



Land Transfer Tax Exemptions

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When land is conveyed to or held in trust for a transferee, the person obtaining a new interest in the said land must pay land transfer tax ("LTT") upon registration of the transfer. Although the LTT is applicable in most land transfer situations, there are certain exemptions that allow the LTT to not apply. The following is only a brief outline of four LTT exemptions.

First Time Purchasers of Newly-Constructed Homes

A refund of the LTT is available for first time purchasers of newly constructed homes in proportion to his/her acquired interest in the land. Furthermore, a refund is available for the interest acquired by a same-sex partner provided that the same-sex partner is a first time home purchaser or that the same sex partner had disposed of his/her eligible home prior to the time he/she became the same-sex partner of the purchaser.

Transfer Involving Corporations

In this circumstance, a LTT exemption occurs when unregistered transfers of land are being made between affiliated corporations. This exemption remains possible as long as the transfer is not registered and as long as the corporations involved in the transfer continue to be affiliates of each other. In this context "affiliates" include one corporation being a subsidiary of another, both corporations are subsidiaries of the same corporation or if each corporation is controlled by the same person(s). However, the LTT will not be exempt in the case of a land transfer between corporations where the consideration passing is the allotment and issuance of shares of the transferee corporation.

Gifts

Although gifts of land are not exempt from the LTT, if there is no consideration (either directly or indirectly) on the transfer of land then no LTT is payable. In this context, consideration includes the assumption of any liabilities attached to the land such as an outstanding mortgage, lien or unpaid taxes, etc.



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Spouses or Same Sex Partners

An exemption of the LTT arises when land is transferred between spouses, former spouses or same sex partners. The exemption of the LTT occurs when the land is transferred with the only consideration being the assumption of any encumbrance registered on the land, the transfer is in compliance with a written agreement where the parties have agreed to live separate and apart, or the transfer has been ordered by a court of competent jurisdiction.

Although this article has canvassed various exemptions to the LTT, lawyers and respective parties involved in the transfer of land must still start with the assumption that the LTT must be paid on the land transfer and then look at the facts of the transfer to see if they somehow fit into one of the exemptions that are outlined in the Land Transfer Tax Act. (This article was prepared with the assistance of Rick Forno, law student, University of Ottawa, Faculty of Law.)

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