

Page 001 to/à Page 003

Withheld pursuant to/removed as

s.14



November 14, 2016

s.21

Dear ^{s.21}

RE: Property Transfer Tax Advance Tax Ruling ATR^{s.21}

I am responding to your letter dated September 20, 2016, requesting a ruling with respect to application of the Additional Transfer Tax. We received payment for this ruling on October 20, 2016.

I. BACKGROUND

The request is made on behalf of ^{s.21}
^{s.21}

in
the Metro Vancouver. The properties in question have been attached in an appendix and are referred to in the ruling as **the Properties**.

I understand the facts as being the following:

1. ^{s.21}
2. The current owners of the Properties do not fall under the definition of “foreign entity” as defined in section 2.01 of the *Property Transfer Tax Act* (PTTA) and the registered as well as the beneficial owners of the Properties existed as such for at least three years.
3. You have identified the purchaser, ^{s.21} as being a “foreign entity” as defined in s. 2.01 of the PTTA.
4. I understand that the proposed transactions are the sale of the Properties by a way of a purchase and sale of
 - a. All of the issued shares of the current registered owners of the Properties
 - b. All of the issued units of the limited partnerships that are the beneficial owners of the Properties (you have identified these in an attached Appendix).

5. You have provided evidence that the proposed structure of the transaction was entered into through a letter of intent between the affiliates of current owners and the affiliates of the purchaser, on June 28, 2016, almost a month prior to the introduction of the Additional Transfer Tax. The structure of the transaction was all along envisioned by your clients as part of their desired relationship with no consideration to other tax liabilities, including the 15% Additional Transfer Tax.

II. RULING REQUEST

You are requesting a ruling as to application of the Additional Transfer Tax provisions including the anti-avoidance section 2.04 to the above mentioned transactions.

III. RULING

It is my ruling that the proposed transfers will be exempt from Additional Transfer Tax as there is no application to register the transfers at the LTO.

IV. LEGISLATION AND ANALYSIS

Legislation

Under the PTTA, all transfers that are taxable transactions are subject to PTT, unless specifically exempt. The tax is due at the time an application to register a taxable transaction is made at the LTO and is based on the fair market value of the land or interest in land transferred. The transferee is subject to the tax.

Section 1(1) of the PTTA defines "taxable transaction" as a transaction:

(a) *purporting to transfer or grant, by any method including a disposition, an order of a court, including an order absolute of foreclosure, or by the operation of any enactment or law...*

(iii) *a right to occupy land under a lease agreement...*

(e) *between a lessor and a lessee of land such that, following the transaction, that lessee and any other person, if any, having the right to occupy the land under a lease agreement, will have the right to occupy the land for a period that exceeds 30 years in total...*

and includes

(g) *2 or more lease agreements or options to lease if*
(i) *those transactions are in respect of the same land;*
(ii) *the applications for registration of the transactions are made at a land title office within 6 months of each other;*
(iii) *each of the transactions provides either a term during which a person is given a right to occupy the land or, in the case of an option to lease, a right to enter into*

a lease agreement under which a person will be given a right to occupy the land for a term specified in the option to lease; and
(iv) the terms referred to in subparagraph (iii), other than terms provided by a time share plan within the meaning of the Real Estate Development Marketing Act, a sublease or an assignment, exceed 30 years in total...

Under section 2 of the Act, tax is due at the time an application to register a taxable transaction is made at LTO, including the registration of a transfer of legal title.

On August 2, 2016, the 15% Additional Transfer Tax (sections 2.01-2.04) was introduced to allow tax be imposed in addition to the property transfer tax on taxable transactions registered at the LTO when the taxable transaction includes residential property located in the Metro Vancouver and the transferee is a foreign entity or taxable trustee, or both (s. 2.02 (2)).

Section 2.04 (the Additional Transfer Tax- anti-avoidance rule) delineates what avoidance transactions and tax consequences are in the context of the Additional Transfer Tax:

2.04 (1) In this section:

"avoidance transaction" means a transaction

(a) that, but for this section, would result, directly or indirectly, in a tax benefit, or
(b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit,
but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit;

"tax benefit" means a reduction, avoidance or deferral of tax payable under section 2.02;

"transaction" includes an arrangement or event.

(2) For the purposes of this section, a series of transactions is deemed to include any related transactions completed in contemplation of the series.

(3) If a transaction is an avoidance transaction, the administrator may determine the tax consequences to a transferee in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

(4) The tax consequences to any person, after the application of this section, must be determined only through an assessment under section 18.

Analysis

s.21

The purchaser, ^{s.21} is a foreign entity purchaser as defined in s. 2.01 of the PTTA, i.e., "**foreign entity**" means a foreign national or a foreign corporation. The purchase of any residential property in the Metro Vancouver Area by ^{s.21} is a taxable transaction for which the purchaser is liable for the 15% Additional Transfer Tax on application at the LTO for the registration of the taxable transaction. Not registering the purchase at the LTO can fall under the current anti-avoidance rules, section 2.04 (b).

Although the registration of the proposed transactions by ^{s.21} does not occur at the LTO, the purchase of shares and beneficial interest, under the current anti-avoidance section 2.04(b) of the PTTA can be perceived as being a "*series of transactions that [...] would result directly or indirectly into a tax benefit*".

Nonetheless, after careful analysis of the contract (the Purchase Agreement) and of the particular facts, as well as the timing of the contract, I determined that the proposed transactions do not fall under s. 2.04 (b) of the anti-avoidance provision; they can be viewed as a "*transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit*". That being said, there is no guarantee that in the future, similar transactions are going to be treated equally. Each transaction is assessed considering the uniqueness of the evidentiary facts, which in your clients' scenario support the "bona fide" purposes of the proposed transactions.

This ruling is issued for the purposes of this transaction only, and with the understanding that all of the facts provided by you or your clients are accurate and complete. In the event the PTTA or PTT Regulation are amended with respect to such transactions and the proposed transfers are not registered before the amendment, this ruling will be null and void. This ruling is binding on the Administrator of the PTT, provided the transactions are completed in the manner described in the advance tax ruling request.

After registration, the transactions for which this advanced tax ruling has been provided may be subject to review by the Administrator. Information provided for this ruling will be verified against the information and relevant circumstances presented at the date of registration in order to determine the accurate application of the ruling.

Please attach a copy of this ruling to the property transfer tax return submitted with the application for registration at the LTO, or if you submit the application for registration electronically, please include the reference number on the electronic tax return.

Additional information may be obtained by accessing the Ministry of Finance web site at www.gov.bc.ca/fin/ or by calling us in Victoria at **250-387-0604** or outside of Victoria by our toll free Enquiry BC number at **1 800 663 7867** and requesting a transfer to **387-0604** or email your questions to **PTTENQ@gov.bc.ca**.

Yours truly,

Hilary Harley
Director, Audit and Compliance
Property Taxation Branch
Ministry of Finance

Return #

registration date

RELATED

s.22

s.22

15-Aug-16

8-Dec-16

NOT RELATED

s.22

27-Sep-16

25-Nov-16

11-Aug-16

15-Dec-16

OTHER

s.22

22-Aug-16

29-Nov-16

15-Dec-16

27-Sep-16

17-Oct-16

address	declared value	ATT paid	name	citizenship
s.22				China
				Canada
				Canada
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				Canada
				China
				Canada
				USA
				Canada
				China
				Canada

percentag name	citizenship	percentag name	citizenship
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s.22

Stark, Shaya FIN:EX

From: Emery, Steven B FIN:EX
Sent: Thursday, December 22, 2016 1:53 PM
To: Lewis, Emily FIN:EX; Dogaru, Raluca FIN:EX
Subject: Fwd: GAAR COMMITTEE- Brief overview and facts

Let's meet in the new year to plan.

Sent from my iPhone

Begin forwarded message:

From: "Symes, Elan C FIN:EX" <Elan.Symes@gov.bc.ca>
Date: December 21, 2016 at 8:55:44 AM PST
To: "Emery, Steven B FIN:EX" <Steven.Emery@gov.bc.ca>
Subject: RE: GAAR COMMITTEE- Brief overview and facts

Looks fine although I expect our meetings would be rather infrequent and also I think the auditor should not be given the discretion if the committee makes a decision on whether or not the case is suitable for GAAR, but you can discuss with Paula and Jordan. Ultimately, it is the statutory decision maker who has the decision authority and the GAAR committee can provide that guidance.

Elan Symes
Assistant Deputy Minister
Ministry of Finance
250-387-0665

From: Emery, Steven B FIN:EX
Sent: Friday, December 9, 2016 1:34 PM
To: Symes, Elan C FIN:EX
Subject: GAAR COMMITTEE- Brief overview and facts
Importance: High

Here's a brief description of scope, process, policy and other facts regarding the GAAR Committee for the Income Tax Act, Canada. We could model the BC GAAR Committee along similar lines. If you agree with this, I will meet with Paula and Jordan in the new year to discuss further and get it started. Let me know.

GAAR Committee purpose and structure

- is a non - statutory advisory committee of the CRA created in 1988 to review instances where GAAR is to be applied in advance rulings and audit reassessments.
- consists of senior members of the CRA, as well as members of the Department of Justice and the Department of Finance.
 - CRA has representation from Income Tax Rulings, Legislative Policy and Tax Avoidance departments.
 - The Department of Justice has lawyer representatives from Tax Advisory and Tax Litigation practices and a legal advisor housed within the CRA.
 - The Department of Finance has representatives from its Tax Policy branch.
- The Committee meets every other week in Ottawa at the office of the CRA Rulings Directorate, assuming there is a full agenda. A full agenda usually consists of 3-4 cases to be reviewed. Neither taxpayers nor their representatives are permitted to attend.

GAAR Committee Role

- the Committee is only able to make non-binding recommendations on the application of GAAR. If at the beginning every GAAR matter came before the Committee, its current role and scope is to solely focus on matters that have not already been ruled on. Furthermore, matters where GAAR forms only a secondary basis for an assessment are not reviewed by the GAAR Committee.

GAAR Committee case referrals: process and procedures

- Most of the GAAR referrals come from the CRA audits after reviewing files and make the determination that there might be even a perceived avoidance transactions (CRA auditors have training in the area of how to determine or identify tax-avoidance issue during audit)

- Steps

- **Auditor** -- identifies the transaction that they feel may be an anti-avoidance issue and GAAR might apply
 - Consults with the **tax-avoidance department of the local CRA Tax Service Office** which reviews the transactions and make a determination as to whether to proceed further.

↓
If yes



refer the file to **the CRA Ottawa headquarters** where the file is again reviewed to determine whether they agree with the recommendation to apply the GAAR

NO. YES.

The file is closed here The file is referred to the GAAR Committee. Input will be given by the GAAR Committee before CRA proceeds issuing a GAAR reassessment.

GAAR Committee meetings and decisions

- In the by-weekly meetings, the auditor from tax avoidance department presents the facts and recommendations to the committee for review. The committee reviews the facts and recommends whether or not the GAAR should be applied to that particular transaction. The committee's decision is relayed to the tax-avoidance section, and then forwarded to the auditor.
- Auditors' powers post GAAR Committee decision
 - An auditor is not legally bound by the decision of the GAAR Committee.
 - Recommend GAAR** : auditor may decide not to proceed in reassessing the taxpayer even if the Committee has recommended that the GAAR should apply, perhaps as part of a larger settlement.
 - Not Recommend GAAR**: It is highly unlikely an auditor would apply the GAAR where its application was not recommended by the committee.

GAAR Committee Statistics

- Since inception in 1988, GAAR introduced in 1988, the GAAR Committee has ruled that cumulatively GAAR applied in 769 of 1,027 cases (75 percent of all cases referred). Of the 769 cases in which the Committee ruled that GAAR applied, GAAR was the CRA's primary assessing position in 358 cases (47 percent) and its secondary position in 411 cases (53 percent).
- Out of about 24 cases brought to court, CRA was only successful in 8 court cases, 3 were in federal court of appeal level.
<http://www.kpmg.com/Ca/en/IssuesAndInsights/ArticlesPublications/TaxNews/Documents/7a-561-CTF-Paul-Hickey-GAAR-Statistics-web-V1-no.7.pdf>

Stark, Shaya FIN:EX

From: CTBTaxQuestions FIN:EX
Sent: Tuesday, January 24, 2017 9:59 AM
To: Lewis, Emily FIN:EX
Cc: Cameron, Samantha FIN:EX
Subject: RE: Rulings questions

Hi Emily,

Thank you for your inquiry.

With respect to your first question, to the best of my knowledge we have never refused to answer questions/ruling requests just because of the nature of the topic/question being asked (provided that the ruling request relates to the several consumption tax acts on which we are qualified to answer). However, responses on certain issues s.13 may be framed in very cautious and general terms.

As to your second question, as you are aware from your time in Rulings, there are regularly cases where we don't know the answer to a question right away, and cannot answer it immediately. Our standard response time is three business days on basic questions, and 20 business days for complex issues (the date the request is received does not count as a day).

It is not always possible to complete complex rulings within 20 business days. Leaving aside workload issues/backlog that may account for the delay, in some cases we may need to carry out some significant research and discussions (including with other business units), possibly have a full-blown policy review, or even request a legal opinion on the matter. Delays in responding may be just a few weeks, or may be many months or longer (as in the case of waiting on some legal opinions). If we know that there will be a lengthy delay, we might advise the taxpayer of this in advance.

s.13

This correspondence describes how the Ministry interprets the relevant tax provisions for information purposes only. This response may be impacted by variations in circumstance, subsequent changes to legislation or subsequent court decisions. The Ministry is not responsible for updating this response if there are any subsequent changes to the law. This response is provided as an aid to understanding the legislation and is not intended to replace the legislation.

Rulings and Interpretations Team
Ministry of Finance
www.gov.bc.ca/consumertaxes

From: Cameron, Samantha FIN:EX
Sent: Tuesday, January 24, 2017 8:50 AM

To: Eggleston, Stephen D FIN:EX
Subject: FW: Rulings questions
Importance: High

Hi Stephen,

Could you please respond to Emily by end of day and cc me?

Regards,

Sam

From: Lewis, Emily FIN:EX
Sent: Monday, January 16, 2017 2:52 PM
To: Cameron, Samantha FIN:EX
Subject: Rulings questions

Hi Samantha,

We've not met, but I'm new in my role as Manager of Audit and Compliance for property transfer tax. I spent some time in Rulings after the return to PST in BC, and we have a small rulings function here in PTB. I've got a couple questions about rulings policy/process on your team as we sort through some issues with new legislation on our team, and I'm hoping you or one of your staff can provide me with some information.

- 1) Do you have topics on which you will not issue rulings?
- 2) Have you had cases where you temporarily didn't answer requests related to a specific topic – complexity/legal issues?
- 3) Do you get ruling requests on your GAAR provisions?

