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Ontario hikes land transfer tax on new houses

Buyers will pay on total, not base, price

My dictionary defines "grinch" as one who spoils the pleasure of others. The derivation, of course, is the principal character in the Dr. Seuss classic, *How the Grinch Stole Christmas*.

That definition might well apply to Ontario Finance Minister Dwight Duncan, whose mandarins have come out with an edict to increase the land transfer tax paid on every new home and condominium in Ontario.

No major announcement of the increase was made and industry insiders told me they were not aware of any stakeholder consultation. At the end of March, a new land transfer tax bulletin quietly appeared, buried deep within the Ministry of Finance website (http://www.rev.gov.on.ca/english/bulletins/lti/1_2006.html and see full copy, below).

Under the current practice, purchasers of new homes and condominiums pay land transfer tax on the base price of the home, excluding GST, all the builder extras and the purchaser upgrades.

According to the new tax bulletin from the Ontario Ministry of Finance, however, homebuyers will now have to pay tax on the total purchase price, including all extras and upgrades, plus installations, assumed charges and miscellaneous costs.

The value of extras and upgrades to be included in the purchase price for land transfer tax purposes now includes the cost of:

- upgraded flooring, cupboards, doors, windows and counters
- architectural changes
- extra doors and entrances
- whirlpool baths
- finished basements
- smoke detectors
- roughed-in washrooms
- fireplaces

Purchasers will also have to pay land transfer tax on charges for:

- lot premiums
- tree planting
- sodding and planting
- driveway paving

Builders of new houses and condominiums typically charge back to each purchaser all or a portion of the installation and connection charges for gas, hydro and water meters.

As a result of the changes in the new bulletin, the value of these installations will now be added to the purchase price so that land transfer tax will be payable on the total.

As if this weren't enough, purchasers will have to start paying land transfer tax on a host of other charges that builders typically pass on to purchasers as extras, including:

- municipal lot levies
- development charges and increases in development charges
- school levies
- the \$53.50 charge by the Law Society to the sellers
- any administrative fee charged for a late request for upgrades
- the Ontario New Home Warranty Plan fee
- architect's fees

Purchasers will not be able to escape some of the liability by entering into separate agreements to buy the land and then construct the house. The cost of both agreements would be subject to land transfer tax.

If a home purchase includes new appliances, buyers have to pay the government eight per cent retail sales tax on the value of the appliances instead of land transfer tax. But in most cases, the buyers wind up paying PST directly to the builder instead of the government. Eventually, either the builders or the government will have to stop collecting this tax so the purchasers won't have to pay it twice.

Last week I contacted Toronto lawyers Harry Herskowitz and Mark Freedman to get their take on the new tax bulletin. Herskowitz is a partner at DelZotti Zorzi and Freedman is a

partner at Harris Sheaffer. The two lawyers handle a large percentage of builder closings for new condominiums in the Greater Toronto Area.

Herskowitz told me the builder community is concerned that increasing the overall amount of land transfer tax will have a negative impact on new home buyers. It may also bump up the house value on which the Taron warranty premiums are calculated, as well as the price upon which the GST New Housing Rebate is calculated.

In addition, when the Municipal Property Assessment Corporation sets the initial market value assessment of each new house and condominium, those values will be increased by the total cost of the extras, which could be in the range of \$5,000 or more. As a result, municipal property taxes will be that much higher in future years, since the initial base price will include all the extras, upgrades, levies and other adjustments.

Mark Freedman told me that several aspects of the new tax bulletin are still unclear. Some builders, he said, offer purchasers a cash-back credit or a refund of all common expenses for the first year of ownership.

Some credits, Freedman explained, are reductions in the price and some are incentives paid after closing.

Whether or not these items can now be deducted from the purchase price for the purpose of calculating and paying land transfer tax remains to be seen.

Freedman, Herskowitz and Jules Mikelberg, another developer lawyer, will be meeting shortly to discuss how to comply with the new guidelines and standardize conveyancing procedures across the industry.

In Ontario, land transfer tax is paid on a sliding scale. The new tax policy will apply at the marginal rates of 1 per cent on homes valued at less than \$250,000, 1.5 per cent on homes valued at more than \$250,000, and 2 per cent where the price exceeds \$400,000.

