

"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;

"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 or transferor 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.

Aug 23 – looked at LTSA and Value BC – all looks fine.
s.13; s.15; s.22

s.14; s.22

Prepared July 27, 2021

s.13

s.22

Decision –
s.22

Second proposed transaction is exempt,^{s.13}
s.13

I understand that it is your position that any person who may benefit from a trust at a future date and/or subject to a condition of the trust being fulfilled is a beneficiary for the purpose of the Act.

s.22

s.13; s.22

s.13

Prepared July 27, 2021

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Withheld pursuant to/removed as

s.22

RE: PTT policy analysis request

From: FIN REV PTB Policy and Planning FIN:EX ^{s.15}
s.15

To: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>, FIN REV PTB Policy and Planning
FIN:EX <PTBPolicy@gov.bc.ca>

Cc: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>

Sent: January 10, 2019 2:57:41 PM PST

Received: January 10, 2019 2:57:00 PM PST

Attachments: image003.gif, image004.png

Yes, actually, on a similar note, ^{s.13; s.14}
s.13; s.14

From: Huang, Ying FIN:EX
Sent: January 10, 2019 2:41 PM
To: FIN REV PTB Policy and Planning FIN:EX <PTBPolicy@gov.bc.ca>
Cc: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>
Subject: RE: PTT policy analysis request

Hi Don,

Are you able to give us a sense of which direction we should go? In the past, we don't give straight answer. We usually just telling them that we don't do pre-audits neither provide legal advice. I'm not sure if we should provide the same answer to this one.

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 Policy and Planning FIN:EX
Sent: January 10, 2019 1:27 PM
To: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>
Cc: FIN REV PTB Policy and Planning FIN:EX <PTBPolicy@gov.bc.ca>; Brouwer, Deborah FIN:EX
<Deborah.Brouwer@gov.bc.ca>
Subject: RE: PTT policy analysis request

Certainly Ying, when do you need our response? I will be out of office tomorrow. Would middle of next week work for you?

From: Huang, Ying FIN:EX
Sent: January 10, 2019 10:24 AM
To: FIN REV PTB Policy and Planning FIN:EX <PTBPolicy@gov.bc.ca>
Subject: RE: PTT policy analysis request

Hi Don,

We do need some input from you regarding the question below. I'm wondering if anti-avoidance provision covers scenario like this.

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 Policy and Planning FIN:EX

Sent: January 7, 2019 10:39 AM

To: FIN REV G PTB-PTT Enquiries FIN:EX <PTTENQ@gov.bc.ca>; FIN REV PTB Policy and Planning FIN:EX <PTBPolicy@gov.bc.ca>

Cc: Saunders, Davide FIN:EX <Davide.Saunders@gov.bc.ca>; Wright, Desiree FIN:EX <Desiree.Wright@gov.bc.ca>; Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>

Subject: RE: PTT policy analysis request

Received. Thank you Urmila.

And thank you for bringing the issue about the PTB policy and planning email address to my attention. I'll follow up to get this resolved.

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

Sent: January 7, 2019 10:37 AM

To: FIN REV PTB Policy and Planning FIN:EX <PTBPolicy@gov.bc.ca>

Cc: Saunders, Davide FIN:EX <Davide.Saunders@gov.bc.ca>; Wright, Desiree FIN:EX <Desiree.Wright@gov.bc.ca>; Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>

Subject: FW: PTT policy analysis request

Please see email below. It looks like a policy question.

Best Regards,

Thank you,

Urmila Misra – Operations Analyst

Property Transfer Tax- Ministry of Finance



From:^{s.22}

Sent: January 7, 2019 10:16 AM

To: FIN REV G PTB-PTT Enquiries FIN:EX <PTTENQ@gov.bc.ca>

Subject: PTT policy analysis request

Dear PTT,

I have a client, who is purchasing a vacant lot.^{s.22}

^{s.22}

He contacted me to inquire that, on the date of

completion, whether he can put his 5 yr old daughter (who is a Canadian) on the title as the sole owner. I have read the anti-avoidance rule of the PTT Act, but I was not certain if what he wants me to do is tax-avoidance. My concerns are as follows:

- It is not uncommon for a parent to purchase a property for his/her child. Hence, it may be legitimate for him to do it.
- On one hand, I do not want to be involved in tax avoidance
- On the other hand, I do not want to be negligent to the client's interest, if their request can be fulfilled in a legal way.
- To be honest, the anti-avoidance rule does not provide examples to help us understand.

Thank you for your time. I look forward to your help.

s.22

FW: Advance Ruling Request

From: FIN REV PTB AdvanceRuling FIN:EX ^{s.15}
s.15

To: Hannah, Fraser FIN:EX <Fraser.Hannah@gov.bc.ca>, Demianchuk, Janette FIN:EX
<Janette.Demianchuk@gov.bc.ca>

Cc: Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>

Sent: February 20, 2019 3:59:57 PM PST

Received: February 20, 2019 3:59:00 PM PST

Attachments: image002.png

;

As requested.

From: FIN REV PTB AdvanceRuling FIN:EX
Sent: December 24, 2018 1:44 PM
To: ^{s.22}
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Subject: RE: Advance Ruling Request

Thank you for your inquiry dated ^{s.22} requesting an advance tax ruling as to whether additional transfer tax is payable on the assignment of a contract of purchase and sale.

Advance tax rulings are the Property Transfer Tax (PTT) Administrator's interpretation of the Property Transfer Tax Act (PTTA) as it applies to the specific transaction or series of transactions. The purpose of the advance tax ruling is that of providing clarification around the application of the legislation to a proposed transaction prior to its registration at the Land Title Office (LTO).

As mentioned, advance tax rulings are written advice for proposed transactions resulting in a change of title registrable at the LTO; assignments of contract of purchase and sale do not always result in changes of title immediately registrable at the LTO; hence the PTT Administrator is unable to provide an advance tax ruling on future tax liabilities, including the additional transfer tax application.

It seems that in your request you are looking for a confirmation as to whether the assignment is captured under the PTTA's GAAR provision as a "series of transactions" that are intended to lead to a tax benefit. In your submission, you state that the developer is requiring that you obtain an advance tax ruling to that effect. Since developers are not regulated under the PTTA, the PTT Administrator has no authority to advise or incent a developer to consent or not consent to an assignment of a contract of purchaser and sale. The developer has made this decision based on their own interpretation of the legislation and it is their decision as to how to proceed in regards to this request.

As mentioned, the PTT Administrator is not in the position to assist with offering advice or a comfort letter. For further details and assistance, we suggest you contact your legal representative.

s.22

Page 009 of 310 to/à Page 051 of 310

Withheld pursuant to/removed as

s.22

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
 To: s.22
 Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
 Sent: s.22
 Received:
 Attachments: image002.jpg, image001.jpg, s.22 - Signed with
 enclosed documents.pdf

The Property Transfer Tax Rulings Team acknowledges receipt of your email dated^{s.22} requesting an advance tax ruling (ATR).

The file number^{s.22} has been assigned to your application. Please reference this number in future communications regarding your application.

In your letter, you pose two questions to be answered in the ruling:

1. *Will any of the below proposed transactions attract Property Transfer Tax pursuant to the Property Transfer Tax Act (RSBC 1996, c. 378)?*
2. *If not, will any of the proposed transactions be considered an 'avoidance transaction' as defined by s. 2.001 of the Property Transfer Tax Act, and subject to property transfer tax at any step in the process?*

Your second question relates to the application of section 2.001 (anti-avoidance rule) of the Property Transfer Tax Act (PTTA). A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the PTTA. However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit. So, although we can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the PTTA, we cannot confirm the application or non-application of section 2.001 of the PTTA to any particular transaction outside the context of a post-transaction audit. We are unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place. Accordingly, ATRs cannot rule on whether a proposed transaction constitutes an avoidance transaction.

From your first question, we understand that you are requesting a ruling on whether the proposed transaction will qualify for any of the exemptions from property transfer tax (PTT) contained in section 14 of the PTTA. ATRs will rule on this question.

If you wish, you may revise your submission to state which subsection(s) of section 14 you believe the proposed transaction qualifies for, and explain why you believe the requirements are met.

We will review your submission, and advise you within 5 to 10 business days if any additional documentation is required to process the ATR. If none, we will provide the invoice for the ruling. The ruling will be processed after payment has been received.

Regards,
 Property Transfer Tax Rulings Team
 Property Taxation Branch
 Ministry of Finance

Page 053 of 310

Withheld pursuant to/removed as

s.22

s.22
RE:

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
To: s.22 FIN REV PTB AdvanceRuling FIN:EX
<PTBAdvanceRuling@gov.bc.ca>
Cc: s.22
Sent:
Received:
Attachments: image001.jpg, image002.jpg

Good Morning,

Thank you for your follow up email. We are happy to provide clarification.

Advance tax rulings (ATRs) are the Property Transfer Tax Administrator's (the Administrator) interpretation of the legislation as it applies to the specific transaction or series of transactions proposed in the ruling request submitted with the Property Taxation Branch. The purpose of the advance tax ruling is to provide clarification on the application of the legislation on facts provided by the taxpayer prior to registration of title at the Land Title Office (LTO). Rulings are binding on the Administrator.

In order for the Administrator to provide an informed interpretation of the legislation as it applies to a transaction, the Administrator must have sufficient information about the transaction. It is the Administrator's interpretation that sufficient information to make a determination about whether a particular transaction constitutes an avoidance transaction is available only in a post-transaction audit. Sufficient information cannot be available before the transaction has occurred.

Please note that this interpretation applies only to section 2.001 of the Act. The Administrator is able to provide an advance ruling on other exemptions as stated in the Act.

We apologize for any lack of clarity in Bulletin 021 and we will assess whether an update is required to provide clarity about the availability of a ruling on the application of section 2.001 to a proposed transaction.

Regards,

Property Transfer Tax Rulings Team

Property Taxation Branch

Ministry of Finance

From: s.22
Sent: March 26, 2019 10:54 AM
To: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Cc: s.22
Subject: RE: s.22

Good morning,

We have reviewed the response to our request for an Advance Ruling in this matter, and we do not understand your statement that you 'cannot confirm the application or non-application of section 2.001 of the PTTA to any particular transaction outside the context of a post-transaction audit'.

We refer you to the Ministry of Finance Tax Bulletin 021 which clearly states that you will provide an advanced ruling on proposed transactions (see <https://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/ptt-021-advance-tax-rulings.pdf>).

We would be grateful for clarification on this issue.

Sincerely,

s.22

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Sent:^{s.22}

To^{s.22}

Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Subject^{s.22}

The Property Transfer Tax Rulings Team acknowledges receipt of your email dated^{s.22} requesting an advance tax ruling (ATR).

The file number^{s.22} has been assigned to your application. Please reference this number in future communications regarding your application.

In your letter, you pose two questions to be answered in the ruling:

1. *Will any of the below proposed transactions attract Property Transfer Tax pursuant to the Property Transfer Tax Act (RSBC 1996, c. 378)?*
2. *If not, will any of the proposed transactions be considered an 'avoidance transaction' as defined by s. 2.001 of the Property Transfer Tax Act, and subject to property transfer tax at any step in the process?*

Your second question relates to the application of section 2.001 (anti-avoidance rule) of the Property Transfer Tax Act (PTTA). A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the PTTA. However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit. So, although we can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the

PTTA, we cannot confirm the application or non-application of section 2.001 of the PTTA to any particular transaction outside the context of a post-transaction audit. We are unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place. Accordingly, ATRs cannot rule on whether a proposed transaction constitutes an avoidance transaction.

From your first question, we understand that you are requesting a ruling on whether the proposed transaction will qualify for any of the exemptions from property transfer tax (PTT) contained in section 14 of the PTTA. ATRs will rule on this question.

If you wish, you may revise your submission to state which subsection(s) of section 14 you believe the proposed transaction qualifies for, and explain why you believe the requirements are met.

We will review your submission, and advise you within 5 to 10 business days if any additional documentation is required to process the ATR. If none, we will provide the invoice for the ruling. The ruling will be processed after payment has been received.

Regards,
Property Transfer Tax Rulings Team

Property Taxation Branch

Ministry of Finance

RE: Public enquiry

From: Hardv. Donald FIN:EX^{s.15}
s.15

To: de Wynter, Devon FIN:EX <Devon.deWynter@gov.bc.ca>
Sent: April 18, 2019 9:52:14 AM PDT
Received: April 18, 2019 9:52:00 AM PDT

Hi Devon, no I did not mean I would respond to^{s.22} directly. Sorry if that was unclear. Rather, I meant that I was suggesting a response to you.

From: de Wynter, Devon FIN:EX
Sent: April 18, 2019 8:12 AM
To: Hardy, Donald FIN:EX <Donald.Hardy@gov.bc.ca>
Subject: RE: Public enquiry

Hi Don,

I just want to clarify something. When you say "I will respond", does that mean you are emailing^{s.22} yourself? Or this was you providing your response for me to email to him. At first I thought it was the former, but then I thought about it, and I'm not so sure. If you did email him, could you please provide me with a copy of your response so I can put it in our folder for responses to enquiries.

Thanks,
Devon

From: Hardy, Donald FIN:EX
Sent: April 16, 2019 2:57 PM
To: de Wynter, Devon FIN:EX <Devon.deWynter@gov.bc.ca>
Cc: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>; Brouwer, Deborah FIN:EX <Deborah.Brouwer@gov.bc.ca>
Subject: RE: Public enquiry

Hi Devon,

I will respond to^{s.22} questions in the order he writes them:

- For the sake of 2(7), I am confident that no period has been prescribed.
- Section 2.0001 pertains to "anti-avoidance." We do not answer hypothetical questions on the anti-avoidance provisions of PTTA as the decision on whether an avoidance transaction occurred and on the resulting consequences to the taxpayer can only be determined through a post-transaction audit.

s.13; s.14

From: de Wynter, Devon FIN:EX
Sent: April 15, 2019 9:29 AM
To: Hardy, Donald FIN:EX <Donald.Hardy@gov.bc.ca>
Cc: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>
Subject: Public enquiry

Don, as discussed, we are looking to see if any filing period has been prescribed related to Section 2(5) and (7) of the PTTA.

Furthermore, we are looking for a general response to the question regarding Section 2.001(3).

Thank you,

Devon

From: s.22
Sent:
To: FIN REV G PTB-PTT Enquiries FIN:EX <PTTENQ@gov.bc.ca>
Subject: Questions

Hello.

I have a couple of questions:

- Has there been anything prescribed for the purposes of s.2(7)?
- s.2.001(3) states that "...the administrator may determine the tax consequences to a transferee or transferor...". I understand PTT is assessed against the transferee, and hence if there is a tax benefit that is denied, the assessment under the avoidance provision would be against the transferee. Can you please explain the circumstances where a transferor could have "tax consequences" assessed under this provision.

Thank you,

s.22



s.22

April 29, 2019

Dear ^{s.22}

Re: Property Transfer Tax Advance Ruling ^{s.22}

s.22

I am responding to your letter dated March 5, 2019 requesting an advance tax ruling on the application of the property transfer tax (PTT) for a transfer proposed by your client, ^{s.22} . Thank you for the payment received in full.

Background

I understand the facts of your request are as follows:

1. The property is legally described as:
^{s.22}

(the Property)

2. The registered owner on title is
^{s.22}

3. ^{s.22}

- 4.

5. ^{s.13; s.22}

6. s.22 are both Canadian citizens.
7. Under the first proposed transaction, s.22 will transfer his interest in the Property to s.22 as trustee of the Trust.
8. Under the second proposed transaction, s.22 will resign as trustee, appointing s.22 as sole trustee of the Trust. s.22 will register on title as trustee of the Trust.

Ruling Request

You are requesting a ruling on:

1. whether the transfer of title to the Property from s.22 to s.22 as sole trustee of the Trust is exempt from PTT.
2. whether the subsequent transfer of title to the Property from s.22 as trustee of the Trust to s.22 as trustee of the Trust is exempt from PTT.

You have also requested a ruling affirming that both of the proposed transactions do not constitute “avoidance transactions” as defined in the Property Transfer Tax Act (the Act), section 2.001(1). It is the Ministry of Finance’s policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although I can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, I cannot confirm the application or non-application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

I am unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

Ruling

It is my ruling that the proposed transfer of title to s.22 as sole trustee of the Trust does not qualify for an exemption from PTT, and is fully taxable.

It is my ruling that the proposed transfer from s.22 as trustee of the Trust to s.22 as trustee of the Trust does not qualify for an exemption from PTT, and is fully taxable.

Legislation

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

Section 14(3)(d) provides an exemption where the transfer is from a transferor who is a trustee, registered in that capacity under the *Land Title Act*, of a trust that is settled during the lifetime of the settlor if the transferee is a beneficiary of the trust; the transferee beneficiary is a related individual of the settlor of the trust; and, the land transferred is a recreational residence or was the principal residence of either the settlor for a continuous period of at least 6 months immediately before the date of transfer or of the transferee beneficiary for that period.

Section 14(4)(q) of the Act provides an exemption for a transfer from a transferor to a transferee, each of whom is registered under the *Land Title Act* if the change in trustee does not relate directly or indirectly to a change in beneficiaries or class of beneficiaries or to a change in the terms of the trust. The trustees must make a declaration that there are no changes in the beneficiaries, class of beneficiaries or in the terms of the trust in the property transfer tax return submitted with the application for registration at the LTO.

Section 14(1) defines "related individual" to mean a related individual who is a Canadian citizen or a permanent resident of Canada.

Section 1(1) of the Act defines "related individual" as: a person's spouse, child, grandchild, greatgrandchild, parent, grandparent or great-grandparent; the spouse of a person's child, grandchild or greatgrandchild; or the child, parent, grandparent or great-grandparent of a person's spouse.