Thanks,

Emily Lewis, CPA, CMA
Manager, Audit & Compliance, Property Transfer Tax
Property Tax Branch, Ministry of Finance
T: (250) 818-6487

Stark, Shaya FIN:EX

From: Dogaru, Raluca FIN:EX
Sent: Friday, February 24, 2017 10:08 AM
To: Gysbers, Trudie FIN:EX
Cc: Yan, Yvonne FIN:EX
Subject: FW: Request for Advanced Ruling- PLEASE LOG IN
Attachments: s.22

Importance: High

Trudie, please log in.
Thanks,
Raluca

From: Yan, Yvonne FIN:EX
Sent: Tuesday, February 21, 2017 9:28 AM
To: Dogaru, Raluca FIN:EX
Subject: FW: Request for Advanced Ruling
Good morning Raluca

I just got this email from Sanjeeve about an advanced tax ruling application. I didn't received it on Jan 25, I guess David forward it to you directly? Now, the lawyer is following up. I am not sure usually how long it takes to process it or what the standard procedure is. If I can help to update the lawyer, I am happy to😊

Sincerely
Yvonne Yan
Compliance, Property Transfer Tax
Property Taxation Branch
Ministry of Finance
É Local Phone 250 387-2525

From: FIN REV G PTB-PTT Enquiries FIN:EX
Sent: Tuesday, February 21, 2017 8:38 AM
To: Yan, Yvonne FIN:EX
Subject: FW: Request for Advanced Ruling

Hi Yvonne,
Guess you have already dealt with this with Raluca. Please update the Taxpayer
Thanks
Sanjeeve

s.21,s.22

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s.14

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s.22;s.21

2017-05-17 10:42 GMT-07:00 Dogaru, Raluca FIN:EX <Raluca.Dogaru@gov.bc.ca>:

Dear s.22

Thank you for your email. We have received and reviewed your request. You have not submitted the contract of purchase and sale, nor any relevant documentation that confirms your marital status or the citizenship status of your spouse in your application. At this point we are not able to release an advance tax ruling regarding your request.

The Property Taxation Branch is not in the position to advise taxpayers on how they should not or should structure a transaction to minimize the impact of the tax liability. We recommend you seek legal advice on how to best proceed with the registration of title of the identified property s.22
BC, s.22 Burnaby,

Currently, a transfer of residential property located in Metro Vancouver into the name of a foreign national is taxable and the additional transfer tax is payable on the registered proportionate share of the foreign national. Entering into a series of transactions that lead to avoidance of tax can result in additional tax and penalties to be applied under the “anti-avoidance” rule (s.04). However, if the structure of the transaction is the result of a reasonable planning for bona fide purposes, the registration of that transaction might not be subject to the anti-avoidance rule. Assuming that the facts outlined in your submission are correct, it appears that the assignment of title into the name of s.22 could be considered a reasonable arrangement and planning and less likely subject to the anti-avoidance rule.

Note that this email is for information purposes, does not purport to offer advice and is **not binding on the PTT Administrator**.

Should you decide to proceed with a written Advance Tax Ruling, please submit all the relevant documents including the contract of purchase and sale, assignment documents, proof of citizenship status of your spouse and any other supportive information.

Please let me know if you have any additional questions or concerns.

Sincerely,

Raluca Dogaru, MA, MPA

Policy and Legislative Analyst

Property Taxation Branch

Ministry of Finance

778 698 3916

s.21,s.22

2017^{s.22}, Saunders, Davide FIN:EX <Davide.Saunders@gov.bc.ca>^{s.22}

Hello,

Thank you for your email. We have searched our records, and do not see an advanced tax ruling received on that date.

Can you re-send the materials.

Here is information on how to request an Advanced Tax Ruling:

<http://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/ptt-021-advance-tax-rulings.pdf>

Davide Saunders

s.21,s.22

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Stark, Shaya FIN:EX

From: Dogaru, Raluca FIN:EX
Sent: Friday, May 19, 2017 10:17 AM
To: Gysbers, Trudie FIN:EX
Cc: Saunders, Davide FIN:EX
Subject: FW: Advance Tax Ruling Request .s.22
Attachments: s.22

Hi,

Could you please log this request for an ATR and send them an invoice for **6 hours +GST**.

Thanks,
Raluca Dogaru, MA, MPA
Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance
778 698 3916

s.21,s.22

Page 038 to/à Page 044

Withheld pursuant to/removed as

s.14

Stark, Shaya FIN:EX

From: Gunther, Mark FIN:EX
Sent: Thursday, June 8, 2017 11:03 AM
To: Lewis, Emily FIN:EX; Krasnick, Jeffrey S FIN:EX; Cameron, Samantha FIN:EX; Preston, Keith DM FIN:EX; Dogaru, Raluca FIN:EX; Longbottom, Lauren JAG:EX; Lay, Ryan JAG:EX
Subject: FYI - GAAR - Veracity Capital Corporation - SCC Leave to Appeal Denied

Hello GAAR Committee,

As promised during the last GAAR Committee meeting, we are informing you that the Supreme Court of Canada dismissed leave to appeal the BCCA's decision overturning the Minister's GAAR Assessment in *Veracity*. No further avenues of appeal exist for this assessment.

Thanks,

Mark

Mark Gunther, CPA, CA
Manager, Income Tax Advisory
Income Tax Advisory and Intergovernmental Relations
Income Taxation Branch
Ministry of Finance
Phone: 250-387-5754 Fax: 250-356-9243
email: Mark.Gunther@gov.bc.ca

VISION: Trusted financial and economic leadership for a prosperous province

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Stark, Shaya FIN:EX

From: Dogaru, Raluca FIN:EX
Sent: Wednesday, June 14, 2017 8:59 AM
To: 'bmussatto@udi.org'
Cc: Lewis, Emily FIN:EX
Subject: UDI BILL 28 Questions for the Province
Attachments: UDI June 14, 2017.pdf

Importance: High

Hello Briana,

Please find attached the memo responses for this morning's meeting. Could you please distribute to whom you see fit. Much appreciated.

Sincerely,
Raluca

Raluca Dogaru, M.A, M.P.A
Policy and Legislative Analyst
Property Taxation Branch, MF
250-387-1246



June 14, 2017

From: Emily Lewis, Manager Audit and Compliance

**Re: Urban Development Institute (“UDI”) consultation with Property Taxation
Branch: Application of Additional Tax on Foreign Transferees**

Section 2.04 of the Property Transfer Tax Act (PTTA) is an anti-avoidance provision and its interpretation will always depend on the facts of the particular case to which it is applied. The section is intended to apply to any number of different and usually unforeseen transactions that have as their purpose the avoidance of the additional tax (ATT). Taxpayers and its advisors, **and not** the Province are always in the best position to determine whether a particular proposed transaction is/will be undertaken primarily for the purpose of avoiding the additional tax.

QUESTIONS

1) Would an extension of a closing date to allow a purchaser to receive his/her permanent residency or citizenship constitute an ‘avoidance transaction’?

An avoidance transaction is any transaction that results in a ‘tax benefit’ (defined as a reduction, avoidance or deferral of the tax payable under section 2.02), either alone or as part of a series of transactions, unless the transaction may reasonably be considered to have been undertaken or arranged primarily **for bona fide purposes** other than obtaining the tax benefit.

If an extension of a closing date results in a reduction, avoidance or deferral of the tax payable under section 2.02, and it could not reasonably be considered to have been arranged primarily for a bona fide purpose other than the purpose of obtaining the tax benefit, the extension of the closing date could be considered an avoidance transaction.

2) If the answer to 1) is yes, and a developer/vendor consents to the extension, is the developer/vendor liable for any penalties or liabilities under the Property Transfer Tax Act (PTTA)?

The provisions of the PTТА relating to the additional tax do not impose liability on the developer/vendor in this scenario. Whether the developer/vendor may be liable for penalties under section 34 of the PTТА would depend on the facts of the particular situation.

3) Is a bona fide, arms-length assignment of a contractual right to purchase by an existing, foreign national purchaser to a permanent resident or citizen an ‘avoidance transaction’?

An avoidance transaction is any transaction that results in a ‘tax benefit’, either alone or as part of a series of transactions, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for **bona fide purposes** other than obtaining the tax benefit.

If a bona fide, arms-length assignment of a contractual right to purchase by an existing foreign national purchaser resulted in a reduction, avoidance or deferral of the tax payable under section 2.02, and could not reasonably be considered to have been arranged primarily for any bona fide purpose other than the purpose of obtaining the tax benefit, the assignment of a contractual right to purchase by an existing, foreign national purchaser to a permanent resident or citizen could be considered an avoidance transaction.

It **should be noted that the relevant test is not whether the assignment transaction itself is bona fide**. Rather, the relevant test is whether **the purpose of the assignment transaction is a bona fide purpose other than to obtain the tax benefit**.

4) If the answer to 3) is yes, is a developer/vendor who consents to such an assignment (where assignment requires developer/vendor consent) liable for any penalties or liabilities under the PTТА?

As mentioned above, the provisions of the PTТА relating to the additional tax do not impose a liability on the vendor/developer. Whether the developer/vendor may be liable for penalties under section 34 of the PTТА would depend on the facts of the particular situation.

5) Is termination/surrender of a purchase contract in which the purchaser is a foreign national an avoidance transaction?

As already set out above in responses to questions 1) and 3), an avoidance transaction is any transaction that results in a 'tax benefit', either alone or together with other transactions in the same series of transactions, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than obtaining the tax benefit. The term 'transaction' is defined in subsection 2.04(1) to include 'an arrangement or event'.

If the termination/surrender of a purchase contract in which the purchaser is a foreign national is an arrangement or event that results in a reduction, avoidance or deferral of the tax payable under section 2.02, and that could not reasonably be considered to have been arranged primarily for any bona fide purpose other than the purpose of obtaining the tax benefit, the termination/surrender of the purchase contract could be considered an avoidance transaction.

6) If the answer to 5) is yes, is a developer/vendor who consents to such a surrender/termination liable for any penalties or liabilities under the Act?

Please refer to our response under Q 4) above.

7) Is the additional tax payable only in circumstances where a transfer is filed in the Land Title Office? What about a situation where a foreign corporation buys the shares of a corporation that is the registered owner of land, and there is no transfer of land filed in the Land Titles Office.

Additional tax (ATT) becomes payable upon the registration at the land title office of a taxable transaction. However, if a transaction or series of transactions, which could include the purchase of shares of a corporation, was undertaken or arranged in order to avoid the additional tax (i.e. obtain a 'tax benefit') by avoiding filing a transfer at the Land Titles Office it could be considered an 'avoidance transaction' pursuant to subsection 2.04(1).

8) How would the additional tax be calculated where a BC limited partnership that is formed under the laws of BC with a BC (i.e., non-foreign) corporation as its general partner acquires the beneficial ownership of residential property with a non-foreign nominee corporation holding title to the land for and on behalf of the LP, if the limited partnership has limited partners that are foreign entities? (reworded)

Situations involving limited partnerships (LPs) and nominee corporations will be dealt with on a case by case basis, after reviewing the terms of the limited partnership agreement and all other relevant documents.

Property Taxation Branch considers that the terms 'trust' and 'taxable trustee' in section 2.01 of the PTTA are intended to apply broadly. If any limited partner is a foreign entity, the non-foreign corporation general partner that acquires the beneficial ownership of residential property and the non-foreign nominee corporation holding title to the land for and on behalf of the LP could both be considered 'taxable trustees' for purposes of the ATT. In that case, if either the general partner or the nominee corporation is the transferee, and is also a 'taxable trustee', additional tax would apply on 100% of the value of the taxable amount.

9) As a follow up to question, what happens if three months after the LP acquires its beneficial interest, a non-foreign corporation limited partner sells all or a portion of its limited partnership interest to a foreign corporation who becomes a new limited partner? (reworded)

According to question 8) above, the LP already has limited partners that are foreign entities. If the non-foreign corporation general partner and the non-foreign corporation are already 'taxable trustees' for purposes of section 2.02 of the PTTA, the ATT would have already applied.

10) As a follow up to question #8, does the answer change if the LP agreement specifically negates any trust relationship where the general partner (and not a bare trustee) holds property for the LP?

Property Taxation Branch will review the relevant documents in all cases in order to determine the nature of the legal interests and relationships that taxpayers describe. If, in the circumstances described in question 8), the relevant documents had the legal effect of negating a trust relationship between the general partner and the limited partners, the answer to that question may be different.

However, the Property Taxation Branch will endeavor to understand the true nature of the legal arrangements and will not necessarily be bound by a statement in a limited partnership agreement that does not reflect the true nature of the arrangement. In such a case the application of the anti-avoidance rule in section 2.04 of the PTTA might be considered.

11) Where a joint venture or general partnership, which has one or more foreign entities among its members/partners, acquires land that triggers the payment of ATT, and the members/partners acquire a direct registered ownership interest in the land, how is the additional tax calculated? (reworded)

If there is no 'taxable trustee' and each member/ partner's interest can be clearly identified, each member or partner would pay additional tax based on the proportionate share of the taxable transaction's fair market value they acquire. However, it should also be noted that, pursuant to subsection 2.02(7) of the PTTA, all of the transferees will be jointly and severally liable for the total amount of tax owing under subsection 2.02(3) in respect of the taxable transaction.

12) In what scenario does the Property Taxation Branch view a developer who consents to an assignment of a presale contract to have committed an offence under section 34 of the PTTA?

At a minimum, the Property Taxation Branch would expect a developer who consents to an assignment of a presale contract to have satisfied itself as to the identities (including citizenship or residency status for tax purposes) of the assignor and assignee and to have maintained a record of the transaction. Since the application of section 34 of the PTTA will depend on the unique facts of each individual case, it is not possible to predict in advance the scenarios in which the assignment of a presale contract might result in the application of section 34 of the PTTA.

13) Who does the Property Taxation Branch consider to be the settlor of a bare trust for purposes of the PTTA? (reworded)

The existence of a bare trust relationship, and the nature of the relationship between the settlor, beneficiary and trustee in a particular case, will depend on mixed questions of fact and law. The Property Taxation Branch will deal with situations involving bare trusts on a case by case basis, and in light of the purposes underlying sections 2.02 and 2.04 of the PTTA.

14) When will the Property Taxation Branch be issuing interpretation bulletins in respect of the additional tax?

Property Taxation Branch strives to continuously revise the public information available on the Ministry's website and address the complexity of the additional tax's application. Should you require assistance, or interpretation of how the ATT provisions apply to a specific set of facts, you can contact the office at 250-387-0555 or ATTENQ@gov.bc.ca.

15) Is the Property Taxation Branch providing advance tax rulings on questions relating to the assignment of presale contracts, and if not, what is the reason? (reworded)

The purpose of the Advance Tax Rulings is to outline the ministry's interpretation or position on the application of the PTTA's provisions to a set of facts. The Property Taxation Branch is only able to provide rulings in respect of section 2.04 where the submission from the taxpayer sets out all of the information relevant for the identified transfer. In addition, the details of the transactions and all the relevant supportive documentation should be submitted with the request in order to obtain a technical interpretation of the legislation.

16) Will the Property Taxation Branch commit to producing a digest of rulings in relation to the additional tax?

See the answers to Q 14 and Q15.

17) Will the Province consider a regime to exempt development sites from the additional tax (whether at the time of acquisition or via a post-construction rebate)?

This question relates to legislative amendments to the Act and we are not in the position to comment on it. Please contact Tax Policy Branch.