Assuming the government ruling will add about \$5,000 in extras to the taxable value of each new home, the initial effect of this provincial policy will be to increase the transfer tax by perhaps \$75 to \$100 on each new house or condo.

Where a buyer has ordered substantial upgrades, the tax increase will be significantly higher.

Although the actual dollar cost of the tax hit will not be much on each purchase, the optics are that it will appear prices have increased substantially across the board. That may hurt the entire new home sector.

The only good news is that the land transfer tax grab should be more than offset by the new 1 per cent decrease in the goods and services tax.

Bob Aaron is a Toronto real estate lawyer. www.aaron.ca ©Aaron & Aaron. All Rights Reserved.

from

LTT 1-2006 Determining the Value of the Consideration for Transfers of New Homes

LTT 1-2006, March 2006

Determining the Value of the Consideration for Transfers of New Homes

Land Transfer Tax Act

This bulletin provides guidelines to assist in understanding how to calculate the "value of the consideration" in the purchase of a newly constructed home.

The information in this bulletin does not replace the law found in the *Land Transfer Tax Act* and related regulations.

General

Tax Base

The true "value of the consideration" is the amount to be declared in the land transfer tax statements for electronic land registrations, or in the which is required to be filed with the Land Registrar for attachment to all conveyances tendered for registration.

Land transfer tax is calculated on the true value of the consideration, which is defined in subsection 1(1) of the *Land Transfer Tax Act* (Act). For information on the rates and calculation of the tax, please refer to

The definition of the value of the consideration is broad, and is not limited to the purchase price stated in an agreement of purchase and sale. Regard must be given to the definitions of "convey", "conveyance" and "land" which are broad as well. These definitions may be found at the end of this bulletin.

Some Factors To Be Taken Into Account in Determining the Value of the Consideration

Extras and Upgrades

Purchasers of new homes often agree to a base purchase price and then advise the builder of any extras and upgrades that they want.

The value of these extras and upgrades are to be included in determining the value of the consideration. Some examples of extras and upgrades that are part of the structure are:

- upgraded flooring, cupboards, doors, windows, counters, etc.,
- architectural changes,
- extra doors and entrances,
- whirlpool baths,
- finished basements,
- roughed in washrooms,
- fireplaces.

The value of upgrades to the land are also to be included in determining the value of the consideration. Some examples of these upgrades are:

- lot premiums,
- tree planting,
- sodding and grading,
- driveway paving.

Installations

In a new home, builders typically install gas, hydro and water meters and the like. Where the builder adds the cost of installation, over and above the purchase price stated in the agreement of purchase and sale, the value of these installations are to be included in determining the value of the consideration.

Assumed Liabilities and Miscellaneous Costs

The definition of value of the consideration includes the value of any liability assumed and the value of any benefit conferred "as part of the arrangement relating to the conveyance."

In many cases, the builder has assumed liabilities and incurred other miscellaneous costs which are passed to the new home buyer. As these costs are assumed by the new home buyer as part of the arrangement relating to the conveyance, they form part of the value of the consideration. Some examples are:

- lot levies,
- development charges,
- school levies,
- increases in development levies imposed by a municipality,
- the vendor's Law Society of Upper Canada transaction levy surcharge,
- a late request for upgrades fee,
- the Ontario New Home Warranty Plan fee,
- architect's fees.

Construction as Part of an Arrangement Relating to a Conveyance

Land is defined as including a structure to be constructed on land as part of an arrangement relating to a conveyance. This is in addition to land and any existing structures and fixtures.

Entering into separate agreements for the purchase of the land and the construction of a new home on it will not reduce the value of the consideration for the transaction if they are all integral to the arrangement relating to the conveyance. A good rule of thumb to determine if this is integral to the arrangement is: "if the purchaser doesn't enter into the agreement to construct the new home, will he or she still get the land?" Where the conveyance of the vacant land is dependent on the construction of the home, then the arrangement is to buy the land and the structure to be constructed; both agreements must be taken into account to determine the true value of the consideration.

