

ONTARIO IMPOSES 15% TAX ON FOREIGN BUYERS OF RESIDENTIAL PROPERTY

By Ian V. MacInnis

Ontario announced a 15% tax on the purchase or acquisition of an interest in residential property located in the Greater Golden Horseshoe ("**GGH**") by individuals who are not citizens or permanent residents of Canada and by foreign corporations ("**foreign entities**") and certain taxable trustees. The new Non-Resident Speculation Tax ("**NRST**") is part of a package of measures introduced to address the skyrocketing prices for residential real estate. The NRST will apply in addition to the general land transfer tax in Ontario.

The NRST will be effective as of April 21, 2017; however, the tax will not apply to binding Agreements of Purchase and Sale signed on or before April 20, 2017.

Entities Subject to the NRST

The NRST applies to "**foreign entities**" or "**taxable trustees**" who purchase or acquire residential property in the GGH.

A "**foreign entity**" is either a foreign national or a foreign corporation.

A "**foreign national**" is an individual who is not a Canadian citizen or permanent resident of Canada (as defined in the *Immigration and Refugee Protection Act (Canada)*).

A "**foreign corporation**" is a corporation that is one of the following:

- not incorporated in Canada;
- incorporated in Canada but is controlled in whole or in part by a foreign national or other foreign corporation, unless the shares of the corporation are listed on a Canadian stock exchange; or
- is controlled directly or indirectly by a foreign entity.

A "**taxable trustee**" is a trustee that is one of the following:

- a foreign entity holding title in trust for beneficiaries; or
- a Canadian citizen, permanent resident of Canada or a corporation holding title in trust for foreign entity beneficiaries.



[Ian V. MacInnis](#)
Partner

t: 416.941.8813
imacinnis@foglers.com



[Tammy J. Anklewicz](#)
Partner

t: 416.365.3710
tanklewicz@foglers.com



[Kathryn Balter](#)
Associate

t: 416.864.8852
kbalter@foglers.com



[Leonard P. Bosschart](#)
Partner

t: 416.864.7600
lbosschart@foglers.com



[Shaun M. Doody](#)
Associate

t: 416.864.7602
sdoody@foglers.com

The NRST will not apply when a person purchases or acquires residential property as a trustee of a mutual fund trust, real estate investment trust or specified investment flow-through trust. In addition, refugees and nominees under the Ontario Immigrant Nominee Program will not be subject to the NRST. Ontario has also announced that a NRST rebate will be available for eligible individuals who subsequently attain citizenship or permanent resident status within four (4) years of the date of the purchase or acquisition, as well as certain international students and certain foreign nationals working in Ontario for a continuous one-year period since the purchase or acquisition date.

Types of Property Subject to the NRST

The NRST will apply to transfers of land that contain at least one (1) and not more than six (6) single-family residences (e.g., detached and semi-detached houses, townhouses and condominiums). The NRST does not apply to multi-residential apartment buildings with more than six (6) units. In the case where there is a purchase of multiple condominium units, each unit would be considered land containing one (1) single-family residence.

The NRST does not apply to other types of land such as agricultural land, commercial land or industrial land.

The NRST will apply to the following geographic areas: Brant, Dufferin, Durham, Haldimand, Halton, Hamilton, Kawartha Lakes, Niagara, Northumberland, Peel, Peterborough, Simcoe, Toronto, Waterloo, Wellington and York.

Application

The 15% NRST applies on the value of the consideration for the residential property. Where the land transfer includes both residential property and another type of property, the NRST applies on that portion of the value of the consideration that is attributable to the residential property.