From: [Dogaru, Raluca FIN:EX](#)
To: s.22
Cc: [Gysbers, Trudie FIN:EX](#); [Yan, Yvonne FIN:EX](#)
Subject: Request for advance tax ruling and application of additional transfer tax s.22
Date: Wednesday, August 16, 2017 12:20:00 PM
Attachments: [Request for Advanced Ruling.msg](#)
[FW Request for Advanced Ruling.msg](#)
Importance: High
Sensitivity: Confidential

Dear s.22

We have received your request for an advance tax ruling on behalf of your clients in regards the transfer of the : s.22 Vancouver, BC, s.22 and s.22 Vancouver, BC s.22 (the "**Subject Properties**") . We

have reviewed the documentation submitted and determined that the transfer of the subject properties in the name of the surviving joint tenants is not exempt under the sections 2.01 and 2.02 of the *Property Transfer Tax Act (PTTA)* from the 15% additional tax.

I understand that the intention of your clients was to register title prior to Aug 2, 2016, the date when the additional transfer tax was introduced. However, the registration has not occurred prior to the introduction of the new provisions. It is my understanding that the surviving joint tenants are, and will be, foreign nationals, as defined in s. 2.01 of the PTТА, at the date of registration of title at the land title office and, that, the subject properties are classed as residential.

s. 2.01 of the PTТА defines foreign national to mean

"**foreign national**" means an individual who is a foreign national as defined in section 2 (1) of the *Immigration and Refugee Protection Act* (Canada);

The property transfer tax is a registration tax for which tax is payable at the date of registration, unless specifically exempt.

There is no discretion on part of the PTT Administrator to grandfather any transfers contemplated prior to any legislative changes. Hence, the transfer into the name of the surviving joint tenants who are foreign nationals at the date of purchase is not exempt from the 15% additional transfer tax. 15% additional transfer tax is payable on the proposed transactions at the time of registration of title at the land title office as outlined in s.2. and s. 2.02 of the PTТА cited below for your convenience.

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. [...]

2.02 (1) The tax imposed under this section in respect of a taxable transaction is in addition to the tax imposed under section 2 (1) in respect of the taxable transaction.

(2) Subsection (3) applies to a taxable transaction if

(a) the subject matter of the taxable transaction includes residential property located, in whole or in part, within a specified area, and

(b) any transferee is a foreign entity or taxable trustee, or both.

(3) On application at a land title office for registration of a taxable transaction to which this subsection applies, the transferee must

(a) pay tax to the government, in accordance with subsection (4), by the means, at the time and in the manner required by the administrator,

(b) include with the return filed under section 2 (1) (b) the information and records required by the administrator, and

(c) unless the administrator specifies otherwise, file the form established by the administrator, by the means, at the time and in the manner required by the administrator, whether or not the taxable transaction is exempt under this Act.

(4) The tax payable under subsection (3) by the transferee is,

(a) unless paragraph (b) of this subsection applies, 15% of the taxable amount, or [...]

Nonetheless, under section 14(3) (m) of the PTTA, the transfer into the name of the surviving joint tenants will be exempt from the payment of basic property transfer tax (code 08).

14(3)(m) a transfer by operation of law to the survivor of a joint tenancy of the land consequent on the death of a joint tenant of the land;

Since the email above outlined the application of tax to the proposed transactions, I will proceed with cancelling your application for an advance tax ruling, unless you would advise otherwise.

Please let me know if you have further questions or concerns.

Sincerely,

Raluca Dogaru, M.A, M.P.A
Policy and Legislative Analyst
Property Taxation Branch, MF
250-387-1246

From: [Gysbers, Trudie FIN:EX](#)
To: [Dogaru, Raluca FIN:EX](#)
Subject: FW: Request for Advanced Ruling
Date: Friday, August 11, 2017 10:00:38 AM
Attachments: s.22

From: Gysbers, Trudie FIN:EX
Sent: Friday, March 24, 2017 12:04 PM
To: Gysbers, Trudie FIN:EX (Trudie.Gysbers@gov.bc.ca)
Subject: FW: Request for Advanced Ruling
Trudie Gysbers
Ministry of Finance
Audit Analyst
Property Taxation Branch
250-953-3865
Email - Trudie.Gysbers@gov.bc.ca

s.21,s.22

Page 056 to/à Page 090

Withheld pursuant to/removed as

s.22;s.21

Stark, Shaya FIN:EX

From: Yates, Leanne R FIN:EX
Sent: Wednesday, September 20, 2017 9:30 AM
To: Dogaru, Raluca FIN:EX
Subject: RE s.22 question- payment and refund of ATR fee
Attachments: FW: Advance Tax Ruling Request - s.22

Assuming the attached is the one you are talking about.....

s.22 was the 1st one logged for this fiscal, when I got back from my leave in May I asked Trudie about it and she told me it never became a ruling and I think she told me that she meant to remove it from the spreadsheet but I left it in there since it was assigned a number and then crossed it off and marked it cancelled. The email attached is in our ATR folder on the LAN where you asked her to invoice them for 6 hours but there is no invoice recorded anywhere, no date as to when she may have invoiced them and no record of a payment anywhere.

From: Dogaru, Raluca FIN:EX
Sent: Wednesday, September 20, 2017 8:55 AM
To: Yates, Leanne R FIN:EX
Subject: s.22 question- payment and refund of ATR fee
Importance: High

Leanne,

Could you please check and confirm for me that s.22 has been cancelled and a return of the fee (6hours +GST) has been returned to the requestor. My files indicate s.22 as the contact on file and that the payment was received on May 18 and that we were asked for a refund. Is that correct. Your help is much appreciated.

Thank you,
Raluca

Raluca Dogaru, MA, MPA
Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance
778 698 3916

Page 092 to/à Page 110

Withheld pursuant to/removed as

s.14

Stark, Shaya FIN:EX

From: Bergh, Esther FIN:EX
Sent: Friday, March 9, 2018 2:03 PM
To: Dogaru, Raluca FIN:EX
Cc: Krasnick, Jeffrey S FIN:EX; Clarke, Treana FIN:EX
Subject: GAAR
Attachments: GAAR summary.docx

Hi Raluca,

As requested, attached is a short summary on GAAR. Please let me know if you require any additional information.

Regards,
Esther

Esther Bergh

Senior Income Tax Specialist

Income Tax Advisory & Intergovernmental Relations | Income Taxation Branch | Ministry of Finance

Phone: 778-698-9668 Fax: 250-356-9243 Email: Esther.bergh@gov.bc.ca

Note – new phone number

VISION: Trusted financial and economic leadership for a prosperous province

Please Note: This communication is intended for the use of the recipient to which it is addressed and may contain confidential, personal, and /or privileged information. Please contact me immediately if you are not the intended recipient of this communication and do not copy or distribute it. Any communication received in error should be deleted or destroyed.

From: [Dogaru, Raluca FIN:EX](#)
To: ["Allison Smith"](#)
Subject: RE: CLEBC | Ministry of Finance Material
Date: May 4, 2018 12:45:32 PM
Attachments: [CLE - May 2018 Legal Conveyancers.pptx](#)
Importance: High

Hello Allison,

Please find attached my presentation. I tried to follow the guidelines of the presentation sent by your office earlier in the month (i.e., font, structure etc). Would you please ensure that the PP presentation can be visualized using your technology?

Thank you and see you on Friday, May 11.

Raluca

Raluca Dogaru, MA, MPA
Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance
778 698 3916

From: Allison Smith [mailto:ASmith@cle.bc.ca]
Sent: Friday, May 4, 2018 12:03 PM
To: 'dickc@spagslaw.ca'; 'gdavies@llglaw.ca'; Dogaru, Raluca FIN:EX; 'rxg@cwilson.com'; 'rhalifax@cobbett-cotton.com'; 'dustin.meyer@ltsa.ca'; 'lniro@bellalliance.ca'; 'colleenr@spagslaw.ca'; 'msong@lsbc.org'; 'bob@starkelllaw.com'
Cc: Jessica Hodgins
Subject: CLEBC | Preview of Course Materials before Distribution - Conveyancing Basics for Legal Support Staff

Dear Faculty,

Thank you for all your contributions to the materials. If you'd like to review the formatted materials for the course, I have attached a compilation of the submitted materials. Please note the following:

- Some panels have yet to submit materials and have placeholders for their late submissions in the table of contents
- The materials will be posted to registrants on **Monday, May 7th**
- Late materials (after 9:00am on Monday) will be posted on the course event page

Please let me know if you have any questions or if anything in the materials needs to be changed.

Best,

Allison Smith
Online Course Materials Coordinator, Online Programs

500-1155 West Pender Street, Vancouver, BC V6E 2P4

TELEPHONE 604.893.2164 FAX 604.669.9260
TOLL FREE 1.800.663.0437

www.cle.bc.ca

THE CONTINUING LEGAL EDUCATION
SOCIETY OF BRITISH COLUMBIA

Property Transfer Tax Act

2018 policy and legislative changes:
“Home For B.C.: A 30 point plan housing affordability in
British Columbia”

CLE – May 2018

BACKGROUND

Property Transfer Tax Act

- ✓ Government's commitment to add to the housing stock and increase affordability
- ✓ Prevention of fraud and tax avoidance
- ✓ Response to concerns about outside investment fuelling property prices in the Province of B.C.



BUDGET 2018 – PTTA CHANGES

(1)

- ✓ New Tax Rate 2% for Residential Properties over \$3 mil.
- ✓ Additional Transfer Tax rate (ATT) increased to 20%
- ✓ ATT “specified areas” extended to 4 more regional districts
- ✓ Collection of additional information on transferee



BUDGET 2018 – PTTA CHANGES

(2)

- ✓ Bankruptcy exemption (code 12) revised
- ✓ New limitation period- 6 years (stat barred period)
- ✓ New administrative monetary penalties
- ✓ New Anti-Avoidance provision (GAAR)
- ✓ Collection of MLS data



OTHER Budget 2018 Announcements

- ✓ 2 new registries being planned
 - Presold strata units
 - Beneficial interest ownership
 - Collection of additional data

- ✓ OTHER: Speculation Tax- not PTT related
gov.bc.ca/speculationtax



New tax rate on residential properties over \$3 million

2% rate ** on the value of residential class of residential properties **>\$3 mil**

- Applies to residential portion of the properties
(FMV residential- \$3 mil) X 2%
- Applies in addition to basic rates: 1%, 2% and 3%

**The rate does not apply to transfers (code 34,47,10 or split returns), if the first transfer part of the series of transfers registered with LTSA prior to Feb 21, 2018

New tax rate on residential properties over \$3 million

- ✓ Tax return calculates 1%, 2%, 3% rate
 - For properties over 3 mil, FIN536 – calculates the amount of further tax to be reported in section I of the PTT return**.

**Calculation of tax owed for properties that are:

- all residential (class 1)
- all farm (class 9)
- mix of farm/residential (class 1/class 9)
- Mixed class(class 1 and other class)

- ✓ FIN536 should be attached to the tax return when filing

Collection of Additional Information on the PTT Return

- ✓ Social Insurance Number (Cdn or not Cdn)
- ✓ Individual Tax Number (if available, for not Cdn)
- ✓ Business Number (for corporations)
- ✓ Date of birth (Cdn or not Cdn)
- ✓ Citizenship and country, if not Canadian citizens

**Corporations will have to give the information for their directors

**Bare trustee/s will have to give the information for their trustees, settlors and beneficiaries

ATT – New Rate and “Specified Areas”

The tax rate increased to 20% effective February 21, 2018.

The “specified areas” liable for ATT expanded to include additional 4 regional districts :

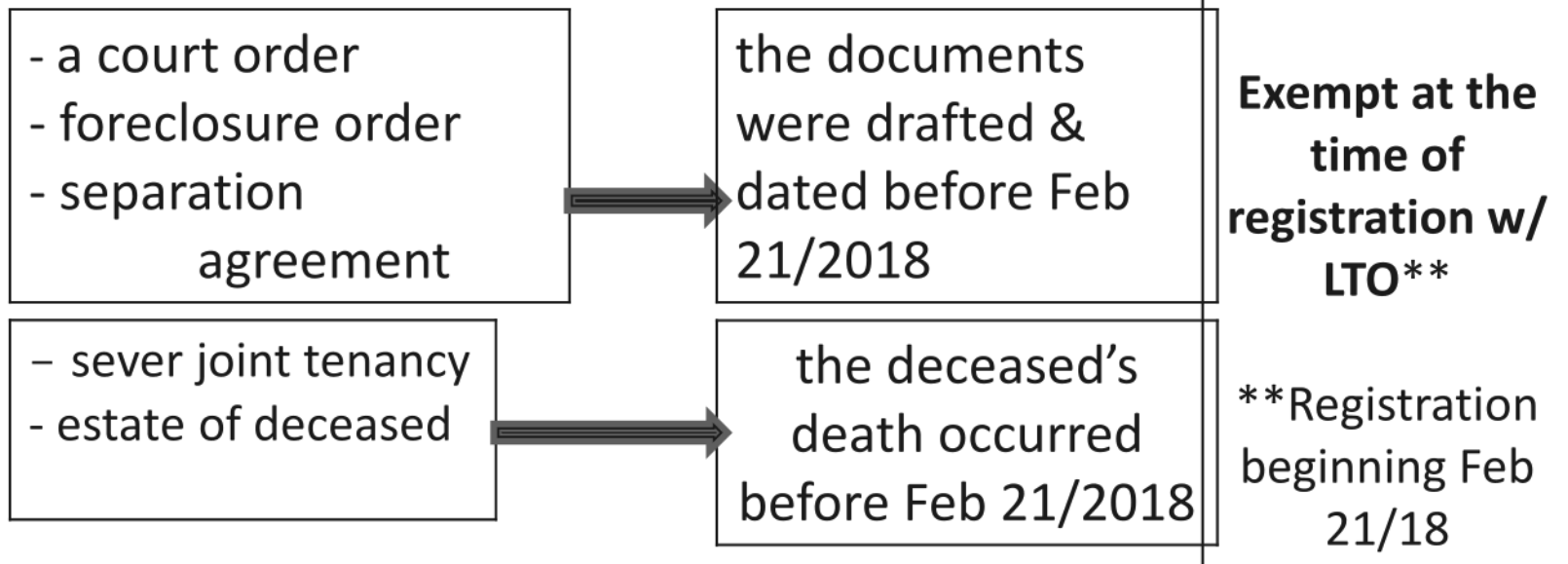
- Metro Vancouver (ex GVRD)
- Capital Regional District
- Regional District of Central Okanagan
- Fraser Valley Regional District
- Regional District of Nanaimo

ATT – Transitional Rules

(1)

The transitional rules apply to transfers that are within the 4 new “specified areas” and the transfers **are exempt** from the ATT, if:

A.