Analysis

Section 14(3)(d) applies to transfers from a trustee of a trust settled during the lifetime of the settlor to a beneficiary of the trust.

In order for a transaction to qualify for an exemption under section 14(3)(d), three additional requirements must be satisfied:

1. The trustee must be registered under the *Land Title Act* as the trustee of the land transferred.
2. The settlor of the trust and the transferee beneficiary must be related individuals.
3. The land transferred must be a family farm or a recreational residence, or it must have been the principal residence of either the settlor or of the transferee beneficiary for a continuous period of at least six months immediately before the date of the transfer.

s.22 settled the Trust during his lifetime.^{s.22} meet the Act's definition of related individuals. As well, the Property will have served as the principal residence of s.22 for six months immediately prior to the transfer.

While s.22 is named as a beneficiary in the Trust, the first proposed transfer will involve her in the capacity of a trustee and not as a beneficiary.

s.22 is currently registered on title as owner of the Property in his personal capacity, and not as a trustee.

Accordingly, the proposed transfer from s.22 to s.22 as trustee does not satisfy the requirements listed under section 14(3)(d) for an exemption from PTT. The transfer is, therefore, fully taxable.

The second transfer proposes that s.22 as trustee of the Trust will transfer title to s.22 s.22 as trustee of the same Trust.

In order for a transaction to qualify for an exemption under Section 14(4)(q), both the transferor and transferee must be registered under the *Land Title Act* as a trustee of the land.^{s.22} will not be registered as a trustee at the time of the proposed transfer.

Accordingly, the proposed transfer from s.22 as trustee to s.22 as trustee does not satisfy the requirements under section 14(4)(q) for an exemption from PTT. The proposed transaction is, therefore, fully taxable.

Disclaimer

This ruling is issued for the purposes of these transactions only and with the understanding that all of the facts provided by you or your clients are accurate and complete. In the event the Act is 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 advance 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.

Yours truly,

Lorna Pritchard

Acting Director, Property Transfer Tax



s.22

April 29, 2019

Dear ^{s.22}

Re: Property Transfer Tax Advance Ruling ^{s.22}
^{s.22}

I am responding to your letter dated March 5, 2019 requesting an advance tax ruling on the application of the property transfer tax (PTT) for a transfer proposed by your clients, ^{s.22}. Thank you for the payment received in full.

Background

I understand the facts of your request are as follows:

1. The property is legally described as:
^{s.22}

(the Property)

2. The registered owner on title is
^{s.22}

3. ^{s.22} both Canadian citizens, are spouses.

^{s.22}
4

5. ^{s.22}
6. Prior to the transactions pertaining to the Property occurring, ^{s.22} plans to resign as trustee of the Trust.
7. After resigning, ^{s.22} will transfer the Property to ^{s.22} as sole trustee of the Trust. The registered owner on title will be ^{s.22}
8. Subsequently, ^{s.22} in his capacity of sole trustee, will appoint ^{s.22} as a co-trustee, and a partial interest in the Property will be transferred from ^{s.22} to ^{s.22}

Ruling Request

You are requesting a ruling on:

- A. whether the transfer of title to the Property from ^{s.22} to ^{s.22} ^{s.22} is exempt from PTT, and
- B. whether the subsequent transfer of a partial interest in the Property from ^{s.22} to ^{s.22} is exempt from PTT.

You have also requested a ruling affirming that both of the proposed transactions do not constitute “avoidance transactions” as defined in the Property Transfer Tax Act (the Act), section 2.001(1).

In response to your request for a ruling on avoidance transactions, I will advise you that it is the Ministry of Finance’s policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although I can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, I cannot confirm the application or non-application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

I am unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

Ruling

Ministry of Finance Revenue Division
Property Taxation Branch

Mailing Address:
PO Box 9446 Stn Prov Govt
Victoria BC V8W 9V6

Website: gov.bc.ca/propertytransfertax
Email: PTTENQ@gov.bc.ca

Telephone: 250 387-0555
Toll free: 1 888 355-2700

It is my ruling that the proposed transfer of title from ^{s.22} to ^{s.22} does not qualify for an exemption from PTT and is fully taxable.

It is my ruling that the proposed transfer of a partial interest from ^{s.22} to ^{s.22} does not qualify for an exemption from PTT and is fully taxable.

Legislation

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

Section 14(3)(d) provides an exemption where the transfer is from a transferor who is a trustee, registered in that capacity under the *Land Title Act*, of a trust that is settled during the lifetime of the settlor if the transferee is a beneficiary of the trust; the transferee beneficiary is a related individual of the settlor of the trust; and, the land transferred is a recreational residence or was the principal residence of either the settlor for a continuous period of at least 6 months immediately before the date of transfer or of the transferee beneficiary for that period.

Section 14(4)(q) of the Act provides an exemption for a transfer from a transferor to a transferee, each of whom is registered under the *Land Title Act* if the change in trustee does not relate directly or indirectly to a change in beneficiaries or class of beneficiaries or to a change in the terms of the trust. The trustees must make a declaration that there are no changes in the beneficiaries, class of beneficiaries or in the terms of the trust in the property transfer tax return submitted with the application for registration at the LTO.

Section 14(1) defines "related individual" to mean a related individual who is a Canadian citizen or a permanent resident of Canada.

Section 1(1) of the Act defines "related individual" as: a person's spouse, child, grandchild, greatgrandchild, parent, grandparent or great-grandparent; the spouse of a person's child, grandchild or greatgrandchild; or the child, parent, grandparent or great-grandparent of a person's spouse.

Analysis

The Act, in sections 14(3)(d), (d.1) and (d.2) outlines exemptions for transfers involving transfers to trustees of a trust settled during the lifetime of the settlor. Since sections 14(3)(d.1) and (d.2) apply only to transfers involving a family farm, these sections are not applicable.

Section 14(3)(d) applies to transfers from a trustee of a trust settled during the lifetime of the settlor to a beneficiary of the trust.

In order for a transaction to qualify for an exemption under section 14(3)(d), three additional requirements must be satisfied:

1. The trustee must be registered in that capacity under the *Land Title Act* as the trustee of the land transferred.
2. The settlor of the trust and the transferee beneficiary must be related individuals.
3. The land transferred must be a family farm or a recreational residence, or it must have been the principal residence of either the settlor or of the transferee beneficiary for a continuous period of at least six months immediately before the date of the transfer.

s.22 settled the Trust during her lifetime. s.22 meet the Act's definition of related individuals. As well, the Property will have served as the principal residence of s.22 for six months prior to the transfer.

While s.22 is named as a beneficiary in the Trust, the first proposed transfer will involve him in the capacity of a trustee and not as a beneficiary.

s.22 is currently registered on title as owner of the Property in her personal capacity, and not as a trustee.

Accordingly, the proposed transfer from s.22 to s.22 does not satisfy the requirements listed under section 14(3)(d) for an exemption from PTT. The transfer is, therefore, fully taxable.

In order for a transaction to qualify for an exemption under Section 14(4)(q), both the transferor and transferee must both be registered under the *Land Title Act* as a trustee of the land. At the time of the second proposed transfer, s.22 will not be registered as a trustee at the time of the proposed transfer.

Accordingly, the proposed transfer of a partial interest from s.22 to s.22 s.22 does not satisfy the requirements under section 14(4)(q) for an exemption from PTT. The proposed transaction is, therefore, fully taxable.

Disclaimer

This ruling is issued for the purposes of these transactions only and with the understanding that all of the facts provided by you or your clients are accurate and complete. In the event the Act is 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 advance 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.

Yours truly,

Lorna Pritchard

Acting Director, Property Transfer Tax

RE: PTT s 2.001 Inquiry

From: Hardy, Don FIN:EX s.15
s.15
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: May 16, 2019 11:04:55 AM PDT
Received: May 16, 2019 11:04:00 AM PDT
Attachments: image001.png

Hi Lorna,

s.13; s.14

Yes, we have received similar inquiries before.

s.13; s.14

s.13; s.14

. I am available if you have any questions about this response.

A transaction that is primarily arranged for a bona fide purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although we can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, we cannot confirm the application or non-application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

We are unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

From: Pritchard, Lorna FIN:EX
Sent: May 16, 2019 10:51 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: FW: PTT s 2.001 Inquiry

Hi Don, we received this enquiry below. I recall that we have provided some responses to this question below (maybe Ralucca). Can you please draft up a response.

Thank you
Lorna

From: FIN REV G PTB-PTT Enquiries FIN:EX
Sent: May 16, 2019 10:34 AM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Subject: FW: PTT s 2.001 Inquiry

Hi Lorna,

Here is the email I had mentioned.

Have a good day,
Beth 😊

Beth Mowatt

Compliance Analyst I Property *Transfer* Taxation Branch

Ministry of Finance

■ Local Phone 778-698-3959

<http://www.gov.bc.ca>

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We are concerned about protecting your privacy. Please be aware that sending personal information via e-mail can expose the information to unwanted parties. If you don't feel comfortable using e-mail to transfer your sensitive information, please contact us via phone or regular mail.

From^{s.22}

Sent:

To: FIN REV G PTB-PTT Enquiries FIN:EX <PTTENQ@gov.bc.ca>

Subject: PTT s 2.001 Inquiry

Good morning,

I am seeking information on the above GAAR provision recently added to the Act. Specifically, we are hoping you can provide a practice directive on how to advise clients going forward. Any information on the matter would be most appreciated.

Kind regards,

s.22

Page 070 of 310 to/à Page 073 of 310

Withheld pursuant to/removed as

s.22

Page 075 of 310

Withheld pursuant to/removed as

s.22

Page 077 of 310 to/à Page 078 of 310

Withheld pursuant to/removed as

s.22



TAX MATTERS

Six reasons to set up an 'alter ego' trust



TIM CESTNICK >

SPECIAL TO THE GLOBE AND MAIL

PUBLISHED FEBRUARY 26, 2014

UPDATED MAY 11, 2018

0 COMMENTS



Tim Cestnick is president of WaterStreet Family Offices, and author of several tax and personal finance books. tcestnick@waterstreet.ca

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351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1
Phillip Crawley, Publisher



s.22

September 11, 2019

s.22

Dear

Re: Property Transfer Tax Advance Ruling

s.22

s.22

I am responding to your letter dated August 1, 2019 requesting an advance tax ruling on the application of the property transfer tax (PTT) for a transfer proposed by your client,

s.22

Thank you for the payment received in full.

Background

I understand the facts of your request are as follows:

1. The property is legally described as:

s.22

(the Property)

2. The registered owner on title is

s.22

3. The Property is classified as residential under the *BC Assessment Act*.

4. s.22
5. s.22
6. Two transactions involving the Property are proposed.
7. Under the first proposed transaction, s.22 will transfer all of his interest in the Property to s.22 as trustee of the Trust.
8. Subsequently, s.22 will resign as trustee. Under the terms of the Trust, s.22 will then become trustee. As a result, title will transfer from s.22 to s.22
9. s.22 is s.22 son.
10. Both s.22 are Canadian citizens.

Ruling Request

You are requesting a ruling on:

- a) whether the transfer of title to the Property from I s.22 to s.22 is exempt from PTT, and
- b) whether the subsequent transfer of title from s.22 to s.22 is exempt from PTT.

You have also requested a ruling affirming that both of the proposed transactions do not constitute “avoidance transactions” as defined in the Property Transfer Tax Act (the Act), section 2.001(1).

In response to your request for a ruling on avoidance transactions, I will advise you that it is the Ministry of Finance’s policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although I can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, I cannot confirm the application or non-

application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

I am unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

Ruling

It is my ruling that the proposed transfer of title from ^{s.22} to ^{s.22} is exempt from PTT.

It is my ruling that the subsequent proposed transfer of title from ^{s.22} to ^{s.22} does not qualify for an exemption from PTT and is fully taxable.

Legislation

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

The Act – in section 14(3)(b) - provides an exemption from PTT for transfers to related individuals, subject to certain conditions.

Section 14(3)(b) states in part:

If a taxable transaction entitles the transferee, on compliance with the *Land Title Act*, to registration in a land title office, that transferee is exempt from the payment of tax if the taxable transaction is a transfer within any of the following descriptions:

(b) a transfer from a transferor ... to a transferee who is a related individual, if the land transferred has been the principal residence of either the transferor for a continuous period of at least 6 months immediately before the date of transfer or of the transferee for that period.

Section 14(1) defines “principal residence” as a parcel of land:

(a) on which the person in relation to whose residency the exemption under this section is claimed usually resided and used as his or her home,
(b) on which there are improvements that are designed to accommodate and that are used only to accommodate 3 or fewer families,
(c) on which all the improvements are classified under section 19 of the Assessment Act as property used for residential purposes, and
(d) that is not larger than 0.5 ha in area;

Section 14(4)(q) of the Act provides an exemption for a transfer from a transferor to a transferee, each of whom is registered under the *Land Title Act* if the change in trustee

Ministry of Finance Revenue Division
Property Taxation Branch

Mailing Address:
PO Box 9446 Stn Prov Govt
Victoria BC V8W 9V6

Website: gov.bc.ca/propertytransfertax
Email: PTTENQ@gov.bc.ca

Telephone: 250 387-0555
Toll free: 1 888 355-2700

does not relate directly or indirectly to a change in beneficiaries or class of beneficiaries or to a change in the terms of the trust. The trustees must make a declaration that there are no changes in the beneficiaries, class of beneficiaries or in the terms of the trust in the property transfer tax return submitted with the application for registration at the LTO.

Section 14(1) defines "related individual" to mean a related individual who is a Canadian citizen or a permanent resident of Canada.

Section 1(1) of the Act defines "related individual" as: a person's spouse, child, grandchild, greatgrandchild, parent, grandparent or great-grandparent; the spouse of a person's child, grandchild or greatgrandchild; or the child, parent, grandparent or great-grandparent of a person's spouse.

Analysis

First Proposed Transaction:

To reiterate, for a transfer to qualify for an exemption from PTT under section 14(3)(b), the land must have served as the principal residence of either the transferor or the transferee for a period of six months immediately before the date of the transfer. As well, the transferee(s) must satisfy the definition in the Act of a related individual, and the land cannot be larger than 0.5 hectares in size.

The Property not only is designed to accommodate fewer than 3 families, but is also classified as residential. As well, you have advised that the Property will have served as the principal residence of ^{s.22} for six months immediately before the transfer. Finally, the Property is not larger than 0.5 hectares in size.

As ^{s.22} son, ^{s.22} satisfies the Act's requirements as a related individual.

All of the requirements listed under 14(3)(b) are satisfied. The transfer is exempt from PTT.

Second Proposed Transaction:

The Act exempts transfers of land between different trustees of the same trust under limited circumstances as listed under section 14(4)(q). To qualify for this exemption, the transferor and the transferee trustees must both "be registered under the *Land Title Act* as a trustee of the land." Eligibility for this exemption must be determined on the capacity in which the trustee is registered under the *Land Title Act*.

At the time of the second proposed transaction, ^{s.22} will be eligible to become trustee under the terms of the Trust. ^{s.22} will not, however, be registered under the *Land Title Act* as a trustee. Only ^{s.22} will satisfy the registration requirement.

Accordingly, the exemption listed under section 14(4)(q) is not available for this transaction. The transaction is, therefore, fully taxable.

Disclaimer

This ruling is issued for the purposes of these transactions only and with the understanding that all of the facts provided by you are accurate and complete. In the event the Act is 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 provided the transactions are completed in the manner described in the advance tax ruling request.

Please attach a copy of this ruling to the property transfer tax return submitted with the application for registration at the Land Title Office, or if you submit the application for registration electronically, please include the reference number (ATR^{s.22} on the electronic tax return.

After registration, the transactions for which this advance 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 to determine the accurate application of the ruling.

Yours truly,

Lorna Pritchard

Acting Director, Property Transfer Tax

RE: Policy assistance request - Anti-avoidance

From: Hardy, Don FIN:EX^{s.15}
s.15

To: Huang, Ying FIN:EX <Ying.Huang@gov.bc.ca>, Henderson, Jeff FIN:EX
<Jeff.Henderson@gov.bc.ca>

Cc: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>

Sent: September 11, 2019 8:48:06 AM PDT

Received: September 11, 2019 8:48:00 AM PDT

Hi Ying, we are working on this, although it may take a while.^{s.13; s.14}

From: Huang, Ying FIN:EX

Sent: August 26, 2019 11:37 AM

To: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>

Cc: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Subject: RE: Policy assistance request - Anti-avoidance

Thanks Jeff.

s.15; s.22

s.13

s.13

I don't have

a specific timeline, but would be appreciated if we could put this request on the priority list next to the web form project.

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: Henderson, Jeff FIN:EX

Sent: August 26, 2019 10:55 AM

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

Cc: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Subject: RE: Policy assistance request - Anti-avoidance

Hi Ying,

I'll have Don work with you on this one. What is your timeline?

Don - Can you please work on analyzing Ying's questions below.

I'm pretty sure Raluca mentioned that Rev Div has a committee regarding any potential use of the general anti-avoidance rules under any of the tax statutes. We want to make sure that these provisions are only applied in appropriate circumstances.

We would need to consult with this committee before any action is taken.

Thx,

Jeff

From: Huang, Ying FIN:EX
Sent: August 20, 2019 2:10 PM
To: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Cc: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: Policy assistance request - Anti-avoidance

Hi Jeff,

We are requesting policy assistance s.13; s.15
s.13; s.15

The following are some relevant facts from the case:
s.15; s.22

Thanks,

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

RE: Tax Avoidance

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>, Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Sent: November 19, 2019 12:09:57 PM PST
Received: November 19, 2019 12:09:59 PM PST
Hi Don.

s.13

Nothing is done at this point.

s.13

They have called me on different situations in the past and my thought wasIf they are following our legislation and working around it, it would not be avoidance. If they are falsely declaring (saying two people are husband/wife) when they are not....that could be deemed as Tax Avoidance. But I am not expert on this as its fairly new.

