

Land Transfer Tax “De Minimis” Partnership Exemption: Clarifying Amendments for Certain Dispositions

NOTE: This publication was revised in March 2016 to include two new sections: **An update to facilitate compliance;** and **Filing returns.**

This publication explains the amendments that have been made to Ontario Regulation 70/91 (Regulation) through the filing of O.Reg 35/16. It provides general information only and does not replace the Land Transfer Tax Act (Act) and Regulations.

Amendments have been made to section 1 of the Regulation to clarify how the “de minimis” partnership exemption (Exemption) from land transfer tax (LTT) under section 3 of the Act applies to certain dispositions of a beneficial interest in land, including those occurring in respect of complex real estate structures involving real estate investment trusts (REITs) and/or layer(s) of limited partnership(s).

The amendments are applicable on or after July 19, 1989 (the date on which the Exemption became effective).

Clarifying amendments

The amendments clarify that, for dispositions on or after July 19, 1989:

1. One of the following must be satisfied by the person (the individual or corporation) who acquires the beneficial interest in land:
 - a. The person was a partner in the partnership immediately before the disposition and that person’s entitlement as a partner to a percentage of the profits of the partnership, assuming it had profits to distribute, increased as a result of the disposition, or
 - b. The person became a partner in the partnership as a result of the disposition and became entitled as a partner to a percentage of the profits of the partnership, assuming it had profits to distribute, as a result of the disposition.

2. For limited partnerships, the provisions of the *Limited Partnerships Act* apply to determine if the person is a partner in a limited partnership.
3. For further clarity, the amendments state that the Exemption is not available if the partner who acquires the partner's interest in the partnership is a trust (such as a REIT) or another partnership.

Other requirements of the Exemption, including those respecting the five per cent limit, continue to apply.

Multi-layered structures

It is possible that a taxpayer (an individual or corporation) may acquire a beneficial interest in land through trusts or partnerships.

The Exemption is not available when a REIT or another type of trust becomes a partner in a partnership that holds land. Similarly, the Exemption is not available when a partnership becomes a partner in another partnership that holds land.

Past rulings

If a person has received a written ruling from the ministry on or before February 18, 2016 that applies to a taxpayer-specific disposition of a beneficial interest in land that is a partner's interest in a partnership, the ministry will generally consider the ruling to continue to apply to the taxpayer-specific disposition, despite the amendments, provided that all material facts in respect to the disposition were disclosed to the ministry when the ruling was issued.

An update to facilitate compliance

The following measures apply only to dispositions of a beneficial interest in land through one or more partnerships.

1. Assessment/Reassessment period

For dispositions of a beneficial interest in land through one or more partnerships, the Minister will assess and/or reassess only dispositions that occurred on or after February 18, 2012.

2. Prosecutions

For dispositions of a beneficial interest in land through one or more partnerships that occurred prior to February 18, 2016, the ministry will not initiate prosecutions under the Act.

3. Special Voluntary Disclosure Policy (SVDP)

A special, time-limited, voluntary disclosure policy (SVDP) will be available only with respect to dispositions of a beneficial interest in land through one or more partnerships. The SVDP will apply only to dispositions that occurred on or before February 17, 2016.

In general, the requirements of the SVDP will be the same as the ministry's general voluntary disclosure policy (VDP), as set out in the ministry's Voluntary Disclosure bulletin (with certain exceptions set out below). For further information about the general VDP, please refer to: www.fin.gov.on.ca/en/bulletins/general/voldisclosure.html

Like the general VDP, provided that the program requirements are met, the ministry will not assess penalties in respect of the dispositions reported in the disclosure. In addition, it is proposed that under the SVDP:

- Interest will not apply from the time of the disposition up to December 31, 2016.
- The ministry will issue an acceptance letter upon verifying that the disclosure is valid and program requirements are met.

The SVDP will be time limited. The disclosure must be made on or before December 31, 2016.

Full payment will be expected upon disclosure. Where the whole amount owing cannot be paid immediately, the ministry may consider reasonable payment arrangements.

Dispositions disclosed under the SVDP will generally be subject to the assessment/reassessment period in the Act.

For dispositions that are not eligible for the SVDP, or that do not meet the deadline for the SVDP, the ministry's general VDP will continue to apply.

Note: as stated previously, for dispositions of a beneficial interest in land through partnership(s) that occurred prior to February 18, 2016, the ministry will not initiate prosecutions under the Act.

4. Extension of time for returns (Dispositions on or after February 18, 2016)

For dispositions of a beneficial interest in land through one or more partnerships, returns and remittances for dispositions that occurred on or after February 18, 2016 will be due the later of the thirtieth day after the date of the disposition and January 1, 2017. Interest will not start to accrue for these transactions until January 1, 2017.

Filing returns

To help facilitate compliance and in accordance with its usual practice, the ministry accepts returns and payments made by a partner on behalf of other partners, as well as by trustee(s) on behalf of beneficiaries.

Questions regarding the application of the Exemption

If a question of interpretation of a term or provision of the Act or the regulations, or a question of the application of the Act or the regulations to a specific fact situation arises, a written request for an interpretation may be submitted to the ministry at the address provided below. Full and fair disclosure of all of the facts and documents must be provided.

Ministry of Finance
Advisory Services, Land Transfer Tax
33 King Street West, 3rd Floor
Oshawa ON L1H 8H5

For more information

If this publication does not completely address your particular situation, refer to the Act and related regulations, visit ontario.ca/finance or contact the Ministry of Finance at 1 866 ONT-TAXS (1 866 668-8297) or 1 800 263-7776 for teletypewriter (TTY).

Cette publication est disponible en français sous le titre « Exemption au titre d'une participation minimale dans une société de personnes découlant des droits de cession immobilière : modifications visant à préciser certaines dispositions ». Vous pouvez en obtenir un exemplaire en appelant le 1 866 ONT-TAXS (1 866 668-8297) ou en visitant ontario.ca/finances.

ISBN: 978-1-4606-2596-5 (Print)

ISBN: 978-1-4606-2594-1 (PDF)

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