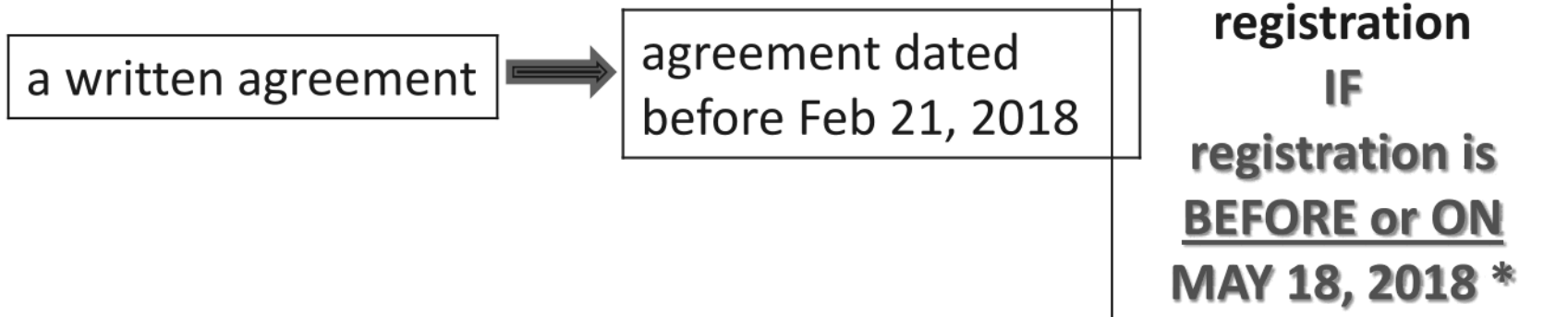


ATT – Transitional Rules

(2)

The transitional rules apply to transfers that are within the 4 new specified areas and **are exempt** from the tax if:

B.



* if the written agreement is assigned to a foreign entity or taxable trustee on February 21, 2018 or later, the 20% rate applies.

How do the Budget 2018 changes affect conveyance and filing of the Property transfer tax return?

PTT and ATT Returns

- ✓ New PTT return– V.30 implemented on Feb 21, 2018
- ✓ New form (FIN 536) for the calculation of the 2% tax rate on residential properties > \$3 mil.
 - used to calculate the amount of tax
 - should be attached to V.30 if tax is reported in Part I , Line 8, on the PTT Return
- ✓ ATT return (FIN 532 **) needs to be attached for transfers in the extended specified areas in the Province
 - ** even if the transfer falls under a transitional rule

QUESTIONS



Page 128 to/à Page 165

Withheld pursuant to/removed as

s.22;s.21

Stark, Shaya FIN:EX

From: Guthrie, Leslie J FIN:EX
Sent: Wednesday, June 20, 2018 1:31 PM
To: Dogaru, Raluca FIN:EX; Brouwer, Deborah FIN:EX
Cc: de Wynter, Devon FIN:EX; Huang, Ying FIN:EX
Subject: RE: Briefing Note - Administrative Penalty or GAAR potential case

This is super helpful to set the scene for the discussion. A follow up question:

s.13

○

Leslie Guthrie, CPA, CA
Director, Property Transfer Tax
Ministry of Finance
Phone (778) 698-7638 FAX (250)953-3094

From: Dogaru, Raluca FIN:EX
Sent: Wednesday, June 20, 2018 12:24 PM
To: Guthrie, Leslie J FIN:EX; Brouwer, Deborah FIN:EX
Cc: de Wynter, Devon FIN:EX; Huang, Ying FIN:EX
Subject: RE: Briefing Note - Administrative Penalty or GAAR potential case
Importance: High

Hello all,

A per our discussion, below is a summary of the PTTA admin penalties provision.

Section 34.2 has been introduced in the Budget 2018 to enable the PTT Administrator to apply administrative penalties. The intent of the section is to allow the PTT Administrator penalize those transferees (or by expansion any other person) that evaded or avoided the tax (or resulted in tax evasion or avoidance by the transferee). The section offers the framework and enumerates actions that can be subject to penalties; such actions/events included :

1. False or deceptive statements on the return, including in regards to the information required to be provided on the return (s. 34.2 (a)/(c))
 - (a) made, or participated in, assented to or acquiesced in the making of, a false or deceptive statement in a return or record required to be made or provided under this Act, or in information required to be provided under this Act
 - (c) made, or participated in, assented to or acquiesced in the making of, a false or deceptive **entry in a record** or return of a transferor or transferee, (this is similar to the above but intended to capture also third parties/legal representative who collect and make the data entry on the return on behalf of either the transferor or the transferee, or both)

2. Destroy, hide or alter a return or records that are evidence of true tax liability; these records or the information concern either the transferor or the transferee (s. 34.2 (b))
 - (b) destroyed, altered, mutilated, hidden or otherwise disposed of a return or record of a transferor or transferee
3. Omit or are aware of the omission of essential materials (or the records) that are otherwise required on the return (s. 34.2(d))
 - (d) omitted, or assented to or acquiesced in the omission of, a material particular in a record or return of a transferor or transferee
4. **Wilful avoidance or evasion or tax non-compliance**- which includes all of the above and also non remittance of payment of tax as required under the Act or the Regulations (s. 34.2(e))
 - (e) willfully, in any manner, avoided or evaded or attempted to avoid or evade
 - (i) compliance with this Act or the regulations, or
 - (ii) remittance or payment of taxes required by this Act or the regulations

s.13,s.17

Let me know if you have any questions.
Raluca

Raluca Dogaru, MA, MPA
Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance
778 698 3916

From: Guthrie, Leslie J FIN:EX
Sent: Thursday, June 14, 2018 1:23 PM
To: Dogaru, Raluca FIN:EX; Brouwer, Deborah FIN:EX
Cc: de Wynter, Devon FIN:EX; Huang, Ying FIN:EX
Subject: FW: Briefing Note - Administrative Penalty or GAAR potential case

Hello – here is the situation I mentioned this morning....case specific. I don't believe GARR is the correct application but the admin penalties. We assume an admin penalty couldn't technically be applied due to the date of royal assent but let's say this transaction happened post March 15, 2018...would the case facts support a penalty?

Leslie Guthrie, CPA, CA
Director, Property Transfer Tax
Ministry of Finance
Phone (778) 698-7638 FAX (250)953-3094

From: de Wynter, Devon FIN:EX
Sent: Wednesday, June 13, 2018 1:44 PM
To: Guthrie, Leslie J FIN:EX
Subject: Briefing Note - Administrative Penalty or GAAR potential case

s.17,s.21,s.22

However, we wish to determine if the above is sufficient to recommend application of GAAR.

Stark, Shaya FIN:EX

From: Dogaru, Raluca FIN:EX
Sent: Wednesday, June 20, 2018 2:05 PM
To: Godfrey, Tim FIN:EX
Subject: FW: Briefing Note - Administrative Penalty or GAAR potential case

Importance: High

See below

Raluca Dogaru, MA, MPA
Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance
778 698 3916

From: Dogaru, Raluca FIN:EX
Sent: Wednesday, June 20, 2018 12:24 PM
To: Guthrie, Leslie J FIN:EX; Brouwer, Deborah FIN:EX
Cc: de Wynter, Devon FIN:EX; Huang, Ying FIN:EX
Subject: RE: Briefing Note - Administrative Penalty or GAAR potential case
Importance: High

Hello all,

A per our discussion, below is a summary of the PTTA admin penalties provision.

Section 34.2 has been introduced in the Budget 2018 to enable the PTT Administrator to apply administrative penalties. The intent of the section is to allow the PTT Administrator penalize those transferees (or by expansion any other person) that evaded or avoided the tax (or resulted in tax evasion or avoidance by the transferee). The section offers the framework and enumerates actions that can be subject to penalties; such actions/events included :

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 - (c) made, or participated in, assented to or acquiesced in the making of, a false or deceptive **entry in a record** or return of a transferor or transferee, (this is similar to the above but intended to capture also third parties/legal representative who collect and make the data entry on the return on behalf of either the transferor or the transferee, or both)
2. Destroy, hide or alter a return or records that are evidence of true tax liability; these records or the information concern either the transferor or the transferee (s. 34.2 (b))
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 - (d) omitted, or assented to or acquiesced in the omission of, a material particular in a record or return of a transferor or transferee
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 - (e) willfully, in any manner, avoided or evaded or attempted to avoid or evade
 - (i) compliance with this Act or the regulations, or
 - (ii) remittance or payment of taxes required by this Act or the regulations

s.13,s.17

Let me know if you have any questions.
Raluca

Raluca Dogaru, MA, MPA

Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance
778 698 3916

From: Guthrie, Leslie J FIN:EX
Sent: Thursday, June 14, 2018 1:23 PM
To: Dogaru, Raluca FIN:EX; Brouwer, Deborah FIN:EX
Cc: de Wynter, Devon FIN:EX; Huang, Ying FIN:EX
Subject: FW: Briefing Note - Administrative Penalty or GAAR potential case

Hello – here is the situation I mentioned this morning....case specific. I don't believe GARR is the correct application but the admin penalties. We assume an admin penalty couldn't technically be applied due to the date of royal assent but let's say this transaction happened post March 15, 2018...would the case facts support a penalty?

Leslie Guthrie, CPA, CA
Director, Property Transfer Tax
Ministry of Finance
Phone (778) 698-7638 FAX (250)953-3094

From: de Wynter, Devon FIN:EX
Sent: Wednesday, June 13, 2018 1:44 PM
To: Guthrie, Leslie J FIN:EX
Subject: Briefing Note - Administrative Penalty or GAAR potential case

s.17,s.21,s.22

However, we wish to determine if the above is sufficient to recommend application of GAAR.

Stark, Shaya FIN:EX

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Thursday, June 21, 2018 9:26 AM
To: Dogaru, Raluca FIN:EX
Subject: FW: Request for Advanced Tax Ruling
Attachments: PTT Advanced Ruling Package.pdf

Follow Up Flag: Follow up
Due By: Tuesday, June 26, 2018 4:30 PM
Flag Status: Flagged

Hey Raluca, this came in last not for one of the ATT ATR's.

Cheers,

Kevin

s.21,s.22

Page 175 to/à Page 176

Withheld pursuant to/removed as

s.22;s.21

Stark, Shaya FIN:EX

From: Dogaru, Raluca FIN:EX
Sent: Wednesday, July 4, 2018 2:01 PM
To: Gudgeon, Kevin FIN:EX
Subject: FW: ATR GAAR wording

Importance: High
Sensitivity: Confidential

FYI

Raluca Dogaru, MA, MPA
Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance
778 698 3916

From: Dogaru, Raluca FIN:EX
Sent: Thursday, February 9, 2017 12:52 PM
To: Lewis, Emily FIN:EX
Subject: ATR GAAR wording
Importance: High
Sensitivity: Confidential

Hi Emily,

As discussed, for your edit and approval. Let me know if you require anything further or want me to do other changes.

Raluca

STANDARD EMAIL:

Dear XXX,

We received your application for an advance tax ruling on behalf of your clients, on XXXX. It is our understanding that the request is in regards to the application of the Property Transfer Tax Act's additional tax provisions, including the anti-avoidance section. Due to complexity and volume, all such applications require an extended period of review and analysis before a ruling can be issued. Once the rulings team completes the research and analysis of the factual scenario outlined in your submission, you will be advised of the cost and the timeline as to when to expect the release of the ruling. Note that the standard advance tax ruling fee might be considerable high. Some of these requests might need to go for review to the Ministry's GAAR Committee which will significantly impact the response time.

Please let us know if you still want to proceed with the request.

Sincerely,

From: [FIN REV PTB AdvanceRuling FIN:EX](#)
To: s.22
Cc: [Guthrie, Leslie J FIN:EX](#)
Bcc: [Gudgeon, Kevin FIN:EX](#)
Subject: RE: Advanced Ruling Request: RESPONSE
Date: Thursday, July 5, 2018 12:34:54 PM
Importance: High
Sensitivity: Confidential

Dear s.22

Thank you for submitting all the additional information in regards to your request for an advance tax ruling s.22 on behalf of your clients, s.22
s.22

I understand you are seeking an advance tax ruling as to whether the assignment of the pre-sale unit, purchased into the name of s.22, in the development property called s.22 in Vancouver, BC would be considered an avoidance transaction as defined in section 2.001 of the *Property Transfer Tax Act* (PTTA).

You have provided the chronology of events, as follows.
s.22

To alleviate financial stress, the purchasers propose to assign 100% of their purchase agreement to a third party; however, no purchaser has been identified as potential assignee for the property. Furthermore, the Developer is concerned that the assignment can fall under the PTTA anti-avoidance provisions and is reluctant to allow the assignment to occur.

An Advance Tax Ruling is issued when all the facts of a proposed transaction are available and ready for review; rulings are not released for hypothetical scenarios or when the factual evidence of proposed transactions are not fully available/known. Currently, it is unknown who the assignee of the proposed transaction is and the relationship to the assignors s.22; furthermore it was not yet indicated how the property will be marketed (open market, non-open market).

At this point, Property Taxation Branch is not in the position to release a binding ruling, as the file is missing crucial information. That being said, if the facts as outlined in your request are true and remain unchanged at the time the transaction will occur, and

assuming that the assignment will occur on the open market and be an arm's length transaction to an unrelated third party, it is PTB's interpretation that the proposed **transaction may reasonably be considered to have been undertaken for bona fide purposes other than for the purpose of obtaining a tax benefit.**

For more information on the Advance Tax Ruling process visit <https://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/ptt-021-advance-tax-rulings.pdf>. As already mentioned we are not in the position to release a binding advance tax ruling and your request will be cancelled. Should you desire to reapply for a ruling, please send a new request at PTBAdvanceRuling@gov.bc.ca.

This email does not purport to be binding on the PTT Administrator nor does it intend to provide legal advice.

Should you have further comments or concerns, please do not hesitate to contact us.

Raluca Dogaru, MA, MPA

Policy and Legislative Analyst

Property Taxation Branch

Ministry of Finance

778 698 3916

s.21,s.22

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Withheld pursuant to/removed as

s.22;s.21

Stark, Shaya FIN:EX

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Wednesday, July 11, 2018 2:36 PM
To: s.22
Subject: RE: Requesting a ruling s.22

Dear s.22

This is to acknowledge that your email of June 21st, 2018 was received by the Property Transfer Tax rulings team. We apologize for the delay in responding.

The Property Transfer Tax and the Additional Property Transfer Tax are charged when changes are made to the title of a property. This includes:

- acquiring a registered interest in the property
- gaining an additional registered interest in the property
- becoming the registered holder of a lease, life estate, or right to purchase for the property

The amount of tax paid is based on the fair market value of the land and improvements (e.g. buildings) on the date of registration.

In your email you are requesting an Advanced Tax Ruling for a transfer that will not be registered in the land title office. Because property transfer tax is based on registered transfers, we are unable to provide a ruling on an unregistered transfer.

In regard to the question of whether the proposed transfer of beneficial ownership would be considered an “avoidance transaction” the determination of whether a transfer falls under the anti-avoidance provisions of the Act, would come at a later date if title to property changes in the land title office. Presently, we cannot comment any further, as there is no clear indication as to whether any future transfer would be part of a series of transactions resulting in a direct or indirect tax benefit or is arranged primarily for bona fide purposes other than a tax benefit.

Advance Tax Rulings Team

s.21,s.22

Page 183 to/à Page 184

Withheld pursuant to/removed as

s.22;s.21

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Tuesday, July 24, 2018 8:47 AM
To: s.22
Subject: RE: Enquiries about 20% extra foreigner PTT exempt / return

Dear s.22

Thank you again for your email dated July 6, 2018 regarding additional transfer tax.

For ease of reference, I have inserted your three questions into the response, and answered each in turn:

(1) If I become PR before the completion date of my second condo, can I get exemption of 20% extra foreigner PTT because I am already a PR at that time.

Response: Yes, if you are a permanent resident at the time of purchase, you will be exempt from paying the additional transfer tax.