With so many people now transferring to "TRUSTS" under the Income Tax Act, to get away from probate fees, I seem to be asked this on a more frequent basis.

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: November 19, 2019 10:29 AM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>; Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Cc: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Subject: RE: Tax Avoidance

Trudie, just curious about how this is proposed? We've had two ATRs regarding this kind of transaction – father is on title, and plans to transfer title to father in trust. To get an exemption father will first transfer to son as a trustee. Then son will resign as trustee and appoint father as replacement trustee. In both cases, we ruled the that transaction from son as trustee to father as trustee is taxable.

In both ATR applications, they also asked for a ruling that the proposed transactions were not avoidance transactions. We did not provide a ruling on this question. Here is the response we provided:

You have also requested a ruling affirming that both of the proposed transactions do not constitute "avoidance transactions" as defined in the Property Transfer Tax Act (the Act), section 2.001(1). In response to your request for a ruling on avoidance transactions, I will advise you that it is the Ministry of Finance's policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although I can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, I cannot confirm the application or non-application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

I am unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: November 19, 2019 10:00 AM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE: Tax Avoidance

Are they asking whether it is tax avoidance? We don't provide any advice on whether it is or isn't – Don uses a disclaimer – let's discuss

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: November 19, 2019 9:57 AM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE: Tax Avoidance

The transaction has not happened yet. Is this tax avoidance or working around the legislation?

From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: November 19, 2019 9:54 AM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE: Tax Avoidance

Hmmm....this may be considered tax avoidance. I know that many transfers occur in stages to 'avoid' tax but my understanding is that usually the transferees have an interest in the property. In this case, it sounds as though the daughter does not have an interest in the property but only is only taking title to avoid taxes. Don, is this a reasonable characterization?

Section 2.001 (ATT Anti Avoidance Rule) only applies to ATT.

But Administrative Penalties may apply under Section 34.1 (e) if it is tax avoidance.

s.13

Has this transaction occurred yet or are they asking?

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: November 18, 2019 4:37 PM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Subject: Tax Avoidance

Hi Lorna

I have a situation that I am looking at where the property is in the name of a "Father". At the end of the day, they want this property to be in the Fathers name "IN TRUST". To do this it would be taxable.

Would we be concerned if they did the transfer in two steps (1 day apart) and transferred the property from the "Father" to his daughterthen another transfer from the daughter to her "father IN TRUST". This could be looked at as Tax Avoidance? There would be no tax if they did this in 2 steps but my concern is the tax avoidance. The property is over 3 million dollars.

What are your thoughts?

Trudie Gysbers
Supervisor Operations

RE: Anti-avoidance - PTT rulings

From: Hardy, Don FIN:EX ^{s.15}
s.15

To: Demianchuk, Janette FIN:EX <Janette.Demianchuk@gov.bc.ca>
Sent: April 16, 2020 6:10:49 AM PDT
Received: April 16, 2020 6:10:00 AM PDT

No problem, Janette. Always pleased to assist. Just curious, what do you need a template for? E.g., are the taxpayers asking for a ruling that SVT's anti-avoidance provisions do not apply?

From: Demianchuk, Janette FIN:EX <Janette.Demianchuk@gov.bc.ca>
Sent: April 16, 2020 6:08 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE: Anti-avoidance - PTT rulings

Thanks Don!

Now that I read this, I realize I've asked you for this before. Sorry about that!

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: April 15, 2020 4:55 PM
To: Demianchuk, Janette FIN:EX <Janette.Demianchuk@gov.bc.ca>
Subject: RE: Anti-avoidance - PTT rulings

Hi Janette, yes, we have a template re anti-avoidance ^{s.13; s.14}

But I don't know if that will suffice for your purposes. It is used only to decline to provide an advance ruling on whether a proposed transaction is an avoidance transaction.

We use this template only when people ask us to provide a binding advance ruling that the proposed transaction is not an avoidance transaction. Our template tells them that we cannot provide this type of a ruling in advance of transaction. I'll insert language we used in an ATR that asked us – in part – to confirm that a set of transactions would not be considered as avoidance transactions. I'm available.

You have also requested a ruling affirming that both of the proposed transactions do not constitute "avoidance transactions" as defined in the Property Transfer Tax Act (the Act), section 2.001(1).

In response to your request for a ruling on avoidance transactions, I will advise you that it is the Ministry of Finance's policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although I can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, I cannot confirm the application or non-application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

I am unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

From: Demianchuk, Janette FIN:EX <Janette.Demianchuk@gov.bc.ca>

Sent: April 15, 2020 2:58 PM

To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Subject: Anti-avoidance - PTT rulings

Hi Don,

I'm wondering if you have templated language that you use in your rulings when responding to inquires that references the anti-avoidance provision under PTT? For example, if it is clear that someone is trying to set up their affairs to avoid taxes. We were discussing situations for spec tax when we would like to include some language referencing the SVT anti-avoidance provision, and thought we would check with you first to see if there was existing language that we could tailor for SVT purposes.

Thanks!

Janette

RE: Advance Tax Ruling Request

From: s.22
To: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: May 7, 2020 2:14:06 PM PDT
Received: May 7, 2020 2:14:11 PM PDT
Attachments: image001.jpg

I acknowledge receipt of your response to my inquiry. Thank you.

Best regards,

s.22

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: May 7, 2020 1:56 PM
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Subject: RE: Advance Tax Ruling Request

s.22

We understand that you are requesting an advance tax ruling on whether the transaction described in your email is an “avoidance transaction” as defined in section 2.001(1).

It is the Ministry of Finance’s policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although we can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, we cannot confirm the application or non- application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

In other words, we are unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

Regards,

Property Transfer Tax Rulings Team
Property Taxation Branch
Ministry of Finance

s.22

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Withheld pursuant to/removed as

s.22

RE: Is it Tax avoidance or greedy developer?

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: October 2, 2020 1:54:55 PM PDT
Received: October 2, 2020 1:54:55 PM PDT
The Property Transfer Tax Rulings Team acknowledges receipt of your email dated s.22

We understand that you are asking for an advance ruling as to whether the assignment of a contract of purchase and sale constitutes an "avoidance transaction" as defined under the *Property Transfer Tax Act* (PTTA), section 2.001. It seems that in your request you are looking for a confirmation that the assignment is not captured under the PTTA's Avoidance provision as a "series of transactions" that are intended to lead to a tax benefit. For your reference, I will insert the language of section 2.001 below.

"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;

"transaction" includes an arrangement or event.

Advance tax rulings are the Property Transfer Tax (PTT) Administrator's interpretation of the PTTA as it applies to the specific transaction or series of transactions. The purpose of the advance tax ruling is that of providing clarification around the application of the legislation to a proposed transaction prior to its registration at the Land Title Office (LTO).

As mentioned, advance tax rulings are written advice for proposed transactions resulting in a change of title registrable at the LTO; assignments of contract of purchase and sale do not always result in changes of title immediately registrable at the LTO; hence the PTT Administrator is unable to provide an advance tax ruling on future tax liabilities concerning assignments, including whether the assignment constitutes an avoidance transaction.

From your submission, we understand the developer is refusing to consent to an assignment proposed by your client. Since developers are not regulated under the PTTA, the PTT Administrator has no authority to advise or incent a developer to consent or not consent to an assignment of a contract of purchase and sale. The developer has made this decision based on their own interpretation of the legislation and it is their decision as to how to proceed in regard to this request.

As mentioned, the PTT Administrator is not in the position to assist with offering advice or a comfort letter. For further details and assistance, we suggest you follow up with your legal representative.

Regards,

Property Transfer Tax Rulings Team
Property Taxation Branch
Ministry of Finance

Page 122 of 310

Withheld pursuant to/removed as

s.22

RE:

From: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: October 2, 2020 1:55:01 PM PDT
Received: October 2, 2020 1:55:01 PM PDT

Hi Lorna,

No, 2.001 applies to all tax under the PTTA. Prior to 2018 it applied to transactions under 2.02 only, but the section was amended (and moved) in 2018 to apply to the Act generally. Unfortunately, they left the marginal note the same which makes it a bit confusing, but generally the margin note (the title to each section) has no legal effect.

Thx,

Jeff

From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: October 2, 2020 11:57 AM
To: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE: s.22

Hi,

We should bring in Bailey since she is more familiar with the audits. And maybe Trudie as she deals a lot with trusts.

....and thank you for the clarification on the 2 sections. One questions, does 2.001 only apply to ATT?

.

From: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Sent: October 2, 2020 10:25 AM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE:s.22

Hi Lorna,

Don and I discussed this morning and I've sent you a meeting invite for Monday.

I think you're points are good to consider and I'd like to discuss how audit looks at the anti-avoidance rule. The one clarification I'd provide is that we're talking about s. 2.001 (general anti-avoidance rule) and not s. 34.2 (administrative penalties). The latter contemplates situations where the taxpayers has tried to mislead the Ministry while the former is meant to capture any transaction(s) that are carried out for the purpose only of avoiding tax.

Thx,

Jeff

From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: October 1, 2020 5:59 PM
To: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Subject: RE: s.22

Hi Jeff,

s.13

From: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Sent: September 26, 2020 7:38 AM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Subject: FW:s.22

Hi Lorna,

Don and I discussed this ATR yesterday and I suggested we get your input (and potentially Steven's).

This is the 3rd ATR request for the same transaction so we would like to provide a warning re. the avoidance transaction provision, but wanted to get your thoughts.

Let me know if you'd like to discuss.

Thx,

Jeff

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: September 25, 2020 11:42 AM
To: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Subject: FW:s.22

Hi Jeff,

Thanks for your assistance on this one. Here is the written request for another ruling regarding the transferees and the property^{s.22}

s.22

As discussed, here is a draft email to send in acknowledgement.

"The Property Transfer Tax Rulings Team acknowledges receipt of your letter dated ^{s.22} In your letter, you describe proposed transactions and ask for an advance ruling declaring these transactions as exempt from property transfer tax (PTT).

The transactions concern the same transferors and transferees as well as the same property discussed in ^{s.22} ^{s.22}. In your ^{s.22} letter, you propose to split the existing trust registered against the property in order to achieve a favourable ruling.

Before commencing with the ruling, we will clarify a limitation of ATRs. Specifically, ATRs do not rule on whether a proposed transaction constitutes an "avoidance transaction" as defined under the PTTA, section 2.0001. The PTTA defines "avoidance transaction", in part, as *"a transaction that is part of a series of transactions, which series ... would result, directly or indirectly, in a tax benefit."*

It is the Ministry of Finance's policy not to provide advance rulings on whether proposed transactions are avoidance transactions. Rather, a determination that a particular transaction constituted an avoidance transaction can be made only during an audit undertaken after the transaction has occurred.

While your letter does not request an avoidance transaction ruling, we will caution you that even if the Administrator provides a favourable advance ruling on the transactions described in your letter, these transactions will remain subject to audit. Despite an advance ruling that the transactions qualify for a PTT exemption, an audit may still determine that avoidance transactions have occurred, and apply tax consequences in accordance with the PTTA, section 2.001.

If you require further clarification, please advise us. If you understand this information and still wish to proceed with an ATR, please confirm your understanding. We will then assign a tracking number to the application and provide an invoice on the transaction.

s.22



s.22

October 19, 2020

Dear^{s.22}

Re: Property Transfer Tax Advance Ruling^{s.22}

s.22

I am responding to your letter dated September 10, 2020 requesting an advance tax ruling on the application of the property transfer tax (PTT) to transfers proposed by your clients^{s.22}. Thank you for the payment received in full.

Please note that in reaching my ruling, I have relied on the statements in your letter regarding the terms of the trust registered against the Property that will be the subject of these transactions. Should a post-transaction audit determine the letter inaccurately described any of the terms and conditions of that trust, that determination will render my ruling null and void.

As well, for any proposed transaction involving a trust, it is the responsibility of the transferees or their legal representative to ensure that the terms of the trust in question authorize that transaction. My ruling should not, therefore, be interpreted as a confirmation that the terms of the trust authorize the proposed transaction described in your letter. Rather, I have ruled on whether the transferees of the proposed transaction will qualify for an exemption from PTT should the terms of the trust authorize that transaction.

Background

I understand the facts of your request are as follows:

1. The property that is the subject of the transfer is legally described as:

s.22

The civic address of this property ("Property") is ^{s.22}
s.22

2. The registered owners on title for the Property are:

s.22

3. ^{s.22} resides at the Property.

4. ^{s.22} both
Canadian citizens, were registered on title as joint tenants.

5. ^{s.22}

6. ^{s.22} both Canadian citizens,
registered on title to the Property as trustees. ^{s.22} registered
on title as trustee, becoming both settlor and trustee.

7. ^{s.22}

8. One of the settlors of the Trust, ^{s.22} is deceased.

9. One of the trustees registered on the title, ^{s.22} is deceased.

10. ^{s.22} has been appointed as a trustee of the Trust; he is not
currently registered on title as trustee.

11. ^{s.22}, a Canadian citizen, is a beneficiary of the Trustee, and
son to ^{s.22}.

12. In your letter, you propose two transactions, which I have listed below in order:

- a. ^{s.22} will be removed from title, resulting in ^{s.22} becoming the only remaining trustees registered on title; and
- b. ^{s.22}, in their capacity as trustees, will subsequently transfer all interest to ^{s.22}
 - i. On page 4 of your letter, you write that "... the transfer is made to ^{s.22} by way of sale and not in satisfaction of his beneficial interest." From this statement, I understand that ^{s.22} will register on title in his individual capacity, and will not receive his interest in the capacity as a beneficiary of the Trust.

Ruling Request

You request:

1. A ruling declaring the transaction removing ^{s.22} (as trustee) from title as exempt from PTT; and
2. A ruling declaring that the subsequent transfer to ^{s.22} (in his individual capacity) qualifies for a full (not partial) exemption from PTT.

As well, you request a ruling declaring the transfer to ^{s.22} is not an avoidance transaction as defined under the Act, section 2.001(1), and that the PTT Administrator will not "determine the tax consequences of the proposed transaction."

With respect to section 2.001(1) of the Act, it is the Ministry of Finance's policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act. However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in an audit.

So, although I can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, I cannot confirm the application or non-application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

In other words, I cannot confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

Ruling

It is my ruling that the proposed transfer removing^{s.22} from title is not a taxable transaction and thus will not result in any tax liability.

It is my ruling that the proposed transfer to^{s.22} in his individual capacity does not qualify for an exemption, and is fully taxable.

Legislation

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

Section 14(4)(q) of the PTTA provides an exemption for a transfer from a transferor to a transferee, each of whom is registered under the *Land Title Act* if the change in trustee does not relate directly or indirectly to a change in beneficiaries or class of beneficiaries or to a change in the terms of the trust.

Section 14(3)(d) provides an exemption where the transfer is from a transferor who is a trustee, registered in that capacity under the *Land Title Act*, of a trust that is settled during the lifetime of the settlor if the transferee is a beneficiary of the trust; the transferee beneficiary is a related individual of the settlor of the trust; and, the land transferred is a recreational residence or was the principal residence of either the settlor for a continuous period of at least 6 months immediately before the date of transfer or of the transferee beneficiary for that period.

Section 1(1) defines "related individual" as: a person's spouse, child, grandchild, greatgrandchild, parent, grandparent or great-grandparent; the spouse of a person's child, grandchild or greatgrandchild; or the child, parent, grandparent or great-grandparent of a person's spouse.

Section 14(1) stipulates that a related individual must be a Canadian citizen or permanent resident of Canada to qualify for an exemption.

Section 1(1) defines "settlor", in relation to a trust, as the person who contributed the land to the trust estate, or who contributed to the trust estate the assets used to acquire the land, whether or not that person is the creator of the trust.

Section 14(1) defines "principal residence" as a parcel of land:

- (a) on which the person in relation to whose residency the exemption under this section is claimed usually resided and used as his or her home,
- (b) on which there are improvements that are designed to accommodate and that are used only to accommodate 3 or fewer families,

- (c) on which all the improvements are classified under section 19 of the Assessment Act as property used for residential purposes, and
- (d) that is not larger than 0.5 ha in area;

Analysis

The Act exempts transfers of land between different trustees of the same trust under limited circumstances as listed under section 14(4)(q). To qualify for this exemption, the transferor and the transferee trustees must both “be registered under the *Land Title Act* as a trustee of the land.” Eligibility for this exemption must be determined on the capacity in which the trustee is registered under the *Land Title Act*.

The proposed transaction will not add any trustees to the title but will remove a deceased trustee from title. Such a transfer does not meet the definition of “taxable transaction” under the PTTA, and would not result in any PTT liability.

Section 14(3)(d) applies to transfers from a trustee of a trust settled during the lifetime of the settlor to a beneficiary of the trust.

For a transaction to qualify for an exemption under section 14(3)(d), three additional requirements must be satisfied:

1. The trustee must be registered under the *Land Title Act* as the trustee of the land transferred.
2. The settlor of the trust and the transferee beneficiary must be related individuals.
3. The land transferred must be a family farm or a recreational residence, or it must have been the principal residence of either the settlor or of the transferee beneficiary for a continuous period of at least six months immediately before the date of the transfer.

s.22, during their lifetimes, settled the Property upon the Trust. As noted earlier, the trustees of the Trust are currently registered in that capacity under the *Land Title Act*, satisfying the first requirement.

The Property, which contains only residential improvements, is not larger than 0.5 hectares, and cannot accommodate more than three families. Since^{s.22} the surviving settlor, inhabits the Property as her principal residence, and will continue to do so for the six-month period immediately before the date of the proposed transaction, the proposed transaction complies with the third requirement.

