMM 5292 or IMM 5688/5509)
- Valid Immigrant Visa and Record of Landing (IM 1000)

If your name has been changed since the production of any of these documents, please provide the official supporting document for the change of name.

##### **SIN:**

- SIN card or Confirmation of SIN issued by Service Canada,
- Notice of Assessment issued by the Canada Revenue Agency showing complete name and SIN.

#### **ATT RFI**

##### **ATT - Missing ATT Returns – project:**

Upon review of our records, it appears that our office has not received the Additional Property Transfer Tax Returns (Form FIN 532) for the following transactions which took place between August 2, 2016 and March 31, 2017:

##### **ATT - MISSING ATT RETURN**

Upon review of our records, it appears that our office has not received the Additional Property Transfer Tax Returns (Form FIN 532) for the transaction noted above. Please email the completed form to [ATTENQ@gov.bc.ca](mailto:ATTENQ@gov.bc.ca) upon receipt of this notification.

##### **ATT - FOLLOW UP REQUEST**

This is a follow up of our correspondence dated [Date] on the above subject. We urge you to respond as soon as possible. See copy attached.

Failure to respond with the information required by end of business day on [Date], would result in a Notice of Assessment for additional transfer tax in the amount of a minimum of [\$Amount].

Include the property transfer tax return number in your correspondence.

##### **ATT – RELATIONSHIP**

To complete the review we require the following information.

- Describe the relationship between all transferees.

##### **ATT – COMMON LAW SUPPORT**

In order to qualify as a related individual (spouse), our office requires proof of living and cohabitating in a marriage-like relationship for a continuous period of at least two years prior to the date of transfer. Please provide proof of residency for both transferees at the same address covering the two year period beginning [date 2 years before registration].

##### **\*ATT – BARE TRUST SIN COMPLIANCE OPTION**

We require confirmation of the citizenship status for each of the beneficial owners identified in the bare trust information section of your return. Provide the following information for all the beneficial owners:

##### **ATT – CALCULATION SUPPORT**

Provide your calculation for Additional Transfer Tax on the transfer and supporting documentation.

##### **ATT – PR/CC COMPLIANCE**

To complete the review we require confirmation of your citizenship status information. On the tax return you did not indicate that you were a Canadian Citizen or Permanent Resident.

***\*ATT –SIN Compliance option***

You declared on your tax return that you are a Canadian citizen or permanent resident (PR) under the *Immigration and Refugee Protection Act* (Canada), but you failed to provide a valid Social Insurance Number (SIN). We require confirmation of your SIN and citizenship status.

***ATT – SIN SUPPORT***

To confirm your SIN, please provide a copy of one of the following:

- SIN card, or
- Notice of Assessment issued by the Canada Revenue Agency showing full name and SIN.

***ATT – CITIZENSHIP STATUS SUPPORT***

To confirm your Canadian citizenship or permanent resident status, please provide a copy of one of the following:

- Valid Canadian passport,
- Canadian citizenship certificate or citizenship card,
- Canadian birth certificate,
- Valid permanent resident (PR) card (front and back), or
- Confirmation of Permanent Residence (IMM 5292 or IMM 5688/5509), or
- Valid Immigrant Visa and Record of Landing (IMM 1000)

If your name has changed since any of these documents' issue date, provide the official supporting document for the change in name.

***ATT – FINANCIAL CONTRIBUTIONS/ TAXABLE TRUSTEE (Multiple Transferees)***

- How much, in Canadian dollars, did each transferee contribute to the [purchase price/down payment for the mortgage]?
- Who is the registered holder(s) of the bank account from which mortgage payments are drawn? [Remove if no mortgage]
- If the mortgage was guaranteed by anyone other than the transferees, provide their name and relationship to the transferees. [Remove if no mortgage]
- Who pays the property taxes, utilities, and home insurance?
- Who currently resides on the transferred property?
- If the property is rented, who collects, deposits, and reports rental income?

Provide bank statements showing transactions for the [purchase/down payment], mortgage payments [remove if no mortgage], bill payments, and rent collection (if applicable). Statements must show registered holder(s) of the account.

***ATT – FINANCIAL CONTRIBUTIONS/ TAXABLE TRUSTEE (One Transferee)***

- What is the source of the funds used for the [purchase price/down payment for the mortgage]? If the funds are your own, how did you accumulate them?
- Who is the registered holder(s) of the bank account from which mortgage payments are drawn? [Remove if no mortgage]

- If the mortgage was guaranteed by anyone other than the transferee, provide their name and relationship to the transferee. [Remove if no mortgage]
- Who pays the property taxes, utilities, and home insurance?
- Who currently resides on the transferred property?
- If the property is rented, who collects, deposits, and reports rental income?

Provide bank statements showing transactions for the {purchase/down payment}, mortgage payments [remove if no mortgage], bill payments, and rent collection (if applicable). Statements must show registered holder(s) of the account.

