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GMS Flash Alert

2022-213 | December 2, 2022

Canada - Tax Developments Related to Purchases of Residential Property

A significant concern of the various levels of government in Canada (federal, provincial, and municipal) is housing affordability. In 2022 there have been new laws introduced and updates to existing taxes that will potentially impact residential real estate in Canada for individuals relocating to and from Canada.

During 2022, the Canadian government has passed legislation for a prohibition on purchases of residential property by non-residents during 2023 and 2024, that is intended to come into effect on January 1, 2023. This legislation will limit purchases of residential property by non-residents, subject to a few exceptions.

Other new taxes that were either passed in 2022 or that took effect in 2022 include the federal Underused Housing Tax and the Toronto Vacant Home Tax[1]. Also, the existing Ontario Non-Resident Speculation Tax was twice updated in 2022[2].

WHY THIS MATTERS

The new federal prohibition on non-residential purchases of residential real estate and updates to the Ontario Non-Resident Speculation Tax may limit the ability of certain individuals relocating to Canada to purchase residential real estate entirely in 2023 and 2024 and significantly increase the purchase costs of residential real estate located in Ontario after 2024.

This might impact the ability of Canada to attract certain immigrants and impact the ability of Canadian-based employers to convince employees to relocate to Canada.

The new federal Underused Housing Tax and the Toronto Vacant Home Tax and updates to the Vancouver Empty Homes Tax are designed to impose taxes on individuals who own residential real estate and leave that property vacant for too much of the year. The taxes can be quite material, especially where multiple taxes apply to a single property, which can negatively impact employer assignment policies and potentially assignment costs, as well.

Background

The Canadian government's budget for 2022 outlined measures to increase housing affordability measures and one particular concern was foreign money coming into Canada to purchase residential real estate. The government therefore proposed restrictions that would prohibit foreign commercial enterprises (corporations incorporated outside Canada and corporations incorporated inside Canada whose shares are not listed on a stock exchange in Canada) and people who are not Canadian citizens or permanent residents from acquiring non-recreational, residential property for a period of two years. The Department of Finance Canada released draft legislative proposals to implement the prohibition in Bill C-19[3] which received Royal Asset on June 23, 2022, with an effective date of January 1, 2023.

Exceptions

The federal prohibition is subject to exceptions as provided for in legislation and, importantly, exempts Canadian citizens or permanent residents of Canada.

The federal prohibition does not apply to:

- a temporary resident within the meaning of the *Immigration and Refugee Protection Act* who satisfies prescribed conditions;
- a protected person within the meaning of subsection 95(2) of that Act;
    - an individual who is a non-Canadian and who purchases residential property in Canada with his/her spouse or common-law partner if the spouse or common-law partner is a Canadian citizen, personally registered as an Indian under the *Indian Act*, permanent resident, or a temporary resident within the meaning of the *Immigration and Refugee Act* who satisfies prescribed conditions or a protected person within the meaning of subsection 95(2) of that Act; or
    - a person of a prescribed class of persons.

Also, foreign states are not prohibited from purchasing residential property for diplomatic or consular purposes and the prohibition doesn't apply to property where the agreement of purchase and sale is entered into before January 1, 2023.

Additional exceptions may be provided for in regulations. The federal government through the Canada Mortgage and Housing Corporation issued a consultation paper to obtain feedback on certain limited exceptions for temporary residents of Canada that meet very specific conditions (feedback period ended September 16, 2022)[4].

Other Measures

The Canadian federal government prohibition is just one of the various measures that received approval or took effect in 2022 to address housing affordability. Another was a new 1 percent city level vacant home tax introduced by Toronto, effective January 1, 2022[5].

In other attempts to address housing affordability, existing legislation was modified: the Vancouver Empty Homes Tax, which was the first vacant home tax in Canada, had been introduced as a 1-percent tax in 2017 and had increased to 3 percent for 2021. In 2022 it was increased to 5 percent effective for the 2023 reference year and onwards[6].

The Vancouver and Toronto vacant home taxes are annual taxes that may apply when the homeowner leaves his/her home vacant. The Ontario Non-Resident Speculation Tax was modified, but unlike other measures, it is a tax that is applied at point of purchase for certain non-resident purchasers. The Ontario Non-Resident Speculation Tax was introduced in 2017 and assessed a 15-percent tax on the purchase of resident property in the Greater Golden Horseshoe Region of Ontario by certain non-residents. The tax was amended effective March 30, 2022, to increase the tax to 20 percent and to extend the tax to apply to purchases anywhere in Ontario[7]. The tax was further amended effective October 25, 2022, to increase the tax to 25 percent. There are transitional provisions for purchases entered into prior to March 30, 2022, that closed after March 30, 2022, and for purchases entered between March 30, 2022 and October 24, 2022, that closed after October 25, 2022.

Additional vacant home taxes have either been implemented or planned for future years. The City of Ottawa implemented one in 2022 while the City of Hamilton will implement one in 2024. Regional governments that have begun consultations on vacant home taxes include Peel Region and York Region in Ontario.

KPMG NOTE

From a global mobility perspective, the various measures that impact real estate, whether temporary prohibitions, buyer taxes or vacant home taxes, can have a profound impact on individual taxpayers as well as on companies that seek to relocate employees to or from Canada.

FOOTNOTES:

1 For coverage by KPMG LLP of the Canada and Toronto Underused Housing taxes, see *GMS Flash Alert* 2022-129, June 28, 2022.

2 See Ontario Finance Department, "Ontario Continues to Crack Down on Foreign Real-Estate Speculation: Government increasing Non-Resident Speculation Tax rate to 25 per cent, the highest in Canada," (October 24, 2022) at: https://news.ontario.ca/en/release/1002421/ontario-continues-to-crack-down-on-foreign-real-estate-speculation .

3 For the text and status of Bill C-19, see the Parliament of Canada webpage: https://www.parl.ca/legisinfo/en/bill/44-1/c-19 .

4 For the Canada Mortgage and Housing Corporation consultation paper, see https://assets.cmhc-schl.gc.ca/sites/cmhc/media-newsroom/notices/2022/thoughts-ban-non-canadians-buying-real-estate/consultation-paper-draft-limited-distribution-en.pdf?rev=25292560-01e4-4875-ba24-abfafbddc8f4 .

5 See the government of the city of Toronto webpage "Vacant Home Tax" at: https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/ .

6 Vancouver Empty Homes Tax, see https://vancouver.ca/home-property-development/empty-homes-tax.aspx .

7 For coverage by KPMG LLP of the March 30, 2022 changes to the Ontario Non-Resident Speculation Tax, see *GMS Flash Alert* 2022-086, April 15, 2022. Also see: See Ontario Finance Department, "Ontario Continues to Crack Down on Foreign Real-Estate Speculation: Government increasing Non-Resident Speculation Tax rate to 25 per cent, the highest in Canada," (October 24, 2022) at: https://news.ontario.ca/en/release/1002421/ontario-continues-to-crack-down-on-foreign-real-estate-speculation .

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