Assignment of Agreement of Purchase and Sale

Where vendor A and purchaser B have entered into an agreement of purchase and sale, and then C takes an assignment of B's interest, the true value of the consideration on the transfer to C includes:

- the consideration for the assignment,
- the purchase price in the agreement assigned, and
- the value of extras, upgrades, installations, etc. as set out above.

Note: registration of any notice of the agreement between A and B also attracts land transfer tax.

Selling the Newly Constructed Home to a Second Purchaser

Where vendor A and purchaser B have entered into an agreement of purchase and sale, and then B enters into a separate agreement to sell the same property to C, the true value of the consideration for the transfer to C includes:

- the purchase price in the resale agreement, and
- the value of any costs and liabilities assumed by C.

Note: registration of any notice of the agreement between A and B also attracts land transfer tax.

Addressing Arrangement/Agreement(s) as a Whole

All aspects of the arrangement/agreement(s) as a whole should be addressed in determining the value of the consideration. The statement of adjustments often provides a good basis for a review of items that should be included in the determining the value of the consideration. The examples cited earlier in this section are not exhaustive.

Goods and Services Tax (GST) and the GST Rebate

GST not Included

Newly constructed homes are subject to the GST. The GST is not to be included in determining the value of the consideration.

Assigned GST Rebate may be Included

Frequently, the agreement of purchase and sale for a new home requires the purchaser to assign any GST rebate to the vendor. The assigned rebate often forms part of the value of the consideration. For details, refer to Tax Bulletin

Statement or Affidavit Setting Out the Value of the Consideration

Electronic Land Registrations

Where a conveyance is tendered for registration as an electronic document, the allocation of the true value of the consideration subject to land transfer tax is to be set out in Statements 1 (a) through (f) in the Consideration tab.

Other Registrations

If the conveyance is tendered for registration otherwise than as an electronic document, allocation of the true value of the consideration subject to land transfer tax is to be set out in Lines 2 (a) through (e) of the submitted to the Land Registrar with the conveyance.

Retail Sales Tax

Where chattels such as fridges, stoves, dishwashers, draperies, furniture and equipment are included in the purchase of the home, the value of these items is subject to retail sales tax. As a result, the value of these items does not form part of the value of the consideration that is subject to land transfer tax.

For electronic land registrations, the value of these chattels is to be entered in Statement 1(h) - Value of all Chattels in the Consideration tab.

For other registrations, the value of these chattels is to be listed on Line 2(g) - Value of all Chattels in the

For more information on retail sales tax please contact the nearest Ontario Ministry of Finance Tax Office listed under Taxes - Provincial (Retail) Sales Tax in the blue pages of your telephone directory, call our TAX FAX Service at 1-877-4-TAX-FAX (1-877-482-9329), or visit our website at

Definitions from the *Land Transfer Tax Act*

Convey

"convey" includes the granting, assigning, releasing, surrendering, leasing or disposing of land in Ontario, agreeing to sell land in Ontario, or the giving of an option upon or with respect to any land in Ontario, or the registration of a caution or notice of any kind signifying the existence of an unregistered instrument or writing by which land is conveyed, whether the effect of any of the foregoing is to bring into existence an interest of any kind in land or is only for the purpose of giving effect to or formal recognition to any interest of whatsoever kind that theretofore existed in land, but "convey" does not include any transfer of land for the purpose only of securing a debt or loan, or any transfer by a creditor for the purpose only of returning land that had been used as security for a debt or loan.

Conveyance

"conveyance" includes any instrument or writing by which land is conveyed and includes a final order of foreclosure under any mortgage or charge affecting land and a caution or notice of any kind in writing signifying the existence of any instrument or writing by which land is conveyed.

Land

"land" includes lands, tenements and hereditaments and any estate, right or interest therein, a structure to be constructed on land as part of an arrangement relating to a conveyance of land, a leasehold interest or estate, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to the location of land or to the existence thereon of any building or fixture, and fixtures.