Provide copies of your Notice of Assessment from the Canada Revenue Agency for the last three years.

#### **ATT – PERSONAL INCOME SUPPORT**

Provide copies of your Notice of Assessment from the Canada Revenue Agency for the last three years.

#### **ATT – INCORPORATION**

Corporations not incorporated in Canada are subject to the Additional Transfer Tax when purchasing residential property in the Greater Vancouver Regional District.

Provide copies of the following documents for the transferee corporation:

- Certificate of Incorporation
- Notice of Directors
- Central Security Register

#### **ATT – SHAREHOLDER/DIRECTOR INFORMATION**

Under the Property Transfer Tax Act, transferee corporations controlled by a foreign entity are subject to the Additional Transfer Tax when registering residential property in the Greater Vancouver Regional District. To complete the review we require confirmation of the citizenship status of the shareholders and directors of the corporation.

Provide the following information for all shareholders who hold 10% or more of the corporation's common and/or preferred shares:

- Full name, Address, and percentage of common and preferred shares held
- Support for Social Insurance Number (SIN) and Canadian citizenship status

If any of the shareholders named above is a corporation, provide the same information for the corporate shareholder.

If any of the shareholders named above is a trust, provide the following information for all beneficiaries of the trust:

- Full name and address
- Support for Social Insurance Number (SIN) and Canadian citizenship status

Provide the following information for all directors of the corporation (if different than shareholders):

- Full name and address
- Support for Social Insurance Number (SIN) and Canadian citizenship status

***ATT – PNP EXEMPTION CLAIMED***

To complete our review, we require the following information:

- Copy of your B.C. Provincial Nominee confirmation
- If the nomination has expired, supporting documentation for your application for permanent resident status.

***ATT – PNP RETRO EXEMPTION CLAIMED INTRO***

Our office is conducting a review of your application for a retro exemption of the Additional Property Transfer Tax as a B.C. Provincial Nominee. Prior to issuing your refund, we need to verify that you qualify for this exemption by confirming that the property is being used as your principal residence.

***ATT – REFUND RFI 92 Day move on.***

To complete our review, we require the support that you moved onto the property within 92 days of the registration date. Acceptable documents include:

- Telephone bills
- Cable bills
- Credit card or bank statements
- Any personal mail that was mailed to you at the property address

Provide the support to [ATTENQ@gov.bc.ca](mailto:ATTENQ@gov.bc.ca)

Include the PTTR number and Letter ID in any correspondence.

***ATT – PNP RFI Day move on.***

You have applied for an exemption of the Additional Property Transfer Tax as a B.C. Provincial Nominee. We have been unable to confirm your residency at the property.

To determine your eligibility for the exemption, please provide a copy of the following document:

- Residential home insurance for the property

In addition to the above, send copies of two of the following documents sent to you at the property address within three months of the registration date:

- Telephone bills
- Cable bills
- Credit card or bank statements
- Any personal mail that was mailed to you at the property address

***ATT – PNP Nomination Confirmation***

You have claimed the additional transfer tax exemption for confirmed nominees under the Provincial Nominee Program.

We have been unable to confirm your nomination.

To confirm your eligibility for the exemption, provide a copy of your confirmation certificate.

If the confirmation expired before the registration date of the property transfer, provide support that you applied for Permanent Residency before the expiration date.

## Vance, Hilary FIN:EX

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**From:** Killam, Bailey FIN:EX  
**Sent:** Friday, January 12, 2018 12:14 PM  
**To:** Williams, Steve T FIN:EX; Banton, Lesley FIN:EX  
**Cc:** Dogaru, Raluca FIN:EX  
**Subject:** Taxable Trustee - Audit Procedures  
**Attachments:** 99 and 1 Procedures.docx; Taxable Trustee Indicators.docx; 99 and 1 meeting with tax policy.docx; Taxable Trustee Explanation Paragraphs.docx; Taxable Trustee RFI paragraphs.docx

Hello,

Here is what we have been working with to audit files with potential taxable trustee issues. I have included our current audit procedure documents, letter paragraph templates, and meeting notes. These are continually changing as we enhance our program. Please let me know if there are any questions.