Considering the second requirement,^{s.22} is a related individual to the settlors. If^{s.22} were to receive his interest in the Property in the capacity of a beneficiary, he would likely qualify for a full exemption from applicable PTT – regardless that one settlor is deceased.

is choosing, however, not to exercise any rights under the Trust to receive an interest in the Property. Rather, he will purchase the interest from the Trust in his own individual capacity. I cannot, therefore, consider him as a “transferee beneficiary” as required under section 14(3)(d).

In summary, since the proposed transaction does not comply with all of the requirements established under section 14(3)(d), I must rule that transaction as fully taxable.

Disclaimer

This ruling is issued for the purposes of these transactions only and with the understanding that the facts provided by you are accurate and complete. In the event the PTTA is 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.

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 (ATR^{s.22} on the electronic tax return.

After registration, the transactions for which this advance 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.

Yours truly,

Lorna Pritchard

Director, Property Transfer Tax

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
To: s.22
Cc: FIN REV PTB AdvanceRuling
FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: s.22

Received:

Attachments: image005.png, image002.jpg, image001.jpg, image003.png

Good Morning,

We are writing in follow up to your requested submitted^{s.22} requesting an advance tax ruling on^{s.13}. Please accept our apologies for the delay in processing the ruling.

To summarize, we understand that^{s.22} is the registered owner of the land that will be the subject of the transactions. s.13; s.22

s.13; s.22

As you may know, the *Property Transfer Tax Act* (the "PTTA") does not provide an exemption for a transfer from^{s.13; s.22}

s.13; s.22

Please provide all submissions by s.22

Regards,

Property Transfer Tax Rulings Team

Property Taxation Branch

Ministry of Finance

From: FIN REV PTB AdvanceRuling FIN:EX
Sen^{s.22}

To:

Cc: FIN REV PTB AdvanceRuling FIN:EX

Subject: FW: ATR^{s.22} s.22

Thank you for the payment received in full, which was processed s.22. We will make our best efforts to provide the ruling by^{s.22}.

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Ser^{s.22}

To: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Cc:

Subject: ATR^{s.22}

The Property Transfer Tax Rulings Team acknowledges receipt of your letter dated^{s.22} requested an advance tax ruling (ATR) on proposed transactions described in the letter.

Your request has been assigned tracking number ATR^{s.22} please reference this number in all future correspondence pertaining to this request.

We have attached an invoice, which reflects an estimated processing time of four hours.

After payment has been processed, we will commence with the ruling.

Regards,

Property Transfer Tax Rulings Team

Property Taxation Branch

Page 134 of 310 to/à Page 137 of 310

Withheld pursuant to/removed as

s.22

ATR^{s.22}

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>, s.22

Sent:

Received:

Attachments: image001.jpg, image003.jpg, image005.png, image006.png, image004.jpg, image002.jpg, LT MOF 22FEB2021 (02019754xBE0F1).pdf

Thank you for your letter dated^{s.22} sent in response to the Property Transfer Tax Ruling Team's email dated^{s.22}.
We apologize for the delay in responding.
In your letter, ^{s.13; s.22}

s.13; s.22

We request additional clarification ^{s.13; s.22}
^{s.13; s.22}

s.13; s.22

If no response is received by that date or if the response provided does not identify the bona fide purposes of the transactions described in your ATR request, we will close the ATR file in the absence of sufficient information.

Regards,

Property Transfer Tax Rulings Team

Property Taxation Branch

Ministry of Finance

s.22

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Sent: s.22

To: >

Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Subject: ATR s.22

Good Morning,

We are writing in follow up to your requested submitted^{s.22} requesting an advance tax ruling on^{s.13}. Please accept our apologies for the delay in processing the ruling.

To summarize, we understand that^{s.22} is the registered owner of the land that will be the subject of the transactions.^{s.13; s.22}

s.13; s.22

As you may know, the *Property Transfer Tax Act* (the "PTTA") does not provide an exemption for a transfer from^{s.13; s.22}

s.13; s.22

Please provide all submissions by^{s.22}

Regards,

Property Transfer Tax Rulings Team

Property Taxation Branch

Ministry of Finance

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Sent: s.22

To: s.22

Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Subject: FW: ATR s.22

Thank you for the payment received in full, which was processed^{s.22}. We will make our best efforts to provide the ruling by^{s.22}

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Sent: s.22

To: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>

Cc:

Subject: ATR s.22

The Property Transfer Tax Rulings Team acknowledges receipt of your letter dated^{s.22} requested an advance tax ruling (ATR) on proposed transactions described in the letter.

Your request has been assigned tracking number ATR^{s.22} – please reference this number in all future correspondence pertaining to this request.

We have attached an invoice, which reflects an estimated processing time of four hours.

After payment has been processed, we will commence with the ruling.

Regards,

Property Transfer Tax Rulings Team

Property Taxation Branch

Ministry of Finance

Page 140 of 310 to/à Page 150 of 310

Withheld pursuant to/removed as

s.22



July 19, 2021

File Number: s.22
Letter Id: L0368484672

s.22

s.22

Dear s.22

Re: Request for Information - Advance Tax Ruling Request s.22 for EXEMPTION 41 & 05 - PRINCIPAL RESIDENCE

We request additional clarification about the bona fide purpose of s.13; s.22
s.13; s.22 . In other words, if that s.13; s.22
s.13; s.22 is being structured for a purpose other than to obtain a tax benefit (as defined under section 2.001 of the Property Transfer Tax Act), please explain that purpose.

If we do not receive the above information by 18-Aug-2021, your advance ruling request may be cancelled and the ruling fee refunded.

Please provide the requested information by email to: PTBAdvanceRuling@gov.bc.ca

Provide as much relevant information or supporting documentation as possible to ensure that our review can be finalized and an Advance Tax Ruling drafted. Failure to provide details that are relevant to the interpretation of the legislation to the specifics of your client's file may result in the Ministry not being able to provide an Advance Tax Ruling.

Yours truly,

Rulings Team

One on One Discussion - Aug 6

From: Don.Hardy@gov.bc.ca
To: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Sent: August 5, 2021 11:07:57 AM PDT
Received: August 5, 2021 11:07:57 AM PDT

Jeff, for this Friday's one on one, can we discuss avoidance? ^{s.13; s.22}

s.13; s.22

I'll give you a broad overview below, and then discuss possible responses.

s.13; s.14; s.22

1

Thanks,
Don

RE: Avoidance Transactions

From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Cc: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>, Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>

Sent: s.22

Received:

Hi Don,

I support you^{s.13; s.14}
s.13

Thank you
Lorna

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: August 9, 2021 9:49 AM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>; Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Subject: Avoidance Transactions

Good Morning Lorna,

I would like to advise you of^{s.13}
s.13

discuss possible next steps. . Below, I'll provide an overview of the transfers, and

Here is the history of title transfers:

s.13; s.22

s.13

s.13; s.22

or a reason other than

to avoid incurring PTT.

As for next steps, we are considering ^{s.13; s.22}
s.13; s.22

s.13; s.14

Would you have any concerns about the potential application of the avoidance provisions of the PTTA?
Please note that at this point for the purpose of avoidance, we are focusing only on transactions like those
described above —s.13; s.22

s.13; s.22

s.13; s.14

I am pleased to discuss further.

Thanks,
Don

Thanks,
Don

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Withheld pursuant to/removed as

s.22

Page 156 of 310

Withheld pursuant to/removed as

s.13 ; s.22



s.22

August 31, 2021

Dear ^{s.22}

Re: Property Transfer Tax Advance Ruling ^{s.22}
^{s.22}

I am responding to your letter dated July 2, 2021 requesting an advance tax ruling on the application of the property transfer tax (PTT) to transfers proposed by your client,
^{s.22} Thank you for the payment received in full.

Background

I understand the facts of your request are as follows:

1. The property that is the subject of the transfer is legally described as:
^{s.22}

The civic address of this property ("Property") is ^{s.22}
^{s.22}

2. The registered owner on title to the Property is:
^{s.22}

3. ^{s.22} both Canadian citizens, reside at the Property ^{s.22}
^{s.22}

4. ^{s.22} are in a marriage-like relationship.

5. ^{s.22}

6. ^{s.22}

7. On the same date ^{s.22} resigned as trustee, and ^{s.22} registered on title as trustee.

8. On ^{s.22} ^{s.22} purchased the Property, and ^{s.22} registered on title as trustee. Until ^{s.22}, ^{s.22} was registered on title as owner of both the Property and the Former Home.

9. Or ^{s.22} ^{s.22} transferred all interest in the Former Home to ^{s.22} ^{s.22}

10. Two transactions are proposed. First, ^{s.22} will transfer all interest in the Property to ^{s.22} ("First Transaction").

11. The next day ^{s.22} will transfer her interest in the Property to ^{s.22} ("Second Transaction").

Ruling Request

You request a ruling that:

- (a) the First Transaction will qualify for an exemption from PTT under section 14(3)(d) of the *Property Transfer Tax Act* ("Act"), and
- (b) the Second Transaction will qualify for an exemption from PTT under section 14(3)(b) of the Act.

You have also requested a ruling affirming that both of the proposed transactions do not constitute "avoidance transactions" as defined in the Act, section 2.001(1).

It is the Ministry of Finance's policy not to provide advance rulings on whether proposed transactions are avoidance transactions.

A transaction that is primarily arranged for a *bona fide* purpose other than the avoidance or reduction of tax will not be subject to section 2.001 of the Act.

However, the purpose of a particular transaction is a question of fact and cannot be determined without a comprehensive review of all the relevant facts and circumstances carried out in a post-transaction audit.

So, although I can confirm that our view generally is that the majority of transactions undertaken solely for the purpose of acquiring or disposing of an interest in real estate will not be subject to section 2.001 of the Act, I cannot confirm the application or non-application of section 2.001 of the Act to any particular transaction outside the context of a post-transaction audit.

I am unable to confirm the application or non-application of section 2.001 to a transaction that has not yet taken place.

Ruling

It is my ruling that:

- (a) the First Transaction does not qualify for an exemption and is fully taxable, and
- (b) the Second Transaction is exempt from PTT.

Legislation

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

Section 14(3)(d) provides an exemption where the transfer is from a transferor who is a trustee, registered in that capacity under the *Land Title Act* (LTA), of a trust that is settled during the lifetime of the settlor if the transferee is a beneficiary of the trust; the transferee beneficiary is a related individual of the settlor of the trust; and, the land transferred is a recreational residence or was the principal residence of either the settlor for a continuous period of at least six months immediately before the date of transfer or of the transferee beneficiary for that period.

Section 1(1) defines "related individual" as: a person's spouse, child, grandchild, greatgrandchild, parent, grandparent or great-grandparent; the spouse of a person's child, grandchild or greatgrandchild; or the child, parent, grandparent or great-grandparent of a person's spouse.

As noted earlier, both ^{s.22} will have resided at the Property for at least six months immediately prior to the date of registration of the First Transaction.

The Property, which contains only a residential improvement, is not larger than 0.5 hectares, and cannot accommodate more than three families.

Having determined that ^{s.22} is a related individual to the settlor, and that the Property is ^{s.22} principal residence, I must now determine whether ^{s.22} qualifies as the beneficiary of the proposed transaction.

^{s.22}

However, it is our position that for a transferee to be considered a beneficiary for the purposes of section 14(3)(d), that transferee must be entitled to benefit from the trust instrument at the time of the transaction. The transferee must comply with the trust instrument's conditions for beneficiaries.

Before ^{s.22} can be considered a beneficiary under section 14(3)(d), ^{s.22} must satisfy all conditions established under ^{s.22}

^{s.22} is a residual beneficiary of ^{s.22} If ^{s.22} is alive on the 30th clear day after the death of ^{s.22}, the trustees of ^{s.22} must pay or transfer the "trust fund" to ^{s.22}. The trust fund includes the Property.

As ^{s.22} is alive, ^{s.22} cannot, at this time, benefit from ^{s.22} ^{s.22} is not, therefore, a beneficiary for the purposes of section 14(3)(d).

In summary, since the First Transaction does not comply with all requirements of 14(3)(d), it is fully taxable.

Second Transaction:

At the time of the Second Transaction, the Property will have served as the principal residence of both the transferor and transferee for a continuous period exceeding six months.

^{s.22} is a related individual to ^{s.22}

The Second Transaction satisfies the requirements of section 14(3)(b) and therefore, qualifies for a full exemption from PTT.

Disclaimer

This ruling is issued for the purposes of these transactions only and with the understanding that the facts provided by you are accurate and complete. In the event the Act is 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 your July 2, 2021 letter.

When you register the Second Transaction at the LTO, please include the ruling reference number (ATR^{s.22}) on the electronic Property Transfer Tax Return.

After registration, the transactions for which this advance 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 to determine the accurate application of the ruling.

Yours truly,

Lorna Pritchard

Director, Property Transfer Tax

FW: Exemption^{s.22}

From: Don.Hardy@gov.bc.ca
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: October 14, 2021 2:54:35 PM PDT
Received: October 14, 2021 2:54:35 PM PDT
Attachments: image002.jpg, image003.jpg

Hi again Trudie,

We are considering making a request for data on properties where^{s.13} without paying an tax. Right now, I am trying to work out the scope of the request and the data elements to request. Here is my first draft. Do you mind taking a look at it and letting me know what you think? Is the start date – 2016-01-01 – earlier than when TACS became operational?

Data Request:

We would like to request data on transactions meeting the following criteria:

s.13; s.15

For each series of transactions, we would like the following data elements:

- a. Property PID
- b. PTT Return number for^{s.13}
 - a. From the PTT Return, the following elements:
 - i. Date of the transaction
 - ii. Name of transferee
 - iii. Name of vendor
 - iv. FMV
 - v. Amount of PTT Due
 - vi. Amount of PTT Exemption Claimed
- c. PTT Return number for^{s.13}
 - a. From the PTT Return, the following elements:
 - i. Date of the transaction
 - ii. Name of transferee
 - iii. Name of Vendor
 - iv. FMV
 - v. Amount of PTT Due
 - vi. Amount of PTT Exemption claimed.

We request data from January 1, 2016 to the present.

From: Hardy, Don FIN:EX
Sent: October 14, 2021 2:15 PM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Subject: RE: Exemption s.22

Hi Trudie, here is a draft letter to the transferee regarding potential avoidance. Can you review, please, and let me know if there is anything you feel is missing/needs revision? If you are comfortable with the content as is, can you please forward to Lorna for final review?

Just curious, do the RFI letters typically specify a date by which we must receive a response? If no response is received, do we then disallow their exemption claim and send a NOFA?

s.13; s.22

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: July 27, 2021 3:58 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: FW: Exemption ^{s.22}

Hi Don

s.13; s.15

Could we look at tax avoidance for this?

Trudie Gysbers
Supervisor Operations
Property Taxation Branch | Property Transfer Tax | Ministry of Finance
Phone: 250-387-0555 Ext. 1413 Fax: 250-953-3094
Website: [Property Transfer Tax](#)



From: Parmar, Hailey FIN:EX <Hailey.Parmar@gov.bc.ca>
Sent: July 27, 2021 3:00 PM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Subject: Exemptions^{s.22}

Hi Trudie,

I have an^{s.13} where I was hoping to get some assistance from you. They claimed^{s.13} but it should have been^{s.13}

Here is my main question:^{s.13}
s.13; s.15

Let me know ☺

Thanks,



Hailey Parmar – Audit Analyst

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 250-387-0555 Ext. 1436 Fax: 250-953-3094

Website: [Property Transfer Tax](#)

FW: Draft Avoidance RFI

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: October 18, 2021 2:42:22 PM PDT
Received: October 18, 2021 2:42:23 PM PDT
Attachments: image001.jpg

Hi Don/Lorna.

Thank you Don. The revised version does read much clearer.

Lorna, I will be sending the TP an RFI letter and will use Don's wording. Are you ok with the letter below to send out to the TP?

Trudie Gysbers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 250-387-0555 Ext. 1413 Fax: 250-953-3094

Website: [Property Transfer Tax](#)



From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: October 18, 2021 2:27 PM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Subject: Draft Avoidance RFI

Trudie, thanks for your feedback. As discussed, I've revised. Please let me know if this revised version reads more clearly.

Section 2.001 - Additional tax imposed – anti-avoidance rule

"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;

"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 or transferor 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.

The complete text of the PTTA is available online at BC Laws website - www.bclaws.gov.bc.ca/

s.13
FW: Exemption - Data Request

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Cc: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: October 18, 2021 4:05:44 PM PDT
Received: October 18, 2021 4:05:45 PM PDT
Attachments: image002.jpg

Hi Don

This looks good. s.13
s.13

s.13; s.15

Trudie Gysbers
Supervisor Operations
Property Taxation Branch | Property Transfer Tax | Ministry of Finance
Phone: 250-387-0555 Ext. 1413 Fax: 250-953-3094
Website: [Property Transfer Tax](#)



From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: October 18, 2021 2:30 PM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Subject: Exemption^{s.13} · Data Request

Trudie, again many thanks for your feedback. I've revised the data request email. Please let me know if it reads more clearly.

Data Request:

We would like to request data on transactions meeting the following criteria:

s.13; s.15

For each series of transactions, we would like the following data elements:

- a. Property PID
- b. PTT Return number for^{s.13}
 - a. From the PTT Return, the following elements:
 - i. Date of the transaction
 - ii. Name of transferee
 - iii. Name of vendor
 - iv. FMV
 - v. Amount of PTT Due
 - vi. Amount of PTT Exemption Claimed
- c. PTT Return number for^{s.13}
 - a. From the PTT Return, the following elements:
 - i. Date of the transaction
 - ii. Name of transferee
 - iii. Name of Vendor
 - iv. FMV
 - v. Amount of PTT Due
 - vi. Amount of PTT Exemption claimed.