(2) If I become PR after the completion date of my second condo, can I get 20% extra foreigner PTT return because I become a PR within one year.

Response: No, if you are not a permanent resident at the time you purchase your second condo, you will be considered a “foreign national” under the *Property Transfer Tax Act* (PTTA) and, therefore, will be subject to the additional transfer tax.

The *Property Transfer Tax Regulation* (Regulation) contains provisions enabling provincial nominees to apply for a refund of additional transfer tax if they become permanent residents within one year of the purchase. However, this provision is available only to provincial nominees who have not already received an additional transfer tax exemption for a property purchase. In your email, you indicate that you have already purchased a property and received the exemption for this purchase.

(3) For any situation above, if it will affect the exemption for my first condo.

Response: No, your purchase of a second property will not cancel the exemption you received for your first purchase, or change the amount of transfer tax due for the purchase of your first property.

We have provided these responses assuming that, at the time of purchase of your second property, you will not be a “taxable trustee” as defined under the PTTA. The PTTA defines a taxable trustee as 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.

To illustrate, if a legal trustee purchased a property, and that trustee is a foreign national, the purchase is subject to additional transfer tax. As well, if a legal trustee, who is a citizen or permanent resident, purchases a property, but the beneficiary of the trustee is a foreign nation, the purchase is subject to additional transfer tax.

This correspondence illustrates the current provisions of the *Property Transfer Tax Regulation*, and is provided for informative purposes. This email is not binding on the Administrator.

Accordingly, you may wish to request an advanced tax ruling (ATR), a binding ruling determining whether a proposed property transaction is subject to property transfer tax. The ruling is binding on the Administrator. To illustrate, if the ruling determines that a property purchase is not subject to additional transfer tax, the Land Title Office would not charge the buyer additional transfer tax at the time the purchase is registered.

To request an ATR, please email PTBAdvancedRuling@gov.bc.ca with the following details:

- a clear statement of the questions the ruling is expected to answer,
- details of the specific property included in the transaction,
- a complete and detailed statement of the facts of the proposed transaction,
- a complete list of the taxpayers proposing the transaction and their identities, citizenship or other information relevant for the ruling, and
- copies of any documents that support the proposed transaction.

For more information, please view <https://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/ptt-021-advance-tax-rulings.pdf>

We trust this information is helpful.

s.21,s.22

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Withheld pursuant to/removed as

s.22;s.21

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Tuesday, July 31, 2018 3:43 PM
To: s.22
Subject: RE: Additional Property Transfer Tax

Dear s.22

Thank you again for your email dated July 19, 2018 regarding additional transfer tax.

In your email, you communicate that you have previously purchased property in British Columbia (BC), but have not claimed the additional transfer tax exemption available for BC Provincial Nominees. We understand that at the time you purchase your new apartment:

- you will not be a Canadian citizen or permanent resident,
- you will be a BC Provincial Nominee,
- you will purchase the apartment as your principle residence, and
- you will not purchase the property on behalf of any other person(s).

Therefore, at the time you purchase your new home, you will be able to claim the additional transfer tax exemption.

The Property Transfer Tax Regulation provides a one-time exemption from the additional property transfer tax for BC Provincial Nominees.

Further information on the application of additional transfer tax to the BC Provincial Nominee program is available on the website of the BC Ministry of Finance - <https://www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/understand/additional-property-transfer-tax>. Please see the BC Provincial Nominee heading.

We have provided this response assuming that, at the time of purchase of your property, you will not be a “taxable trustee” as defined under the *Property Transfer Tax Act* (PTTA). The PTTA defines a taxable trustee as 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.

To illustrate, if a legal trustee purchases a property, and that trustee is a foreign national, the purchase is subject to additional transfer tax. As well, if a legal trustee, who is a citizen or permanent resident, purchases a property, but the beneficiary of the trustee is a foreign national, the purchase is subject to additional transfer tax.

This correspondence illustrates the current provisions of the Property Transfer Tax Regulation, and is provided for informative purposes. This email is not binding on the Administrator.

Accordingly, you may wish to request an advanced tax ruling (ATR), a binding ruling determining whether a proposed property transaction is subject to property transfer tax. The ruling is binding on the Administrator. To illustrate, if the ruling determines that a property purchase is not subject to additional transfer tax, the Land Title Office would not charge the buyer additional transfer tax at the time the purchase is registered.

To request an ATR, please email PTBAdvancedRuling@gov.bc.ca with the following details:

- a clear statement of the questions the ruling is expected to answer,

- details of the specific property included in the transaction,
- a complete and detailed statement of the facts of the proposed transaction,
- a complete list of the taxpayers proposing the transaction and their identities, citizenship or other information relevant for the ruling, and
- copies of any documents that support the proposed transaction.

For more information, please view <https://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/ptt-021-advance-tax-rulings.pdf>

We trust this information is helpful.

s.21,s.22

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Wednesday, August 15, 2018 1:21 PM
To: s.21
Subject: RE: Real Property Transfer Tax Questions

Dear s.21

Thank you again for your inquiry.

In order to determine whether or not tax is payable under the Property Transfer Taxation Act, the Property Transfer Tax Rulings Team will need to complete an Advanced Tax Ruling (ATR), a ruling which is binding upon the administrator of the Act.

For the purpose of completing an ATR, can you please provide the following information:

- Property that s.21 owns – with civic address(es) if possible
- Total number of directors of s.21
- The number of directors of s.21 who are Canadian citizens or permanent residents of Canada
- Information, including citizenship or permanent residence status, of all of s.21 corporate interest holders.

An individual is a corporate interest holder if any of the following apply:

- (a) the individual has legal or beneficial ownership or control, directly or indirectly, of
 - (i) shares of the relevant corporation representing 25% or more of the value of the equity of that corporation, or
 - (ii) 25% or more of the voting rights in respect of the relevant corporation;
- (b) the individual has the right, directly or indirectly, to appoint or remove from office the majority of the board of directors of the relevant corporation;
- (c) the individual has the right to exercise or does exercise, under a unanimous shareholders' agreement or otherwise, significant influence or control over the relevant corporation.

Please contact at your convenience if you have any further questions.

s.21

Page 191 to/à Page 192

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s.21

Page 193 to/à Page 222

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s.22;s.21

Stark, Shaya FIN:EX

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Tuesday, September 11, 2018 3:14 PM
To: s.21
Cc: FIN REV PTB AdvanceRuling FIN:EX
Subject: RE: Advanced Property Transfer Tax Ruling Requested - additional property transfer tax pursuant to Section 2.02 of the Act

Dear Sir,

Thank you for the additional information provided.

As discussed in our telephone conversation, the Property Transfer Tax Rulings Team cannot provide a binding Advanced Tax Ruling (ATR) in the absence of identifying information on the property and the individuals and corporations involved. The information contained below is provided for informative purposes only and is not binding on the Administrator of the Property Transfer Tax Act (PTTA).

In the situation described in your email, if at the time of transfer of the property, any transferee is determined to be a "foreign entity or taxable trustee or both" as defined under PTTA, tax liabilities for additional transfer tax (ATT) may apply.

A corporation is considered a "foreign entity" if a foreign national "controls" the corporation.

To assist you with the concept of control, please refer to the PTTA definition of control in section 2.01 of the PTTA, and to section 256 of the Income Tax Act (Canada). The text of the PTTA is available online at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96378_01.

If any of your clients are seeking a measure of certainty about whether they would be subject to ATT regarding a proposed property transfer, I recommend that they apply for a binding ATR with an evidence-based fact specific submission. They may apply through an email to this inbox. They will need to provide:

- Identity of proposed transferee, including citizenship or permanent residence status
- Legal Description and Parcel identifier for the land subject to the transfer
- Identities of all corporate interests holders, including citizenship or permanent residence status
- Identities of corporation directors, including citizenship or permanent residence status
- Copies of partnership agreements and any other available documentation that may assist in the review.

I trust this information is helpful. Thank you again for your inquiry.

s.21

From: "FIN REV PTB AdvanceRuling FIN:EX" <PTBAdvanceRuling@gov.bc.ca>
To: s.21
Date: 08/24/2018 11:18 AM
Subject: RE: Advanced Property Transfer Tax Ruling Requested - additional property transfer tax pursuant to Section 2.02 of the Act

Dear Sir,

Thank you again for your email requesting an advanced tax ruling (ATR).

In your email, you clarify that NomineeCo will be registered on title for the Parcel with the Land Title Office. In this case, NomineeCo is the "transferee" of the land as defined under the Property Transfer Tax Act (PTTA), and is subject to paying property transfer tax at the time the transfer of land is registered with the Land Title Office.

You ask whether additional transfer tax (ATT) pursuant to section 2.02 of the PTTA will be payable upon registration of the Parcel with NomineeCo; if ATT is payable, who is liable to pay ATT; and when applicable tax must be paid.

Applicable tax is due at the time a transfer of title is registered with the Land Titles Office.

ATT is payable if any transferee is a foreign entity or taxable trustee or both. For your reference, I will insert the relevant definition from PTTA below.

"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;

"foreign entity" means a foreign national or a foreign corporation;

"foreign corporation" means a corporation that is one of the following:

- (a) a corporation that is not incorporated in Canada;
- (b) unless the shares of the corporation are listed on a Canadian stock exchange, a corporation that is incorporated in Canada and is controlled by one or more of the following:
 - a foreign national;
 - a corporation that is not incorporated in Canada;
 - a corporation that would, if each share of the corporation's capital stock that is owned by a foreign national or by a corporation described in paragraph (a) of this definition were owned by a particular person, be controlled by the particular person;

If the transferee is a foreign entity or taxable trustee or both at the time of transfer, the transferee is liable to pay the ATT.

To determine whether NomineeCo will be a foreign entity or taxable trustee or both at the time NomineeCo registers on title for the Parcel, the Property Transfer Tax Rulings Team requests additional information on NomineeCo.

At your convenience, can you please provide:

- Legal Description and Parcel Identifier for the Land
- Total number of directors of NomineeCo
- The number of directors of NomineeCo who are Canadian citizens or permanent residents of Canada
- Information, including citizenship or permanent residence status, of all of NomineeCo's corporate interest holders (please see below)
- Any additional available documentation, such as a Central Securities Register for NomineeCo, that may assist in the review

An individual is a corporate interest holder if any of the following apply:

- (a) the individual has legal or beneficial ownership or control, directly or indirectly, of
 - shares of the relevant corporation representing 25% or more of the value of the equity of that corporation, or
 - 25% or more of the voting rights in respect of the relevant corporation;
- (b) the individual has the right, directly or indirectly, to appoint or remove from office the majority of the board of directors of the relevant corporation;
- (c) the individual has the right to exercise or does exercise, under a unanimous shareholders' agreement or otherwise, significant influence or control over the relevant corporation

We look forward to your response.

Property Transfer Tax Rulings Team

s.21

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s.21

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s.22;s.21

Stark, Shaya FIN:EX

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Thursday, September 13, 2018 11:14 AM
To: Brouwer, Deborah FIN:EX; Dogaru, Raluca FIN:EX; Huang, Ying FIN:EX
Subject: FW: PTT Advance Tax Ruling Request s.22
Attachments: s.22

Hi Deb, Ying and Raluca,

We have received this ATR request today. I am forwarding it to you as I wonder if there might be a connection with the email that we dealt with earlier today – please see last two attachments.

In the fourth attachment in the original email – entitled s.22 - the seller's lawyer is named as s.22 . And the sender of the email expressing concern about "Foriegn buyer tax anti-avoidance rules are too vague" appears to be one of the lawyers working at s.22

At this point, I don't know what – if any – connects may exists between the email about anti-avoidance and this ATR request. Just wanted to make you all away. I will keep you informed as I process this ATR request.

Thanks,
Don

s.21,s.22

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s.22;s.21

Stark, Shaya FIN:EX

From: Hardy, Donald FIN:EX
Sent: Thursday, September 13, 2018 9:48 AM
To: Huang, Ying FIN:EX
Cc: Brouwer, Deborah FIN:EX; Dogaru, Raluca FIN:EX
Subject: RE: Reply Direct CLIFF ID 367239

Hello Ying,

Here is a standard email that we have developed for responding to ATRs that involve anti-avoidance questions.

Dear XXX,

We received your application for an advance tax ruling on behalf of your clients, on XXXX. It is our understanding that the request is in regards to the application of the Property Transfer Tax Act's additional tax provisions, including the anti-avoidance section. Due to complexity and volume, all such applications require an extended period of review and analysis before a ruling can be issued. Once the rulings team completes the research and analysis of the factual scenario outlined in your submission, you will be advised of the cost and the timeline as to when to expect the release of the ruling. Note that the standard advance tax ruling fee might be considerable high. Some of these requests might need to go for review to the Ministry's GAAR Committee which will significantly impact the response time.

Please let us know if you still want to proceed with the request.

Sincerely,

From: Brouwer, Deborah FIN:EX
Sent: September 11, 2018 4:39 PM
To: Hardy, Donald FIN:EX <Donald.Hardy@gov.bc.ca>
Cc: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>
Subject: FW: Reply Direct CLIFF ID 367239

Hi Don,

Could you please share with Ying, the standard wording we use for ATRs that ask these kinds of anti-avoidance questions?

Thanks,
Deb

From: FIN REV PTB Admin FIN:EX
Sent: September 11, 2018 8:43 AM
To: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>; Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>
Cc: FIN REV PTB Admin FIN:EX <PTBADMIN@gov.bc.ca>
Subject: FW: Reply Direct CLIFF ID 367239

Dear Deb and Ying,

Having examined this, Louise thought that you two might be the right people to address this CLIFF. Policy has already decided that they will not answer it (see below).

Please send us a summary of the response when you are able.

Cheerily,

Kerry Patriarche

Administrative Assistant
Ministry of Finance
Revenue Division, Property Taxation Branch
4th floor 1802 Douglas St.
778 698-9713

From: Chantal Gibbs [mailto:FINOffice@gov.bc.ca]
Sent: Monday, September 10, 2018 3:59 PM
To: FIN REV PTB Admin FIN:EX
Cc: Goss, Jordan T FIN:EX; Hunter-Friesen, Margaret M FIN:EX; FIN REV PTB Admin FIN:EX
Subject: Reply Direct CLIFF ID 367239

MO-Minister's Office **Referral Slip for ID:367239**

2018/09/10

CONFIDENTIAL

<i>Log Type:</i> Email	<i>Action:</i> Reply Direct	<i>Due:</i> 2018/04/30
<i>Batch:</i> 2018 Speculation Tax - Reply Direct	<i>Subaction:</i>	

Author Type: Company
s.22

Written: 2018/04/17 *Rush Reason:*

Received: 2018/04/17 *Resp Type:*

Actioned: 2018/04/17 *File No.:*

Email

Due: 2018/04/30 *Entered By:* meverra
1

Signed: *Signed By:*

Date-Stamp:

Mailed:

Closed:

Address To: Minister *Issue:* Housing Affordability;Tax-Property-Speculation

Copy To: *X-Ref:*

Branch Rsp: PLD-Tax Policy *Drafter:*

Subject

Post-Budget Feedback / additional Property Transfer Tax/ foreign buyers tax questions.