**Attachments:**

- 99 and 1 Procedures – procedures document to assist the auditor's while working 99:1 files
- Taxable Trustee RFI paragraphs – examples of request for information requests sent to taxpayers
- Taxable Trustee Explanation paragraphs – examples of explanations sent to the taxpayers
- 99 and 1 meeting with tax policy – Notes from May 2, 2017 meeting with tax policy
- Taxable Trustee Indicators – procedures for Compliance Analysts to identify high risk taxable trustee files where no ATT was declared (100% foreign and 0% Cdn)

Thank you,

Bailey Killam  
ATT Team Leader  
Property Taxation Branch  
Ministry of Finance  
Phone: 778-698-9523  
Fax: 250-953-3094

### **TAXABLE TRUSTEE:**

Taxable trustee is defined in s 2.01 of the Property Transfer Tax Act (PTTA) to mean a trustee who acquires property on behalf of a foreign entity who has a beneficial interest in the property. We have determined that (the foreigners – name them have/HAS) a greater beneficial interest in the property than was declared. [Name the transferee] is deemed to be a taxable trustee and subject to 15% additional property transfer tax (ATT) on his (the transferee's) proportionate share of the taxable transaction's fair market value.

### **APPEAL**

Further information about the assessment, including how to file a notice of objection, can be found on the reverse side of the assessment notice.

### **STANDARD PTT PARAGRAPH:**

Property transfer tax is a registration tax that is payable on the fair market value of land and improvements on the date the title is registered at the Land Title Office. The *Property Transfer Tax Act* defines fair market value as the amount that would have been paid for the fee simple interest in the land, had it been sold at the date of registration in the open market, by a willing buyer to a willing seller.

### **STANDARD ATT PARAGRAPH:**

The additional property transfer tax is a 15% tax that foreign entities or taxable trustees pay in addition to the general property transfer tax on transfers of residential property located in the Greater Vancouver Regional District (GVRD) (also known as the Metro Vancouver Regional District).

### **PNP REFUND / RETRO EXEMPTION DENIAL (PRINCIPAL RESIDENCE):**

We received your request for Additional Transfer Tax [REFUND/RETRO EXEMPTION] for Provincial Nominees. Under Section 17.1 of the Property Transfer Tax Regulations, in order to qualify as a "qualifying transferee", you must inhabit the improvement as your principal residence. We were unable to confirm that you are using the property as your principal residence and therefore are denying your application.

### **NBH EXEMPTION DENIAL DUE TO TAXABLE TRUSTEE:**

Under section 12.01, a 'qualifying individual' does not include a 'taxable trustee'. The requirement in s. 12.01 that a qualifying individual be a Canadian citizen or permanent resident should be read in light of the ATT and the definition of 'taxable trustee'. The Newly built home exemption is not available to the transferee as they have no beneficial interest in the property which is in fact held by a 'foreign national'. Foreign nationals are not exempt under the program.



### **FTH EXEMPTION DENIAL DUE TO TAXABLE TRUSTEE:**

Under section 12.01, a 'qualifying individual' does not include a 'taxable trustee'. The requirement in s. 12.01 that a qualifying individual be a Canadian citizen or permanent resident should be read in light of the ATT and the definition of 'taxable trustee'. The First Time Home Buyers exemption is not available to the transferee as they have no beneficial interest in the property which is in fact held by a 'foreign national'. Foreign nationals are not exempt under the program.

### **SPOUSE OF PN NOT ELIGIBLE FOR EXEMPTION PARAGRAPH**

[Taxpayer] is not a provincial nominee as defined in the Property Transfer Tax Regulations. Therefore [Taxpayer] is a foreign national as defined in the Property Transfer Tax Act and her proportionate share of the property is subject to the additional tax.

### **CHANGE OF FMV**

In determining the fair market value of the property on [DATE], we have used the BC Assessment Authority (BCA) 2017 roll value of \$[XX,XXX.XX] which is based on market conditions as at July 1, 2016.

The declared value has been increased to that established by the BCA 2017 roll value; however, if you have any further evidence that would indicate that the fair market value should be other than BCA 2017 value, please submit it for review.

**Assessment Table no PTT**

The following are the details of the assessment:

| <b>Description</b>            | <b>Filed</b>   | <b>Adjusted</b> | <b>Assessed</b> |
|-------------------------------|----------------|-----------------|-----------------|
| Fair Market Value (FMV)       | \$2,680,000.00 | \$0.00          | \$2,680,000.00  |
| FMV Subject to 15% ATT        | \$26,800.00    | \$2,653,200.00  | \$2,680,000.00  |
| 15% tax on FMV subject to ATT | \$4,020.00     | \$397,980.00    | \$402,000.00    |

**Assessment Table no PTT**

The following are the details of the assessment:

| <b>Description</b>            | <b>Filed</b>   | <b>Adjusted</b> | <b>Assessed</b> |
|-------------------------------|----------------|-----------------|-----------------|
| Fair Market Value (FMV)       | \$2,680,000.00 | \$100,000.00    | \$2,780,000.00  |
| FMV Subject to 15% ATT        | \$26,800.00    | \$2,753,200.00  | \$2,780,000.00  |
| 15% tax on FMV subject to ATT | \$4,020.00     | \$312,980.00    | \$417,000.00    |
| Property Transfer Tax         | \$58,400.00    | \$3,000.00      | \$61,400.00     |