We request data from January 1, 2016 to the present.

s.13
RE: Exemption - Data Request

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>, Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: October 18, 2021 4:19:50 PM PDT
Received: October 18, 2021 4:19:51 PM PDT
Attachments: image002.jpg, image003.jpg

Good eye. Thanks Lorna

Trudie Gysbers
Supervisor Operations
Property Taxation Branch | Property Transfer Tax | Ministry of Finance
Phone: 250-387-0555 Ext. 1413 Fax: 250-953-3094
Website: Property Transfer Tax



From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: October 18, 2021 4:19 PM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE: Exemption^{s.13} - Data Request

Hi, I think there might be a typo in the request below – see the highlighted.

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: October 18, 2021 4:06 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Cc: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Subject: FW: Exemption^{s.13} - Data Request

Hi Don

This looks good. ^{s.13}
s.13

s.13; s.15

Trudie Gysbers
Supervisor Operations
Property Taxation Branch | Property Transfer Tax | Ministry of Finance
Phone: 250-387-0555 Ext. 1413 Fax: 250-953-3094



From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: October 18, 2021 2:30 PM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Subject: Exemption^{s.13} - Data Request

Trudie, again many thanks for your feedback. I've revised the data request email. Please let me know if it reads more clearly.

Data Request:

We would like to request data on transactions meeting the following criteria:

s.13; s.15

For each series of transactions, we would like the following data elements:

- a. Property PID
- b. PTT Return number for^{s.13}
 - a. From the PTT Return, the following elements:
 - i. Date of the transaction
 - ii. Name of transferee
 - iii. Name of vendor
 - iv. FMV
 - v. Amount of PTT Due
 - vi. Amount of PTT Exemption Claimed
- c. PTT Return number for^{s.13}
 - a. From the PTT Return, the following elements:
 - i. Date of the transaction
 - ii. Name of transferee
 - iii. Name of Vendor
 - iv. FMV
 - v. Amount of PTT Due

vi. Amount of PTT Exemption claimed.

We request data from January 1, 2016 to the present.

s.13; s.15

Purpose:

Some individual owners have managed to transfer title s.13
s.13

We would like to know s.13 and also, to find
out s.13; s.15; s.17

Data Request:

We would like to request data on transactions meeting the following criteria: the vendors and purchasers are all individuals, not corporations.

s.13; s.15

We would like an extract listing all properties where this s.13 has
occurred since 2016-01-01 (or since the implementation of TACS).

For each property where s.13 , we
request the following data elements:

s.13

- (a) Parcel Identification Number (PID)
- (b) Date of Transaction
- (c) Names of Purchasers
- (d) Names of Vendors
- (e) Gross PTT Amount (before exemption)
- (f) PTT Exempt Amount

s.13

- (a) Parcel Identification Number (PID)
- (b) Date of Transaction
- (c) Names of Purchasers
- (d) Names of Vendors
- (e) Gross PTT Amount (before exemption)
- (f) PTT Exempt Amount

s.13

RE: TRUST

From: Don.Hardy@gov.bc.ca
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: November 24, 2021 8:44:10 AM PST
Received: November 24, 2021 8:44:11 AM PST
Attachments: image001.jpg

Hi Trudie, we certainly could, although were the avoidance provisions in the Act at the time this transaction occurred?

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: November 24, 2021 7:38 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: TRUST

Hi Don

This is the file we were chatting about yesterday^{s.22}

I noticed this morning, that^{s.22}
s.22^{s.22} and I would like to bring this file up with them as well.

What are your thoughts?

Trudie Gysbers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 778-698-3768 Fax: 250-953-3094

Website: [Property Transfer Tax](#)



RE: Past Rulings dealing with transfers of beneficial interest only

From: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
To: s.22
Cc: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: November 29, 2021 4:32:56 PM PST
Received: November 29, 2021 4:32:56 PM PST
Attachments: image001.png

Good Afternoon,

Thank you for your email.

The BC Ministry of Finance has not posted redacted versions of past advance tax rulings (ATRs) on its public facing website.

We, however, advise you that the transfer of a beneficial interest alone has never been the subject of an ATR.

ATRs are available only for transfers of registered interests, as transfers of beneficial interest will not trigger property transfer tax. In accordance with section 1(3) of the Property Transfer Tax Act, an ATR considers the person registered as the owner of land as the legal and beneficial owner – even if the registered owner is holding the land in trust (via an unregistered trust instrument).

For your information, ATRs are currently restricted to questions of whether a proposed transaction will qualify for one of the property transfer tax exemptions provided under section 14(3) and (4) of the Property Transfer Tax Act.

We trust this information is helpful. Thanks again for your inquiry.

Regards,

Property Transfer Tax Rulings Team
Property Taxation Branch
Ministry of Finance

From: s.22
Sent: November 29, 2021 10:19 AM
To: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Subject: Past Rulings dealing with transfers of beneficial interest only

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hello,

Is there a data base or other source where past issued advance rulings can be viewed? I expect personal/confidential information would be redacted from the published rulings as is done when advance rulings are published by the Canada Revenue Agency or similar agencies.

We are considering seeking an advance ruling and are wondering if the issue may have been dealt with before. I appreciate each ruling is unique and only binding in respect of the relevant facts but the issue we are considering is universal and I expect commonly encountered. In summary we are wondering whether a transfer of a beneficial interest in an interest in property alone (without a registration of legal title) has been considered in the context of section 2.001 or section 34.2 of the Property Transfer Tax Act.

Any assistance you can provide would be appreciated.

Thank you.

s.22

FW:^{s.22}

From: Don.Hardy@gov.bc.ca
To: Henderson, Jeff FIN:EX <Jeff.Henderson@gov.bc.ca>
Sent: December 2, 2021 1:46:19 PM PST
Received: December 2, 2021 1:46:19 PM PST
Attachments: s.22

Hi Jeff,

Here is the response from the law firm on the letter we sent regarding a potential avoidance transaction.

We had asked for an explanation about^{s.13; s.22}
s.13; s.22

They have responded^{s.13; s.22}
s.13; s.22

Tomorrow morning, can we discuss next steps?

Thanks,
Don

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: November 29, 2021 11:01 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject:^{s.22}

Lets discuss

This is the letter from law firm regarding the avoidance

Page 180 of 310 to/à Page 208 of 310

Withheld pursuant to/removed as

s.22

FW: File Number

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: January 27, 2022 8:41:58 AM PST
Received: January 27, 2022 8:41:59 AM PST
Attachments: image002.jpg, image004.jpg, image006.png, s.22
s.22 image007.jpg, image003.jpg,
image005.jpg, image001.jpg

Trudie Gysbers she/her/hers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 778-698-3768 Fax: 250-953-3094

Website: [Property Transfer Tax](#)



Page 210 of 310 to/à Page 216 of 310

Withheld pursuant to/removed as

s.22

s.22
RE: File No.

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: February 11, 2022 11:17:56 AM PST
Received: February 11, 2022 11:17:57 AM PST

Excellent response Don – thank you very much for clarifying this. I was unaware that the PTTA, section 2.001 was extended to include PTT transactions.

Heather

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: February 11, 2022 11:12 AM
To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: RE: File No^{s.22}

Hi Heather,

The PTTA, section 2.001 clarifies the concept of an “avoidance transaction”. It is a transaction or a series of transactions that result in a “tax benefit” – reduction, avoidance, or deferral of tax payable under the PTTA.

It is relatively new addition to the PTTA. It was first added to the Act in 2016, and then only for ATT transactions. In 2018, the limitation on ATT transactions was removed, meaning that it applies to any transaction under the Act, including family farm transfers. Section 2.001 also states that an avoidance transaction does not include a transaction reasonably considered to have been arranged for purposes other than to avoid tax.

If a transaction is an avoidance transaction, then the administrator can issue a NOFA to recover the full amount of tax avoided.

s.13; s.14; s.22

s.13

I hope this is clear. I am pleased to discuss further.

Cheers,
Don

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: February 11, 2022 9:22 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: FW: File No. s.22

[2022-02-11 9:19 AM]

s.13

Hi Don - Can I send you an email exchange I had with a law firm

s.13 and get your thoughts. Don't people pay lawyers and accountants all the time to figure-out how to structure transactions for to be advantageous from a tax perspective?

Thanks Don,

Heather

s.22

Page 219 of 310 to/à Page 220 of 310

Withheld pursuant to/removed as

s.22

From: Don.Hardy@gov.bc.ca
To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: February 25, 2022 3:34:17 PM PST
Received: February 25, 2022 3:34:17 PM PST
Attachments: FMV - Net Interest Passing - Joint Tenants.pdf

Hi, I have taken a look at the summary below, and I don't think the lawyer's argument refutes our position. The lawyer makes statement that I don't agree with. It seems to me that we are strong in our position.

One thought, I don't know if his position about the intention mattering is derived from reading policy statement (attached). This an all other policy statements have been released pursuant to FOIPPA requests. The lawyer may have come across the net interest passing statement somehow. In any event, this policy statement is designed for transfers involving joint tenants, which is not applicable to the case under audit as^{s.22}

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: February 25, 2022 12:09 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE: Fil^{s.22} APPEAL - my suggested Memo to APPEALS]

Whenever it suits you Don. What do you think would work for you?

PS:
I was thinking that if you have any Legislation to quote (*e.g., that addresses the 'Beneficial Ownership' issue; other*), that would be very helpful to add to the write-up.

Thanks so much,

Heather

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: February 25, 2022 10:23 AM
To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: RE: File^{s.22} APPEAL - my suggested Memo to APPEALS]

When do you need my input by, Heather?

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: February 22, 2022 1:09 PM
To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: Files^{s.22} APPEAL - my suggested Memo to APPEALS]
Importance: High

Over to you Don

MEMO to APPEALS

s.13; s.17; s.22

s.13; s.17; s.22 *PTT Act* s. 2(1) General tax imposed – which states:

“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”

s.13; s.17; s.22

s.22

s.22

In performing my audit work, I did assess taxes based on the fair market value of the property, in combination with the percentage-interest acquired by each transferee; however, HOW the title transfer(s) were filed did affect how much of each transferee's overall acquired interest I was able to qualify for exemption. These are two distinct issues that had to be looked at in isolation.

s.13; s.17; s.22

s.22

s.22

Based on that assumption (which is all it was – an assumption – and a faulty assumption at that), Brandon Parker calculated what the tax consequences would be. It is important to note that anything Mr. Parker said over the phone would not be legally binding (the law firm/family would have had to have asked for an Advanced Tax Ruling if they wanted a binding opinion of any kind).

s.22

s.22

I did in fact state this in my letter to the family (copy of the letter can be found in the Audit Case File under the Letters (tab)^{s.22} The lawyer points out (and this was confirmed to me upon subsequent discussions with the PTT Policy Team), that filing multiple transactions to artificially reduce tax that might otherwise be payable is not allowed under the PTT Act; however, he goes on to argue (not his words but my interpretation of them), that if they 'play by the rules' and file just one consolidated Form A transfer, they should in effect be rewarded for their honesty by being granted the same preferential tax treatment that a multiple, successive filing approach (i.e., a possible 'tax avoidance' maneuver) would have yielded them. This makes no sense to me. Why would anyone risk the repercussions associated with being charged with tax avoidance if they can achieve the very same tax benefits by being 100% honest in their filings?

Don's Comments (if any)

My recommendation is that my decision be AFFIRMED and that the Notice of Assessment remain in effect 'as is' with no adjustment.

Heather L. Brost, CPA, CGA
Auditor, Property Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094

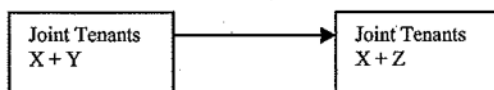
Property Transfer Tax Act	Administrative Policy Statement
Fair Market Value	
Transfer joint tenancy interests (The Net Interest Passing Policy)	
March 12, 2009	

Introduction

Under the *Property Transfer Tax Act* (the Act) there are no provisions which differentiate between the applications of property transfer tax (PTT) to property that is held by joint tenants or by tenants in common. As a result, when the provisions of the Act are strictly applied, basic inequities can arise, particularly where partial interests are transferred by one of the joint tenants. The Ministry has attempted to provide some administrative fairness to the varied situations that joint property owners may find themselves involved in by creating of the Net Interest Passing Policy (the Policy).

When only one joint tenant transfers their interest in the property, the remaining joint tenant maintains an interest in the property that is essentially the same. The Policy was therefore created to ensure that the remaining joint tenant would not be liable for PTT in these circumstances.

What is the Net Interest Passing Policy?



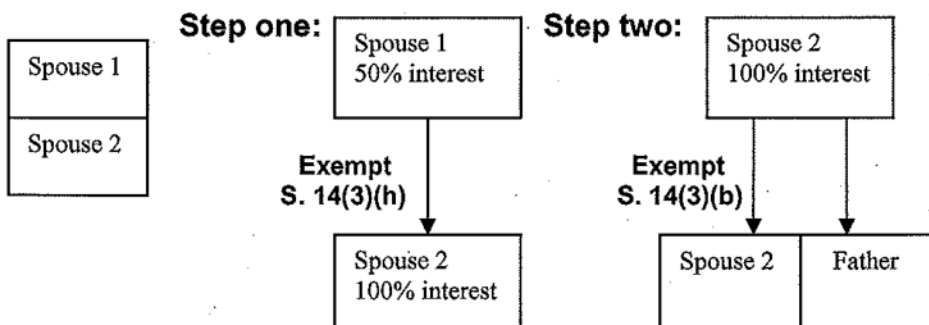
When the above transaction is registered at the Land Title Office, under the Policy, the joint tenant transferees (X + Z) are treated as if they were tenants in common. Accordingly, for the purposes of calculating the tax payable, X's interest in the property remains unchanged and Y's interest in the property is deemed to be transferred directly to Z. X is therefore excluded from the calculation and Z's liability for PTT is based on 50% of the FMV of the property.

When determining whether any of the exemptions apply, the Property Taxation Branch (PTB) only looks at the relationship between Y and Z to establish eligibility.

When related individuals are involved, there may be multiple exemptions available which could be used to obtain a complete exemption from PTT. Eligibility for the multiple exemptions will often depend on how the joint tenants structure their transfer. PTB therefore advises taxpayers that the best way to clearly indicate how the interests were intended to be transferred, to ensure a full exemption is received, is to complete the transfer using two steps. A separate Form A and PTT return should be used for each of the separate transactions.

For example: Separating spouses are joint tenants and one of the spouses transfers his joint interest to the second spouse's father. The exemptions under sections 14(3) (h) and 14(3) (b) could be used to provide a complete exemption from tax.

- Step 1:** The first transfer, from Spouse 1 to Spouse 2, will qualify for the exemption under section 14(3) (h), provided that the transfer is made pursuant to a written separation agreement.
- Step 2:** The second transfer from Spouse 2, to Spouse 2 + her Father, will also be exempt. The transfer from Spouse 2 to herself is excluded in accordance with the Policy. The transfer of the 50% interest from Spouse 2 to her Father will qualify for exemption under section 14(3) (b), provided that Spouse 2 has used the property as a principal residence during the 6 months prior to registration and all other requirements for the exemption are met.



Administrative Policy Statement (March 12, 2009)

In general terms, the Policy has been very effective in dealing with the application of tax to almost all situations involving joint tenancy transfers and it works in favour of the taxpayer. However, there are occasionally unique situations where strict application of the Policy may not be in the best interest of the taxpayer.

In circumstances where the application of the Policy could result in the denial of an exemption for the newly registered joint tenant, the parties' intentions must be considered. A determination of the parties' intent will be achieved by looking at all available information including the Form A, PTT return, Court Order or separation agreement.

The Net Interest Passing Policy will be applied to joint tenancy transfers as follows:

1. In almost all cases, the Policy will be applied to transfers where one joint tenant transfers his/her property interest to a third party. This will ensure

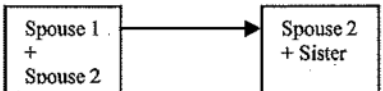
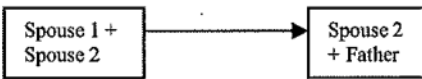
that a joint tenant whose interest in the property remains the same will not be liable for tax.

2. PTB will continue to advise taxpayers that in situations where two exemptions could be used to exempt the joint tenancy transfer, two transactions should be filed at the LTO, using a separate Form A and PTT return for each of the transactions. Filing two separate transactions will allow taxpayers to clearly indicate which interests are intended to be transferred and to whom.
3. In rare situations where the application of the Policy would result in the denial of an exemption that the taxpayer might otherwise have qualified for, PTB will review all of the available information (including the Form A, PTT return, court order, separation agreement etc.) to determine how the taxpayers intended to transfer their joint tenancy interests.

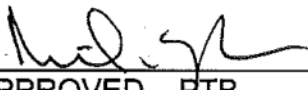
Where the taxpayers' intent is not clearly demonstrated upon review of the information, PTB will forward the file to PALB for further examination and a determination as to the taxpayer's intent, as best shown by the evidence.