Log Notes

2018/09/10 As per Steve, this should be directed to PTB which is part of the Revenue Division

2018/04/17 Updated log batch, issue and subject, as they were incorrect. Emailed MCS to inform them.

Referral MO-Minister's Office -> MO-Minister's Office					
From:	MO-Minister's Office	Sent:	2018/04/17	Status:	Pending
				Ref Action:	Reply Direct
To:	MO-Minister's Office	Received:	2018/04/17	Reason:	
				Subaction:	
Assign To:		Completed:		Due:	2018/04/30 (Pending (91))
				File No.:	

Referral MO-Minister's Office -> MO-Minister's Office -> MCS-Correspondence					
From:	MO-Minister's Office	Sent:	2018/04/17	Status:	Pending
				Ref Action:	MCS Assign
To:	MCS-Correspondence	Received:		Reason:	
				Subaction:	
Assign To:		Completed:		Due:	2018/04/30 (Pending (91))
				File No.:	
Referral Comments					
2018/04/17 MO-Minister's Office Email notification sent to "MCS-Correspondence".					

Referral MO-Minister's Office -> MO-Minister's Office -> MCS-Correspondence -> PLD-Tax Policy					
From:	MCS-Correspondence	Sent:	2018/04/17	Status:	Pending
				Ref Action:	Reply Direct
To:	PLD-Tax Policy	Received:		Reason:	
				Subaction:	
Assign To:		Completed:		Due:	2018/04/30 (Pending (91))
				File No.:	
Referral Comments					
2018/04/17 MCS-Correspondence Email notification sent to "PLD-Tax Policy".					

Referral MO-Minister's Office -> MO-Minister's Office -> MCS-Correspondence -> PLD-Tax Policy -> MCS-Correspondence					
From:	PLD-Tax Policy	Sent:	2018/09/10	Status:	Pending
				Ref Action:	Redirect-MCS
To:	MCS-Correspondence	Received:		Reason:	
				Subaction:	
Assign To:		Completed:		Due:	2018/04/30 (Pending (91))
				File No.:	
Referral Comments					
2018/09/10 PLD-Tax Policy Email notification sent to "MCS-Correspondence".					

Referral MO-Minister's Office -> MO-Minister's Office -> MCS-Correspondence -> PLD-Tax Policy -> MCS-Correspondence -> RD-PTB

<i>From:</i>	MCS-Correspondence	<i>Sent:</i>	2018/09/10	<i>Status:</i>	Pending	<i>Ref Action:</i>	Reply Direct
<i>To:</i>	RD-PTB	<i>Received:</i>		<i>Reason:</i>		<i>Subaction:</i>	
<i>Assign To:</i>		<i>Completed:</i>		<i>Due:</i>	2018/04/30 (Active (91))	<i>File No.:</i>	

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s.22;s.21

Stark, Shaya FIN:EX

From: Hardy, Donald FIN:EX
Sent: Tuesday, September 18, 2018 3:51 PM
To: Huang, Ying FIN:EX
Cc: Brouwer, Deborah FIN:EX
Subject: RE: Bullets-MLA CLIFF ID 373453

Hi Ying, yes, I think that will capture the spirit of what we are trying to communicate.

From: Huang, Ying FIN:EX
Sent: September 18, 2018 3:42 PM
To: Hardy, Donald FIN:EX <Donald.Hardy@gov.bc.ca>
Cc: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>
Subject: RE: Bullets-MLA CLIFF ID 373453

Thank you Don. I see your point now. To clarify and address the writer's concern regarding to the assignment of agreement situation here, should we say "In property purchases or transfers of the right to purchase where....."?

Ying Huang CPA, CGA
Manager of Additional Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778)698-9688 Fax: (250)953-3094

From: Hardy, Donald FIN:EX
Sent: September 18, 2018 3:11 PM
To: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>
Cc: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>
Subject: RE: Bullets-MLA CLIFF ID 373453

You're welcome, Ying. s.13

s.13

s.13

Canadian purchasers do not have to worry about being charged with PTT when buying from foreign nationals – so long as the purchases are not taxable trustees. I know that the scenario in the email is specific to a pre-sale, but I am thinking that any fear Canadian might have about engaging with a foreign national would derive from PTTA provisions re property transfer.

s.13

From: Huang, Ying FIN:EX
Sent: September 18, 2018 2:47 PM
To: Hardy, Donald FIN:EX <Donald.Hardy@gov.bc.ca>
Cc: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>
Subject: RE: Bullets-MLA CLIFF ID 373453

Thank you Don for the draft.

It looks really good. The only thing I noticed is that this is a pre-sold unit and the transferor is a Canadian developer, but not a foreign national in this case. So I would recommend leaving the highlighted sentence out. Your thoughts?

Ying Huang CPA, CGA

Manager of Additional Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778)698-9688 Fax: (250)953-3094

From: Hardy, Donald FIN:EX
Sent: September 18, 2018 2:28 PM
To: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>
Cc: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>
Subject: RE: Bullets-MLA CLIFF ID 373453

Ying, here's a draft response for your review.

Thank you for your email dated April 17, 2018 regarding foreign buyer anti-avoidance rules.

In your email, you state that a Canadian buyer purchasing a foreign national's interest in a pre-sold unit is concerned that the transaction could be deemed to be evasion or avoidance and trigger additional taxes and penalties. You request clarification about the Property Transfer Tax Act (PTTA) provisions regarding transactions involving foreign nationals.

PTTA defines in section 2.001 "avoidance transactions." An "avoidance transaction" means a transaction:

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, or
 - (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit (emphasis added);
- "tax benefit" means a reduction, avoidance or deferral of tax payable under this Act.

In property purchases where the transferor is a foreign national and the transferee is a Canadian citizen, the transferee is not subject to PTT.

We have provided this response assuming that, at the time of purchase, the Canadian transferee will not be a "taxable trustee" as defined under the PTTA. The PTTA defines a taxable trustee as 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.

To illustrate, if a legal trustee purchases a property, and that trustee is a foreign national, the purchase is subject to ATT. As well, if a legal trustee, who is a Canadian citizen or permanent resident, purchases a property, but the beneficiary of the trustee is a foreign national, the purchase is subject to ATT.

If the Administrator of the PTTA determines through an audit that a property purchase constitutes an avoidance transaction, the Administrator may issue a Notice of Assessment under section 18 of the PTTA. The Notice of Assessment will confirm the total amount of tax payable. In addition, possible penalties might apply. Section 34.2 allows the Administrator to issue penalties in circumstances such as:

If the administrator determines that a person, for the purpose of evading or avoiding a tax liability of the person or of another person, has

(a) made, or participated in, assented to or acquiesced in the making of, a false or deceptive statement in a return or record required to be made or provided under this Act, or in information required to be provided under this Act,
(b) destroyed, altered, mutilated, hidden or otherwise disposed of a return or record of a transferor or transferee,
(c) made, or participated in, assented to or acquiesced in the making of, a false or deceptive entry in a record or return of a transferor or transferee,
(d) omitted, or assented to or acquiesced in the omission of, a material particular in a record or return of a transferor or transferee, or
(e) willfully, in any manner, avoided or evaded or attempted to avoid or evade
(i) compliance with this Act or the regulations, or
(ii) remittance or payment of taxes required by this Act or the regulations,
the person is jointly and severally liable for the amount of any tax avoided or evaded as a result and must pay to the administrator, in addition to that amount, a penalty in an amount equal to 100% of the amount of tax avoided or evaded.

From: Brouwer, Deborah FIN:EX
Sent: September 11, 2018 4:56 PM
To: Hardy, Donald FIN:EX <Donald.Hardy@gov.bc.ca>
Cc: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>; Tailleir, Roger FIN:EX <Roger.Tailleir@gov.bc.ca>
Subject: FW: Bullets-MLA CLIFF ID 373453

Hi Don,
Would you mind investigating this issue to draft bullets to response to this cliff request? If Roger is back tomorrow, he can give you a hand.

We can talk tomorrow.
Thanks,
Deb

From: Huang, Ying FIN:EX
Sent: September 11, 2018 4:43 PM
To: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>
Subject: FW: Bullets-MLA CLIFF ID 373453

Hi Deb,

Could I get some help from your team in Roger's absence? Thanks.

Ying Huang CPA, CGA
Manager of Additional Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778)698-9688 Fax: (250)953-3094

From: FIN REV PTB Admin FIN:EX
Sent: September 10, 2018 11:27 AM
To: Tailleir, Roger FIN:EX <Roger.Tailleir@gov.bc.ca>

Cc: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>

Subject: FW: Bullets-MLA CLIFF ID 373453

Dear Roger and Ying,

Please draft these bullets.

Cheerily,

Kerry Patriarche

Administrative Assistant

Ministry of Finance

Revenue Division, Property Taxation Branch

4th floor 1802 Douglas St.

778 698-9713

From: Chantal Gibbs [mailto:FINOffice@gov.bc.ca]

Sent: Monday, September 10, 2018 10:39 AM

To: FIN REV PTB Admin FIN:EX

Cc: Goss, Jordan T FIN:EX; Hunter-Friesen, Margaret M FIN:EX; FIN REV PTB Admin FIN:EX

Subject: Bullets-MLA CLIFF ID 373453

MO-Minister's Office **Referral Slip for ID:373453**

2018/09/10

CONFIDENTIAL

<i>Log Type:</i> Email	<i>Action:</i> Bullets-MLA	<i>Due:</i> 2018/09/13
<i>Batch:</i>	<i>Subaction:</i>	

Author Type: TBD

Alison COPELAND, Constituency Assistant

102-23015 Dewdney Trunk Road

Maple Ridge, BC, Canada V2X3K9

Phone: (604) 476-4530

Email: Alison.Copeland@leg.bc.ca

Written: 2018/09/05 *Rush Reason:*

Received: 2018/09/06

Actioned: 2018/09/06 *File No.:*

Due: 2018/09/13 *Entered By:* sbrobac k

Signed:

Closed:

Secondary Authors

Author Type: MLA-Government

Mr. Bob D'EITH, MLA

BC NDP MLA, Maple Ridge-Mission

Phone: (604) 476-4530

Email: bob.deith.mla@leg.bc.ca

Author Private Citizen
Type: s.22

Email: n/a

Address To:	Minister	Issue:	TBD
Copy To:		X-Ref:	
Branch Rsp:	TBD	Drafter:	

Subject

Enter Subject: use OneNote Subject Line Keyword List
Enter Dates: Written / Received (by MO) / Actioned (by MO to MCS)
*** Do History Search / X-Reference pertinent previous logs ***

2nd Referral: MCS for MCS Assign

Log Notes

2018/09/10 Please provide MLA Bullets.

Referral MO-Minister's Office -> MO-Minister's Office

From:	MO-Minister's Office	Sent:	2018/09/07	Status:	Accepted	Ref Action:	Bullets-MLA
To:	MO-Minister's Office	Received:	2018/09/07	Reason:		Subaction:	
Assign To:		Completed:		Due:	2018/09/13 (Pending (3))	File No.:	

Referral MO-Minister's Office -> MO-Minister's Office -> MCS-Correspondence

From:	MO-Minister's Office	Sent:	2018/09/07	Status:	Pending	Ref Action:	MCS Assign
To:	MCS-Correspondence	Received:		Reason:		Subaction:	
Assign To:		Completed:		Due:	2018/09/11 (Pending (1))	File No.:	

Referral Comments

2018/09/07 MO-Minister's Office Email notification sent to "MCS-Correspondence".

Referral MO-Minister's Office -> MO-Minister's Office -> MCS-Correspondence -> RD-PTB

From:	MCS-Correspondence	Sent:	2018/09/10	Status:	Pending	Ref Action:	Bullets-MLA
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<i>To:</i>	RD-PTB	<i>Received:</i>	<i>Reason:</i>	<i>Subaction:</i>
<i>Assign To:</i>		<i>Completed:</i>	<i>Due:</i> 2018/09/13 (Active (3))	<i>File No.:</i>

From: FIN REV G PTB-ATT Enquiries FIN:EX
Sent: Tuesday, September 18, 2018 4:05 PM
To: s.22
Subject: RE: Foreign buyer tax anti-avoidance rules are too vague

Dear s.22

Thank you for your email dated April 17, 2018 regarding foreign buyer anti-avoidance rules.

In your email, you state that a Canadian buyer purchasing a foreign national's interest in a pre-sold unit is concerned that the transaction could be deemed to be evasion or avoidance and trigger additional taxes and penalties. You request clarification about the Property Transfer Tax Act (PTTA) provisions regarding transactions involving foreign nationals.

PTTA defines in section 2.001 "avoidance transactions." An "avoidance transaction" means a transaction:

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, or
 - (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit (emphasis added);
- "tax benefit" means a reduction, avoidance or deferral of tax payable under this Act.

In property purchases or transfers of the right to purchase where the transferor is a foreign national and the transferee is a Canadian citizen, the transferee is not subject to PTT.

We have provided this response assuming that, at the time of purchase, the Canadian transferee will not be a "taxable trustee" as defined under the PTTA. The PTTA defines a taxable trustee as 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.

To illustrate, if a legal trustee purchases a property, and that trustee is a foreign national, the purchase is subject to ATT. As well, if a legal trustee, who is a Canadian citizen or permanent resident, purchases a property, but the beneficiary of the trustee is a foreign national, the purchase is subject to ATT.

If the Administrator of the PTTA determines through an audit that a property purchase constitutes an avoidance transaction, the Administrator may issue a Notice of Assessment under section 18 of the PTTA. The Notice of Assessment will confirm the total amount of tax payable. In addition, possible penalties might apply. Section 34.2 allows the Administrator to issue penalties in circumstances such as:

If the administrator determines that a person, for the purpose of evading or avoiding a tax liability of the person or of another person, has

- (a) made, or participated in, assented to or acquiesced in the making of, a false or deceptive statement in a return or record required to be made or provided under this Act, or in information required to be provided under this Act,
- (b) destroyed, altered, mutilated, hidden or otherwise disposed of a return or record of a transferor or transferee,
- (c) made, or participated in, assented to or acquiesced in the making of, a false or deceptive entry in a record or return of a transferor or transferee,

(d) omitted, or assented to or acquiesced in the omission of, a material particular in a record or return of a transferor or transferee, or
(e) willfully, in any manner, avoided or evaded or attempted to avoid or evade
(i) compliance with this Act or the regulations, or
(ii) remittance or payment of taxes required by this Act or the regulations,
the person is jointly and severally liable for the amount of any tax avoided or evaded as a result and must pay to the administrator, in addition to that amount, a penalty in an amount equal to 100% of the amount of tax avoided or evaded.

Sincerely,



Additional Property Transfer Tax

Ministry of Finance | Property Taxation Branch

Email: ATTENQ@gov.bc.ca. **Phone:** 1-888-355-2700

Service Hours: Monday – Friday (excluding statutory holidays)

8:30 am – 4:30 pm PST

This email is intended only for the use of the individual or organization to whom it is addressed. It may contain information that is privileged or confidential. Any distribution, disclosure, copying, or other use by anyone else is strictly prohibited. If you have received this in error, please telephone or e-mail the sender immediately and delete the message.

s.21,s.22

Page 251

Withheld pursuant to/removed as

s.22;s.21

Stark, Shaya FIN:EX

From: Hardy, Donald FIN:EX
Sent: Tuesday, September 25, 2018 9:49 AM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX
Subject: RE: PTT Advance Tax Ruling Request s.22
Attachments: s.22

Dear s.22

Thank you for your email dated September 13, 2018. In your email, you request an advanced tax ruling (ATR) on the amount of property transfer tax (PTT) payable on a proposed transaction. You also ask whether the proposed transaction will be subject to additional transfer tax (ATT).