Value of the Consideration

"value of the consideration" includes,

- the gross sale price or the amount expressed in money of any consideration given or to be given for the conveyance by or on behalf of the transferee and the value expressed in money of any liability assumed or undertaken by or on behalf of the transferee as part of the arrangement relating to the conveyance and the value expressed in money of any benefit of whatsoever kind conferred directly or indirectly by the transferee on any person as part of the arrangement relating to the conveyance,
- in the case of a final order of foreclosure under any mortgage or charge affecting land, the lesser of,
 - the value of the consideration determined under clause (a) plus the amount owed under the mortgage or charge at the time it is foreclosed, including principal, interest and all other costs and expenses other than municipal taxes, secured by the mortgage or charge and owing at the time plus the amount owing similarly calculated under any mortgage or charge that is subsequent in priority to the mortgage or charge in respect of which the final order of foreclosure is made and that is held by the mortgagee or chargee in whose favour the final order of foreclosure that is registered is made, or
 - an amount established to the satisfaction of the Minister to be equal to the fair market value of the land that is subject to the mortgage or charge,
- b.1. in the case of a conveyance of land to the mortgagee or chargee under a mortgage or charge affecting the land when the conveyance is given in satisfaction of the amount owed under the mortgage or charge, the lesser of,
 - the value of the consideration determined under clause (a) plus the amount owed under the mortgage or charge at the time the conveyance is made, including principal, interest and all other costs or expenses other than municipal taxes, secured by the mortgage or charge and owing at the time plus the amount owing similarly calculated under any other mortgage or charge that is subsequent in priority to the mortgage or charge in respect of which the conveyance is made, if that mortgage or charge is held by the mortgagee or chargee to whom the conveyance is made, or
 - an amount established to the satisfaction of the Minister to be equal to the fair market value of the land that is subject to the conveyance,
- in the case where a lease of land, a transfer of the interest of a lessee under a lease of land, or a notice of any kind in writing signifying the existence of an unregistered lease of land or of an unregistered transfer of the interest of a lessee under a lease of land is not exempt from tax by virtue of subsection (6), the fair market value, ascertained as at the time of the tender or submission for registration, of the land to which the lease extends or of a smaller portion of such land if only such smaller portion is conveyed,
- in the case of a caution or notice of any kind in writing signifying the existence of any unregistered instrument or writing by which land is conveyed and that is not a notice in writing described in clause (c), the value of the consideration determined under clause (a) or (b) for the land conveyed by the unregistered instrument or writing that is referred to in such caution or notice in writing that is not a notice in writing described in clause (c),
- in the case of a conveyance of land from a trustee (whether or not the trustee is so described in the conveyance) to a person to whom or for whose benefit any equitable or beneficial interest in the land has been transferred by a conveyance or conveyances that have not been registered, the value of the consideration determined under clauses (a) to (d), whichever is applicable, in respect of the unregistered conveyances made to such person,
- in the case of a conveyance of land from a trustee to another trustee (whether or not either trustee is so described in the conveyance) where,
 - the person to whom or for whose benefit any equitable or beneficial interest in the land is held is not the same person to whom or for whose benefit any equitable or beneficial interest in the land was held by the trustee making the conveyance when that trustee first acquired legal interest in the land, and
 - valuable consideration has been given by the transferee of an equitable or beneficial interest for the transfer of any equitable or beneficial interest in the land held by the trustee making the conveyance while that trustee was the holder of the legal interest in the land, the fair market value, ascertained at the time of the tender or submission for registration, of the land to which the conveyance extends, or
- in the case of a conveyance of land to a corporation where any part of the consideration consists of the allotment and issuance of the corporation's shares or in the case of a conveyance of land from a corporation to any of its shareholders the fair market value, ascertained at the time of the tender or submission for registration, of the land to which the conveyance extends.

Additional Information

If this bulletin does not completely address your particular situation, refer to the Act and related regulations, or contact the:

Ministry of Finance
Land Transfer Tax Program
33 King Street West
P.O. Box 625
Oshawa ON L1H 8H9

Tel: 905-433-6361
Fax 905-433-5770
TTY (Teletypewriter): 1-800-263-7776

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FAX service at 1-877-4-TAX-FAX (1-877-482-9329).

or by calling our TAX

The *Land Transfer Tax Act* and Ontario's other statutes and regulations may be obtained online at www.legislation.gov.on.ca.

*Ce bulletin est disponible en fran aise.
Veuillez appeler le 905-433-6393 pour demander la version fran aise du pr sent bulletin.*

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