Examples of Scenarios and Implementation Policy

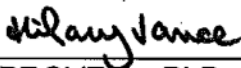
***Note: In all examples below the transferors on title are joint tenants and the transferees on title are joint tenants.**

Scenario	Administrative Policy
 <ul style="list-style-type: none"> - The property qualifies as the principal residence of Spouse 1 and Spouse 2. - One transaction is filed. No exemption is claimed. 	<p>The net interest passing policy is applied. Spouse 1's interest is deemed to be transferred directly to Spouse 2's Sister. Spouse 2 is excluded from the calculation of PTT. The Sister pays PTT on 50% of the FMV.</p>
 <ul style="list-style-type: none"> - Spouse 1 and Spouse 2 executed a separation agreement. The property qualifies as Spouse 2's principal residence. - Two separate transactions are registered. - Spouse 1 transfers his 	<p>The net interest passing policy is applied. The first transfer from Spouse 1 to Spouse 2 is exempt under s. 14(3) (h).</p> <p>The transfer from Spouse 2 to (Spouse 2 + Father) is also exempt. Spouse 2 is excluded from the calculation of PTT. The Father is exempt from PTT under s. 14(3) (b).</p>

<p>interest to Spouse 2 and the exemption under s. 14(3) (h) is claimed.</p> <ul style="list-style-type: none"> - Spouse 2 transfers the 100% interest to herself and her Father in joint tenancy. The exemption under s. 14(3) (b) is claimed. 	
<div data-bbox="220 571 643 645"> <div>Mother + Son</div> <div>Mother + Daughter</div> </div> <ul style="list-style-type: none"> - The property qualifies as a recreational residence with a FMV that is less than \$275,000. - One transaction is registered. The exemption under s. 14(3) (a) is claimed. 	<p>A strict application of the net interest passing policy would deem the Son to have transferred his interest to the Daughter, which could lead to the denial of a possible exemption for the Daughter.</p> <p>If the Son had intended to transfer his interest to the Mother, this would qualify for exemption under s. 14(3) (a).</p> <p>If the Mother had intended to transfer her interest to the Daughter, this would be exempt under s. 14(3) (a).</p> <p>All available information will therefore be assessed to determine the parties' intent when transferring their interests. If the intention is not clear, the file will be forwarded to PALB for review.</p>


APPROVED – FTB

March 20/09
DATE


APPROVED – PLB

March 12 2009
DATE

FW: EX18 - Incorporated Society (Question)

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: March 12, 2022 5:58:34 PM PST
Received: March 12, 2022 5:58:35 PM PST
Attachments: image001.jpg, image003.png, image002.jpg

Hi Sanjeev (please note^{s.22}

The email below is the proposed DRAFT wording that I worked on with Don Hardy on Friday (for your response to s.21; s.22). I have sent the DRAFT wording to Don Hardy for his review and approval (and possibly edits/additions), before you send it to^{s.21; s.22}.

You can connect with Don Hardy on Monday (if you are in a hurry to send a response to^{s.21; s.22} on Monday); or – you can wait^{s.22} and I can follow-up with Don Hardy before sending you the FINAL approved wording.

Thanks Sanjeev,

Heather

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: March 11, 2022 6:16 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: EX18 - Incorporated Society (Question)
Importance: High

Proposed Answer (for Sanjeev to provide to^{s.21; s.22})

This Information is Provided for Information Purposes Only and is Not Binding on the Property Transfer Tax Administrator

Incorporated Society → Individual [Property Transfer Tax Act – PTTA s. 14(3)(g)]

If a transferor that is an incorporated society desires to transfer legal title on a **family farm** property to a transferee that is an individual(s), it is highly probable that the taxable transaction would be eligible for a family farm exemption under s. 14(3)(g) of the PTTA - as long as the incorporated society qualifies as a **family farm corporation**; and, the prescribed familial-relationship criteria between the transferees and the incorporated society members is satisfied.

Please note however that the society would have to provide credible evidence that it meets the PTTA s. 14(1) definition of **family farm corporation**; and, that all society members meet the familial-relationship criteria prescribed in s. 14(3)(g)(i) or (ii) of the PTTA. The subject property would also need to qualify as a **family farm** per the PTTA s. 14(1) definition of same.

Individual → Incorporated Society [Property Transfer Tax Act - PTTA s. 14(3)(f)]

If a transferor that is an individual desires to transfer legal title on a **family farm** property to an incorporated society that qualifies as a **family farm corporation**; and, where all society members meet the familial-relationship criteria prescribed in s. 14(3)(f)(ii) of the PTTA, then I think it highly probable that the taxable transaction would be eligible for a family farm exemption under s. 14(3)(f) of the PTTA.

Please note however that the society would have to provide credible evidence that it meets the PTTA s. 14(1) definition of **family farm corporation**; and, that all society members meet the familial-relationship criteria

prescribed in s. 14(3)(f)(ii) of the PTTA. The subject property would also need to qualify as a **family farm** per the PTTA s. 14(1) definition of same.

The above being said, if your law firm desires a **binding** ruling on the matter, it would need to apply for an **Advanced Tax Ruling** on the actual (not hypothetical) planned title transfer. The request would need to include specific information and details such as the names of the transferor(s) and transferee(s); the parcel identifier; the desired exemption claim and reason for said claim; etc.

I hope this information helps^{s.21;}_{s.22} and please contact me if you require any further assistance,

Regards,

Sanjeev Anand, CPA, CGA
A/ Audit Team Lead
Property Transfer Tax, Property Taxation Branch
Ministry of Finance
Phone (778) 698-4978 FAX (250) 953-3094

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: March 8, 2022 5:23 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Subject: RE: Family Farm Exemption

Thank you so much Don for looking at this for me (and so quickly too)!

^{s.22} but have fired a copy of your email off to Sanjeev (who received the original query), so that he can also see your thoughts. We are hoping to loop back with you on ^{s.22} (if you have time of course).

Again – your assistance with this is very much appreciated Don.

Heather

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: March 8, 2022 1:35 PM
To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: RE: Family Farm Exemption

Hi,

I assume that they are claiming 14(3)(g) – FFC to shareholder(s)? Subsequently, they plan to claim 14(3)(f) – Shareholder(s) to FFC?

If the FFC currently on title is an incorporated society, and that society meets the FFC requirement – principal activity farming, and no corporate shareholders – then I think that they are eligible for 14(3)(g).
^{s.21; s.22} correctly states that under the Interpretation Act, the term corporation include an incorporated society.

About “shareholders”, that term is not defined in the PTTA or Interpretation Act. But I think we can consider a Society’s “members” as “shareholders”. I am assuming that there is a way that a Society can show all of its members and thus allow us to verify that there are no corporate members/shareholders.

I believe we would grant the exemption if all of the Society members meet the relational requirement (e.g. all of them are family members). Just wondering if this is feasible –s.21; s.22
s.21; s.22

Just curious about whether this series of transaction could be considered an “avoidance” for the purposes of s. 2.001 of the PTTA? For an avoidance to occur, there first has to be a “tax benefit” – a reduction or avoidance of tax under the tax.

To illustrate, FFC One and FFC Two have the same shareholders. FFC One transfers to the shareholders; shareholders then transfer to FFC Two. I don’t see that a tax benefit has resulted since FFC One is not on title again. But if FFC One and FFC Two are distinct corporations, FFC One has not achieved a tax benefit.

As an aside, I wonder if it might be prudent when we get inquiries asking about a series of transfers (e.g. FFC One to Shareholders, and then Shareholders to FFC Two or the correspondence you forwarded to me a while ago) to caution them that such a series could potentially be considered an “avoidance transaction” and thus subject to being assessed? Just a thought.

Pleased to discuss further.

Don

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: March 8, 2022 11:24 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: FW: Family Farm Exemption

Any comments Don?

Thanks again,

Heather

From: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Sent: March 8, 2022 9:33 AM
To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: FW: Family Farm Exemption

Hello Heather,

Do you think they would qualify for the exemption?

Thanks

Sanjeev Anand, CPA, CGA
A/ Audit Team Lead
Property Transfer Tax, Property Taxation Branch
Ministry of Finance
Phone (778) 698-4978 FAX (250) 953-3094

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Page 231 of 310

Withheld pursuant to/removed as

s.21 ; s.22

From: FIN REV G PTB-PTT Enquiries FIN:EX <PTTENQ@gov.bc.ca>

Sent: March 7, 2022 3:17 PM

To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>

Subject: FW: Family Farm Exemption

Incoming Correspondence,

Best Regards,

Thank you,

Urmila Misra – Operations Analyst

Property Transfer Tax- Ministry of Finance



s.21; s.22

FW: Files:**[EX18 - EX38 - s. 2.001 Tax Avoidance?]**

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Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>

Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>, Brost, Heather L FIN:EX
<Heather.Brost@gov.bc.ca>

March 28, 2022 12:09:42 PM PDT

March 28, 2022 12:09:44 PM PDT

s.21; s.22 EX18_Analysis_Share_Purchase_Amalgamation_EX38_Claim_Followed_by_Regular_
EX18_Claim_No_Revenue_Just_Gain_Loss_from_Disposition_Assets_Tax_Avoidance_FINAL_For_D
iscussion_with_Lorna.docx

Hi Don,

Please see the attached summary from Heather and then can we discuss next steps.

Thank you
Lorna

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: March 25, 2022 12:09 PM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Subject: Files s.21; s.22 EX18 - EX38 - s. 2.001 Tax Avoidance?]

Good morning Lorna,

Sanjeev has asked that I forward a copy of the attached document to you for your review.

It involves transfers of legal title on 3 farm properties being made on s.21 :o
s.21 (with an **Amalgamation Exemption** - EX38) being claimed, followed by legal title to the same
properties being transferred on s.21 to s.22 (with
a **Family Farm Exemption** - EX18) being claimed.

I reviewed the three transfers and denied the EX18 claims; however, following pushback from the ^{s.22}
I decided to perform a more-comprehensive review of the overall situation (which resulted in me looking backwards
s.13 This review revealed what Sanjeev and I now feel is a clear case of PTTA s.

2.001 tax-avoidance.

Lorna, we would appreciate it if you would read over the attached document and give us your thoughts on the matter; including whether you agree that we have detected a clear case of tax avoidance. If so, please advise us as to what the tax implications/penalties should be (i.e., denial of just the EX18 claims – versus - denial of both the EX18 and EX38 claims – versus some other action).

Thank you Lorna,

Heather L. Brost, CPA, CGA
Auditor, Property Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094



Discussion Paper

Audit Files: s.21; s.22

s.21; s.22

**Ministry of
Finance**

Revenue Programs Division
Property Taxation Branch
Property Transfer Tax Office

www.gov.bc.ca/sbr

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Facsimile: 250 953-3094

Page 236 of 310 to/à Page 237 of 310

Withheld pursuant to/removed as

s.21 ; s.22

PTTA s. 2.001 (Additional tax imposed – Anti-avoidance rule)

2.001 (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

where “**tax benefit**” means a reduction, avoidance or deferral of tax payable under this Act

(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 or transferor 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.



Review of Files^{s.21; s.22}
s.21; s.22

T2 Data

s.21; s.22

reported:

s.21; s.22

It also reported (on SCH 200):

s.21; s.22

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s.21; s.22

Auditor's Decision

s.21; s.22

Lawyer's Response (to decision)

s.21; s.22



s.21; s.22

Auditor's Response (to lawyer comments)

s.21; s.22

Group Discussion

- Is anything missing/wrong with the auditor's Principal Activity analysis/conclusion? The PTT Audit A/Supervisor (Sanjeev Anand) did not think so; and agreed that the auditor's decision^{s.13; s.21; s.22} was sound.
- Do we possibly have a clear case of tax avoidance per the PTTA **s. 2.001** legislation? Heather Brost and Sanjeev Anand both believe we do (textbook case); and, have now escalated our concern to Lorna Pritchard for further review and comment (including any potential penalties that we may be able to apply, keeping in mind that we are dealing with^{s.21; s.22}, as well as with^{s.21; s.22}).

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Telephone: 250 655-5059
Facsimile: 250 953-3094

RE: Files s.21; s.22

- s. 2.001 Tax Avoidance?]

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>, Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Cc: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: April 11, 2022 9:59:52 AM PDT
Received: April 11, 2022 9:59:53 AM PDT
Attachments: s.21; s.22 _Letter_for_Lawyer.docx

Don and Sanjeev,

I have drafted a proposed response (attached) to be sent to the lawyer who is representing s.21; s.22 the taxpayers) on the above-noted files. I have purposely left the response somewhat detailed to afford the lawyer full transparency as to the facts uncovered during our review, as well as our position and planned course of action on the matter.

I would appreciate it Don (and Sanjeev upon your return), if you would review the proposed DRAFT and provide me your feedback. I will be away s.22, but will be happy to address any questions or concerns you may have upon my return s.22).

Thank you so much,

Heather L. Brost, CPA, CGA
Auditor, Property Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: April 5, 2022 11:59 AM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: RE: Files s.21; s.22 - s. 2.001 Tax Avoidance?]

Hi,

My initial reaction is that s.13 in this case.

If I'm not mistaken, this case does not involve s.13
s.13 as I understand.

Do we suspect that s.13; s.21; s.22
s.13; s.21; s.22

s.13; s.21; s.22 we have credible evidence, then I would support further investigation about
s.13; s.21; s.22 If the answers are
"no", then I would recommend s.13; s.21; s.22

This brings me back to the avoidance provisions - ^{s.13}
Therefore, s. 2.001 would not apply.

Pleased to discuss further.

Don

From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: April 5, 2022 9:59 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: RE: Files ^{s.21; s.22} s. 2.001 Tax Avoidance?]

Good morning,

I wanted to follow up on this issue to see whether we need to discuss further.

As I understand, the basics of the issue are:

1. there is a strong possibility that an avoidance transaction has been attempted; ^{s.21; s.22}
s.21; s.22
2. However ^{s.13; s.21; s.22}
s.13;
3. ^{s.14}

4.

Administrative penalties

- 4.2 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.

s.13

The question we are faced with now is whether we should we consider^{s.13; s.21; s.22}
To my knowledge^{s.13}

s.13

My thoughts are that^{s.13}
however, I'm open to advice.

Have I summarized correctly, and should we further discuss/consider^{s.13; s.21; s.22} ?

Lorna

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: March 28, 2022 4:23 PM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: RE: Files:^{s.21; s.22} s. 2.001 Tax Avoidance?]

Hi,

Thanks for the opportunity to provide input into the audit files.

I agreed that there is a strong possibility that an avoidance transaction has been attempted;^{s.21; s.22}
^{s.21; s.22}

However, at this point, I don't think that^{s.13; s.21; s.22}
^{s.13; s.21; s.22}

I would suggest as next steps that^{s.13; s.21; s.22}
^{s.13; s.21; s.22}

Just wondering what evidence we have identified that^{s.13}
s.13

Pleased to discuss further.

Don

From: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Sent: March 28, 2022 12:10 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Subject: FW: Files^{s.21; s.22} s. 2.001 Tax Avoidance?]

Hi Don,

Please see the attached summary from Heather and then can we discuss next steps.

Thank you
Lorna

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: March 25, 2022 12:09 PM
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Subject: Files;^{s.21; s.22} s. 2.001 Tax Avoidance?]

Good morning Lorna,

Sanjeev has asked that I forward a copy of the attached document to you for your review.

It involves transfers of legal title on^{s.13; s.21; s.22}
s.13; s.21; s.22

I reviewed the^{s.13; s.21; s.22}
^{s.13; s.21; s.22}
^{s.13; s.21; s.22}

however, following pushback from^{s.13; s.21; s.22}

This review revealed what Sanjeev and I now feel is a clear case of PTTA s.
2.001 tax-avoidance.

Lorna, we would appreciate it if you would read over the attached document and give us your thoughts on the matter; including whether you agree that we have detected a clear case of tax avoidance. If so, please advise us as to what the tax implications/penalties should be^{s.13; s.21; s.22}
^{s.13; s.21; s.22}

Thank you Lorna,

Heather L. Brost, CPA, CGA

Auditor, Property Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094



s.13; s.21; s.22

Re: Property Transfer Tax File(s):
Transferee(s):
Transferor(s):
Property Location:

Land Title Office Registration Date:

Dear s.21; s.22

Further to our letter of s.21; s.22
s.21; s.22, and your request that we revisit our decision, we wish to
inform you that our decision stands.

Revisiting our decision required us to expand the scope of our review to include the entire
sequence of events s.21; s.22
s.21; s.22

Sequence of Events
s.21; s.22

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Property Transfer Tax Office

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Victoria BC V8W 9V1
Telephone: 250 655-5059
Facsimile: 250 953-3094

Page 248 of 310

Withheld pursuant to/removed as

s.21 ; s.22



s.21; s.22

s.13

PTTA s. 2.001 (Additional tax imposed – anti-avoidance rule)

2.001 (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;

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Mailing Address:
PO Box 9427 Stn Prov Govt
Victoria BC V8W 9V1
Telephone: 250 655-5059
Facsimile: 250 953-3094

“tax benefit” means a reduction, avoidance or deferral of tax payable under this Act;

“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 or transferor 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.

PTTA s. 34.2 (Administrative penalties)

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) “
- (b) “
- (c) “
- (d) “
- (e) willfully, in any manner, avoided or evaded or attempted to avoid or evade
 - (i) compliance with this Act or the regulations, or
 - (ii) “

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.

s.21; s.22

Page 251 of 310

Withheld pursuant to/removed as

s.13 ; s.21 ; s.22

File

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: April 22, 2022 3:11:16 PM PDT
Received: April 22, 2022 3:11:17 PM PDT
Attachments: s.21; s.22 Letter_for_Lawyer_FINAL.docx

The latest DRAFT Letter I think it's much improved! Thanks so much Sanjeev for your feedback last week (and for yours' Don in prior weeks).

Heather L. Brost, CPA, CGA
Auditor, Property Transfer Tax
Property Taxation Branch
Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094



April 25, 2022

s.21; s.22

Re: Property Transfer Tax File:
Transferee(s):
Transferor(s):
Property Location:

Land Title Office Registration Date

s.21; s.22
Dear

Further to our letter of s.21; s.22
s.21; s.22 and your request that we revisit our decision, we wish to
inform you that our decision stands.