ATRs do not rule on the fair market value of a property or on the amount of PTT payable on a proposed transaction. Rather, ATRs provide rulings on whether or not an a proposed transaction is eligible for an exemption from PTT under the Property Transfer Tax Act (PTTA). Typically, ATRs rule on whether any of the exemption provisions set out in section 14 of the PTTA apply to the proposed transaction.

Since s.22 Metro Vancouver Regional District, a foreign national purchasing s.22 property on this land is subject to PTT and ATT.

We trust this information is helpful. Thank you again for your inquiry.

Sincerely,

Property Transfer Tax Rulings Team

s.21,s.22

Page 253

Withheld pursuant to/removal as

s.22;s.21

Stark, Shaya FIN:EX

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Wednesday, September 26, 2018 4:05 PM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX
Subject: RE: Advance Tax Ruling - Request For Information - Follow-up

Thank you for your inquiry dated December 28, 2017 regarding the Additional Transfer Tax (ATT). We do apologize for the delay in responding.

The nature of your request is as to whether an assignor of a pre-sold contract is liable for ATT pursuant to an assignment between a non-resident of Canada and a Canadian citizen.

In your letter, you provided details of a presale contract, the names and citizenships of the assignor and assignee. No information was submitted in regard to the relationship between the assignor or assignee, i.e., related or non-related individuals and the reason behind the contemplated assignment of the initial contract of purchase and sale.

Under the Property Transfer Tax Act (PTTA), when title to a property transfers and the change in title is registered at the Land Title Office(LTO), the transferee is responsible for paying property transfer tax (PTT) and/ or ATT. In the case of presale agreements, no title is registered at the LTO and the assignment of the contract does not attract immediately PTT or ATT liability. Once the title is registered in the LTO, the assignee becomes registered title owner and is required to pay PTT and/or ATT accordingly. An Assignor is generally not responsible for paying PTT or ATT.

That being said, there are provisions in the PTTA that might impact both an assignor and an assignee upon audit of the registration of title. These sections include, section 2.001 and section 34.2 PTTA defines in section 2.001 "avoidance transactions." An "avoidance transaction" means a transaction:

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, or
 - (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit;
- "tax benefit" means a reduction, avoidance or deferral of tax payable under this Act;

If the Administrator of the PTTA determines through an audit that the assignment between the assignor and assignee was an avoidance transaction, the Administrator may issue a Notice of Assessment under section 18 of the PTTA. In addition, possible penalties might apply. Section 34.2 allows the Administrator to issue penalties in circumstances such as:

If the administrator determines that a person, for the purpose of evading or avoiding a tax liability of the person or of another person, has

- (a) made, or participated in, assented to or acquiesced in the making of, a false or deceptive statement in a return or record required to be made or provided under this Act, or in information required to be provided under this Act,
- (b) destroyed, altered, mutilated, hidden or otherwise disposed of a return or record of a transferor or transferee,
- (c) made, or participated in, assented to or acquiesced in the making of, a false or deceptive entry in a record or return of a transferor or transferee,
- (d) omitted, or assented to or acquiesced in the omission of, a material particular in a record or return of a transferor or transferee, or
- (e) willfully, in any manner, avoided or evaded or attempted to avoid or evade
- (i) compliance with this Act or the regulations, or

(ii) remittance or payment of taxes required by this Act or the regulations, the person is jointly and severally liable for the amount of any tax avoided or evaded as a result and must pay to the administrator, in addition to that amount, a penalty in an amount equal to 100% of the amount of tax avoided or evaded.

It is not clear whether the assignment proposed is for bona fide purposes, other than obtaining a tax benefit for the non-resident assignor. Hence, we are not in the position to advise on the application of the PTTA's provision to the proposed transaction or issue a ruling.

This correspondence illustrates the current provisions of the PTTA, and is provided for informative purposes. This email is not binding on the Administrator.

s.21,s.22

From: FIN REV PTB AdvanceRuling FIN:EX [<mailto:PTBAdvanceRuling@gov.bc.ca>]
Sent: September-24-18 1:15 PM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX
Subject: RE: Advance Tax Ruling - Request For Information - Follow-up

s.22

Your email of September 18, 2018 has been forwarded to the Property Taxation Branch Advance Ruling inbox. We acknowledge receipt of your email, and apologize for any inconvenience you have experienced.

I am verifying the status of your application, and will respond to the questions posed in your email of December 19, 2017 by September 28, 2018 at latest.

Please continue to direct your correspondence to the PTB AdvanceRuling inbox. If you experience difficulties in sending email to this address, please email me at Donald.Hardy@gov.bc.ca

Sincerely,

s.21,s.22

From: [Dogaru, Raluca FIN:EX](#)
To: [Brouwer, Deborah FIN:EX](#)
Subject: REVISIT-DECISION REQ: **s.13**
Date: Monday, October 1, 2018 12:01:06 PM
Attachments: [ATR GAAR wording.msg](#)
Importance: High
Sensitivity: Confidential

Hi Deb,

Could we please revisit this issue as we have not been able to update the public info so far. It seems that we have an increase in requests on GAAR (now extended also to PTT) and we need to determine PTB's position.

The approved wording on GAAR ATRs (TPB also agreed) is attached for your reference.

Hope we can chat about it tomorrow during our 1:1 meeting.

Thanks,

Raluca

Raluca Dogaru, MA, MPA
Senior Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance

778 698 3916

From: Lewis, Emily FIN:EX
Sent: Monday, January 30, 2017 3:58 PM
To: Dogaru, Raluca FIN:EX; Emery, Steven B FIN:EX
Subject: RE: FOR YOUR REVIEW and APPROVAL: **s.13**
Sensitivity: Confidential

s.13

From: Dogaru, Raluca FIN:EX
Sent: Friday, January 27, 2017 1:38 PM
To: Lewis, Emily FIN:EX
Subject: FW: FOR YOUR REVIEW and APPROVAL: s.13
Sensitivity: Confidential

FYI

Interesting but I do not think it is applicable to us even in circumstances when CRA does it.

From: Hawkshaw, Steve FIN:EX
Sent: Friday, January 27, 2017 1:29 PM
To: Dogaru, Raluca FIN:EX
Subject: RE: FOR YOUR REVIEW and APPROVAL: s.13
Sensitivity: Confidential

s.13

s.13

From: Dogaru, Raluca FIN:EX
Sent: Friday, January 27, 2017 12:13 PM
To: Hawkshaw, Steve FIN:EX
Cc: Lewis, Emily FIN:EX; Godfrey, Tim FIN:EX; Jillings, Duncan FIN:EX
Subject: RE: FOR YOUR REVIEW and APPROVAL: s.13
Sensitivity: Confidential
Thank you Steve.

From: Hawkshaw, Steve FIN:EX
Sent: Friday, January 27, 2017 12:11 PM
To: Dogaru, Raluca FIN:EX
Cc: Lewis, Emily FIN:EX; Godfrey, Tim FIN:EX; Jillings, Duncan FIN:EX
Subject: RE: FOR YOUR REVIEW and APPROVAL: s.13
Sensitivity: Confidential
Hi Raluca,
We spoke with Paul about this issue.

s.13

The other circumstances make sense to me (hypotheticals etc...).

That said this is an administrative policy issue so TPB can't approve or disapprove, that is up to PTB and Elan.

Regards,
Steve

From: Dogaru, Raluca FIN:EX
Sent: Friday, January 27, 2017 11:01 AM
To: Hawkshaw, Steve FIN:EX
Cc: Lewis, Emily FIN:EX
Subject: FOR YOUR REVIEW and APPROVAL: s.13
Importance: High
Sensitivity: Confidential
Hi Steve,

This a follow up of your discussion with Emily in regards to s.13

s.13

s.13 I will send it to Lauren for her consideration. Once we have everything nailed down we can go to Elan for a final decision.

s.13

s.13 their response is attached. Please note though that our rulings are binding, differently from PST.

s.13

s.13 and might as well do so.

Let me know if you want to discuss or have any questions or concerns.

Raluca

Raluca Dogaru, MA, MPA

Policy and Legislative Analyst

Property Taxation Branch, Ministry of Finance

250-387-1246

s.13

From: Dogaru, Raluca FIN:EX
To: Lewis, Emily FIN:EX
Subject: ATR GAAR wording
Date: Thursday, February 9, 2017 12:51:00 PM
Importance: High
Sensitivity: Confidential

Hi Emily,

As discussed, for your edit and approval. Let me know if you require anything further or want me to do other changes.

Raluca

STANDARD EMAIL:

Dear XXX,

We received your application for an advance tax ruling on behalf of your clients, on XXXX. It is our understanding that the request is in regards to the application of the Property Transfer Tax Act's additional tax provisions, including the anti-avoidance section. Due to complexity and volume, all such applications require an extended period of review and analysis before a ruling can be issued. Once the rulings team completes the research and analysis of the factual scenario outlined in your submission, you will be advised of the cost and the timeline as to when to expect the release of the ruling. Note that the standard advance tax ruling fee might be considerable high. Some of these requests might need to go for review to the Ministry's GAAR Committee which will significantly impact the response time.

Please let us know if you still want to proceed with the request.

Sincerely,

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Tuesday, October 9, 2018 9:38 AM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX
Subject: RE: advance ruling regarding property transfer tax, including additional transfer tax
Attachments: 2018-09-26 Request for Tax Ruling.pdf

Dear s.22

In your letter dated September 27, 2018 you request an advanced tax ruling (ATR) on behalf of your clients. ATRs provide rulings on how the property transfer tax, including additional property transfer tax and exemptions, will apply to a proposed transaction. We understand from your letter that no transaction is currently proposed by your clients. Accordingly, it is not possible to complete an ATR at this time.

You may apply for an ATR on behalf of your clients when they are proposing a transaction. At that time, we would request that you provide the following information:

- Legal Description and Parcel Identifier for the Land which will be the subject of the transaction
- Total number of directors of the corporation
- The number of directors of the corporation who are Canadian citizens or permanent residents of Canada
- Information, including citizenship or permanent residence status, of all of the corporation's corporate interest holders (please see below)
- Any additional available documentation, such as a Central Securities Register for the corporation, that may assist in the review

An individual is a corporate interest holder if any of the following apply:

- (a) the individual has legal or beneficial ownership or control, directly or indirectly, of
 - shares of the relevant corporation representing 25% or more of the value of the equity of that corporation, or
 - 25% or more of the voting rights in respect of the relevant corporation;
- (b) the individual has the right, directly or indirectly, to appoint or remove from office the majority of the board of directors of the relevant corporation;
- (c) the individual has the right to exercise or does exercise, under a unanimous shareholders' agreement or otherwise, significant influence or control over the relevant corporation

Thank you again for your inquiry.

s.21,s.22

Page 263

Withheld pursuant to/removed as

s.22;s.21

Stark, Shaya FIN:EX

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: Tuesday, October 9, 2018 9:43 AM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX
Subject: RE: Query re Advance Ruling

Good Morning s.22

Thank you for your follow-up email. My apologies about the delay in responding.

My colleague, Raluca Dogaru, is going to telephone you, most likely today.

Thanks,
Don

s.21,s.22

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: Monday, October 1, 2018 3:24 PM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Subject: RE: Query re Advance Ruling

Hi s.22

Thank you for your email. I will endeavour to provide this information to you within one business day.

Don

From: Hardy, Donald FIN:EX <Donald.Hardy@gov.bc.ca>
Sent: Monday, October 1, 2018 2:10 PM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Subject: RE: Query re Advance Ruling

Hi, yes, you may telephone me at 778-698-1731

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: Monday, October 1, 2018 1:46 PM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Subject: FW: Query re Advance Ruling

Dear s.22

The Property Transfer Tax Rulings Team acknowledges receipt of your email dated September 228, 2018.

It is our understanding that the request is in regards to the application of the Property Transfer Tax Act's additional tax provisions, including the anti-avoidance section. Your clients may request an advanced tax ruling on a proposed transaction. Due to complexity and volume, all such requests require an extended period of review and analysis before a ruling can be issued. Once you have submitted all required information, and the rulings team has reviewed the submission, you will be advised of the cost and the timeline as to when to expect the release of the ruling. Note that the standard advance tax ruling fee might be considerably high. The request might need to go for review to the BC Ministry of Finance's GAAR Committee, which will significantly impact the response time.

Please let us know if you still want to proceed with the request.

s.21,s.22

Page 267 to/à Page 269

Withheld pursuant to/removed as

s.22;s.21

Stark, Shaya FIN:EX

From: Dogaru, Raluca FIN:EX
Sent: Thursday, October 11, 2018 2:50 PM
To: Hardy, Donald FIN:EX; Tailleur, Roger FIN:EX; Gudgeon, Kevin FIN:EX
Cc: Brouwer, Deborah FIN:EX
Subject: RE: ATR Meeting

Hello,

Please find below my comments and answers as I understood them during the meeting. I imagine that some these issues would become part of the ATR procedure manual Don is working on. Is that correct?

- Concern about Gentax sending out a letter by mail: we will monitor to see if this occurs again. If we need help, we will contact Nanci CORRECT.
 - ATRs are for rulings and deal with policy interpretation and legislation application to a proposed transaction-
- s.13

Let me know if you have further questions or you disagree.

Raluca Dogaru, MA, MPA
Senior Policy and Legislative Analyst
Property Taxation Branch
Ministry of Finance

From: Hardy, Donald FIN:EX
Sent: Thursday, October 4, 2018 3:24 PM
To: Dogaru, Raluca FIN:EX; Tailleur, Roger FIN:EX; Gudgeon, Kevin FIN:EX
Subject: ATR Meeting

Hi,

If you don't mind, I'd like to summarize my understanding of the meeting. Please correct me if I have omitted or misunderstood anything.

- Concern about Gentax sending out a letter by mail: we will monitor to see if this occurs again. If we need help, we will contact Nanci

s.13

Happy Thanksgiving!

Stark, Shaya FIN:EX

From: Hardy, Donald FIN:EX
Sent: Friday, October 12, 2018 12:13 PM
To: s.21
Cc: FIN REV PTB AdvanceRuling FIN:EX
Subject: Advanced Tax Ruling Request
Attachments: 2018-09-26 ATR Request.pdf

Dear s.21

The Property Transfer Tax Rulings Team is writing in response to your letter dated September 6, 2018 (attached). We apologize for the delay in responding.

In your letter, you request an advanced tax ruling (ATR). ATRs provide rulings on how the property transfer tax, including additional property transfer tax and exemptions, will apply to a proposed transaction (e.g. change in owner on title for a specific property) that will be registered with the Land Title Office. Your letter states that the purchase of s.21 shares will not be registered with the Land Title Office. Accordingly, it is not possible to complete an ATR at this time.