The NRST will also apply to an unregistered disposition of a beneficial interest in a residential property. The NRST will apply to the value of the consideration for a transfer of residential property if any one (1) of the transferees is a foreign entity or taxable trustee. Accordingly, if the transfer of residential property is made to three (3) transferees, one (1) of whom is a foreign entity that acquires a one-third (1/3) share in the property, the NRST will apply to 100% of the value of the consideration for the transfer. In addition, each transferee is jointly and severally liable for any NRST payable. If a foreign entity or taxable trustee does not pay the NRST, the



Peter K. Guselle
Partner

t: 416.941.8818

pguselle@foglers.com



Suzanne I.R. Hanson
Counsel

t: 416.941.8865

shanson@foglers.com



William T. Perks
Counsel

t: 416.941.8864

wperks@foglers.com



Mary Wahbi
Partner

t: 416.864.7629

mwahbi@foglers.com

Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

t: 416.864.9700

f: 416.941.8852
foglers.com

other transferees will be required to pay the tax even if they are Canadian citizens or permanent residents of Canada.

Payment of the NRST

All transfers of residential property registered on or after April 21, 2017 must contain a statement expressly acknowledging that consideration has been given to the application of the NRST. Registrants will be required to provide one (1) of the following two (2) statements:

- the NRST does not apply to the transfer; or
- the NRST applies to the transfer and has been paid to the Ministry of Finance as confirmed by the applicable receipt number.

Taxpayers reporting unregistered dispositions of land to the Ministry of Finance (Ontario) will be required to expressly acknowledge in a covering letter that consideration has been given to the application of the NRST and whether or not it is payable on the reported transaction. It can be expected that the potential application of the NRST will be a matter that will need to be addressed by the solicitor acting for the purchaser of residential property located in the GGH. It will be necessary to obtain appropriate verification from the purchaser whether or not the purchaser is a foreign entity or taxable trustee. As a practical matter, if the transaction is subject to NRST, it will be necessary to arrange for pre-payment of the tax so as to allow for the electronic registration of title on the intended closing date.

REPORTING NOW REQUIRED TO CLAIM THE PRINCIPAL RESIDENCE EXEMPTION ("PRE")

By Ian V. MacInnis

The long-standing administrative policy of the CRA was not to require an individual to report the disposition of a principal residence if there was no capital gain remaining after applying the PRE. It was only necessary for individual taxpayers to file the Form T2091 to designate a property as a principal residence where there was a capital gain to report (e.g., in a situation where the property was not the taxpayer's principal residence for all of the years or if some portion of the property did not qualify for the PRE).

Starting in 2016 (i.e., for dispositions of a principal residence that occur on or after January 1, 2016), the CRA now requires that the sale of a principal residence be reported on Schedule 3, Capital Gains on the taxpayer's T1 return in order to qualify for the PRE.

The Schedule 3 has been revised to permit a designation of a property that was disposed of to be a principal residence. The Schedule requires the disclosure of the

year of acquisition, the proceeds of disposition and a description of the property being designated as a principal residence. It should be noted that deemed dispositions of a principal residence will also be required to be reported on the T1 return, such as deemed dispositions arising as a result of a change-in-use or the death of the owner.

In a news release dated March 6, 2017, the CRA states that if the home did not qualify as a principal residence for every year it was owned by a taxpayer, the taxpayer would have to report the part of the capital gain on the property that relates to the years for which the property was not designated as a PRE. In order to do this, the taxpayer is required to complete Form T2091, as well as completing the applicable sections of Schedule 3 on page 2 of the Schedule. In the case of the estate of a deceased taxpayer, the designation of a PRE would be made using Form T1255.

If a taxpayer sold more than one property in the same calendar year and each property was at one time, a principal residence of the taxpayer, the taxpayer must show this by ticking box 3 at Line 179 on page 2 of Schedule 3 and by providing the applicable information requested for each property on the same page. In addition, the taxpayer may have to complete a separate Form T2091 for each property to calculate the amount of the capital gain, if any, to report.

As a result of these new reporting requirements, the PRE will only be allowed where the sale and designation of the principal residence is reported on the taxpayer's tax return. This is a substantial change in administrative policy and may have harsh consequences to taxpayers unaware of the change.