Revisiting our decision required us to expand the scope of our review to include the entire
sequence of events (s.21; s.22
s.21; s.22

Sequence of Events
s.21; s.22

**Ministry of
Finance**

Revenue Programs Division
Property Taxation Branch
Property Transfer Tax Office

www.gov.bc.ca/sbr

Courier Delivery:
1802 Douglas St.
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Mailing Address:
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Victoria BC V8W 9V1
Telephone: 778 698-3967
Facsimile: 250 953-3094

Page 254 of 310 to/à Page 255 of 310

Withheld pursuant to/removed as

s.21 ; s.22

Based on the follow-up review performed by our office,^{s.21; s.22}
s.21; s.22

Kind regards,

____ CPA CGA
For Administrator
Property Transfer Tax Act

Advance Task Ruling Request^{s.22}

From: ^{s.22}
To: FIN REV PTB AdvanceRuling FIN:EX <PTBAdvanceRuling@gov.bc.ca>
Sent: May 10, 2022 1:41:32 PM PDT
Received: May 10, 2022 1:41:36 PM PDT

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Good Morning,

^{s.22}

Page 258 of 310

Withheld pursuant to/removed as

s.22

RE: Information on your respective portfolio

From: Don.Hardy@gov.bc.ca
To: Tremblay-McCaig, Genevieve FIN:EX <Genevieve.Tremblay-McCaig@gov.bc.ca>
Sent: May 27, 2022 9:16:00 AM PDT
Received: May 27, 2022 9:16:01 AM PDT

Hi,

Here is a broad summary of my activities, which are done to support the Ministry in its application of the PTTA.

First, here are the standing items:

- Advance Tax Rulings: before registering a proposed transfer, the transferee would like a ruling about whether the proposed transfer would qualify for an exemption from PTT. The rulings are done on a cost recovery basis, meaning that the applicant must pay a fee.
 - For the 2021 Calendar year, a total of 21 applications were received (emailed to an ATR inbox), and 19 rulings were issued (two applications were withdrawn). The fees generated a total of \$11,621 for that year.
 - For the 2022 Calendar year, we have received a total of 8 applications, and issued 5 rulings (three are still in process), and generated a total of \$6,001.
 - For ATRs, the most commonly sought exemptions are family farm exemptions, the second most common topic is about transfers from a trust – both testamentary and inter vivos.
- PTT Remissions: currently we have three open remission requests, all of them pertaining to ATT
- Legislative Developments:
 - Maintaining list of identified PTTA issues to be discussed with Tax Policy every August
 - s.12
- Requests for Legal Opinions: currently I have two open requests^{s.14}
s.14
- Ad hoc items: for example, CLIFFS as assigned, direct requests from program area for support. I work quite closely with Trudie Gysbers.

As well, there are a number of identified projects. Probably best if I describe them here using broad brushstrokes. Once we are ready to discuss each one, I'll provide you with detailed information:

- ATRs:^{s.13}
s.13

• s.12; s.14

- s.13

Finally, s.22
s.22

That is a very broad summary. I am pleased to discuss further.

Don

From: Tremblay-McCaig, Genevieve FIN:EX <Genevieve.Tremblay-McCaig@gov.bc.ca>

Sent: May 26, 2022 9:55 AM

To: Hannah, Fraser FIN:EX <Fraser.Hannah@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>; Demianchuk, Janette FIN:EX <Janette.Demianchuk@gov.bc.ca>; Tian, Yixuan FIN:EX <Yixuan.Tian@gov.bc.ca>; Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>; Kaglik, James FIN:EX <James.Kaglik@gov.bc.ca>; Parker Hall, Matthew W FIN:EX <Matthew.ParkerHall@gov.bc.ca>; Barcellos, Karla FIN:EX <Karla.Barcellos@gov.bc.ca>; Badh, Varinder K FIN:EX <Varinder.Badh@gov.bc.ca>

Subject: Information on your respective portfolio

Good morning,

A couple of you have sent summary of their portfolio, which I found very helpful. If you haven't already done so, please email me an outline of what you're currently working on and anything else you feel I should know. That would not only help me getting up to speed, but also be useful when we have our first meeting (you'll receive an invite later today).

Thank you,

Genevieve

s.21; s.22

Audit Case File

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>, Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: May 30, 2022 12:52:17 PM PDT
Received: May 30, 2022 12:52:18 PM PDT
Attachments: s.13; s.21; s.22
_For_Supervisor_Policy_Analyst_Review_May_30_2022.docx

Good afternoon Sanjeev (and Don),

Please find (attached), my write-up on s.21; s.22
s.21; s.22

Next Steps

- **Review** of this write-up by Sanjeev Anand and Don Hardy (for their thoughts and comments); followed by possible escalation to Lorna Pritchard.
- I would then like to have a **group discussion** to answer the question: "**What is This?**"
 - s.13
 -
 -

Note:
s.13

Thank you both so much, and please let me know if you have any questions or concerns,

Heather Brost, CPA CGA
Property Transfer Tax Auditor
Property Taxation Branch
BC Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094



s.21; s.22

Re: Property Transfer Tax File:
Transferee(s):
Transferor(s):
Property Location:

Land Title Office Registration Date:

Background

The farming operation was reportedly started by ^{s.21; s.22} for the purpose of
s.21; s.22 located on the property.
s.21; s.22

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Telephone: 778 698-3967
Facsimile: 250 953-3094

Page 263 of 310

Withheld pursuant to/removed as

s.21 ; s.22



2.001 (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

where **“tax benefit”** means a reduction, avoidance or deferral of tax payable under this Act
where **“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.

s.13; s.21; s.22

However, to be an “avoidance transaction”, not only does a ‘tax benefit’ have to result, but there must also be solid grounds to believe that the transaction was undertaken or arranged primarily for the purpose of obtaining said ‘tax benefit’ (as opposed to some other bona fide purpose). Therefore, I requested that the lawyer articulate the bona fide reasons for the transfer and the following was cited (not verbatim):

- s.21; s.22

•

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Withheld pursuant to/removed as

s.21 ; s.22

Next Steps

- Review of this write-up by Sanjeev Anand and Don Hardy (any comments added); followed by possible escalation to Lorna Pritchard.
- I would then like to have a group discussion to answer the question: **“What is This?”**
 - Is this transaction simply an example of good (albeit aggressive) tax planning (i.e., NOT an “avoidance transaction”);
 - Is this a probable “avoidance transaction” (i.e., a case where aggressive tax planning has very likely ‘crossed the line’ – legal opinion necessary);
 - Is this an absolute “avoidance transaction” (assuming we can make such determination in the absence of a legal opinion – is a legal opinion necessary and prudent?)

Note:

To answer the above question, I think we need focus on the ‘tax benefit’ and ‘bona fide purpose’ criteria in the PTTA s. 2.001 provision.

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Withheld pursuant to/removed as

s.21 ; s.22

RE: Audit Case File^{s.21; s.22}

From: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: June 1, 2022 10:08:27 AM PDT
Received: June 1, 2022 10:08:28 AM PDT
Attachments: image001.jpg

Yes, I think this is a material difference where we in^{s.21; s.22} file, we could deny the exemption on eligibility criteria not being met. Here in this case we have to prove the aggressive tax planning to use anti-avoidance assessment

Sanjeev Anand, CPA, CGA
A/ Audit Team Lead
Property Transfer Tax, Property Taxation Branch
Ministry of Finance
Phone (778) 698-4978 FAX (250) 953-3094

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Where ideas work



From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: June 1, 2022 10:03 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Cc: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Subject: FW: Audit Case File^{s.21; s.22}

One other thing ... on Files^{s.21; s.22}
^{s.21; s.22} the letter we composed was sent to the law office and we received no response from the law office, while the taxpayer paid the NOFA right away (without any complaint and/or pushback). The NOFA was of course based on an EX18 denial, rather than on the grounds of "Tax Avoidance" which I understand is the main difference between those files and this file.

Just thought you should know the outcome of those other files (where potential 'tax avoidance' was at least discussed with the taxpayer and their lawyer)

Heather

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
Sent: May 31, 2022 4:37 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>; Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Subject: RE: Audit Case File^{s.21; s.22}

Very much appreciated Don!

Yes – I would appreciate very much discussing this file further with you and Sanjeev. What is your time like on Thursday (all day) and/or Friday (morning only); OR sometime next week (Monday – Thursday)?

Thank you,

Heather

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Sent: May 31, 2022 9:40 AM

To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>; Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>

Subject: RE: Audit Case File^{s.21; s.22}

Good Morning,

I've read this summary. Yes, I believe that the^{s.21; s.22}
avoidance transaction.

was an

s.14

Yes, there has been a transaction, and I don't think that there was a bona fide purpose other than to obtain a tax benefit.

Pleased to discuss further.

Regarding next steps, as I advised, I had been working on avoidance in the context of^{s.13}
s.13; s.22

I plan to brief the new manager, Geneviève, at the earlier possible opportunity, and then to take the project forward again. The project could result in assessments under section 2.001. At this point,^{s.13}
s.13

I'll keep you apprised of developments.

Anyway, pleased to discuss further.

Don

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>

Sent: May 30, 2022 12:52 PM

To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Subject: Audit Case File^{s.21; s.22}

Good afternoon Sanjeev (and Don),

Please find (attached), my write-up on^{s.21; s.22}
s.21; s.22

Next Steps

- **Review** of this write-up by Sanjeev Anand and Don Hardy (for their thoughts and comments); followed by possible escalation to Lorna Pritchard.
- I would then like to have a **group discussion** to answer the question: "**What is This?**"

- s.13

- s.13

-

Note:
s.13

Thank you both so much, and please let me know if you have any questions or concerns,

Heather Brost, CPA CGA
Property Transfer Tax Auditor
Property Taxation Branch
BC Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094

File s.21; s.22

[Tax Avoidance Meeting (June 8/22 from 1:30 - 2:30 pm)]

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>
To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>, Hardy, Don FIN:EX
<Don.Hardy@gov.bc.ca>, Matthias, Curtis FIN:EX
<Curtis.Matthias@gov.bc.ca>
Sent: June 8, 2022 12:00:14 PM PDT
Received: June 8, 2022 12:00:15 PM PDT
Attachments: File s.21; s.22

Hello everyone,

Attached, please find the document that Sanjeev and I will be referencing at today's meeting (s.21; s.22
s.21; s.22 .

If you look on **pg. 6** under **Next Steps/Questions**, I have detailed the main **discussion points**; as well as a few **questions** I/we are hoping to get some help with.

If you don't have time to review the document before our 1:30 pm meeting - no worries at all (*we can/will go over them together at the meeting; and you can also respond after the meeting of course*).

Thank you everyone,

Heather Brost, CPA CGA
Property Transfer Tax Auditor
Property Taxation Branch
BC Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094



s.21; s.22

Re: Property Transfer Tax File:
Transferee(s):
Transferor(s):
Property Location:

Land Title Office Registration Date:

Background

s.21; s.22

The farming operation was reportedly started by _____ for the purpose of
growing flowers and bedding plants in greenhouses located on the property.

s.21; s.22

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Property Transfer Tax Office

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Withheld pursuant to/removed as

s.21 ; s.22



2.001 (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

where **“tax benefit”** means a reduction, avoidance or deferral of tax payable under this Act
where **“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.

s.13; s.21; s.22

However, to be an “avoidance transaction”, not only does a ‘tax benefit’ have to result, but there must also be solid grounds to believe that the transaction was undertaken or arranged primarily for the purpose of obtaining said ‘tax benefit’ (as opposed to some other bona fide purpose). Therefore, I requested that the lawyer articulate the bona fide reasons for the transfer and the following was cited (not verbatim):

• s.21; s.22

•

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Page 278 of 310 to/à Page 279 of 310

Withheld pursuant to/removed as

s.21 ; s.22

Page 280 of 310

Withheld pursuant to/removed as

s.13 ; s.21 ; s.22

Page 281 of 310 to/à Page 283 of 310

Withheld pursuant to/removed as

s.21 ; s.22

RE: DRAFT Letter (File

From: Don.Hardy@gov.bc.ca
 To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>, Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>, Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
 Sent: June 9, 2022 3:15:34 PM PDT
 Received: June 9, 2022 3:15:34 PM PDT
 Heather,

I note the following paragraph:

- However, please be advised that once a “tax benefit” is realized (upon approval of this exemption claim), this transaction becomes subject to potential review under s. 2.001 and s. 34.2 of the PTTA. Should the Ministry decide to proceed with said review, a new letter will be issued to the corporation at that time.

I’m afraid I’m not comfortable with this content. I think it’s still too early to indicate whether a “tax benefit” has occurred.

s.13; s.14

I would not mention 34.2 of the PTTA yet. A determination that an avoidance transaction has occurred does not automatically trigger application of administrative penalties under s. 34.2.

Would you be comfortable with saying something like: Please note that while we have approved the claim for Exemption 18, PTB’s review of the transaction as an avoidance transaction remains ongoing. We cannot, at this time, give a specific date by which that review will be completed. If PTB requires any additional information as part of that review, we will contact you.

Pleased to discuss further.

Don

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>

Sent: June 9, 2022 2:16 PM

To: Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>; Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Subject: RE: DRAFT Letter (File

Thanks Curtis for your quick response. Yes – we are just being transparent and upfront (about the possibility of there being a subsequent review), which is particularly important in this case given that the transferee corporation (i.e., the auditee), is now owned by a different shareholder

Also, I have attached a new DRAFT – just made a couple of edits – the only significant one being that I changed a few words on **pg. 2** (the paragraph that mentions the timing of acquiring shares in the corporation).

s.21; s.22

I thought the wording (green highlighting) was perhaps more respectful but I would appreciate your thoughts gentlemen

Thank you again,

Heather

From: Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>

Sent: June 9, 2022 1:54 PM

To: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>; Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Subject: RE: DRAFT Letter (File ^{s.21; s.22})

Hi everyone,

I like the letter. In particular I like how you worded the second last paragraph starting with “however” letting them know that once the tax exemption (benefit) is realized the transaction may be reviewed under 2.001.

I wonder what impact this letter might have on a future review under 2.001? If, we confirm the transaction is eligible for the exemption without pointing out any of our concerns about the timing of the transaction being a possible issue. I think we are okay because we are not saying that s. 2.001 does or does not apply but that the transaction may be reviewed in the future under that.

Curtis

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>

Sent: June 9, 2022 12:21 PM

To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>; Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>

Subject: DRAFT Letter (File ^{s.21; s.22})

Importance: High

Hello

Here is a DRAFT copy of the letter I plan to send to the lawyer (representing ^{s.21; s.22} . I would appreciate your thoughts (particularly on the **2nd and 3rd last paragraph on pg. 2**, given that the text on pg. 1 and at top of pg. 2 is standard text that accompanies most letters).

PS:
Sanjeev and I talked (prior to me creating this draft), so it already includes some of Sanjeev’s helpful input.

Heather Brost, CPA CGA
Property Transfer Tax Auditor
Property Taxation Branch
BC Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094

RE: File ^{s.21; s.22}

From: Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>
To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>, Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: June 10, 2022 1:49:19 PM PDT
Received: June 10, 2022 1:49:19 PM PDT
Attachments: image001.jpg

Hi,

I agree with you both that saying nothing right now is the right thing to do. We don't know how the policy will apply yet so best not to presume it would apply, or how it might apply.

I am going to contemplate the question about assessment for GAAP after an exemption has been granted a bit longer but will return to this.

Thanks,

Curtis

From: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Sent: June 10, 2022 11:57 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>; Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>
Subject: RE: File^{s.21; s.22}

Hello All,

I am on the same page with Don here. Unless we are going ahead with anti avoidance assessments at this time, it will create more confusion for all taxpayers if we mention that transaction may be reviewed for anti-avoidance at a future date (it may not even apply to them).^{s.13} and we decide to review these flagged transactions for anti-avoidance, we can start a new case rather reopening old audit.

Going forward,^{s.13} we can identify anti-avoidance situations during the audit and take appropriate action at the same time.

Thanks

Sanjeev Anand, CPA, CGA
A/ Audit Team Lead
Property Transfer Tax, Property Taxation Branch
Ministry of Finance
Phone (778) 698-4978 FAX (250) 953-3094

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Where ideas work



From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: June 10, 2022 10:48 AM
To: Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>; Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>
Subject: RE: File^{s.21; s.22}

Thanks Curtis,

I'd suggest we hold off on further communication with taxpayers about avoidance. I've discussed the avoidance question with Genevieve, and we have decided that the first step will be to draft a policy statement that will inform our approach to application of the GAAR. That policy statement should address the question about communicating with taxpayers.

I didn't see any issue about us granting them the exemption but later – within the statute of limitations period – assessing them for an avoidance. Your thoughts, Curtis?

For the ATR applications where it seems like they are asking for the ptt administrator's advanced blessing of an avoidance transaction^{s.13; s.14}

s.13; s.14

s.13; s.14

Your thoughts, Sanjeev?

From: Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>

Sent: June 10, 2022 9:59 AM

To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>

Subject: RE: File^{s.21; s.22}

Hi both,

I am only sending this to you for now to get your thoughts.

I will risk suggesting a process for these types of cases (exemptions claimed with clear evidence anti-avoidance might apply) and offer that this is an approach that might be used for similar cases. My goal here is to start the conversation around this idea.

s.13

1.

2.

3.

4.

s.13

Just some thoughts I had, feel free to tear this apart bring forward questions or anything like that. I have tough skin.

Happy Friday guys!

Curtis

From: Brost, Heather L FIN:EX <Heather.Brost@gov.bc.ca>

Sent: June 9, 2022 5:03 PM

To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>; Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>; Matthias, Curtis FIN:EX <Curtis.Matthias@gov.bc.ca>

Subject: Files.21; s.22

Well thank you everyone for your feedback on the DRAFT letter, and for the spirited discussion(s) that followed. This is new terrain for me so thank you everyone for your patience and understanding.

After discussions with all of you (*including with Don at the end of the day on Thursday*), I have (hopefully) perfected the DRAFT letter which we plan to send to the lawyer who is representing the transferee corporation. I believe the letter will be helpful to all parties involved.

The plan is to email a copy of the letter to the lawyer (with a hardcopy version of the letter to be mailed to the auditee).

I plan to do this on Monday, June 13th.