You may apply for an ATR at the time that your organization proposing a transaction for a specific property. At that time, we would request that you provide the following information:

- Legal Description and Parcel Identifier for all properties which will be the subject of the transaction
- Total number of directors of the corporation that will be registered as the owner of the property
- The number of directors of the corporation who are Canadian citizens or permanent residents of Canada
- Information, including citizenship or permanent residence status, of all of the corporation's corporate interest holders (please see below)
- Any additional available corporate documentation, including amalgamation documents (if applicable) that may assist in the ruling

An individual is a corporate interest holder if any of the following apply:

- (a) the individual has legal or beneficial ownership or control, directly or indirectly, of
 - shares of the relevant corporation representing 25% or more of the value of the equity of that corporation, or
 - 25% or more of the voting rights in respect of the relevant corporation;
- (b) the individual has the right, directly or indirectly, to appoint or remove from office the majority of the board of directors of the relevant corporation;
- (c) the individual has the right to exercise or does exercise, under a unanimous shareholders' agreement or otherwise, significant influence or control over the relevant corporation

Thank you again for your inquiry.

Page 273 to/à Page 277

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s.12;s.14;s.13

Page 278

Withheld pursuant to/removed as

s.14;s.13

PROPERTY TRANSFER TAX ACT
UPDATING THE AUDIT AND ENFORCEMENT POWERS IN THE
PROPERTY TRANSFER TAX ACT

I. ISSUE

The audit and enforcement powers in the *Property Transfer Tax Act* (the Act) are dated and incomplete when compared to other provincial taxing statutes.

II. BACKGROUND

The audit, enforcement, penalty, and offence provisions in the Act were drafted in some haste when the Act was first implemented. Although similar to other tax acts they are not as detailed or comprehensive and do not have the same body of case law supporting their use.

Revenue Division has developed a larger list of legislative proposals designed to help address tax evasion and tax compliance. This note focuses on issues identified by Revenue Division related to the Property Transfer Tax and contains proposals to modernize and strengthen the audit and enforcement powers in the Act by:

s.13

III. DISCUSSION

s.13

Page 280

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s.13

Page 281

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s.14;s.13

Page 282

Withheld pursuant to/removed as

s.13

Page 283 to/à Page 287

Withheld pursuant to/removed as

s.22;s.21

Additional PTT and GAAR Advance Rulings
This note may contain legal advice

From: Hawkshaw, Steve FIN:EX
Sent: Friday, January 27, 2017 12:11 PM
To: Dogaru, Raluca FIN:EX
Cc: Lewis, Emily FIN:EX; Godfrey, Tim FIN:EX; Jillings, Duncan FIN:EX
Subject: RE: FOR YOUR REVIEW and APPROVAL: s.13
Sensitivity: Confidential

Hi Raluca,

We spoke with Paul about this issue.

s.13

The other circumstances make sense to me (hypotheticals etc...).

That said this is an administrative policy issue so TPB can't approve or disapprove, that is up to PTB and Elan.

Regards,
Steve

Hi Duncan
Emily phoned me about this issue earlier this week.

s.13

I think we should talk about this.

From: Dogaru, Raluca FIN:EX
Sent: Friday, January 27, 2017 11:01 AM
To: Hawkshaw, Steve FIN:EX
Cc: Lewis, Emily FIN:EX
Subject: FOR YOUR REVIEW and APPROVAL: s.13
Importance: High
Sensitivity: Confidential

Hi Steve,

This a follow up of your discussion with Emily in regards to s.13

s.13

s.13

I will send it to Lauren for her consideration. Once we have everything nailed down we can go to Elan for a final decision.

s.13

s.13 their response is attached. Please note though that our rulings are binding, differently from PST.

s.13

and might as well do so.

Let me know if you want to discuss or have any questions or concerns.

Raluca

Raluca Dogaru, MA, MPA

Policy and Legislative Analyst

Property Taxation Branch, Ministry of Finance

250-387-1246

s.13

Hi Emily,

Thank you for your inquiry.

With respect to your first question, to the best of my knowledge we have never refused to answer questions/ruling requests just because of the nature of the topic/question being asked (provided that the ruling request relates to the several consumption tax acts on which we are qualified to answer). However, responses on certain issues s.13 may be framed in very cautious and general terms.

As to your second question, as you are aware from your time in Rulings, there are regularly cases where we don't know the answer to a question right away, and cannot answer it immediately. Our standard response time is three business days on basic questions, and 20 business days for complex issues (the date the request is received does not count as a day).

It is not always possible to complete complex rulings within 20 business days. Leaving aside workload issues/backlog that may account for the delay, in some cases we may need to carry out some significant research and discussions (including with other business units), possibly have a full-blown policy review, or even request a legal opinion on the matter. Delays in responding may be just a few weeks, or may be many months or longer (as in the case of waiting on some legal opinions). If we know that there will be a lengthy delay, we might advise the taxpayer of this in advance.

This correspondence describes how the Ministry interprets the relevant tax provisions for information purposes only. This response may be impacted by variations in circumstance, subsequent changes to legislation or subsequent court decisions. The Ministry is not responsible for updating this response if there are any subsequent changes to the law. This response is provided as an aid to understanding the legislation and is not intended to replace the legislation.

Rulings and Interpretations Team
Ministry of Finance
www.gov.bc.ca/consumertaxes

From: Cameron, Samantha FIN:EX
Sent: Tuesday, January 24, 2017 8:50 AM
To: Eggleston, Stephen D FIN:EX
Subject: FW: Rulings questions
Importance: High

Hi Stephen,

Could you please respond to Emily by end of day and cc me?

Regards,

Sam

From: Lewis, Emily FIN:EX
Sent: Monday, January 16, 2017 2:52 PM
To: Cameron, Samantha FIN:EX
Subject: Rulings questions

Hi Samantha,

We've not met, but I'm new in my role as Manager of Audit and Compliance for property transfer tax. I spent some time in Rulings after the return to PST in BC, and we have a small rulings function here in PTB. I've got a couple questions about rulings policy/process on your team as we sort through some issues with new legislation on our team, and I'm hoping you or one of your staff can provide me with some information.

- 1) Do you have topics on which you will not issue rulings?
- 2) Have you had cases where you temporarily didn't answer requests related to a specific topic – complexity/legal issues?
- 3) Do you get ruling requests on your GAAR provisions?

Thanks,

Emily Lewis, CPA, CMA

Manager, Audit & Compliance, Property Transfer Tax

Property Tax Branch, Ministry of Finance

T: (250) 818-6487

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Withheld pursuant to/removed as

s.14

Page 295 to/à Page 303

Withheld pursuant to/removed as

s.14;s.22

Jillings, Duncan FIN:EX

From: Godfrey, Tim FIN:EX
Sent: Tuesday, May 2, 2017 10:39 AM
To: Hawkshaw, Steve FIN:EX
Subject: RE: GAAR Committee

I'll see what else i have on, but will try make it along. Thanks

Tim Godfrey
Strategic Advisor
Ministry of Finance
Ph: (250) 387-9002

From: Hawkshaw, Steve FIN:EX
Sent: Tuesday, May 2, 2017 9:23 AM
To: Godfrey, Tim FIN:EX
Subject: FW: GAAR Committee

Interested? s.22

From: Lewis, Emily FIN:EX
Sent: Monday, May 1, 2017 7:24 PM
To: Hawkshaw, Steve FIN:EX
Subject: FW: GAAR Committee

From: Lewis, Emily FIN:EX
Sent: Monday, May 1, 2017 7:23 PM
To: Hawkshaw, Steve FIN:EX
Subject: GAAR Committee

Mr. Hawkshaw – I forgot to mention today: we are having a kick off meeting for the Revenue Division GAAR Committee – Friday at 1PM. Let me know if you want to attend.

Agenda:

Agreement of ToR
ITB Presentation – Veritas Veracity case
PTT: Emily 5 min overview, Lauren Longbottom 30 min GAAR/Taxable Trustee

Apologies for the late notice. s.22

Emily Lewis, CPA, CMA
Manager, Audit & Compliance, Property Transfer Tax
Property Tax Branch, Ministry of Finance
T: (250) 818-6487

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s.14

The follow are the administrative/technical measures that are on the hit list for moving to the RFL process. s.13

s.13

s.12,s.13

Administrative/Technical Measure	Type	Priority
s.12,s.13		

Bridge, Jannea FIN:EX

From: Hawkshaw, Steve FIN:EX
Sent: October 19, 2017 3:52 PM
To: Godfrey, Tim FIN:EX; Jillings, Duncan FIN:EX
Subject: FW: Note 2018 ATT Budget
Attachments: Note - ATT issues Oct 19 2017.docx

Importance: High
Sensitivity: Confidential

Note from Raluca the APTT / audit powers. I am working it into a housing note. I have also asked Hilary to get a written legal opinion on one of the issues.

From: Dogaru, Raluca FIN:EX
Sent: Thursday, October 19, 2017 11:46 AM
To: Hawkshaw, Steve FIN:EX
Cc: Harley, Hilary M FIN:EX
Subject: Note 2018 ATT Budget
Importance: High
Sensitivity: Confidential

Hi Steve,

I promised I drafted a note including all the identified issues with ^{s.13}
^{s.13} . Where applicable I included the available written advice received from legal
counsel. Let me know if you have questions or concerns. I am going to be in Vancouver tomorrow at a CLE conference
and return in the office on Tuesday.

On another note, I was wondering what is the current status of the ^{s.22} file. Are we
^{s.13,s.22}

Thanks,
Raluca

Raluca Dogaru, M.A, M.P.A
Policy and Legislative Analyst
Property Taxation Branch, MF
778-698-3916

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s.14;s.22;s.13

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Withheld pursuant to/removed as

s.14;s.13

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s.16;s.13

Property Transfer Tax Act Administrative Amendments – Budget 2018

Status:

- Feb 8th – Tim completed first draft of 1st and 2nd readings and Qs and As.
 - Raluca's suggestions incorporated Feb 8th PM.
 - Due to Richard by Feb 9th (Friday).

First Reading:

s.13

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PROPERTY TRANSFER TAX ACT
SECTIONS 56 – 67

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s.12

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Withheld pursuant to/removed as

s.13

Jillings, Duncan FIN:EX

From: Jillings, Duncan FIN:EX
Sent: Monday, March 12, 2018 6:09 PM
To: Hawkshaw, Steve FIN:EX
Subject: Re: GAAR

Do not need to phone me

Sent from my iPhone

On Mar 12, 2018, at 3:41 PM, Hawkshaw, Steve FIN:EX <Steve.Hawkshaw@gov.bc.ca> wrote:

GAAR provisions are common in other tax statutes – as well as SAARS (specific anti avoidance rules) that target specific behaviours

Ontario has a GAAR that applies to their entire Land Transfer Tax Act

<https://www.ontario.ca/laws/statute/90I06#BK26>

Section 12.1

Steve Hawkshaw
Director, LNG and Housing
Tax Policy Branch
Policy and Legislation Division
Ministry of Finance

Phone: 778.698.5824
Fax: 250.387-9061
E-Mail: Steve.Hawkshaw@gov.bc.ca

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s.12;s.14

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s.12;s.14;s.13

Thanks and hope to hear from you soon.

Cheers,
Raluca Dogaru
Policy and Legislative Analyst
Property Taxation Branch, MF
250-387-1246

Excerpt from committee stage:

Hon. M. de Jong: Yes, I'm sure the member would.

I'm relying on a document that was given to me — and I hope it is accurate — relating to the commentary that the member has referred to, where, allegedly, a realtor, in a widely distributed document to clients, said, amongst other things: "It is possible in many cases to assign the presale purchase contract to a family member or a friend who is a Canadian citizen or resident."

The anti-avoidance provisions make clear that if the sole purpose of that kind of a transaction is to avoid the tax, that's a problem. That is problematic. So in that case, that would attract the attention — and did, apparently, attract the attention — of the Real Estate Council.

I'm not going to stand here — and never have — to offer definitive legal pronouncements. But the general proposition around the anti-avoidance provisions is that if someone engages in behaviour or a transaction merely to avoid what would otherwise be the applicable tax, then that is problematic. I think the Real Estate Council, I presume, saw that statement as coming perilously close or falling into that category.

D. Eby: Again, I want to clarify this for all the realtors in B.C. that are watching this very carefully. They are worried about complaints being made to the Real Estate Council. They are concerned about threats of jail. If they advise a client, an international speculator, that they do not have to pay this tax as long as they sell the presale condo before it is complete, before it is registered, are they incorrect? Or is that exactly, in fact, what this law is in front of us?

The fact that the minister is not answering the question is what leads to the concern. We need clarity about what the law says. The property transfer tax is never applied to assignment. Never. It doesn't apply to assignment now. And it's important that the minister says that so that realtors know what they can and can't advise their clients.

Hon. M. de Jong: I hope the member will appreciate that I am in no way trying to evade his question, but the circumstances of a particular transaction are relevant to the answer.

In a circumstance where a foreign national is advised, for example, “Well, just assign this contract. Have it registered at the time that obligation crystallizes and then have it transferred back, or have it held in trust and have it transferred back,” that original assignment can be problematic. I’m not endeavouring to evade. I think I have made it clear that the mechanism that triggers the obligation, in general terms, to pay the property transfer tax is registration. That has not changed.

The mechanism that triggers the obligation, in general terms, around the additional tax is registration. But there are circumstances one can contemplate, where someone will try to avoid payment of the additional tax through an assignment process, that are problematic, and realtors and professionals need to be cautious, in my view, about the nature of the advice they give.

D. Eby: I guess we’re getting somewhere. The minister said: “If the assignment is not a true assignment...” You assign it to somebody but then it’s held in trust, or you assign it to somebody with the agreement they’re going to transfer it back later. Okay. But that’s not what the minister read from that email.

What the minister read from that email is, “You can assign it to a friend or family member who is a Canadian citizen without paying the tax,” which is absolutely true. All of the legal obligations to buy the condo pass to that individual. Title passes to that person, who doesn’t have to pay the tax.

Again, if a realtor advises a client.... Here’s a scenario. I’m an international speculator and I set up a business of buying up presale condos and flipping them before completion date. This is my business. I’ve no intention of avoiding the tax. It’s just what I’m doing. That activity is entirely untaxed under this bill. Isn’t that correct?
[Page 13501]

Hon. M. de Jong: Again, coming back to the example that the member has given and applying it in the context of the legislation before us, where the recommendation was to assign the presale purchase contract to a family member or friend.... In that context, the friend, the Canadian citizen or resident, would be obliged to confirm the circumstances of that assignment, and that would attract the additional tax. Maybe I’m missing something, but in that case, by virtue of their status as a trustee, the tax would apply.

D. Eby: I, as a Canadian citizen, buy a presale condo, lose my job. I’ve got my brother. I assign the contract to my brother to complete the contract. I don’t pay the property transfer tax. The property transfer tax isn’t engaged on the assignment. It’s only engaged when the condo is complete and my brother registers the title.

Why would it be the case in this bill that doesn’t change the property transfer tax, that’s totally based on the property transfer tax...? If a foreign national transfers the property to his or her brother who’s a Canadian citizen and who ultimately registers the title, why, suddenly, would the tax apply in that situation?

Hon. M. de Jong: Because in the amendments, there is a definition of a taxable trustee. Again, in the example that we’re talking about, in that specific circumstance, the additional tax would apply.

Duncan Jillings
Director, Property Taxation
Tax Policy Branch
Ministry of Finance