

2022 Issue No. 21
5 April 2022

Tax Alert – Canada

Ontario increases nonresident speculation tax rate and extends application provincewide

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 30 March 2022, Ontario filed Regulation 240/22, which implements amendments to increase the nonresident speculation tax rate to 20% (from 15%) and extend the application of the tax provincewide. As well, tax rebates for international students and foreign nationals working in Ontario have been eliminated. These measures apply to conveyances of land tendered for registration on or after 30 March 2022, subject to transitional measures. The stated purpose of these measures is to reduce foreign residential real-estate speculation and help make Ontario homeownership more affordable for Ontario residents.

Background

As part of its Fair Housing Plan,¹ Ontario implemented a 15% nonresident speculation tax (NRST), applicable to transactions occurring on or after 21 April 2017. Ontario introduced the NRST in response to sharply rising prices for residential housing, especially in the Greater Toronto Area. The NRST, which is levied under the *Land Transfer Tax Act* (LTTA), applies to purchases of residential property² located in the Greater Golden Horseshoe Region of southern Ontario if the purchaser is a foreign national (i.e., an individual who is not a citizen or permanent resident of Canada), a foreign corporation or a taxable trustee.³ The NRST is levied on the value of the consideration for the residential property and applies in addition to the general tax levied under the LTTA.

NRST amendments

In a news release dated 29 March 2022, Ontario announced it would amend the NRST to:

- ▶ Increase the tax rate from 15% to 20%;
- ▶ Extend the tax to apply throughout the province; and
- ▶ Eliminate NRST rebates for international students and foreign nationals working in Ontario.

On 30 March 2022, Ontario filed Regulation 240/22, which amends regulations made under the LTTA⁴ to implement the above-listed measures. These amendments apply to conveyances of land tendered for registration on or after 30 March 2022, subject to transitional measures.

Foreign nationals may continue to claim a rebate if they become permanent residents of Canada within four years after the tax becomes payable, provided certain additional conditions are also met. As well, Ontario is retaining NRST exemptions for nominees under the Ontario Immigrant Nominee Program, protected persons (refugees) and spouses of individuals who are not subject to the NRST.

¹ The Fair Housing Plan was introduced on 20 April 2017 as a comprehensive package of measures with a stated purpose of helping more people find affordable homes, increasing housing supply, protecting buyers and renters and bringing stability to the real estate market.

² Specifically, the NRST applies to transfers of *designated land*, which the LTTA defines as land that contains at least one and not more than six single family residences. Examples of land containing one single family residence include detached and semi-detached houses, townhouses and single condominium units. Examples of land containing more than one single family residence include duplexes, triplexes, fourplexes, fiveplexes and sixplexes. The Ministry of Finance has indicated that the NRST may apply to a transfer of designated land if multiple units and/or structures are transferred together under a single conveyance. However, the NRST does not apply to multi-residential rental apartment buildings with more than six units or agricultural, commercial or industrial lands.

³ A *taxable trustee* generally includes (i) a foreign entity that holds title in trust for beneficiaries, or (ii) a Canadian citizen, permanent resident of Canada, or corporation that holds title in trust for foreign entity beneficiaries.

⁴ O. Reg. 182/17, Tax Payable Under Subsection 2(2.1) of the Act by Foreign Entities and Taxable Trustees (made under the LTTA).

Transitional measures

The NRST will continue to apply at the rate of 15% in respect of conveyances of land tendered for registration after 29 March 2022 if:

- ▶ The land is conveyed under an agreement of purchase and sale, or an assignment of an agreement of purchase and sale, that was entered into on or before 29 March 2022;
- ▶ The land is not conveyed to any foreign national, foreign corporation or taxable trustee other than a purchaser or assignee (and their spouse, if applicable) as stated under the agreement of purchase and sale or assignment; and
- ▶ The land is located in the Greater Golden Horseshoe Region of southern Ontario.

The NRST will not apply to a conveyance of land that is located outside the Greater Golden Horseshoe Region if:

- ▶ The land is conveyed under an agreement of purchase and sale, or an assignment of an agreement of purchase and sale, that was entered into on or before 29 March 2022; and
- ▶ The land is not conveyed to any foreign national, foreign corporation or taxable trustee other than a purchaser or assignee (and their spouse, if applicable) as stated under the agreement of purchase and sale or assignment.

International students and foreign nationals working in Ontario may no longer claim NRST rebates for conveyances of land occurring after 29 March 2022, subject to the exception applicable to certain foreign nationals, as noted above. A rebate remains available if:

- ▶ The land is conveyed under an agreement of purchase and sale or an assignment of such an agreement that was entered into on or before 29 March 2022;
- ▶ The land is not conveyed to any foreign national other than a purchaser or assignee (and their spouse, if applicable) as stated under the agreement of purchase and sale; and
- ▶ The land is located in the Greater Golden Horseshoe Region of southern Ontario.

Rebate applications must be submitted on or before the day that is four years after the day the tax becomes payable or 31 March 2025, whichever is earlier.

Other measures

In addition to the NRST amendments, Ontario indicated it is engaging in other efforts to increase housing supply. For example, the province is working with municipalities that wish to implement a vacant home tax in accordance with the *Municipal Act*. The city of Toronto has already implemented such a tax, and other municipalities are preparing to follow suit. Ontario indicated it will consult with municipal representatives to facilitate the sharing of information and best practices.

Learn more

For more information, please contact your EY or EY Law advisor or one of the following professionals:

Toronto

Jeremy Shnaider

+1 416 943 2657 | jeremy.shnaider@ca.ey.com

Gabriel Baron

+1 416 932 6011 | gabriel.baron@ca.ey.com

Ottawa

Chris Jerome

+1 613 598 4865 | chris.jerome@ca.ey.com

London

John Sliskovic

+1 519 646 5532 | john.t.sliskovic@ca.ey.com

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