Thank you,

Heather Brost, CPA CGA
Property Transfer Tax Auditor
Property Taxation Branch
BC Ministry of Finance
Ph: (778) 698-3967; Fax: (250) 953-3094

From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
To: Anand, Sanjeev FIN:EX <Sanjeev.Anand@gov.bc.ca>, Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: June 14, 2022 4:07:15 PM PDT
Received: June 14, 2022 4:07:15 PM PDT

Hardy, Don FIN:EX 4:00 PM: s.13; s.21; s.22

Sanjeev, I am concerned that Heather's decision
s.13; s.21; s.22

Anand, Sanjeev FIN:EX 4:03 PM:

yes, I recognize that possibility but its worth a try and hopefully, appeal can understand what the taxpayer is trying to do aggressive tax planning and it does not meet the intend of the exemption in substance only in form

Hardy, Don FIN:EX 4:04 PM:

Ok sounds good. Please contact me if I can be of assistance

Anand, Sanjeev FIN:EX 4:05 PM:

i think we have a GAAR as a back up but we needed time so this is what will get us time

Hardy, Don FIN:EX 4:05 PM:

i see

RE: s.22

From: Don.Hardy@gov.bc.ca
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: July 5, 2022 3:46:13 PM PDT
Received: July 5, 2022 3:46:14 PM PDT
Attachments: image001.jpg

Hi Trudie, here's a suggested response. It tells the lawyer that while we are not going to assess^{s.22} for an avoidance, while at the same time it leaves the door open to us assessing^{s.22} at some future point.

- The property transfer tax administrator has concluded that the series of transactions did not result in s.22 receiving a tax benefit. s.22 is not liable for any tax consequences (as discussed under section 2.001(2) of the PTTA).

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: July 5, 2022 1:55 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: s.22

Have we heard anything else from this file?

Trudie Gysbers she/her/hers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 778-698-3768 Fax: 250-953-3094

Website: [Property Transfer Tax](#)



RE:^{s.22}

From: Don.Hardy@gov.bc.ca
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: July 6, 2022 8:47:22 AM PDT
Received: July 6, 2022 8:47:23 AM PDT
Attachments: image001.jpg

Good Morning Trudie.

The blurb you sent only mentions avoidance – section 2.001 of the PTTA.

Administrative Penalties are something different – section 34.2 of the PTTA.

In any event, we are long way from issuing administrative penalties for^{s.22} in the scenario below. We have only contemplated it on a very theoretical level. Our priority is first to finalize policy on avoidance application for^{s.22} in the scenario.

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: July 6, 2022 8:15 AM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: RE^{s.22}

Good Morning Don

I did send them the blurb you mentioned yesterday. Would we reopen this case and look at this down the road? That could be very confusing as I sent the email saying we would not be pursuing administrative penalty?

Trudie Gysbers she/her/hers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 778-698-3768 Fax: 250-953-3094

Website: [Property Transfer Tax](#)



From: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: July 5, 2022 2:07 PM
To: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Subject: RE:s.22

s.13; s.14

Hi Trudie, we can close this audit.

s.13; s.14

We will later on explore whether ^{s.13}
s.13 . But that is further down the road.

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
Sent: July 5, 2022 1:55 PM
To: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Subject: s.22

Have we heard anything else from this file?

Trudie Gysbers she/her/hers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 778-698-3768 Fax: 250-953-3094

Website: [Property Transfer Tax](#)



Page 293 of 310 to/à Page 295 of 310

Withheld pursuant to/removed as

s.13 ; s.22

FW: File Number^{s.22}

From: Gysbers, Trudie FIN:EX <Trudie.Gysbers@gov.bc.ca>
To: Pritchard, Lorna FIN:EX <Lorna.Pritchard@gov.bc.ca>, Izunwanne, Benson
FIN:EX <Benson.Izunwanne@gov.bc.ca>, Leblanc, Gage FIN:EX
<Gage.Leblanc@gov.bc.ca>, Anand, Sanjeev FIN:EX
<Sanjeev.Anand@gov.bc.ca>
Cc: Hardy, Don FIN:EX <Don.Hardy@gov.bc.ca>
Sent: August 30, 2022 10:39:45 AM PDT
Received: August 30, 2022 10:39:46 AM PDT
Attachments: image002.jpg, image004.jpg,^{s.22}
^{s.22}, image007.jpg, image006.png, image005.jpg,
image003.jpg, image001.jpg

Hi Lorna
s.13; s.15

but I do have a file#^{s.22} that was

reviewed for potential tax avoidance under Section 2.001.

I do not believe Don has a copy of this. We could include this in the collection of info.

Trudie Gysbers she/her/hers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 778-698-3768 Fax: 250-953-3094

Website: Property Transfer Tax

I acknowledge the ləkʷəŋən Peoples, known today as the Esquimalt and Songhees Nations, upon whose lands I am fortunate to live, work, and play.



From: Gysbers, Trudie FIN:EX
Sent: July 5, 2022 3:53 PM
To:^{s.22}
Subject: FW: File Numbers.22

Good Afternoon

The property transfer tax administrator has concluded that the series of transactions did not result in
^{s.22} receiving a tax benefit.^{s.22} is not liable for any tax consequences (as discussed under section
2.001(2) of the PTTA).

Thank you.

Trudie Gysbers she/her/hers

Supervisor Operations

Property Taxation Branch | Property Transfer Tax | Ministry of Finance

Phone: 778-698-3768 Fax: 250-953-3094

Website: [Property Transfer Tax](#)



s.22

Page 298 of 310 to/à Page 309 of 310

Withheld pursuant to/removed as

s.22



May 2, 2022

File Number: s.22
Letter Id: L0232453952

s.22

s.22

Dear HARJOT SHOKER:

Re: Request for Information - Advance Tax Ruling Request s.22
s.22

We request additional clarification about the bona fide purpose of s.22
s.22 In other words, if that
s.22 is being structured for a purpose other than to obtain a tax benefit (as
defined under section 2.001 of the Property Transfer Tax Act), please explain that purpose.

If we do not receive the above information by 01-Jun-2022, your advance ruling request may be cancelled and the ruling fee refunded.

Please provide the requested information by email to: PTBAdvanceRuling@gov.bc.ca

Provide as much relevant information or supporting documentation as possible to ensure that our review can be finalized and an Advance Tax Ruling drafted. Failure to provide details that are relevant to the interpretation of the legislation to the specifics of your client's file may result in the Ministry not being able to provide an Advance Tax Ruling.

Yours truly,

Rulings Team

From: [Killam, Bailey FIN:EX](#)
To: [Williams, Steve T FIN:EX](#)
Cc: [Jackson, Derek FIN:EX](#); [Zhao, Lucy FIN:EX](#)
Subject: RE: ATT Anti-avoidance
Date: December 22, 2020 2:01:36 PM

Hi Steve,

We have reviewed the below. Since the time the auditor worked on this file we have learned more about when we would and would not apply the anti-avoidance provision section^{s.13}
s.13

Please let me know if you would like to discuss further.

Thank you,

Bailey Killam
ATT Manager
Property Taxation Branch
Ministry of Finance
Phone: 778-698-9523

From: Williams, Steve T FIN:EX <Steve.Williams@gov.bc.ca>
Sent: November 30, 2020 1:58 PM
To: Killam, Bailey FIN:EX <Bailey.Killam@gov.bc.ca>
Cc: Jackson, Derek FIN:EX <Derek.Jackson@gov.bc.ca>
Subject: RE: ATT Anti-avoidance

Hi Bailey.

Sure, this is fine. Thanks for letting us know some timelines.

Steve

From: Killam, Bailey FIN:EX <Bailey.Killam@gov.bc.ca>
Sent: November 30, 2020 11:02 AM
To: Williams, Steve T FIN:EX <Steve.Williams@gov.bc.ca>
Cc: Jackson, Derek FIN:EX <Derek.Jackson@gov.bc.ca>
Subject: RE: ATT Anti-avoidance

Hi Steve,

I just wanted to acknowledge receipt of this and let you know that I will reply however it won't be for a few of weeks (let me know if that is not okay). Lucy was the auditor and she is deep in testing our

new webform this week which is scheduled to go live on Dec 13th as well as balancing a number of other priority files. ^{s.22}

Thank you,

Bailey Killam
ATT Manager
Property Taxation Branch
Ministry of Finance
Phone: 778-698-9523

From: Williams, Steve T FIN:EX <Steve.Williams@gov.bc.ca>
Sent: November 27, 2020 4:44 PM
To: Killam, Bailey FIN:EX <Bailey.Killam@gov.bc.ca>
Cc: Jackson, Derek FIN:EX <Derek.Jackson@gov.bc.ca>
Subject: ATT Anti-avoidance

Hi Bailey.

s.13; s.21

s.13

Thanks, Steve

From: Jackson, Derek FIN:EX <Derek.Jackson@gov.bc.ca>
Sent: October 1, 2020 3:57 PM
To: Williams, Steve T FIN:EX <Steve.Williams@gov.bc.ca>; Park, Janice FIN:EX <Janice.Park@gov.bc.ca>; Sall, Deborah FIN:EX <Deborah.Sall@gov.bc.ca>; Marceau, Julien FIN:EX <Julien.Marceau@gov.bc.ca>; Ivanova, Ivelina FIN:EX <Ivelina.Ivanova@gov.bc.ca>
Subject: s.13; s.21

s.13; s.21

Page 03 of 10 to/à Page 04 of 10

Withheld pursuant to/removed as

s.13 ; s.21

Derek

Derek Jackson, B. Comm., LL.B.
Appeals Officer
Tax Appeals and Litigation Branch
Ministry of Finance
Ph: 250.419.8738 Fax: 250.387.5883
Email: Derek.Jackson@gov.bc.ca

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British Columbia News

Action on foreign investment, consumer protection and vacancy puts British Columbians first

<https://news.gov.bc.ca/11615>

Monday, July 25, 2016 10:20 AM

Victoria - Legislation introduced today creates new measures to help make home ownership more affordable, establishes a fund for market housing and rental initiatives, strengthens consumer protection, and gives the City of Vancouver the tools it requested to increase rental property supply.

Bill 28, Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016, was introduced in the legislature today.

"Owning a home should be accessible to middle-class families, and those who are in a position to rent should be able to find a suitable home," Premier Christy Clark said. "These changes are about helping to make sure that British Columbians can continue to live, work and raise their families in our vibrant communities."

An additional property transfer tax rate of 15% will apply to purchasers of residential real estate who are foreign nationals or foreign-controlled corporations. The additional tax will take effect Aug. 2, 2016, and will apply to foreign entities registering their purchase of residential property in Metro Vancouver, excluding the treaty lands of the Tsawwassen First Nation.

For mixed-use property, the additional tax would apply on the residential component of the foreign interest in a property. For example, the additional tax on the purchase of a home valued at \$2 million will amount to \$300,000.

"The data we started collecting earlier this summer is showing that foreign nationals invested more than \$1 billion into B.C. property between June 10 and July 14, more than 86% of it in the Lower Mainland," said Finance Minister Michael de Jong. "While investment from outside Canada is only one factor driving price increases, it represents an additional source of pressure on a market struggling to build enough new homes to keep up. This additional tax on foreign purchases will help manage foreign demand while new homes are built to meet local needs."

Second, the government is creating a new Housing Priority Initiatives Fund for provincial housing and rental programs, which will be announced in the near future. The fund will receive an initial investment of \$75 million. It will receive a portion of revenues from the property transfer tax, including revenues from the new additional tax on foreign buyers.

Third, the Province is amending the Real Estate Services Act to substantially implement the key recommendations of the independent advisory group report, and to end self-regulation of the real estate industry. Government has accepted all the recommendations in the report. These changes will increase significantly the superintendent of real estate's authority and oversight.

The power to make the rules that apply to the conduct of licensees will rest with the new superintendent of real estate instead of with council. The new superintendent will also have the authority to direct and oversee council operations, including requiring council to investigate a particular matter, issue a notice of a disciplinary hearing, and provide reports on the operations and activities of council to the superintendent. As well, the chair, vice-chair and all other members of the council will be appointed by government.

"We need to ensure that when people are ready to make such an important investment, the proper protections and oversight are in place," said de Jong. "Consumers must be confident their interests are held above all else."

Fourth, amendments to the Vancouver Charter provide the legislative authority for the city to implement and administer a tax on vacant homes. The City of Vancouver will design the framework of the vacancy tax, including

details like the tax rate, when it will apply and any necessary exemptions.

"The issue of housing supply and affordability is impacting British Columbians and the livability of our Province, especially the Metro Vancouver region," said Minister Peter Fassbender. "The City of Vancouver has identified the need for a vacancy tax in order to meet rental supply issues. We are taking action by introducing legislation today that enables them to do this work."

The Province is working on additional measures to address the complex causes of rising housing prices in Metro Vancouver, as well as other regions of the province. This work focuses on ensuring the dream of home ownership remains within the reach of the middle class, increasing housing supply, smart transit expansion, supporting first-time home buyers, strengthening consumer protection and increasing rental supply.

Learn More:

Learn more about the proposed changes to the property transfer tax:

<http://www2.gov.bc.ca/assets/download/A2960ACDB6BD443280CA34C285BAEA80>

(<http://www2.gov.bc.ca/assets/download/A2960ACDB6BD443280CA34C285BAEA80>)

Visit to learn more about the Province's actions on housing affordability: <http://gov.bc.ca/housingaffordability>
(<http://gov.bc.ca/housingaffordability>)

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Media Contacts

Stephen Smart
Press Secretary
Office of the Premier
778 389-6202

Jamie Edwardson
Communications Director
Ministry of Finance
250 356-2821

Backgrounders

Additional property transfer tax for foreign entities

Effective Aug. 2, 2016, foreign nationals, taxable trustees and foreign-controlled corporations registering their purchase of residential property in Metro Vancouver will pay an additional 15% tax on the residential component of the foreign interest in a property. The tax does not apply within the treaty lands of the Tsawwassen First Nation.

The additional tax presently only applies in the Metro Vancouver, but government can prescribe in regulation other areas where the additional tax would apply. The Province continues to monitor data on foreign investment and foreign ownership in B.C.'s real estate market.

Application:

A trustee will be subject to the additional tax if the trustee is a foreign entity, or if at least one beneficiary of the trust is a foreign entity. Similarly, a corporation would be liable if it is not incorporated in Canada, or if the corporation is incorporated in Canada but is controlled by foreign entities.

The additional tax will only apply to the portion of a property's value that is for residential use. For example, if a foreign corporation purchases a mixed-use development that combines residential space with commercial space, the additional 15% tax will apply only to the portion of the property's value that is for residential use.

Enforcement:

Audit measures already in place for the property transfer tax will be extended to encompass the additional tax. Additional auditors will be required and the process is underway to begin recruitment to ensure the additional tax is paid by those required to do so under the legislation.

The amendments extend the limitation period for audit and enforcement of the additional tax to six years. The existing limitation period for the regular tax is one year. The property transfer tax return form will be updated to require a Social Insurance Number from all transferees who are Canadian Citizens or permanent residents. Invalid social insurance numbers or other discrepancies on a return will lead to an audit and investigation of the transaction.

Avoidance Rules:

The amendments include anti-avoidance rules designed to capture transactions that are specifically structured to avoid the tax. For example, a transferee who would otherwise be taxable cannot hide behind a local trustee. The legislation is structured to look through Canadian trustees to beneficiaries of the trust as an anti-avoidance mechanism. If the trustee is foreign, the transaction is taxable even if the beneficiaries are not foreign.

Increased Penalties:

Fines payable as a result of offences with respect to the additional tax are the amount of unpaid tax, with interest, plus up to \$200,000 for corporations and \$100,000 for individuals. The maximum liability for imprisonment, two years, remains unchanged.

Strengthening consumer protection and restoring consumer confidence

The independent advisory group established by the Real Estate Council of B.C. released its report into regulation of the real estate industry on June 28, 2016. The report presented a comprehensive examination of real estate practices and raised important questions about the effectiveness of the existing regulatory framework for the industry.

The report made 28 primary recommendations to enhance governance, oversight, transparency and accountability to consumers. The Province accepted the report's recommendations, and is taking the additional steps of ending self-regulation of the industry and dramatically increasing the superintendent of real estate's oversight and authority.

The following amendments are proposed to the Real Estate Services Act in response to the recommendations of the independent advisory group:

- Increase maximum disciplinary and administrative penalties (recommendation #16).
- Allow for commissions from licensees and brokerages engaging in misconduct to be taken back to the Real Estate Council. (recommendation #17).
- Require all members of council to be appointed by government (expansion of recommendation #19).
- Significantly increase the superintendent's oversight of council (recommendation #21).
- Allow owners to train and supervise licensees only if owners are themselves licensees (response to recommendation #23).

The amendments provide the superintendent of real estate with the exclusive rule-making powers that previously rested with the Real Estate Council.

The superintendent of real estate has been given explicit authority in the following areas, to address the recommendations of the IAG:

- Establish a Code of Ethics (recommendation #1).
- Prohibit licensees from offering dual agency and require licensees to provide information to unrepresented parties (recommendation #2).
- Establish standards of conduct and business practices for licensees (response to recommendations #3, #4, #9, #11).
- Establish conditions and restrictions on a licensee acquiring an interest in trade (recommendation #7, #8).
- Strengthen requirements for managing brokers to have active and direct oversight over licensees (recommendation #22).
- Require licensees to keep records and report information to Council (recommendation #24).

The recommendations respecting authority over unlicensed activity, which remains with the superintendent of real estate, and the extension of contract assignment rules to transactions not involving licensees require further analysis by government, the superintendent and the Real Estate Council of B.C. (recommendations #6, #20).

Other recommendations do not require any additional authority and plans for their implementation are underway (recommendations #5, #10, #12, #13, #14, #15, #18, #25, #26, #27, #28).

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